

State of Idaho
Department of Water Resources
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 (NE $\frac{1}{4}$ NW $\frac{1}{4}$), 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 **May 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.

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4. To prevent injury to water right 13-7481 (which includes any of its progeny rights) during the non-irrigation season, 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, 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. In any year that water is actively captured and stored under this right (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, the right holder shall remove pressure boards to allow the reservoir to empty 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. The right holder may capture and store water in the reservoir in the latter part of the irrigation season, after Oxford Slough has become disconnected from Deep Creek.
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 28th day of April, 2022.



JAMES CEFALO
Regional Manager

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

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

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **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 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case 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 this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.



April 28, 2022

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

RE: Permit No. 13-8081

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources ("Department") has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review all the conditions of approval listed on your permit. The conditions include requirements that you must accomplish, such as timely submittal of proof of beneficial use or installation of a measuring device, as well as information about how your water use may be administered, such as regulation by a watermaster in a water district. Failure to comply with the conditions of approval may result in your permit lapsing or being canceled.

The permit is a PRELIMINARY ORDER issued pursuant to Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730). It can and will become a final order without further action by the Department unless a party petitions for reconsideration, files exceptions, or requests a hearing as described in the enclosed information sheet.

The final step in the water right process is issuance of a water right license. To receive a water right license, you must divert and use water to the full extent intended and submit a *Statement of Completion for Submitting Proof of Beneficial Use* by the date shown in condition no. 1 of your permit. The Department will send you a *Proof Due Notice* approximately 60 days prior to the date listed in condition no. 1 of your permit.

You may also require approvals from other Department programs, such as Ground Water Protection, Safety of Dams, or Stream Channel Protection, to accomplish your proposed development. Please call or visit any Department office or see the Department's website at idwr.idaho.gov for more information about these programs.

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

If you have any questions concerning the enclosed information, please contact me at (208) 497-3784.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Cefalo', written in a cursive style.

James Cefalo
Eastern Regional Manager

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2022, I served a true and correct copy of Permit to Appropriate Water No. 13-8081 by U.S. Mail, postage prepaid, to the following:

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

BEAR RIVER WATER USERS ASSN INC
967 W BLOOMSBURY COVE
MURRAY UT 84123

RACINE OLSON NYE & BUDGE CHARTERED
PO BOX 1391
POCATELLO ID 83204-1391

CLYDE SNOW & SESSIONS
ONE UTAH CENTER, 13TH FLOOR
201 S MAIN ST
SALT LAKE CTY UT 84111-2215

WATER DISTRICT #11
JOSH HANKS
132 E 400 S
RICHMOND UT 84333-1505

ROBERT L HARRIS
HOLDEN KIDWELL HAHN & CRAPO
PO BOX 50130
IDAHO FALLS, ID 83405-0130

TWIN LAKES CANAL COMPANY
PO BOX 247
PRESTON, ID 83263



Christina Henman
Administrative Asst. I