

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 87-12223

Priority: June 05, 2020

Maximum Diversion Rate: 1.25 CFS

This is to certify that

JAMIN A SMITCHGER 5247 HIGHWAY 95 VIOLA ID 83872-9795

has applied for a permit to appropriate water from:

Source : UNNAMED STREAM

Tributary: PALOUSE RIVER

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>	<u>Annual Volume</u>
IRRIGATION STORAGE	01/01 to 12/31		14.0 AF
IRRIGATION FROM STORAGE	04/01 to 10/31		14.0 AF
STOCKWATER STORAGE	01/01 to 12/31		0.1 AF
STOCKWATER FROM STORAGE	01/01 to 12/31		0.1 AF
POWER	01/01 to 12/31	1.25 CFS	
FIRE PROTECTION STORAGE	01/01 to 12/31		3.1 AF

Location of Point(s) of Diversion

UNNAMED STREAM

SW¼, SW¼, Sec. 17, Twp 41N, Rge 05W, B.M., LATAH County

Place of Use: IRRIGATION STORAGE

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		
41N	05W	17											X							

Place of Use: IRRIGATION FROM STORAGE

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		
41N	05W	17											7.0							7.0

Total Acres: 7.0

Place of Use: STOCKWATER STORAGE

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		
41N	05W	17											X							

Place of Use: STOCKWATER FROM STORAGE

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		
41N	05W	17											X							

Place of Use: POWER

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		
41N	05W	17											X							

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Place of Use: FIRE PROTECTION STORAGE

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		
41N	05W	17											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. Proof of application of water to beneficial use shall be submitted no sooner than March 01, 2025 and received no later than the beneficial use due date of September 01, 2025.
5. 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.
6. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable county zoning and use ordinances.
7. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
8. The term of this permit shall extend to December 31, 2045. Prior to the expiration of the term, the Director may issue an order canceling all or any part of the use authorized herein, may establish a new term, or may revise, delete, or add conditions under which the water right permit or subsequent water right license may be exercised. The order shall take effect on the date the current term expires. If the Director does not issue such an order, the term shall automatically extend to a length equal to the project's prior term and any prior conditions on the water right permit or subsequent water right license shall remain in effect.
9. The right holder shall install a measuring device that can be used to determine the instantaneous rate of flow of water through the system, or the right holder shall provide to the department a flow rate measurement or computation made by a certified water right examiner in accordance with actual system design and operation.
10. This right is subject to the provisions of Idaho Code §§ 42-205 through 42-210, restricting the sale, transfer, assignment, or mortgage of this right. Failure to comply with these provisions is cause for immediate cancellation of this right.
11. To facilitate determination of the volume of water beneficially used by this project, the right holder shall provide the Department a copy of the characteristic performance curve for the turbine(s) and a copy of the monthly power generation figures during the development period. These items shall be submitted with the required Proof of Beneficial Use statement. Failure to submit these items shall be cause for the Director to reject the Proof of Beneficial Use statement.
12. The pond established by the storage of water under this right shall not exceed a total capacity of 2.0 Acre-Feet (AF) or a total surface area of 0.5 acres.
13. Right 87-12223 authorizes storage of an annual total of 17.2 Acre Feet (AF), comprised of 2.0 AF to be used for the initial filling or carryover storage of the pond, 1.1 AF for the replacement of losses due to seepage and evaporation, and up to 14.1 AF for additional refills for irrigation from storage and stockwater from storage use.
14. This right when combined with all other rights shall provide no more than 3.0 Acre Feet (AF) annually per acre at the field headgate for irrigation of the place of use.
15. Stockwater use is for 20 head Mixed Stock.
16. Water shall not be diverted from fire protection storage except to fight or repel an existing fire.

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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

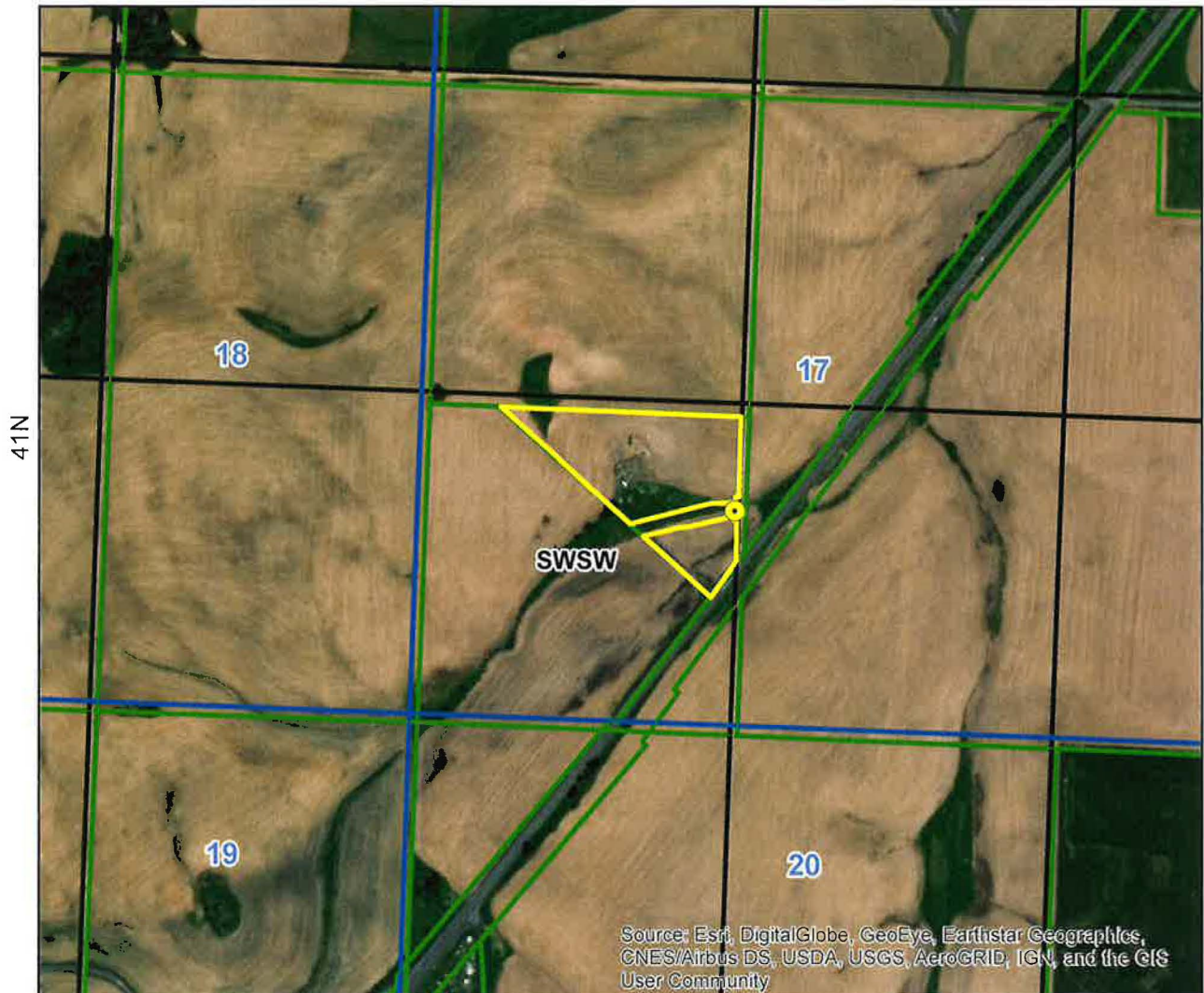
State of Idaho
Department of Water Resources






Attachment to Permit to Appropriate Water

87-12223

This map depicts the STOCKWATER FROM 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.

05W



-  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 Latah County.

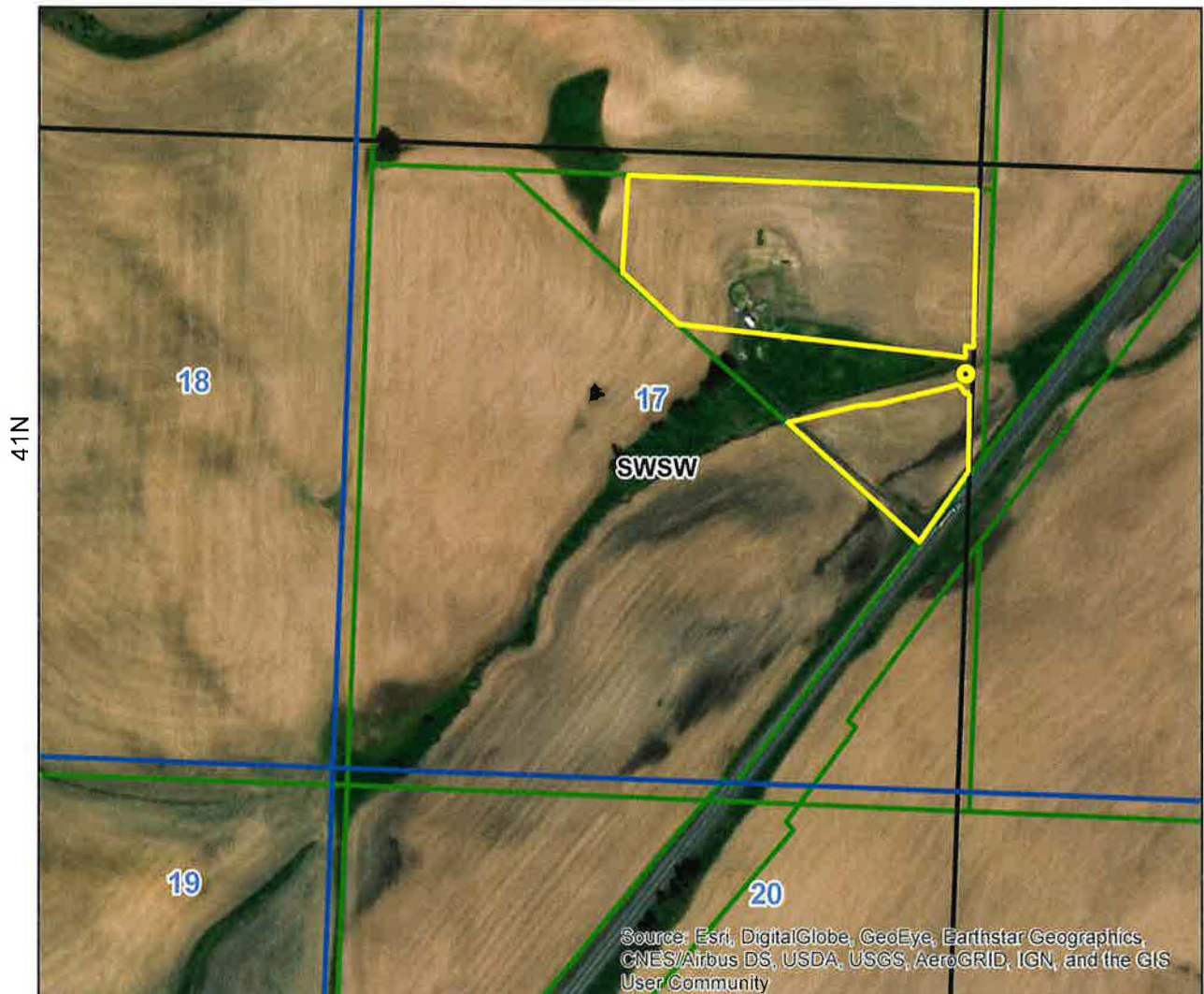
State of Idaho
Department of Water Resources






Attachment to Permit to Appropriate Water

87-12223

This map depicts the IRRIGATION FROM 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.

05W



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

0 0.0475 0.095 0.19 Miles



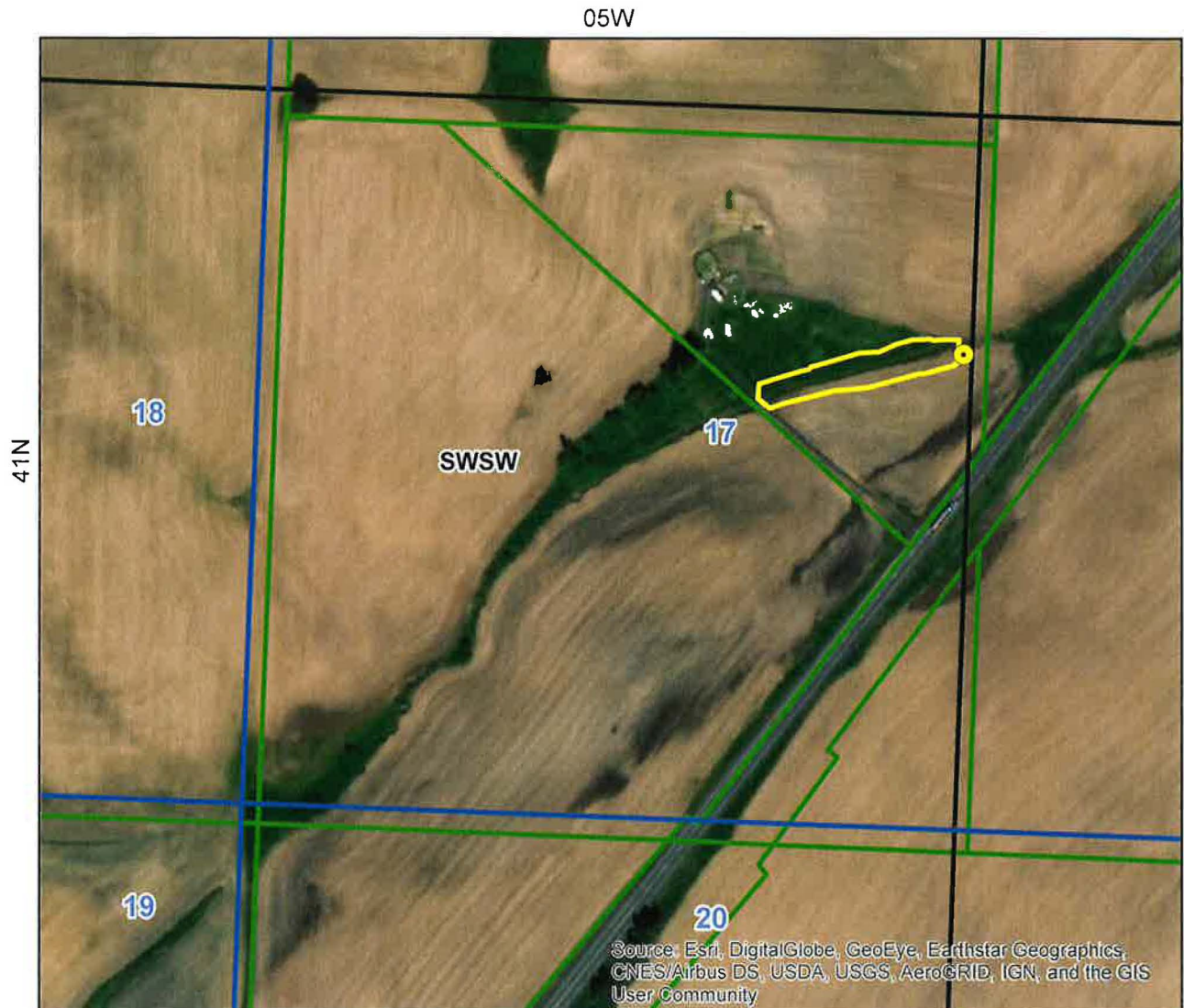
Tax parcel information provided by Latah County.

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

87-12223

This map depicts the FIRE PROTECTION STORAGE, IRRIGATION STORAGE, and STOCKWATER 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
- PLS Sections
- Quarter Quarters
- Taxlots

0 0.04 0.08 0.16 Miles



Tax parcel information provided by Latah County.

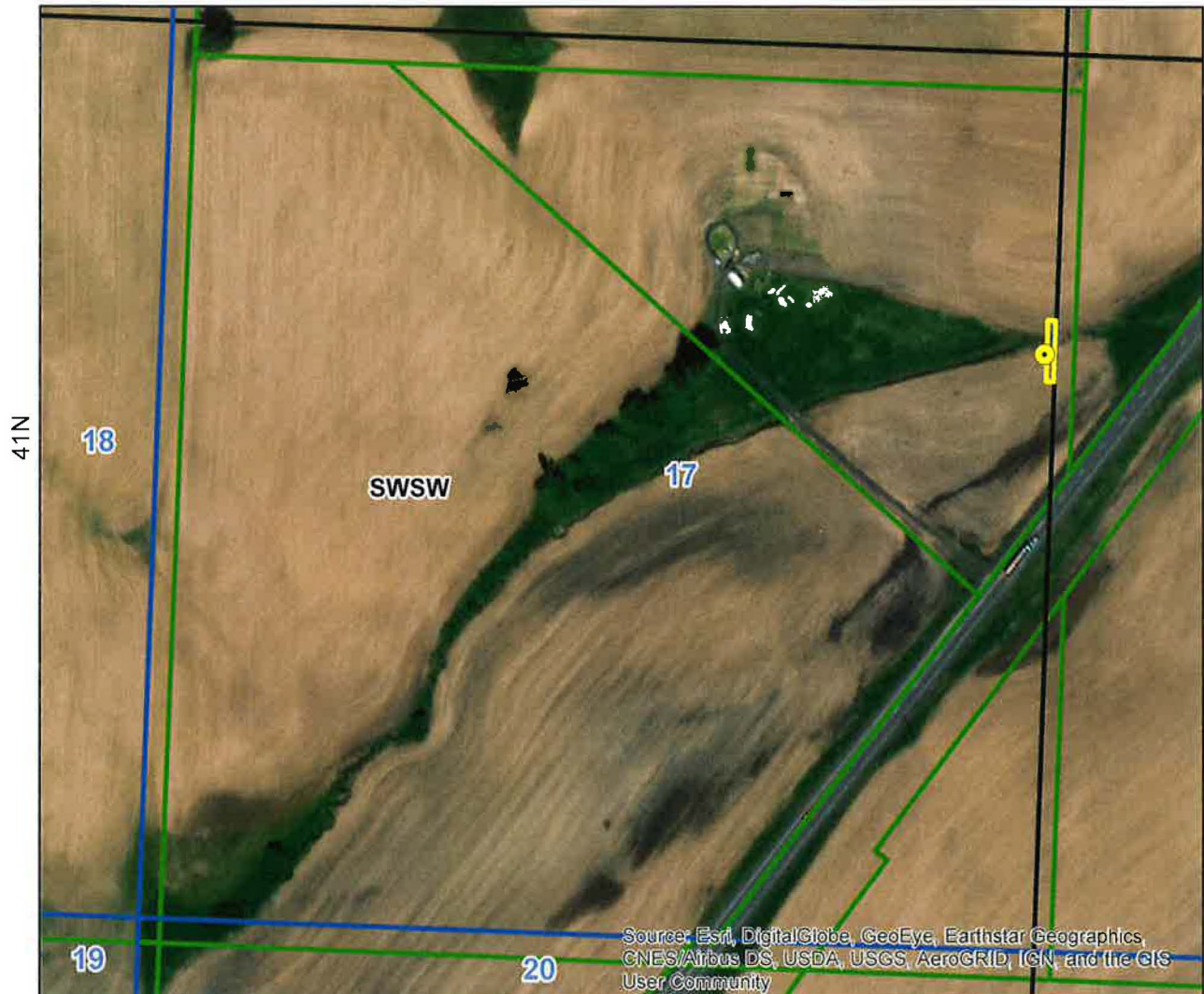
State of Idaho
Department of Water Resources






Attachment to Permit to Appropriate Water

87-12223


This map depicts the POWER 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.

05W



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

0 0.0325 0.065 0.13 Miles



Tax parcel information provided by Latah 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 03, 2020

JAMIN A SMITCHGER
5247 HIGHWAY 95
VIOLA ID 83872-9795

RE: Permit No. 87-12223

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 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 03, 2020, I served a true and correct copy of Permit to Appropriate Water No. 87-12223 by U.S. Mail, postage prepaid, to the following:

JAMIN A SMITCHGER (Current Owner)
5247 HIGHWAY 95
VIOLA ID 83872-9795



Tammy Allman
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.