

State of Idaho  
Department of Water Resources  
**Water Right License**  
Water Right No. 1-10401

**Priority:** June 06, 2002

**Maximum Diversion Volume:** 157,000 AF

It is hereby certified that:

US DEPT OF INTERIOR  
BUREAU OF RECLAMATION  
1150 N CURTIS RD STE 100  
BOISE ID 83706-1234

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated June 06, 2002, and has submitted Proof of Beneficial Use on June 29, 2006. An examination confirms water is diverted from:

**Source :** SNAKE RIVER

**Tributary:** COLUMBIA RIVER

| <u>Beneficial Use</u> | <u>Period of Use</u> | <u>Annual Volume</u> |
|-----------------------|----------------------|----------------------|
| POWER STORAGE         | 01/01 to 12/31       | 157,000 AF           |
| POWER FROM STORAGE    | 01/01 to 12/31       | 157,000 AF           |

**Location of Point(s) of Diversion**

SNAKE RIVER SE¼ NE¼, Sec. 17, Twp 01S, Rge 45E, B.M. BONNEVILLE County

**Place of Use:** POWER FROM STORAGE

| Twp | Rng | Sec | NE |         |    |    | NW |    |    |    | SW |    |    |    | SE |    |    |    |
|-----|-----|-----|----|---------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
|     |     |     | NE | NW      | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE |
| 01S | 45E | 17  |    | X<br>L2 |    |    |    |    |    |    |    |    |    |    |    |    |    |    |

**Conditions of Approval**

1. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 01.
2. The rights for the use of water confirmed in this license shall be junior and subordinate to all 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 right or 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 right.
3. The term of this water right license shall extend to April 1, 2035, or whenever the 2004 Snake River Water Rights Agreement is no longer effective, whichever comes first. Prior to the expiration of the term, the Director may issue an order canceling all or any part of the use authorized herein, may establish a new term, or may revise, delete, or add conditions under which the water right license may be exercised. The order shall take effect on the date the current term expires. If the Director does not issue such an order, the term shall automatically extend to a

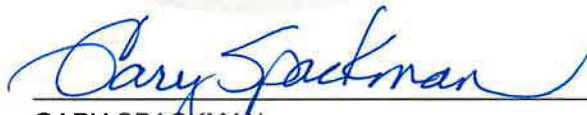
State of Idaho  
Department of Water Resources  
**Water Right License**  
Water Right No. 1-10401

length equal to the project's prior term and any prior conditions on the water right license shall remain in effect.

4. Any use of water authorized by this water right, including any change in use authorized pursuant to a transfer, exchange, Water Supply Bank lease and rental, or any other use of water relying on this water right, shall fully comply with the provisions of the Mediator's Term Sheet of the 2004 Snake River Water Rights Agreement, a copy of which is attached as Attachment 2 to the *Consent Decree Approving Entry of Partial Final Decrees Determining the Rights of the United States as Trustee for the Benefit of the Nez Perce Tribe and the Nez Perce Tribe to the Use of Water in the Snake River Basin Within Idaho and Partial Final Decrees Determining Minimum Stream Flow Water Rights Held by the Idaho Water Resources Board* entered on January 30, 2007, by John M. Melanson, Presiding Judge, Snake River Basin Adjudication.
5. The use of water under this right shall not give rise to any claim against the holder of a senior water right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.
6. The storage of water under this right is contingent upon continued certification by the Department of Water Resources under the dam safety provisions of the Idaho Code, authorizing storage.
7. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.

This license is issued pursuant to the provisions of Idaho Code § 42-219. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed this 31<sup>st</sup> day of May, 2022

  
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GARY SPACKMAN

Director

State of Idaho  
Department of Water Resources  
**Attachment to Water Right License**  
1-10401

This map depicts the POWER FROM STORAGE place of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.



- Point of Diversion
- Place Of Use Boundary
- Townships
- PLS Sections
- Quarter Quarters

0 0.15 0.3 0.6 Miles





IDAHO DEPARTMENT OF  
**WATER RESOURCES**

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Governor Brad Little

Director Gary Spackman

May 31, 2022

US DEPT OF INTERIOR  
BUREAU OF RECLAMATION  
1150 N CURTIS RD STE 100  
BOISE ID 83706-1234

RE: License No. 01-10401

**ISSUANCE OF LICENSE**

Dear Water Right Holder:

The Department of Water Resources ("Department") has enclosed Water Right License 01-10401 confirming that a water right has been established in accordance with your permit to appropriate water from the Snake River. The license is a final order issued by the Department pursuant to Rule 740 of the Department's Rules of Procedure (IDAPA 37.01.01.740). Procedures for petitioning for reconsideration, requesting a hearing, or appealing to district court are described in the enclosed information sheet.

Please thoroughly review all the conditions of approval listed on your license. In particular, Water Right License 01-10401 contains conditions originating in the Snake River Water Rights Agreement of 2004, also known as the Nez Perce Settlement Agreement. Pursuant to Section 16 of the *Consent Decree Approving Entry of Partial Final Decrees Determining the Rights of the United States as Trustee for the Benefit of the Nez Perce Tribe and the Nez Perce Tribe to the Use of Water in the Snake River Basin Within Idaho and Partial Final Decrees Determining Minimum Stream Flow Rights Held by the Idaho Water Resources Board* ("Consent Decree"), issued by the Idaho Water Court on January 30, 2007, the parties are bound to follow it and the provisions of the April 7, 2004 Mediator's Term Sheet. By issuing License 01-10401 with these conditions, the Director expects Reclamation to adhere to the requirements in the Mediator's Term Sheet.

Section III.7 of the Snake River Flow Component of the Mediator's Term Sheet states:

Powerhead water in BOR storage facilities may be used only to increase the reliability of 427,000 acre-feet for flow augmentation and is subject to the following limitations:

- a. After utilization by the United States of all water described in sections III.C.4 through 6, above, if the total amount of water released for flow augmentation is less than the 427,000 acre-feet, the Palisades Reservoir powerhead water may be utilized by the United States to attain 427,000 acre-feet for flow augmentation;

- b. Use of powerhead shall not at any time interfere with the currently established minimum conservation pools or hereinafter established minimum conservation pools;
- c. Powerhead space used for flow augmentation shall be the last space to refill after all other space in reservoirs in that water district, including other space used to provide flow augmentation, in the basin has filled;
- d. Use of water from powerhead space shall be in compliance with state law;

The language of the Mediator's Term Sheet clearly states that refill of powerhead storage water for flow augmentation "shall be the last space to refill after all other space in reservoirs in that water district, including other space used to provide flow augmentation, in the basin has filled."

**Consistent with the Mediator's Term Sheet and License 01-10401, the Director will issue instructions to the watermaster of Water District 01, Snake River, instructing the watermaster that powerhead space, authorized to be stored pursuant to License No. 01-10401 and released through the Water District 01 rental pool for flow augmentation, will be the last storage space to fill in Palisades Reservoir "after all other space in [the] reservoirs . . . in the basin has filled." The Director's "last to fill" instructions to the watermaster shall apply to both 2022 refill of powerhead space vacated in 2021 and future refill of reservoir powerhead space vacated in 2022.**

The license also contains conditions relating to the subordination of water rights for power generation purposes under Idaho State law and establishing a term limit for the water right. Idaho Code § 42-203B establishes the State's authority to subordinate water rights for power purposes to subsequent depletionary uses and its authority to limit the term of a permit or license for power purposes. The State of Idaho's authority to impose limitations on hydropower rights, including subordinating them to other uses, is also stated in IDAPA 37.03.08.050.03. Subordination and term limit conditions were included on Permit 01-10401, issued in 2005. The term limit condition on the license reflects changes to the term review provisions of Idaho Code § 42-203B(9) passed by the Idaho Legislature in 2013.

If you have any questions concerning the enclosed information, please contact the Department at (208) 287-4800.

Sincerely,



Gary Spackman  
Director

Enclosure(s)

### CERTIFICATE OF SERVICE

I hereby certify that on June,    /   , 2022, I served a true and correct copy of Water Right License No. 01-10401 by U.S. Mail, postage prepaid, to the following:

US DEPT OF INTERIOR  
BUREAU OF RECLAMATION  
1150 N CURTIS RD STE 100  
BOISE ID 83706-1234

  
\_\_\_\_\_  
Jean Hersley  
Technical Records Specialist 2

## **EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER**

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246, Idaho Code.

### **PETITION FOR RECONSIDERATION**

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: The petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4), Idaho Code.

### **REQUEST FOR HEARING**

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. See section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

### **APPEAL OF FINAL ORDER TO DISTRICT COURT**

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of: a) the service date of the final order, b) the service date of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.