

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION FOR  
PERMIT NO. 13-8044 IN THE NAME OF  
CLINTON ASTON

**PRELIMINARY ORDER  
APPROVING APPLICATION  
FOR PERMIT**

**PROCEDURAL HISTORY**

On January 7, 2020, Clinton Aston (“Aston”) filed Application for Permit No. 13-8044 (“Application”) with the Idaho Department of Water Resources (“Department”). The Department published notice of the Application on February 5 and 12, 2020. William Spradlin and Shelly Spradlin (collectively referred to as “Spradlins”) and Weston Creek Irrigation Company (“WCIC”) protested the Application. WCIC withdrew its protest contingent on the Department including the following conditions on the permit, if the application were approved:

- 1) The quantity of water under this right for stockwater shall not exceed 13,000 gallons per day.
- 2) This right is subject to all applicable provisions of Section 42-234, Idaho Code.
- 3) Pursuant to Section 42-234(4), Idaho Code, to ensure that other water rights are not injured by the operations of the recharge project authorized by this right, the Director has authority to approve, disapprove, or require alterations in the methods employed to achieve ground water recharge.
- 4) Pursuant to Section 42-234(3), Idaho Code, the Director may reduce the amount of water that may be diverted for recharge purposes under this right even though there is sufficient water to supply the entire amount authorized for appropriation under this right.
- 5) The right shall not be used to mitigate for existing or future consumptive uses of water and shall not generate any credits for the recharge effort.
- 6) Use of water under this right for ground water recharge shall be non-consumptive.

Exhibit IDWR4.

The remaining parties (Aston and the Spradlins) were unable to resolve the issues of protest and requested an administrative hearing to decide the contested case. On July 15, 2020, the Department conducted a hearing in Preston, Idaho. Cherie Palmer served as the hearing officer.

At the hearing, all parties represented themselves. Aston testified on his own behalf and offered Exhibits 1-19. The hearing officer admitted all of Aston’s exhibits into the administrative record. Spradlins testified on their own behalf and offered no exhibits. The hearing officer took official notice of certain documents found within the Department’s records. The Department identified those documents as Exhibits IDWR1 through IDWR4.

After careful consideration of the administrative record, including the application file and the evidence and testimony presented at the hearing, the hearing officer finds, concludes, and orders as follows:

## FINDINGS OF FACT

1. Aston owns land in the SE¼ of Section 5, NE¼ of Section 8, and NW¼ and SE¼ of Section 9, all in Township 16 South, Range 38 East, B.M., Franklin County, Idaho. Ex. 1 at 2; Ex. 2.
2. Application 13-8044 proposes to divert 0.02 cubic feet per second ("cfs"), from an unnamed stream for stockwater and 0.40 cfs for ground water recharge. Ex. IDWR1 at 1. The proposed point of diversion and proposed place of use are located on Aston's property. *Id.* The proposed season of use for both uses is January 1 to December 31. *Id.* Aston has diverted water from the unnamed stream to the proposed recharge site for at least ten years. Aston Testimony.
3. The proposed source of water, unnamed stream tributary to sinks, is a small stream comprised of snow melt and spring water originating in the Cedar Hills. Ex. 18. Prior to 2010, the unnamed stream flowed south from the upland area, passed under a county road, and continued 500 feet before entering the Anker Ditch. Aston Testimony. The Department's water right database does not currently identify the unnamed stream as a source on any water rights.
4. In the late 1800s, homesteaders dug the Anker Ditch. Aston Testimony. The Anker Ditch Water Users ("ditch users") used the ditch to convey irrigation water from Weston Creek, pursuant to shares in WCIC. Ex. 4 at 1 and Aston Testimony.
5. The Anker Ditch traversed Aston's property in a north to southeasterly direction. Ex. 8 and Aston Testimony. Once the Anker Ditch left Aston's property, the ditch continued in a northeasterly direction, wrapping around the Cedar Hills. Ex. 18. The Anker Ditch did not flow into any other water source. Ex. 18. Aston does not own shares in the WCIC and has never diverted water from the Anker Ditch. Aston Testimony.
6. In 2009, the ditch users piped the portion of the Anker Ditch that crossed Aston's property. Ex. 3 and Aston Testimony. The new pipeline also crossed Aston's property. As part of the easement agreement for the new pipeline, the ditch users agreed to "forfeit any authorities and easements for operation of the existing open ditch irrigation system in the project area after successful completion of the new pipeline system." Ex. 4 at 1.
7. In the spring prior to filing Application 13-8044, Aston measured the unnamed stream with a five-gallon bucket and stopwatch. Aston Testimony. The unnamed stream filled the bucket within two seconds. *Id.* This equates to approximately 180 gallons per minute ("gpm").
8. The unnamed stream flows throughout the year, but the flow depends on snow pack and rainfall. *Id.* William Spradlin Testimony. During certain years, there have been times were the unnamed stream contained a mere "trickle". *Id.*
9. The Spradlins share a property line with Aston. Spradlins have owned their property since 1994. Shelly Spradlin Testimony.
10. The Department's water right database show the Spradlins owning two water rights, water right nos. 13-8035 and 13-8036. The two water rights authorize Spradlins to divert ground water to irrigate fifty-eight acres. The Spradlins are shareholders in WCIC, and divert and use water for irrigation purposes in connection with their shares. The Spradlins do not divert water from the Anker Ditch; they divert their WCIC shares from a different ditch. Shelly Spradlin Testimony.

11. William Spradlin has helped WCIC clean out ditches, so he is familiar with the Anker Ditch. William Spradlin Testimony. Shelly Spradlin used to ride horses by the unnamed stream, so she is familiar with the unnamed stream. Shelly Spradlin Testimony.

### **RELEVANT LEGAL PROVISIONS**

Idaho Code 42-234 authorizes the Department to issue permits and licenses for ground water recharge. The statute states:

(1) It is the policy of the state of Idaho to promote and encourage the optimum development and augmentation of the water resources of this state. The legislature deems it essential, therefore, that water projects designed to advance this policy be given maximum support. The legislature find that the use of water to recharge ground water basins in accordance with Idaho law and the state water plan may enhance the full realization of our water resources potential by furthering water conservation and increasing the water available for beneficial use.

(2) The legislature hereby declares that the appropriation of water for purposes of ground water recharge shall constitute a beneficial use of water. The director of the department is authorized to issue permits and licenses for the purposes of ground water recharge, pursuant to the provisions of this chapter and in compliance with other applicable Idaho Law and the state water plan.

(3) The director of the department may regulate the amount of water which may be diverted for recharge purposes and may reduce such amount, even though there is sufficient water to supply the entire amount originally authorized by permit or license. To facilitate necessary financing of an aquifer recharge project, the director may fix a term of years in the permit or license during which the amount of water authorized to be diverted shall not be reduced by the director under the provisions of this subsection.

(4) To ensure that other water rights are not injured by the operations of an aquifer recharge project, the director shall have the authority to approve, disapprove, or require alterations in the methods employed to achieve ground water recharge. In the event that the director determines that the methods of operation are adversely affecting existing water rights or are creating conditions adverse to the beneficial use of water under existing water rights, the director shall order the cessation of operations until such alterations as may be ordered by the director have been accomplished or such adverse effects otherwise have been corrected.

(5) The legislature further recognizes that incidental ground water recharge benefits are often obtained from the diversion and use of water for various beneficial purposes. However, such incidental recharge may not be used as the basis for claim of a separate or expanded water right. Incidental recharge of aquifers which occurs as a result of water diversion and use that does not exceed the vested water right of water right holders is in the public interest. The values of such incidental recharge shall be considered in the management of the state's water resources.

Idaho Code § 42-203A(5) sets forth the criteria for evaluating an application for permit:

In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho, or (g) that it will adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

The Department's Water Appropriation Rules (IDAPA 37.03.08) further describe how the Department must evaluate an application for permit pursuant to the criteria established in Idaho Code § 42-203A(5). Rule 40.04 c states: "The applicant has the ultimate burden of persuasion for the criteria of [Idaho Code § 42-203A(5)]." IDAPA 37.03.08.40.04.c. Rules 50.01 states that the Director may issue permits with conditions to insure compliance to meet the criteria of Idaho Code § 42-203A. IDAPA 37.03.08.50.01.

## **ANALYSIS**

### **Reduction to Existing Water Rights**

Rule 45.01.a.i of the Water Appropriation Rules establishes:

The amount of water available under an existing water right will be reduced below the amount recorded by permit, license, decree or valid claim or the historical amount beneficially used by the water right holder under such recorded rights, whichever is less.

Spradlins object to Aston diverting water from the unnamed stream and piping it for ground water recharge purposes and stockwater. Ex. IDWR2 and Spradlins Testimony. Spradlins argue that Aston's diversion of ground water to irrigate Aston's property diminishes the flows in Weston Creek, therefore; Aston should pipe the unnamed stream into Weston Creek to compensate for the losses. Spradlins Testimony. According to the Spradlins, WCIC users would benefit from Aston piping the unnamed stream to Weston Creek. Shelly Spradlin Testimony.

### Injury to WCIC Water Users

The unnamed stream historically benefitted WCIC shareholders. During the non-irrigation season, the unnamed stream would flow into the Anker Ditch and keep the ditch channel wetted. During the irrigation season, the unnamed stream would augment the irrigation water supply in the Anker Ditch. The Anker Ditch water users (shareholders in WCIC) have piped the ditch so they have no way of accessing the unnamed stream anymore. The ditch users have formally abandoned all of the easements for operation of the existing open ditch irrigation system and have therefore lost their access to the unnamed stream.

Based on the evidence in the record, the unnamed stream has been disconnected from Weston Creek since the Anker Ditch was constructed over 100 years ago. Presently, the only way for the unnamed

stream to connect to Weston Creek is for a pipeline to be installed across the Aston property. Aston is under no obligation to restore the connection between the unnamed stream and Weston Creek. WCIC shareholders historically diverted the unnamed stream and likely had an unrecorded beneficial use right for the historical use. However, WCIC has removed the infrastructure to divert the unnamed stream and withdrew its protest against Application 13-8044. There is no evidence in the record that the proposed use will reduce the quantity of water under existing rights.

Aston has demonstrated that the proposed use will not reduce the quantity of water under existing water rights.

### **Sufficiency of the Water Supply**

Rule 45.01.b of the Water Appropriation Rules establishes:

The water supply will be determined to be insufficient for the proposed use if water is not available for an adequate time interval in quantities sufficient to make the project economically feasible (direct benefits to applicant must exceed direct costs to applicant), unless there are noneconomic factors that justify application approval.

Testimony by the parties painted two completely different pictures of the water supply in the unnamed stream. Aston asserts that the unnamed stream supplies up to 0.40 cfs. Spradlins assert that the unnamed stream provides very little water, a “trickle”. The hearing officer is convinced that in high-flow conditions in good water years, the unnamed stream flows up to 0.40 cfs. Conversely, the hearing officer finds it plausible that in low-flow conditions, the unnamed stream is reduced to a scant amount of water.

The evaluation criterion for sufficiency of the water supply centers on quantities sufficient to make the project economically feasible. Aston already benefits from diverting water from the unnamed stream, in whatever quantity is available, from the proposed point of diversion and piping it to the ground water recharge site. Therefore, the project is economically feasible because the pipeline is in place and water is currently being diverted for ground water recharge, in whatever quantities are available.

Once Aston files proof of beneficial use with the Department, the Department will measure the unnamed stream to determine the stream’s capacity. The hearing officer is persuaded that there is sufficient water in the unnamed stream to supply the proposed stockwater use and all of the proposed ground water recharge use during certain times of the year. The Department may reduce the diversion rate on a license for ground water recharge depending upon its measurement of the stream. Aston has demonstrated that the proposed water supply is sufficient for the proposed use.

### **Good Faith / No Speculation**

Rule 45.01.c.i of the Water Appropriation Rules establishes the relevant criterion for determining whether the application was made in good faith:

The applicant shall have legal access to the property necessary to construct and operate the proposed project, has the authority to exercise eminent domain authority to obtain such access, or in the instance of a project diverting water from or conveying water across land in state or federal ownership, has filed all applications for a right-of-way.



The land at and between the point of diversion and place of use is owned by Aston. Therefore, Aston has legal access to the property necessary to construct, maintain, and operate the project. There are no other known permits required to complete the project. Furthermore, Aston has already installed the pipeline from the unnamed stream which is the subject of the Application. Aston has demonstrated that he filed the Application in good faith.

### **Sufficient Financial Resources**

Rule 45.01.d.i of the Water Appropriation Rules establishes the relevant criterion for determining whether the applicant has sufficient financial resources to complete the project:

An applicant will be found to have sufficient financial resources upon a showing that it is reasonably probable that funding is or will be available for project construction or upon a financial commitment letter acceptable to the Director.

Aston has already constructed a pipeline from the point of diversion to the recharge site. Aston's costs associated with developing the stockwater component of the Application are negligible. Furthermore, the Spradlins are not disputing the sufficiency of Aston's financial resources. Aston has demonstrated that he has sufficient financial resources to complete the project.

### **Local Public Interest**

Idaho Code § 42-202B(3) defines "local public interest" as "the interests that the people in the area directly affected by a proposed water use have in the effects of such water use on the public water resource."

The current definition of local public interest requires an analysis of the effects of the proposed use on the public water resource. In other words, the hearing officer must determine whether the proposed use will impact the public water resource in a way that renders it unable to satisfy the public interest and uses of the water resource.

Historically, the entire flow of the unnamed stream was captured by the Anker Ditch. Ex. 18. WCIC shareholders could then use the water from the unnamed stream for irrigation purposes. The ditch users piped the Anker Ditch. The unnamed stream no longer flows into Anker Ditch and the ditch users have abandoned their use of the unnamed stream. Ex. 4 at 3. Aston proposes to divert water to a recharge site. The ground water recharge will augment the local aquifer and will benefit ground water users in the area. Further, recharge may augment the flows in Weston Creek. The stockwater proposed is negligible and will not affect the local public in a negative way.

Aston has met his burden of persuasion for the local public interest.

### **Conservation of Water Resources in Idaho**

Idaho Code § 42-234 states that "[i]t is the policy of the state of Idaho to promote and encourage the optimum development and augmentation for the water resources of this state. The legislature deems it essential, therefore, that water projects designed to advance this policy be given maximum support. The legislature finds that the use of water to recharge ground water basins in accordance with Idaho law and the state water plan may enhance the full realization of our water resources potential by furthering water conservation and increasing the water available for beneficial use."

Aston's proposed use of stockwater is common practice in Idaho. The proposed uses are consistent with the conservation of water resources within the state of Idaho.

### **Effects on the Local Economy**

This criterion applies only to "out-of-basin" appropriations. It does not apply in this case.

### **Request to Acknowledge Historic Use of the Unnamed Stream**

Aston asserts that the unnamed stream described in Application 13-8044 was originally used for irrigation at an old homestead on his property. Aston Testimony. During the hearing, Aston asked the hearing officer to confirm the validity of a beneficial use irrigation right from the unnamed stream. The hearing officer did not address the question of unrecorded, beneficial use rights on the Aston property at the hearing and will not do so as part of this order. The hearing held on July 15, 2020, and this order only address the new uses proposed in Application 13-8044. Beneficial use water rights can only be confirmed in the context of a water right adjudication. Aston is free to pursue a claim for his asserted beneficial use irrigation right in the Bear River Basin Adjudication. *See* Idaho Code § 42-1406C.

### **Conversion of Permitted Use to Irrigation**

During the hearing, Spradlins stated a concern that Aston would seek to convert the proposed uses (stockwater and ground water recharge) into irrigation use. In order to change the nature of use for a water right, a water user must file an Application for Transfer pursuant to Idaho Code § 42-222(1). Section 42-222 sets forth the criteria for evaluating transfer applications. The Department may approve a transfer if, among other things, "the change does not constitute an enlargement in use of the original right." Idaho Code § 42-222(1). "The director may consider consumptive use, as defined in section 42-202B, Idaho Code, as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right." *Id.*

Idaho Code, Section 42-202B defines consumptive use as: "that portion of the annual volume of water diverted under a water right that is transpired by growing vegetation, evaporated from soils, converted to non-recoverable water vapor, incorporated into products, or otherwise does not return to the waters of the state."

If approved, the permit would include a condition stating that the ground water recharge element is non-consumptive. Further, the consumptive use associated with the stockwater element would be negligible. Irrigation use is highly consumptive. Therefore, any attempt to convert the proposed water right into an irrigation use through a transfer application would violate the prohibition on enlargement and could not be approved. The Spradlins' concern that Aston will convert the proposed water right into irrigation use is unfounded.

## **CONCLUSIONS OF LAW**

Aston has satisfied all elements of review under Idaho Code 42-205A(5). The Department will include the conditions proposed by WCIC and accepted by Aston in conjunction with the withdrawal of the WCIC protest.

## ORDER

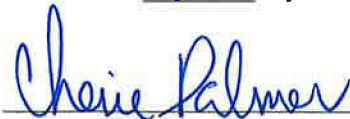
IT IS HEREBY ORDERED that Application for Permit No. 13-8044 is **APPROVED** as follows:

Current Owner: Clinton Aston  
Priority Date: January 7, 2020  
Source: Unnamed Stream tributary to Sinks  
Beneficial Use / Rate: Stockwater 0.02 cfs  
Ground Water Recharge 0.40 cfs  
Season of Use: January 1 – December 31  
Point of Diversion: SW $\frac{1}{4}$ NW $\frac{1}{4}$ , Section 9, Twp 16 S, Rge 38 E, B.M. Franklin County  
Place of Use: SW $\frac{1}{4}$ SE $\frac{1}{4}$ , Section 9, Twp 16 S, Rge 38 E, B.M. Franklin County

IT IS FURTHER ORDERED that Application for Permit No. 13-8044 is subject to the following conditions:

1. Proof of application of water to beneficial use shall be submitted on or before October 1, 2025.
2. Subject to all prior rights.
3. Stockwater use is for 100 head of stock.
4. The quantity of water under this right for stockwater shall not exceed 13,000 gallons per day.
5. This right is subject to all applicable provisions of Section 42-234, Idaho Code.
6. Pursuant to Section 42-234(4), Idaho Code, to ensure that other water rights are not injured by the operations of the recharge project authorized by this right, the Director has authority to approve, disapprove, or require alterations in the methods employed to achieve ground water recharge.
7. Pursuant to Section 42-234(3), Idaho Code, the Director may reduce the amount of water that may be diverted for recharge purposes under this right even though there is sufficient water to supply the entire amount authorized for appropriation under this right.
8. The right shall not be used to mitigate for existing or future consumptive uses of water and shall not generate any credits for the recharge effort.
9. The right holder shall record the daily quantity of water diverted for ground water recharge and shall report the diversion data for the prior calendar year to the Department by February 1 each year. Reporting shall occur in the manner specified by the Department, consistent with Idaho Code § 42-701.
10. Use of water under this right for ground water recharge shall be non-consumptive.

Dated this 9<sup>th</sup> day of September 2020.



Cherie Palmer  
Hearing Officer



## **CERTIFICATE OF SERVICE**

I hereby certify that on September 9, 2020, I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER APPROVING APPLICATION FOR PERMIT to the person (s) listed below:

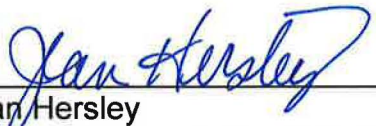
**RE: Application for Permit No.: 13-8044**

**CLINTON K ASTON  
PO BOX 35  
WESTON ID 83286-0035**

**WESTON CREEK IRRIGATION CO  
PO BOX 1  
WESTON ID 83286-0001**

**WILLIAM SPRADLIN  
6995 W 2200 S  
WESTON ID 83286-5104**

**WATER DISTRICT #11  
JOSH HANKS (Watermaster)  
132 E 400 S  
RICHMOND UT 84333-1505**

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

State of Idaho  
Department of Water Resources  
**Permit to Appropriate Water**  
No. 13-8044

Priority: January 07, 2020

Maximum Diversion Rate: 0.40 CFS

This is to certify that

CLINTON K ASTON PO BOX 35 WESTON ID 83286-0035

has applied for a permit to appropriate water from:

Source : UNNAMED STREAM

Tributary: SINKS

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

<u>Beneficial Use</u>	<u>Period of Use</u>	<u>Rate of Diversion</u>
STOCKWATER	01/01 to 12/31	0.02 CFS
GROUND WATER RECHARGE	01/01 to 12/31	0.40 CFS

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

UNNAMED STREAM SW¼ NW¼, Sec. 9, Twp 16S, Rge 38E, B.M. FRANKLIN County

**Place of Use:** STOCKWATER and GROUND WATER RECHARGE

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
16S	38E	9															X		

**Conditions of Approval**

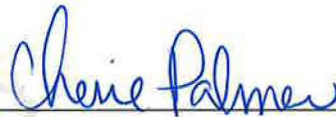
1. Proof of application of water to beneficial use shall be submitted on or before **October 01, 2025**.
2. Subject to all prior water rights.
3. Stockwater use is for 100 head of stock.
4. The quantity of water under this right for stockwater shall not exceed 13,000 gallons per day.
5. This right is subject to all applicable provisions of Section 42-234, Idaho Code.
6. Pursuant to Section 42-234(4), Idaho Code, to ensure that other water rights are not injured by the operations of the recharge project authorized by this right, the Director has authority to approve, disapprove, or require alterations in the methods employed to achieve ground water recharge.
7. Pursuant to Section 42-234(3), Idaho Code, the Director may reduce the amount of water that may be diverted for recharge purposes under this right even though there is sufficient water to supply the entire amount authorized for appropriation under this right.
8. This right shall not be used to mitigate for existing or future consumptive uses of water and shall not generate any credits for the recharge effort.

State of Idaho  
Department of Water Resources  
**Permit to Appropriate Water**  
No. 13-8044

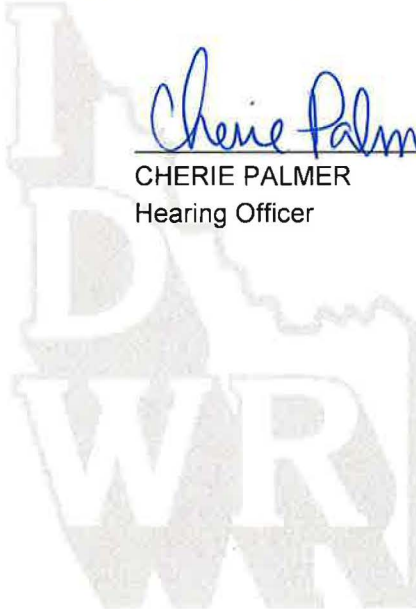
9. The right holder shall record the daily quantity of water diverted for ground water recharge and shall report the diversion data for the prior calendar year to the Department by February 1 each year. Reporting shall occur in the manner specified by the Department, consistent with Idaho Code § 42-701.
10. Use of water under this right for ground water recharge shall be non-consumptive.

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

Signed this 9th day of September, 2020.

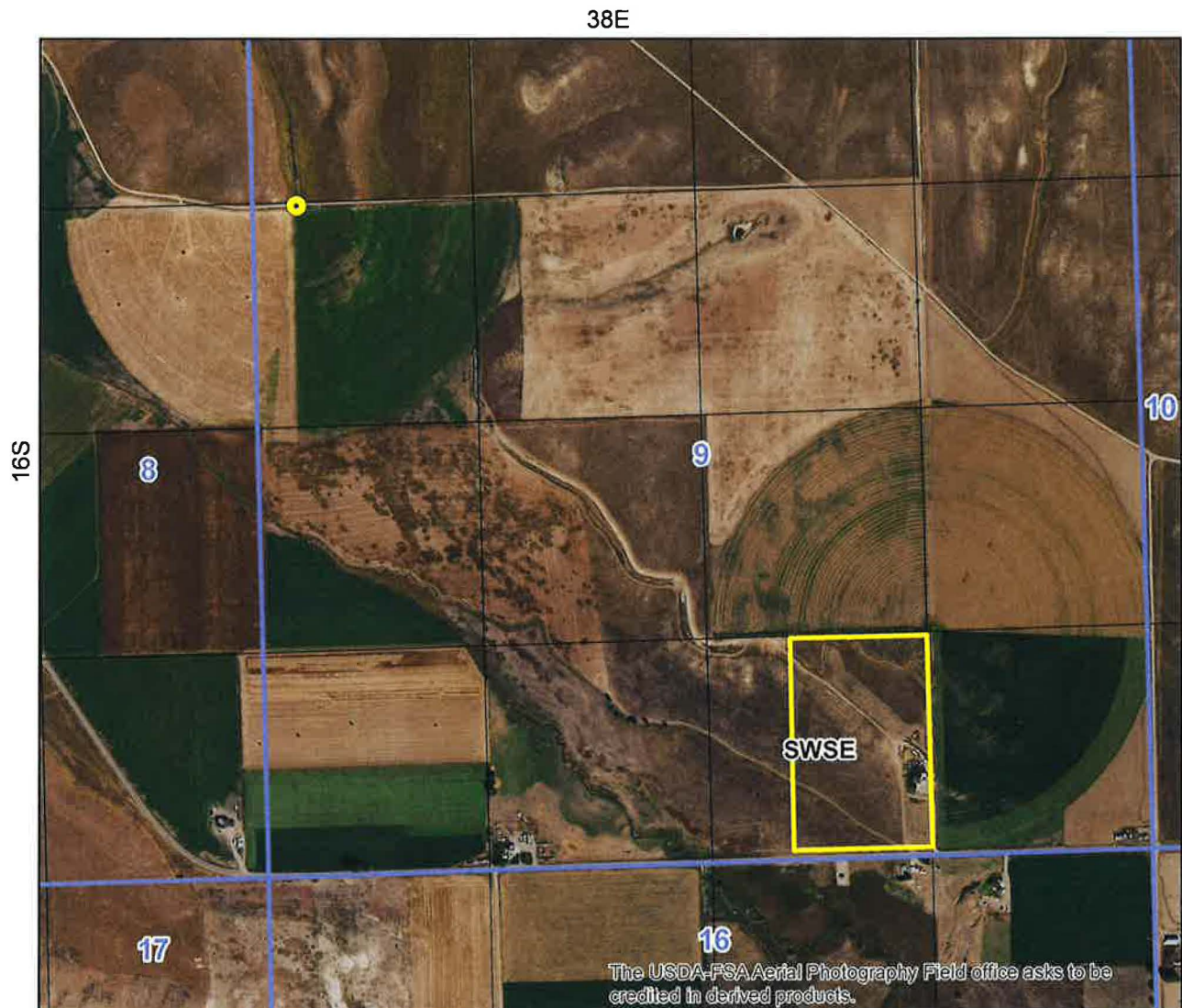







CHERIE PALMER  
Hearing Officer




State of Idaho  
Department of Water Resources  
**Attachment to Permit to Appropriate Water**  
13-8044

This map depicts the STOCKWATER 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 0.125 0.25 0.5 Miles





State of Idaho  
Department of Water Resources  
**Attachment to Permit to Appropriate Water**  
13-8044

This map depicts the GROUND WATER RECHARGE 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 0.1 0.2 0.4 Miles







**State of Idaho**

**DEPARTMENT OF WATER RESOURCES**

322 E Front Street, Suite 648 • PO Box 83720 • Boise ID 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700

Website: [idwr.idaho.gov](http://idwr.idaho.gov) • Email: [idwrinfo@idwr.idaho.gov](mailto:idwrinfo@idwr.idaho.gov)

**BRAD LITTLE**  
Governor

**GARY SPACKMAN**  
Director

September 10, 2020

INTERESTED PARTIES  
(See Certificate of Service)

RE: Application for Permit 13-8044

Dear Interested Parties:

The enclosed Preliminary Order Approving Application for Permit 13-8044 was originally mailed without the Department's Explanatory Information Sheet. I apologize for the inconvenience.

If you have questions concerning the enclosed information, please contact me at (208) 287-4942. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jean Hersley', is written over a horizontal line.

Jean Hersley  
Technical Records Specialist II

Enclosures

## **CERTIFICATE OF SERVICE**

I hereby certify that on September 10, 2020, I mailed a true and correct copy, postage prepaid, of the foregoing **PRELIMINARY ORDER APPROVING APPLICATION FOR PERMIT** to the persons listed below:

RE: Water Right Permit No. 13-8044

**CLINTON K ASTON  
PO BOX 35  
WESTON ID 83286-0035**

**WESTON CREEK IRRIGATION CO  
PO BOX 1  
WESTON ID 83286-0001**

**WILLIAM SPRADLIN  
6995 W 2200 S  
WESTON ID 83286-5104**

**WATER DISTRICT NO. 11  
JOSH HANKS  
132 E 400 S  
RICHMOND UT 84333-1505**

  
\_\_\_\_\_  
**Jean Hersley  
Technical Records Specialist II**

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

**(To be used in connection with actions when a hearing was held)**

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

### **PETITION FOR RECONSIDERATION**

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The hearing officer 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 to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

### **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, request 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 Rules of Procedure 302 and 303.

### **FINAL ORDER**

The Department 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.