

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 98-8020

Priority: June 22, 2020

Maximum Diversion Rate: 0.17 CFS

This is to certify that

91 LIGHTS LLC
217 CEDAR ST # 105
SANDPOINT, ID 83864-1410

AND

IDAHO DEPT OF LANDS
PO BOX 83720
BOISE, ID 83720-0050

have applied for a permit to appropriate water from:

Source : UNNAMED STREAM

Tributary: FALL CREEK

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>
IRRIGATION	04/15 to 10/31	0.06 CFS
FIRE PROTECTION	01/01 to 12/31	0.11 CFS

Location of Point(s) of Diversion

UNNAMED STREAM SW¼, NW¼, Sec. 5, Twp 60N, Rge 01W, B.M., BOUNDARY County

Place of Use: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				No QQ	Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
60N	01W	5									2.0									2.0

Total Acres: 2.0

Place of Use: FIRE PROTECTION

Twp	Rng	Sec	NE				NW				SW				SE				No QQ	Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
60N	01W	5									X									

Conditions of Approval:

1. Proof of application of water to beneficial use shall be submitted on or before **September 01, 2025**.
2. Subject to all prior water rights.
3. This right does not grant any right-of-way or easement across the land of another.
4. Prior to the diversion and use of water under this approval, the right holder shall comply with all fish screening and/or fish passage requirements of the Idaho Department of Fish and Game.
5. The following rights are diverted through point(s) of diversion described above: 98-8020, 98-8021.
6. This right when combined with all other rights shall provide no more than 0.03 Cubic Feet per Second (CFS) per acre nor more than 3.0 Acre Feet (AF) annually per acre at the field headgate for irrigation of the place of use.
7. Water shall not be diverted for fire protection use under this right except to fight or repel an existing fire.

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 98-8020

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

Signed this 2nd day of September, 2020.



Adam Frederick

ADAM FREDERICK
Water Rights Supervisor

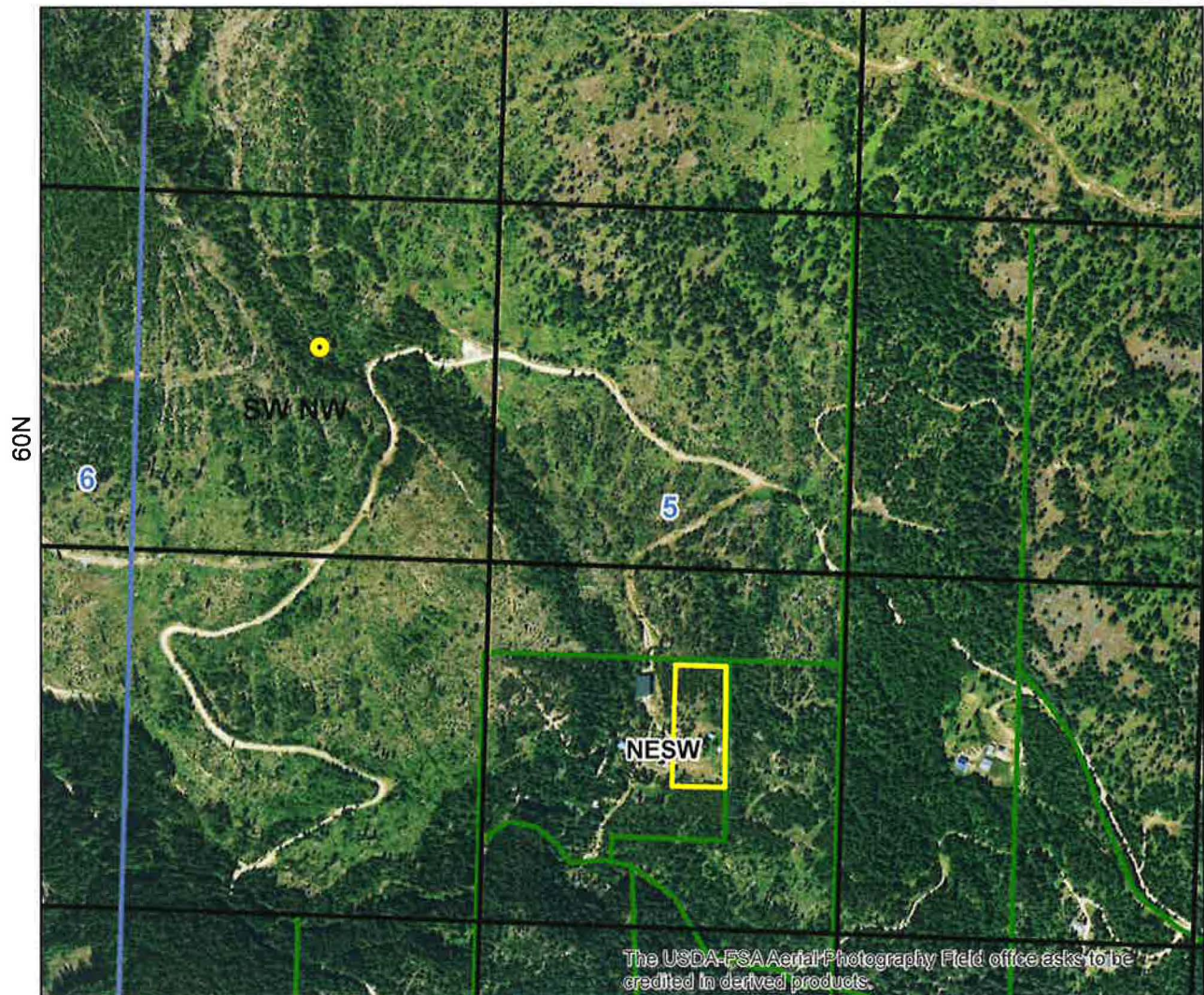
State of Idaho
Department of Water Resources






Attachment to Permit to Appropriate Water

98-8020

This map depicts the IRRIGATION 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.

01W



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

0 0.075 0.15 0.3 Miles



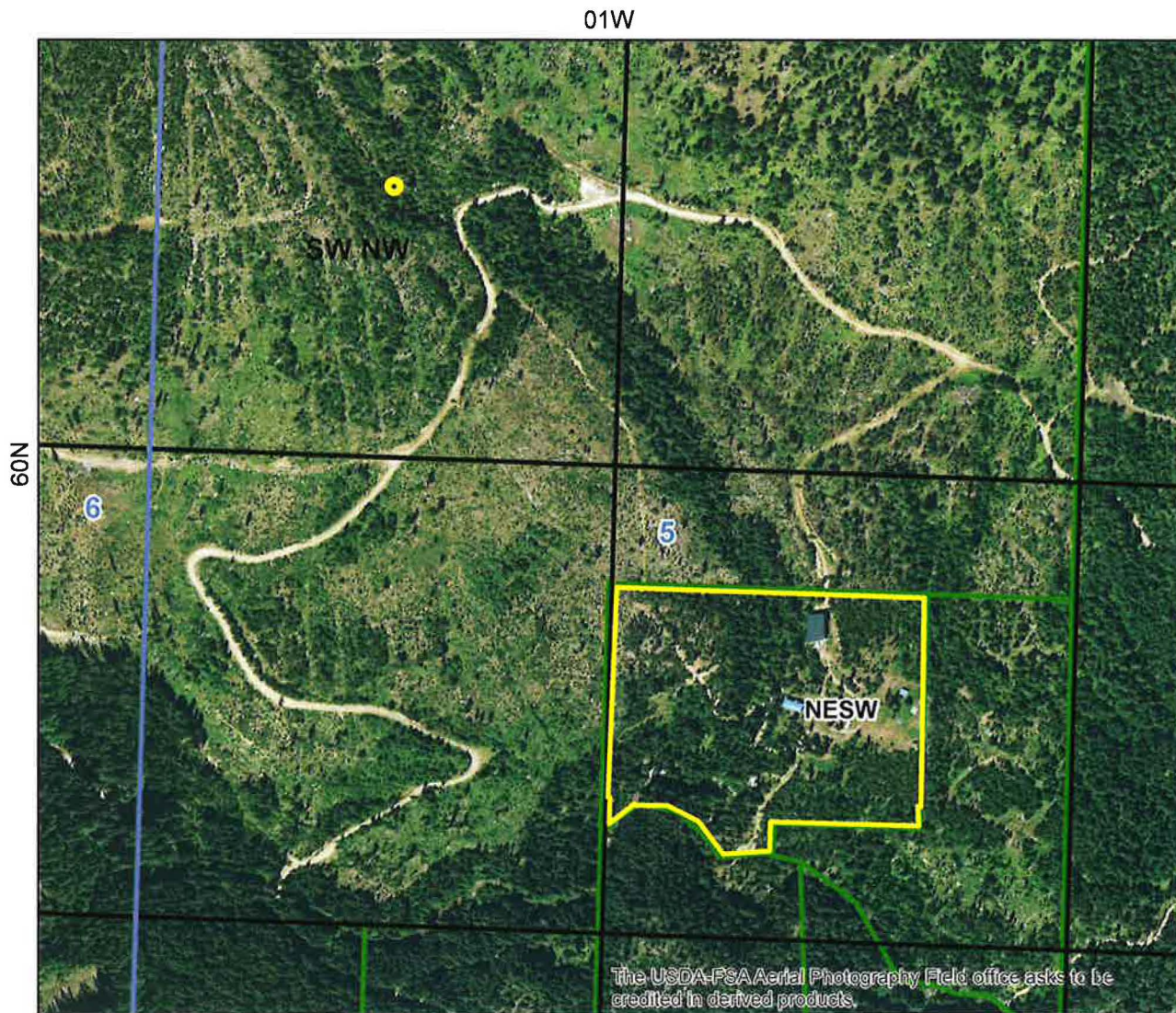
Tax parcel information provided by Boundary County.






State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

98-8020

This map depicts the FIRE PROTECTION 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
-  PLS Sections
-  Quarter Quarters
-  Taxlots

0 0.05 0.1 0.2 Miles



Tax parcel information provided by Boundary County.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region • 7600 N MINERAL DR STE 100 • COEUR D ALENE, ID 83815-7763
Phone: (208)762-2800 • Fax: (208)769-2819 • Website: www.idwr.idaho.gov

Brad Little
Governor

Gary Spackman
Director

September 02, 2020

IDAHO DEPT OF LANDS
PO BOX 83720
BOISE ID 83720-0050

91 LIGHTS LLC
217 CEDAR ST # 105
SANDPOINT ID 83864-1410

RE: Permit No. 98-8020

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 first commence the excavation or construction of your diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is complete. In addition, 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.

Also, please note that permit holders are required to report any change of ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Forms to assign ownership or update your address are available from any office of the Department or on the Department's website.

If you have any questions concerning the enclosed information, please contact the Northern Region Office at (208) 762-2800.

Sincerely,



Adam Frederick
Water Rights Supervisor

Enclosure(s)

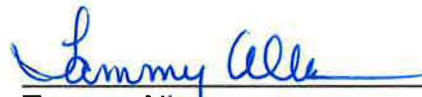
CERTIFICATE OF SERVICE

I hereby certify that on September 02, 2020, I served a true and correct copy of Permit to Appropriate Water No. 98-8020 by U.S. Mail, postage prepaid, to the following:

IDAHO DEPT OF LANDS (Current Owner)
PO BOX 83720
BOISE ID 83720-0050

91 LIGHTS LLC (Current Owner)
217 CEDAR ST # 105
SANDPOINT ID 83864-1410

BRIAN DOMKE (Representative)
PO BOX 711
SAGLE ID 83860-0711



Tammy Alleman
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.

AFFIDAVIT OF PUBLICATION

State of Idaho

SS

County of Boundary, Ginda Johnson
being first duly sworn on oath deposes and says that
he/she is brook beeper of the
Bonners Ferry Herald, a newspaper printed and
published at Bonners Ferry, Boundary County, Idaho;
that the said newspaper has been continuously and
uninterruptedly published in said Boundary County during
a period of 12 months prior to the first publication of the
hereto attached notice of publication in the case of:

Application 98-8020
_____ as it
was published in the regular and entire issue of the said
paper for a period of 2 consecutive weeks,
commencing on 16th day of July, 2020 and
ending on the 23rd day of July, 2020 and
that said notice was published in said newspaper.

Ginda Johnson
SUBSCRIBED AND SWORN TO before me, this
23rd day of July, 2020

Katrina George
Notary Public-State of Idaho
Residing at: Kootenai County
My Commission Expires 8/29/23

RECEIVED
AUG 03 2020
IDWR / NORTH



PUBLIC NOTICE
The following application(s)
have been filed to appropriate
the public waters of the State
of Idaho:
98-8020
IDAHO DEPT OF LANDS
PO BOX 83720
BOISE, ID 83720-0050
91 LIGHTS LLC
217 CEDAR ST # 105
SANDPOINT, ID 83864-1410

Point of Diversion SWNW
S5 T60N R01W
BOUNDARY County
Source UNNAMED STREAM
Tributary FALL CREEK
Use: FIRE PROTECTION
01/01 to 12/31 0.11 CFS
Use: IRRIGATION
04/15 to 10/31 0.06 CFS
Total Diversion: 0.17 CFS
Date Filed: 06-22-2020
Place Of Use: FIRE
PROTECTION, IRRIGATION
T60N R01W S5 NESW
98-8021
IDAHO DEPT OF LANDS
PO BOX 83720
BOISE, ID 83720-0050
91 LIGHTS LLC
217 CEDAR ST # 105
SANDPOINT, ID 83864-1410

Point of Diversion SWNW
S5 T60N R01W
BOUNDARY County
Source UNNAMED STREAM
Tributary FALL CREEK
Use: HYDROELECTRIC
01/01 to 12/31
Total Diversion: 0.83 CFS
Date Filed: 06-22-2020
Place Of Use:
HYDROELECTRIC
T60N R01W S5 NESW
Permits will be subject to all
prior water rights. For addi-
tional information concerning
the property location, contact
the Northern office at
(208)762-2800; or for a full de-
scription of the right(s), please
see [https://idwr.idaho.gov/apps/](https://idwr.idaho.gov/apps/ExtSearch/WRAApplicationRes)
[/ExtSearch/WRAApplicationRes](https://idwr.idaho.gov/apps/ExtSearch/WRAApplicationRes)

ults/. Protests may be submit-
ted 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 Wa-
ter Resources, Northern Re-
gion, 7600 N MINERAL DR
STE 100, COEUR D ALENE
ID 83815-7763 together with a
protest fee of \$25.00 for each
application on or before
8/3/2020. The protestant must
also send a copy of the protest
to the applicant.
GARY SPACKMAN, Director
BFH#10435/AD#394055
JULY 16, 23, 2020



IDAHO DEPARTMENT OF FISH AND GAME

PANHANDLE REGION
2885 West Kathleen Avenue
Coeur d'Alene, Idaho 83815

Brad Little / Governor
Ed Schriever / Director

August 3, 2020

Ms. Tammy Alleman
Idaho Department of Water Resources
7600 North Mineral Drive, Suite 100
Coeur d'Alene, ID 83815

REFERENCE: Application 98-8020 & 98-8021 – 91 Lights LLC and IDL

Dear Tammy:

We have reviewed the above named application to appropriate a total of 1.0 cfs from an unnamed tributary to Fall Creek in Boundary County. The purpose of these comments is to assist the decision-making authority by providing technical information addressing potential effects on wildlife and wildlife habitat and how any adverse effects might be mitigated.

The applicant applied for two separate water rights using the same diversion point. The first, water right 98-8020, diverts 0.17 cfs total. The beneficial uses listed are for fire protection year round (0.11 cfs) and the irrigation of 2.0 acres from April through November (0.06 cfs). The second application, 98-8021, diverts 0.83 cfs for hydropower year round. Both applications state that they have a concrete diversion structure approximately 56 inches in diameter that feeds a 4 inch PVC pipe. The diversion point is on Idaho Department of Lands property, and the gravity flow pipelines will be buried and lead to a smaller network of piping and a 1500 watt hydroelectric generator.

Included with both applications was a stream flow and water use calculation sheet prepared by Brian Domke. On April 4 of this year, Mr. Domke measured the flow of the unnamed tributary at 2.89 cfs with a stream bed friction factor of 0.85 for a total of 2.46 cfs. While we do not dispute Mr. Domke's calculations, we are concerned that the timing of the measurements does not include a low flow period. By comparing nearby hydrographs and data from the USGS estimations for streamflow at ungauged sites data, April is one of the higher water flow months for this small tributary of Falls Creek. Annual mean flow is 0.895 cfs, less than the amount of water being applied for. The small, steep tributary only drains 0.63 square miles of land. The applicant is asking for more than the annual mean flow, and runs the risk of totally dewatering a half mile of the creek on low water years and during the dry summer months.

Keeping Idaho's Wildlife Heritage

Equal Opportunity Employer • 208-769-1414 • Fax: 208-769-1418 • Idaho Relay (TDD) Service: 1-800-377-3529 • <https://idfg.idaho.gov>

Ms. Tammy Alleman -- Page 2
August 3, 2020

In 2018 Idaho Fish and Game fisheries crews surveyed Falls Creek and found it to be fish bearing in its entirety. Tributaries were not sampled, and due to the steep gradient this tributary may not be fish bearing. Small headwaters, fish bearing or not, provide important habitat for macroinvertebrates, amphibians and other native species. They also provide a source of nutrients and can provide thermoregulation for lower reaches during warmer months.

We understand the diversion mentioned in both applications is a cement structure approximately 56 inches in diameter. In Mr. Domke's stream flow calculations the average creek width was 32 inches; it appears the diversion is designed to intercept all of the flow at lower stream flows.

We are concerned that, in this case, the proposed water right will completely dewater nearly one half mile of stream when flows fall below the amount requested, and negatively affect fish and wildlife. Thus, we recommend the applicant consider modifying their application to avoid completely de-watering the stream.

Thank you for the opportunity to comment.

Sincerely,



Charles E. Corsi
Panhandle Regional Supervisor

CEC:MH:lat

C: Paul Kline, IDFG Director's Office