

RECEIVED

MAY 24 2022  
Form No. 204 Rev. 12/12

DEPARTMENT OF  
WATER RESOURCES

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

\$50 fee  
Received by KU  
Recpt No. C112872  
Date 5.24.22

REQUEST FOR EXTENSION OF TIME

To provide additional time in which to submit proof of beneficial use for a water right permit

The Idaho Department of Water Resources will consider this form a request that the permit holder(s) be granted an additional period of time under the provisions of Section 42-204, Idaho Code, in which to complete development of a water right and file proof of beneficial use of water. There is a FILING FEE of \$50.00 to be included with this form when filed with IDWR.

Permit no. 94-04235 7389 Date proof is due June 1, 2022

Name(s) of permit holder(s) Gold Creek Mines Inc.

Mailing address PO Box 709 City Wallace State ID Zip 83873

Telephone no. (208) 664-5818 Email mniemela@rmedlaw.com

Describe what work has been completed toward the development of this water right:

If no work has been completed, show "none".

See attached letter incorporated herein.

Costing \$ 70,322.42

The permit holder(s) has been unable to complete the remainder of the work for the following reasons:

See attached letter incorporated herein.

Permit holder(s) request an extension for five (5) year(s).

Casey Almqvist 5-19-22  
Signature (If other than permit holder, Power of Attorney must be supplied) Date

ACTION OF THE DEPARTMENT OF WATER RESOURCES

The Department has reviewed the explanation for delay and concludes the reason(s) for delay meets the requirements for approval of the Request for Extension of Time as provided by Section(s) 42-204 and/or 42-218, Idaho Code.

IT IS HEREBY ORDERED that the permit is REINSTATED with the priority date advanced to \_\_\_\_\_, 20\_\_\_\_.

IT IS HEREBY ORDERED that the above request for extension of time is APPROVED, and the time within which to submit proof of beneficial use is extended to June 1, 2022.

Signed this 9th day of June, 2022 Shelley W. Keen  
Shelley W. Keen, Chief  
Water Allocation Bureau



Governor Brad Little  
June 15, 2022

Director Gary Spackman

GOLD CREEK MINES INC  
2828 SPURGIN RD  
MISSOULA MT 59804-3110

### REQUEST FOR EXTENSION OF TIME LETTER

**RE: Permit No. 94-7389**

Dear Permit Holder:

Enclosed is a copy of the approved request for extension of time submitted in connection with the above referenced permit which extends the proof due date to **June 01, 2027**.

The Department granted this extension based on evidence of good cause. It is important that you work diligently toward the completion of the project during the development period allowed because the Department **will not** grant an additional extension based on good cause, pursuant to Idaho Code § 42-204(3)(f).

The extension is a PRELIMINARY ORDER issued by the Department pursuant to Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01). It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

**Please be advised that Idaho Code § 42-248, requires you or the owner of this water right to maintain current ownership and address records on file with the Department. Forms to file a change of ownership of a water right and/or a change in the address of the water right owner are available from any Department office or at the Department's website at [www.idwr.idaho.gov](http://www.idwr.idaho.gov).**

If you have any questions concerning this permit, please contact the State Office of the Department located in Boise at (208) 287-4800.

Sincerely,

Debbi Judd  
Technical Records Specialist

Enclosures

c: MATTHEW NIEMELA – *via email*

## CERTIFICATE OF SERVICE

I hereby certify that on **June 15, 2022** I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (**PRELIMINARY ORDER APPROVING REQUEST FOR EXTENSION OF TIME**) to the persons listed below:

RE: Preliminary Order in the Matter of Permit No. **94-7389**

**GOLD CREEK MINES INC  
2828 SPURGIN RD  
MISSOULA MT 59804-3110**

**MATTHEW NIEMELA – *via email*  
PO BOX 1336  
COEUR D ALENE ID 83816-1336  
[mniemela@rmedlaw.com](mailto:mniemela@rmedlaw.com)**



---

**Debbi Judd**

**Technical Records Specialist**

## Judd, Debbi

---

**From:** Judd, Debbi  
**Sent:** Wednesday, May 25, 2022 10:01 AM  
**To:** Matt Niemela  
**Subject:** RE: Request for extension permit 94-7389

Matt,

The cover letter references the correct permit number so I will change it on the form. I will add you as attorney to receive a courtesy copy and there is no need to resubmit the request as I will add this email for documentation to the file.

Thanks,  
Debbi

**From:** Matt Niemela <mniemela@rmedlaw.com>  
**Sent:** Wednesday, May 25, 2022 9:05 AM  
**To:** Judd, Debbi <Debbi.Judd@idwr.idaho.gov>  
**Cc:** Nicole Ryen <nryen@rmedlaw.com>  
**Subject:** Re: Request for extension permit 94-7389

Ms. Judd:

You are correct, the referenced permit is 94-7389. Also, the mailing address in Missoula is best. Will you also provide a courtesy copy to my office - P.O. Box 1336, Coeur d'Alene, ID 83816?

Please let me know if you have questions. Please also advise if you would like us to resubmit the request with the above information.

Matt

Get [Outlook for iOS](#)

---

**From:** Judd, Debbi <[Debbi.Judd@idwr.idaho.gov](mailto:Debbi.Judd@idwr.idaho.gov)>  
**Sent:** Tuesday, May 24, 2022 3:28:05 PM  
**To:** Matt Niemela <[mniemela@rmedlaw.com](mailto:mniemela@rmedlaw.com)>  
**Subject:** Request for extension permit 94-7389

Good afternoon,

The Department received a request for extension for permit 94-4235. It appears that this should be 94-7389 as 94-4235 is a water right, not a permit. Please confirm. Also, the mailing address indicated on the request is PO Box 709, Wallace ID 83873. Previous mailings to that address have been returned to the Department by the USPS as undeliverable. The address I was given by Michael Branstetter is 2828 Spurgin Rd, Missoula MT 59804. Please confirm the correct mailing address for Gold Creek Mines Inc. I will hold this request until I receive confirmation. Please feel free to contact me should you have questions or concerns.

Thanks,  
Debbi

# RAMSDEN, MARFICE, EALY & DE SMET, LLP

ATTORNEYS AT LAW

P.O. BOX 1336, COEUR D'ALENE, ID 83816 | 700 NORTHWEST BLVD, COEUR D'ALENE, ID 83814

E-MAIL: FIRM@RMEDLAW.COM | WEB: WWW.RMEDLAW.COM

TELEPHONE: 208-664-5818 | FACSIMILE: 208-664-5884

MICHAEL E. RAMSDEN, OF COUNSEL \*  
DOUGLAS S. MARFICE \*  
MICHAEL A. EALY \*  
THERON J. DE SMET \*  
NATHAN S. OHLER \*  
MARCUS E. JOHNSON \*  
JACK A. MOSBY \*

\*LICENSED IN ID & WA  
† LICENSED IN ID & CA  
§LICENSED IN ID, OR & AZ

RICK Z. HARUTHUNIAN †  
LAURA K. MARKHAM §  
MATTHEW C. NIEMELA \*  
WILLIAM F. BOYD, RET.  
MICHAEL K. BRANSTETTER, RET.  
TERRANCE R. HARRIS (1963-2021)

May 19, 2022

Debbi Judd  
Technical Records Specialist  
Idaho Department of Water Resources  
322 E Front Street, Suite 648  
Boise, ID 83702

*Re: Permit No. 94-07389*

Dear Ms. Judd,

This office represents Gold Creek Mines, Inc. ("GCM"), the holder of Permit No. 94-07389. This letter supplements the enclosed Request for Extension of Time and addresses each factor in turn.

## **Completed work toward the development of the water rights:**

GCM initially submitted the underlying Application for Permit on November 7, 2001. The Application sought water rights to construct and install a 1,008 kw hydroelectric powerplant near the confluence of Gold Creek and the South Fork of the Coeur d'Alene River. The powerplant will sit entirely on GCM property. Following GCM's filing, the Idaho Department of Fish and Game ("IDFG") filed a Letter of Protest. *See* Exhibit 1. IDFG's letter objected to GCM's Application citing concern that a powerplant would effect local fish habitat and populations in Gold Creek.

The protest resulted in litigation to address IDFG's objections. To obviate IDFG's objection, IDFG requested that GCM conduct a fish survey in the affected areas of Gold Creek. In addition, to conduct the fish survey, GCM was required to also obtain a permit for said survey from the IDFG. GCM retained Anchor QEA to conduct a fish survey in Gold Creek. Anchor QEA completed the survey in July 2016. IDFG accepted Anchor QEA's analysis and agreed to withdraw its protest provided the Permit contain significant Conditions of Approval. IDFG and GCM stipulated to the included conditions on April 20, 2017. *See* Exhibit 2. Idaho Department of Water Resources issued the Permit thereafter.

To date, GCM spent \$70,322.42 allocated as follows:

1. Initial Feasibility Study - \$10,000.00
2. Water Level Logger - \$11,309.21
3. Anchor QEA (consulting and fish survey) - \$47,813.21
4. Update to Feasibility Study - \$1,200.00

GCM also incurred moderate expenses in connection with maintenance and repair of the water level logger.

**Reasons GCM has been unable to complete the remainder of the work:**

After issuance of the Permit, GCM installed a water level logger upstream near the confluence of the unnamed creek and Gold Creek where construction will occur. The water logger was installed to complete a one-year water flow and depth reading analysis for a final feasibility study. In addition to the automated records generated from the water level logger, an agent for GCM must take monthly readings at the site to gather the additional data for the final feasibility analysis. GCM has been unable, to date, to take readings during the winter months (November through March) due to the limited access and limited solar power which powers the water logger. GCM will consider improving access but hopes to avoid this expense prior to completing the final feasibility study.

In addition, GCM expended much of its budget for the project because of the IDFG required environmental study. Following exhaustion of its initial funds, feasibility study notwithstanding, GCM lacked the capital to immediately begin construction and development. The development of fracking between the time of GCM's Application and the issuance of the Permit also lowered the cost effectiveness of hydropower and feasibility of the project. When GCM began to recover the means to continue work, the COVID-19 pandemic, subsequent labor market and inability to obtain supplies impaired GCM's ability to move forward with construction.

After GCM completes the one-year feasibility study, GCM expects construction will take at least two seasons. GCM therefore requests an extension of five years to ensure adequate time to complete the final feasibility study and complete the improvements.

Please contact me with any questions or should you require additional information.

Best regards,



Matthew C. Niemela



**IDAHO FISH & GAME**  
**PANHANDLE REGION**  
 2750 Kathleen Avenue  
 Coeur d'Alene, Idaho 83815

Dirk Kempthorne/Governor  
 Steven Huffaker/Director

February 26, 2002

Mr. Robert Haynes  
 Idaho Department of Water Resources  
 Northern Region  
 1910 Northwest Blvd, S 210  
 Coeur d'Alene, ID 83814

RECEIVED  
 FEB 28 2002  
 IDWR/North

Dear Mr. Haynes:

REFERENCE: #94-7389 - GOLD CREEK MINES, INC.

IDFG protests the above-named application by Gold Creek Mines to withdraw 15 cfs from Gold Creek (Shoshone County) for power generation.

Our protest is based on the potential, but unknown, impacts of the proposed hydropower project on fish and wildlife resources. The application is insufficient to for us to adequately evaluate the environmental impacts of the proposed project.

IDFG has does not currently have information regarding fisheries in the proposed bypass reach. However, because of the size, elevation and location of the creek, we believe that Gold Creek may support westslope cutthroat trout or other native fish. IDFG would like any water right permit to include conditions to ensure an adequate amount of bypass flow is maintained in Gold Creek to support fish and other aquatic and riparian resources.

In addition to our desire to ensure that adequate flows are maintained to support fish and other environmental values, we do not know, but suspect that the amount of water requested is not available in Gold Creek year round.

The applicant should be required to provide sufficient hydrologic and aquatic resource data to demonstrate that sufficient flows are available to satisfy both the requested appropriation and to maintain bypass flows needed to support and protect existing fisheries and other environmental functions before a permit is issued.

Sincerely

Greg Tourtlotte  
 Regional Supervisor

GIT:RH:kh

- C: NRPB Boise; Greg Tourtlotte, IDFG Cd'A
- Mr. Mike Branstetter, Gold Creek Mines
- Mr. David Barber, Office of the Attorney General, State of Idaho

File: IDWR # 94-7389 gold creek mines hydro

*Keeping Idaho's Wildlife Heritage*

Equal Opportunity Employer • 208-769-1414 • Fax: 208-769-1418 • Idaho Relay (TDD) Service: 1-800-377-3529 • <http://www.state.id.us/fishgame>

**EXHIBIT 1**

LAWRENCE G. WASDEN  
Attorney General

CLIVE J. STRONG  
Deputy Attorney General  
Chief, Natural Resources Division

ANN Y. VONDE (ISB # 8406)  
Deputy Attorney General  
700 West State Street – 2<sup>nd</sup> Floor  
P.O. Box 83720  
Boise, ID 83720-0010  
(208) 334-2400

*Attorneys for the Idaho Department of Fish and Game*

BEFORE THE DEPARTMENT OF WATER RESOURCES OF  
THE STATE OF IDAHO

IN THE MATTER OF APPLICATION  
FOR PERMIT NO. 94-7389 IN THE  
NAME OF GOLD CREEK MINES INC.

STIPULATION AND JOINT  
MOTION TO APPROVE  
CONDITIONS

Applicant Gold Creek Mines Inc. (“Applicant”) and protestant Idaho Department of Fish and Game (“Protestant”) by and through their undersigned counsel of record and/or representatives, and pursuant to IDAPA 37.01.01.204, .260, .557 and .612, hereby stipulate to a settlement of the protest in the above-entitled matter, the terms and conditions of which are set forth herein.

STIPULATION AND JOINT MOTION TO APPROVE CONDITIONS - 1

**EXHIBIT 2**

The parties agree that the following conditions (“Conditions”) should be included in any approvals of Applications for Permit No. 94-7389 (“Application”):

1. Proof of application of water to beneficial use shall be submitted on or before [DATE].
2. Subject to all prior water rights
3. Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.
4. When diverting and using water in connection with this right, the right holder will allow at least 2 cfs to bypass the point of diversion and continue to flow down Gold Creek.
5. As a means of monitoring the 2 cfs bypass flow described in this right, a measuring device approved by the Department shall be installed by the right holder and maintained at T47N, R5E, S4.
6. Prior to diversion and use of water under this permit, the right holder shall install a functioning fish screen approved by the Idaho Department of Fish and Game on the point of diversion.
7. The use of water under this right shall be non-consumptive.
8. The term of this permit shall extend to [DATE]. Prior to expiration of the term, the Director may issue and order cancelling
9. If it has not been previously provided, the permit holder shall submit a copy of the FERC exemption order and a copy of the effective energy sales/purchase agreement for this project in conjunction with the Proof of Beneficial Use statement.
10. This right is subject to the provisions of Sections 42-205 through 42-210, Idaho Code, restricting the sale, transfer, assignment, or mortgage of this right. Failure to comply with these provisions is cause for immediate cancellation of this right.
11. The rights for the use of water for power purposes acquired under this right shall be junior and subordinate to all other rights for the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

12. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.

The parties move the Department, pursuant to IDAPA 37.01.01.557, .612 for an order (“Order”) approving the Conditions set forth herein and confirming that they will be included by the Department in any approval of the Application.

Protestant’s protest to the Application shall be deemed withdrawn upon the issuance of a Final Order stating that the Conditions are approved and shall be made a part of the Application’s approval. Provided that the Application is not subsequently amended from its current form except as may be required by the Department to continue processing, the withdrawal of Protestant’s protest shall be with prejudice.

The parties respectfully request the entry of a Final Order approving the stipulated settlement set forth herein including the Conditions; each party to bear its own costs, expenses, and attorney’s fees.

DATED this 10<sup>th</sup> day of April, 2017.



ANN Y. VONDE  
Deputy Attorney General

DATED: April 19, 2017

A handwritten signature in black ink, appearing to read "Michael K. Branstetter", with a long horizontal flourish extending to the right.

Michael K. Branstetter, Hull and Branstetter  
Chartered, attorneys for Gold Creek Mines Inc.

**CERTIFICATE OF SERVICE**

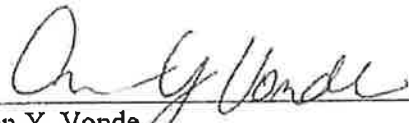
I hereby certify that on the 20<sup>th</sup> day of April, 2017, a true and correct copy of the foregoing was filed and/or served upon the following individual(s) by the means indicated:

Idaho Department of Water Resources  
Attn: Morgan Case  
7600 North Mineral Drive Ste 100  
Coeur d'Alene ID 83815

- U.S. Mail, postage prepaid
- Express Mail
- Hand Delivery
- Email:

Michael Brandstetter  
416 River St.  
Wallace ID 83873-0709

- U.S. Mail, postage prepaid
- Express Mail
- Hand Delivery
- Email:

By:   
Ann Y. Vonde  
Deputy Attorney General