

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 45-14539

Priority: October 28, 2021

Maximum Diversion Volume: 121.2 AF

This is to certify that

ALBION 12 INVESTMENTS LLC
7595 E MCDONALD DR STE 130
SCOTTSDALE AZ 85250-6081

has applied for a permit to appropriate water from:

Source : SPRING CREEK
Source : UNNAMED STREAM

Tributary: HOWELL CREEK
Tributary: SUMMIT CREEK

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

<u>Beneficial Use</u>	<u>Period of Use</u>	<u>Annual Volume</u>
WILDLIFE STORAGE	01/01 to 12/31	121.2 AF
AESTHETIC STORAGE	01/01 to 12/31	121.2 AF

Location of Point(s) of Diversion

SPRING CREEK SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 21, Twp 12S, Rge 25E, B.M. CASSIA County
SPRING CREEK SE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 21, Twp 12S, Rge 25E, B.M. CASSIA County
UNNAMED STREAM SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 16, Twp 12S, Rge 25E, B.M. CASSIA County

Place of Use: WILDLIFE STORAGE

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
12S	25E	16														X			
12S	25E	21					X												

Place of Use: AESTHETIC STORAGE

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
12S	25E	16														X			
12S	25E	21					X												

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **February 1, 2023**.
2. Subject to all prior water rights.
3. 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. 45F.

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4. This right authorizes the total annual storage volume of 121.2 acre-feet, 7.6 acre-feet to be used for the initial filling or carryover storage of the three (3) ponds and 113.6 acre-feet for the replacement of losses caused by seepage and evaporation.
5. The three (3) ponds established by the storage of water under this right shall not exceed a total capacity of 7.6 acre-feet or a total surface area of 1.5 acres.
6. During the year of the initial filling of the three (3) ponds, 2.4 acres in addition to the 1.5 acres identified for mitigation by non-use shall be dried up within the SWSE, Section 16, Township 12S, Range 25E, B.M. If the ponds are depleted or drained for maintenance or other reasons, the right holder shall seek a separate authorization, such as a Water Supply Bank rental, to re-fill the ponds.
7. To mitigate for the depletion of water resulting from the use of water under this right and to prevent injury to senior water right holders, the right holder shall cease diverting and using water as authorized by the following water right for the purposes and amounts specified below. Moreover, the official record for the following water right will be changed to show that diversion and use of water is not authorized because the right, or portion thereof, is being dedicated to mitigation by non-use. The mitigating right may also include a condition stating that the mitigation by non-use is for the benefit of this right.

Right No.	Use Changed to Mitigation by Non-Use	Mitigation Rate (cfs)	Mitigation Acres
45-517D	Irrigation	0.01	1.5

The land that will no longer be irrigated under this right is located within the SWSE, Section 16, Township 12S, Range 25E, B.M.

If the specified mitigation right, or portion thereof, is sold, transferred, leased, used on any place of use, or is not deliverable due to a shortage of water or a priority call, then the amount of water authorized for diversion under this right approval shall be reduced by the same proportion as the reduction to the mitigation rights.

8. In order to reflect the mitigation by non-use amounts identified in the condition above, the following condition will be changed on rights 45-275, 45-284B, 45-285, 45-327D, 45-517D, 45-523A, and 45-13589 as follows:

Rights 45-275, 45-284B, 45-285, 45-327D, 45-517D, 45-523A, and 45-13589 when combined shall not exceed a total irrigation of 376.5 acres.

In addition, the following condition will be changed on rights 45-275, 45-284B, 45-285, 45-327D, 45-517D, 45-523A, 45-13589, 45-14449, 45-14450, 45-14451, and 45-14452 to reflect the mitigation by non-use amount identified in the condition above as follows:

Rights 45-275, 45-284B, 45-285, 45-327D, 45-517D, 45-523A, 45-13589, 45-14449, 45-14450, 45-14451, and 45-14452 when combined shall not exceed a total diversion rate of 4.32 cfs and the irrigation of 397.7 acres.

In addition, the following conditions will be changed on rights 45-275, 45-284B, 45-285, 45-327D, 45-517D, 45-523A, 45-13589, 45-14449, 45-14450, 45-14451, 45-14452, 45-236, 45-240, 45-246B, 45-259, 45-285A, 45-287, 45-290, 45-291, 45-518, 45-519, 45-528, 45-706, and 45-707 to reflect the mitigation by non-use amount identified in the condition above as follows:

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Rights 45-275, 45-284B, 45-285, 45-327D, 45-517D, 45-523A, 45-13589, 45-14449, 45-14450, 45-14451, 45-14452, 45-236, 45-240, 45-246B, 45-259, 45-285A, 45-287, 45-290, 45-291, 45-518, 45-519, 45-528, 45-706, and 45-707 when combined shall not exceed a total diversion rate of 25.40 cfs and the irrigation of 1130.2 acres.

Rights 45-275, 45-284B, 45-285, 45-327D, 45-517D, 45-523A, 45-13589, 45-14449, 45-14450, 45-14451, 45-14452, 45-236, 45-240, 45-246B, 45-259, 45-285A, 45-287, 45-290, 45-291, 45-518, 45-519, 45-528, 45-706, and 45-707 are limited to the irrigation of a specific 1130.2 acres within the 1537.2 acre place of use authorized by this right in a single irrigation season. The specific 1130.2 acres to be irrigated by the right holder are shown in the electronic shape file associated with this right in the geographic information system component of the water rights database maintained by the department. Before changing the 1130.2 acres to be irrigated within the 1537.2 acre place of use, the right holder shall submit a new land list and representative electronic shape file or map to the Department prior to the irrigation season in which the change will occur.

In addition, the following conditions will be changed on right 45-14284 to reflect the mitigation by non-use amount identified in the condition above as follows:

Rights 45-275, 45-284B, 45-285, 45-327D, 45-517D, 45-523A, 45-13589, and 45-14284 when combined shall not exceed a total irrigation of 376.5 acres.

Rights 45-275, 45-284B, 45-285, 45-327D, 45-517D, 45-523A, 45-13589, 45-14284, 45-14449, 45-14450, 45-14451, and 45-14452 when combined shall not exceed the irrigation of 397.7 acres.

9. Noncompliance with any condition of this right, including the requirement for mitigation, is cause for the director to issue a notice of violation, cancel or revoke the right, or, if the right is included in a water district, request that the watermaster curtail diversion and use of water.

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

Signed this 20th day of January, 2022.



COREY SKINNER
Southern Regional Manager

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

45-14539

This map depicts the AESTHETIC & WILDLIFE 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 0.075 0.15 0.3 Miles





IDAHO DEPARTMENT OF
WATER RESOURCES

Southern Region • 650 Addison Ave W, Suite 500 • Twin Falls, ID 83301-5858

Phone: 208-736-3033 • Fax: 208-736-3037 • Email: southerninfo@idwr.idaho.gov • Web: idwr.idaho.gov

Governor Brad Little

Director Gary Spackman

January 24, 2022

ALBION 12 INVESTMENTS LLC
7595 E MCDONALD DR STE 130
SCOTTSDALE AZ 85250-6081

RE: Permit No. 45-14539

Permit Approval Notice

Dear Permit Holder(s):

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 note that pursuant to the approval of 45-14539, the official water right records for 45-236, 45-240, 45-246B, 45-259, 45-275, 45-284B, 45-285, 45-285A, 45-287, 45-290, 45-291, 45-327D, 45-517D, 45-518, 45-519, 45-523A, 45-528, 45-706, 45-707, 45-13589, 45-14284, 45-14449, 45-14450, 45-14451 and 45-14452 have been updated accordingly to reflect the mitigation components.

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) 736-3033.

Sincerely,



Corey Skinner
Southern Regional Manager

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2022, I served a true and correct copy of Permit to Appropriate Water No. 45-14539 by U.S. Mail, postage prepaid, to the following:

ALBION 12 INVESTMENTS LLC (Current Owner)
7595 E MCDONALD DR STE 130
SCOTTSDALE AZ 85250-6081

BROCKWAY ENGINEERING PLLC (Representative)
C/O GREG SULLIVAN
2016 WASHINGTON ST N STE 4
TWIN FALLS ID 83301-3082

WATER DISTRICT #45F
ALAN LLOYD (Watermaster)
939 S 950 E
ALBION ID 83311-9705



Denise Maline
Administrative Assistant 1

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.

Twin Falls Times-News
132 Fairfield St W, Twin Falls, Idaho 83301

SHERRI DAVIS, being duly sworn, deposes and says: That she is the Principal Clerk of the Times-News, a daily newspaper printed and published at Twin Falls, Twin Falls County, State of Idaho, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in the Times-News, in conformity with Section 60-108, Idaho Code, as amended, for:

2 Insertions

ID DEPARTMENT OF WATER RESOURCES

650 ADDISON AVE W, STE 500
TWIN FALLS ID 83301

RECEIVED
DEC 06 2021
DEPT OF WATER RESOURCES
SOUTHERN REGION

ORDER NUMBER 121433.

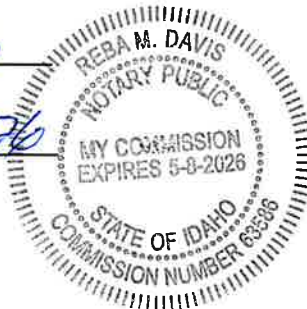
Sherril Davis

(Legals Clerk)

STATE OF IDAHO)
 SS
COUNTY OF TWIN FALLS)

On this 1ST day of December in the year of 2021 before me, a Notary Public, personally appeared before me Sherri Davis known or identified to me to be the person whose name subscribed to the within instrument, and being by first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Reba M. Davis
Notary Public FOR Idaho
Residing at: Twin Falls, Idaho
My Commission expires: 5/8/2026



Section: Legals

Category: 50 Legal

PUBLISHED ON: 11/18/2021, 11/25/2021

TOTAL AD COST: 185.06
FILED ON: 11/30/2021

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

45-14539 ✓
ALBION 12 INVESTMENTS LLC
7595 E MCDONALD DR STE 130
SCOTTSDALE, AZ 85250-6081
Point of Diversion SENENW S21 T12S R25E CASSIA County Source
SPRING CREEK Tributary HOWELL CREEK
Point of Diversion SENENW S21 T12S R25E CASSIA County Source
SPRING CREEK Tributary HOWELL CREEK
Point of Diversion SWNWSE S16 T12S R25E CASSIA County Source
UNNAMED STREAM Tributary SUMMIT CREEK
Use: AESTHETIC STORAGE 01/01 to 12/31 121.2 AF
Use: WILDLIFE STORAGE 01/01 to 12/31 121.2 AF
Total Diversion: 121.2 AF
Date Filed: 07-27-2021
Place Of Use: AESTHETIC STORAGE, WILDLIFE STORAGE
T12S R25E S16 NWSE
T12S R25E S21 NENW
This application is being re-advertised, based on an amended application that was filed October 28, 2021. Application for permit proposes the appropriation of 57 af from Spring Creek and 64.2 af from an unnamed stream (total for both 121.2 af), for uses associated with 3 on-stream ponds. A mitigation plan was submitted with application to account for evaporative losses and initial fill of ponds. Two ponds on Spring Creek are located approximately 1.9 miles east and 2.7 miles to 2.8 miles south of Albion. The pond on unnamed stream is located approximately 2 miles east and 2.4 to 2.5 miles south of Albion.

47-17748 ✓
MC COLLUM ENTERPRISES LLC
PO BOX 5492
TWIN FALLS, ID 83303-5492
Point of Diversion SWSW S28 T09S R17E TWIN FALLS County Source
WASTE WATER Tributary SNAKE RIVER
Use: COMMERCIAL 01/01 to 12/31 0.27 CFS
Use: DIVERSION TO STORAGE 01/01 to 12/31 2 CFS
Use: COMMERCIAL STORAGE 01/01 to 12/31 180.2 AF
Total Diversion: 2 CFS
Date Filed: 09-14-2021
Place Of Use: COMMERCIAL, COMMERCIAL STORAGE
T09S R17E S28 SWSW
T09S R17E S33 NWNW
Application for permit proposes to divert up to 2.0 cfs from waste water for commercial storage (180.2 acre-feet) use in hot tubs. The application also proposes commercial use of 0.27 cfs for a flow-through component to maintain water temperature and water quality in the hot tubs. A mitigation plan is included in the application to address evaporation from the hot tubs. The point of diversion and place of use are located on Canyon Springs Golf Course approximately 1.00 mile north and 0.9 mile west of the intersection of Blue Lakes Boulevard and Pole Line Road in Twin Falls. This application proposes to appropriate trust water and will be evaluated in compliance with Section 42-203C, Idaho Code, and IDWR's Water Appropriation Rules, IDAPA 37.03.08.

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Southern Region office at (208) 736-3033; or for a full description of the right(s), please see <https://research.idwr.idaho.gov>. Protests may be submitted based on the criteria of Idaho Code § 42-203A. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resources, Southern Region, 650 ADDISON AVE W, STE 500, TWIN FALLS, ID 83301-5858 together with a protest fee of \$25.00 for each application on or before **December 6, 2021**. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director
Published on November 18th & 25th, 2021

✓ *DM* 12/8/2021

State of Idaho
Department of Water Resources
RECOMMENDATION FORM

RECEIVED
NOV 29 2021
DEPT OF WATER RESOURCES
SOUTHERN REGION

RE: Application for Permit No. 45-14539

New Appropriation Applicant's Name: ALBION 12 INVESTMENTS LLC
7595 E MC DONALD DR STE 130
SCOTTSDALE AZ 85250-6081

Watermaster's Recommendation:

- a) X I do not oppose approval of this application.
- b) _____ I do not oppose approval of this application if it is conditioned as follows:
- c) _____ I oppose approval of this application for the following reasons:
- d) _____ Additional comments:

Dated this 29 day of November, 2021

Dept of Fish & Game

Bradley Dawson
Signature

Bradley Dawson
Printed Name