

Cefalo, James

From: Cefalo, James
Sent: Monday, March 7, 2022 10:44 AM
To: 'TJ Budge'; Jirak, Jeremy M; Rob Harris; Wilson, Frank S
Cc: hank.povey@gmail.com; Ball, Gary; Esralew, Rachel; Wallis, Joanne V; Pilson, Stephen; Jeletic, Michael P
Subject: RE: [EXTERNAL] RE: Application for Permit 13-8081 (USFWS)
Attachments: Draft Permit 13-8081.pdf

Thank you again for your review and proposed edits. I think we are close. TJ offers an interesting idea. He suggests removing the dates associated with the irrigation season and non-irrigation season altogether. I think there are advantages to not defining the irrigation season at this point. There is a chance that the irrigation season will be re-defined or adjusted as part of the Bear River Basin Adjudication. The generally recognized irrigation season for the area is April 1 – October 31. The decreed season of use is April 20 – September 30. In the Snake River Basin Adjudication, the adjudication court created shoulder season remarks for the areas where the irrigation season did not match the old decrees. By not defining the season of use in the conditions for Permit 13-8081, that makes the permit flexible enough to match whatever season of use is created in the BRBA. If the season of use dates are removed, I think it is important to note that FWS can begin storing water again in late summer, after the Oxford Slough becomes disconnected from Deep Creek. I have added a sentence to that effect at the end of Condition 5.

I apologize for creating another draft. Because the comments were all directed to the season of use question, and TJ's proposal is a big change, I think it is important to give one more opportunity for review. If we find that there are concerns with this draft, I may schedule another status conference to work through the changes real time, rather than through email. Please review the revised draft. Let me know if you have any edits or comments by Friday, March 18th.

James

 IDAHO DEPARTMENT OF
WATER RESOURCES
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From: TJ Budge <tj@racineolson.com>
Sent: Friday, February 25, 2022 4:46 PM
To: Jirak, Jeremy M <jeremy_jirak@fws.gov>; Cefalo, James <James.Cefalo@idwr.idaho.gov>; Rob Harris <rharris@holdenlegal.com>; Wilson, Frank S <Frank.Wilson@sol.doi.gov>
Cc: hank.povey@gmail.com; Ball, Gary <gary_ball@fws.gov>; Esralew, Rachel <Rachel_Esralew@fws.gov>; Wallis, Joanne V <joanne_wallis@fws.gov>; Pilson, Stephen <stephen_pilson@fws.gov>; Jeletic, Michael P <michael_jeletic@fws.gov>
Subject: RE: [EXTERNAL] RE: Application for Permit 13-8081 (USFWS)

I have a few suggested edits, attached.

T.J. Budge
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State of Idaho
Department of Water Resources

2/14/22 Draft Permit to Appropriate Water

No. 13-8081

Priority: July 28, 2021

Maximum Diversion Volume: 1,200.0 AF

This is to certify that

US DEPT OF INTERIOR
FISH & WILDLIFE SERVICE
911 NE 11TH AVE
PORTLAND OR 97232-4181

has applied for a permit to appropriate water from:

Source : OXFORD SLOUGH

Tributary: DEEP CREEK

and a permit is APPROVED for development of water as follows:

Beneficial Use
WILDLIFE STORAGE

Period of Use
01/01 to 12/31

Annual Volume
1,200.0 AF

Location of Point(s) of Diversion

OXFORD SLOUGH L10 (NE¼ NW¼), Sec. 2, Twp 14S, Rge 38E, B.M. FRANKLIN County

Place of Use: WILDLIFE STORAGE

Twp	Rng	Sec	NE				NW				SW				SE			
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
13S	38E	26							X L3	X	X L2	X L2	X	X L1				
13S	38E	26							X L4	X	X L2	X L4		X L5				
13S	38E	26									X L4			X L1				
13S	38E	26												X L5				
13S	38E	27			X L2	X L1				X	X L3			X L5	X L8	X L2	X	X
13S	38E	27				X L8					X L6					X L7		
13S	38E	34	X	X	X	X	X		X L11	X	X	X L10	X L9	X L8	X	X	X L7	X L7
13S	38E	35					X	X	X		X	X	X	X				
14S	38E	2					X L10	X L11	X									
14S	38E	3	X L9															

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **March 01, 2024**.
2. Subject to all prior water rights.
3. The reservoir established by the storage of water under this right shall not exceed a total capacity of 1,200 acre-feet or a total surface area of 836 acres.

State of Idaho
Department of Water Resources**2/14/22 Draft Permit to Appropriate Water**

No. 13-8081

4. To prevent injury to water right 13-7481 during the non-irrigation season ~~(October 1 through April 19)~~, the right holder shall adhere to the following plan of operations: The right holder may capture and store water in the reservoir authorized by this right up to a maximum elevation of 4745.5 feet above sea level. If the holder of water right 13-7481 notifies the right holder of an intent to divert water for storage, and there is insufficient water in Deep Creek to satisfy that right, the right holder shall document the water surface elevation on the day of the notice and provide the elevation reading to the holder of water right 13-7481. The right holder may maintain the reservoir at the documented water surface elevation but shall adjust the diversion structure(s) to allow water in excess of such water elevation to flow downstream into Deep Creek. Upon notice that the holder of water right 13-7481 is no longer diverting water to storage, the right holder may resume storing water under this right. At any time during the non-irrigation season, even after notice is provided by the holder of water right 13-7481, the right holder may store any water in excess of the quantity of water needed to satisfy water right 13-7481, unless this right is curtailed under priority administration of water rights in the Bear River Basin.
5. To prevent injury to downstream water rights during the irrigation season ~~(April 20 through September 30)~~, the right holder shall adhere to the following plan of operations: The right holder may capture and store water in the reservoir authorized by this right up to a maximum elevation of 4745.5 feet above sea level. ~~If storage is paused pursuant to notice from the holder of water right 13-7481 (as described in Condition 4), upon notice that the holder of water right 13-7481 is no longer diverting water to storage or on May 1, whichever is earlier, the right holder may resume storing water.~~ Each year that water is actively captured and stored ~~above the natural water levels of the Oxford Slough (i.e. boards are installed to retain water), at the time~~ irrigation rights are curtailed on the Bear River in the state of Idaho or when a call for water is made by the holder of a senior irrigation right on Deep Creek, ~~but not earlier than April 20th, the right holder shall remove pressure boards, if necessary,~~ to allow the reservoir to empty slowly to an elevation six inches less than the maximum storage level reached that year. Once the reservoir reaches equilibrium at an elevation six inches lower than the maximum storage elevation for a given year, the natural channel below the reservoir dike will dry up and the reservoir will eventually become disconnected from Deep Creek, thereby reflecting the natural hydrologic conditions in mid- to late-summer.
6. After specific notification by the Department, the right holder shall install a suitable measuring device to quantify the amount of water released from the reservoir authorized by this right.
7. Prior to diversion of water under this right, the right holder shall permanently install and maintain a staff gage and water level data logger near the diversion dam which can be used to measure and record the water surface elevation of the water stored behind the dam.

This permit is issued pursuant to the provisions of Idaho Code § 42-204.

Signed this _____ day of _____, 20____.

JAMES CEFALO
Regional Manager