

DEPARTMENT OF  
WATER RESOURCES

## Petition for Reconsideration

The nearest well to the proposed POD is Permit Holders' own domestic well. The Permit benefits from subordination of federal right 75-13316, so even primary irrigation under the Permit will not injure the minimum instream flow right. The Application was not protested. Conversion of five (5) surface irrigated acres to ground water irrigation is not likely to diminish ground water supply in the area or to injure downstream rights.

A condition limiting combined diversion and volume rates for the Permit acres is adequate to prevent the exceedance of the per-acre duty of water on the place of use. Condition no. 3 of the Permit satisfies this requirement. Enlargement under existing rights may be prevented by the substitution of condition no. 4 with the following condition:

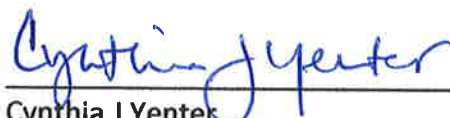
If the portion of water rights 75-14847 or 75-14848 which are appurtenant to the place of use are sold, transferred, leased, or used on any other place of use, right no 75-14954 shall not be used.

The mandate to not abandon or forfeit underlying rights is usually included in the above condition. Enlargement will not occur if underlying rights are abandoned or relinquished, so the inclusion of abandonment in the condition is not necessary (and would again introduce pointless restriction). So long as the acres are irrigated, forfeiture of the underlying rights will not occur, so inclusion of this noun is moot.

Requiring use of surface water before ground water under this permit is an arbitrary requirement for this area that is not warranted by local water supply conditions, and which is simply not necessary for the conservation of water resources in the Salmon River basin. Further, the ambiguous language in condition no. 4 may penalize the Permit Holders because it invites differences in interpretation about when the permit can and cannot be exercised.

Permit Holders request that the Department modify the Permit conditions to not restrict development of ground water for primary irrigation on the Permit acres.

 3.16.2020  
Bryan A Yenter Date

 3.16.2020  
Cynthia J Yenter Date

## **Grimm, Angie**

---

**From:** Cindy Yenter <cindy.yenter@gmail.com>  
**Sent:** Monday, March 16, 2020 6:45 AM  
**To:** Grimm, Angie  
**Subject:** 75-14954 Petition for Reconsideration  
**Attachments:** 75-14954 petition for recon signed.pdf

Angie - The original will be mailed today. You signed on March 2, although service was not until March 9 (a week?). The original should be received timely. Please contact me if there are questions.

Cindy Yenter

Water Right Permit 75-14954 )  
in the name of Bryan and Cynthia Yenter )

On July 17, 2019, Bryan and Cynthia Yenter (Permit Holders) submitted Application for Permit 75-14954 (Application) to the Department of Water Resources (Department). The Application proposed the construction of a shallow well and appropriation of ground water to irrigate five (5) acres. The Application stated that there were existing surface water rights on the property, but that ground water might be developed as the primary source of irrigation water on some or all of the proposed acres. Permit Holders requested that a permit be issued to allow ground water as a primary supply. On March 3, 2020 the Department approved Permit 75-14954 (Permit), subject to ten (10) Conditions of Approval.

Condition No. 4 contained on the Permit requires the full use of surface water rights prior to use of ground water for irrigation, unless the surface water supply is “not reasonably sufficient”, or is not available due to drought, curtailment, or other reasons. Applicants object to the inclusion of this condition on the grounds that it is unduly restrictive in a basin which is open for new appropriation. The ambiguity of the phrase “not reasonably sufficient” does not guarantee that Permit Holders will be able to develop the Permit to the full extent allowed by law.

The Salmon/Clearwater moratorium was rescinded in 2005. The Upper Salmon River basins are presently open to new irrigation appropriations, both primary and supplemental in nature, from both ground and surface water sources. Supplemental irrigation rights by definition authorize additional consumptive use, up to the maximum duty of water for each acre, because the rights are intended to be used when the primary right is curtailed or is not available. It would not be contrary to the conservation of water resources *in an open basin*, to permit conversion from surface water irrigation to primary ground water irrigation, if injury and enlargement do not occur, and if the maximum duty of water per acre is not exceeded.

Ground water levels in the Permit area are high and are influenced by return flows from surrounding surface water flood irrigation. Incidental ground water recharge from irrigation water delivery and return flow is important in the Salmon River valley to maintain the shallow aquifer. Permit Holders are not proposing to convert all their irrigated acres to primary ground water supply. Irrigation with surface water will continue under existing rights on approximately 15 acres, and there will be no reduction of incidental recharge.

The nearest well to the proposed POD is Permit Holders' own domestic well. The Permit benefits from subordination of federal right 75-13316, so even primary irrigation under the Permit will not injure the minimum instream flow right. The Application was not protested. Conversion of five (5) surface irrigated acres to ground water irrigation is not likely to diminish ground water supply in the area or to injure downstream rights.


A condition limiting combined diversion and volume rates for the Permit acres is adequate to prevent the exceedance of the per-acre duty of water on the place of use. Condition no. 3 of the Permit satisfies this requirement. Enlargement under existing rights may be prevented by the substitution of condition no. 4 with the following condition:

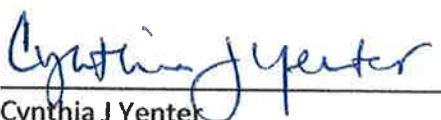
If the portion of water rights 75-14847 or 75-14848 which are appurtenant to the place of use are sold, transferred, leased, or used on any other place of use, right no 75-14954 shall not be used.

The mandate to not abandon or forfeit underlying rights is usually included in the above condition. Enlargement will not occur if underlying rights are abandoned or relinquished, so the inclusion of abandonment in the condition is not necessary (and would again introduce pointless restriction). So long as the acres are irrigated, forfeiture of the underlying rights will not occur, so inclusion of this noun is moot.

Requiring use of surface water before ground water under this permit is an arbitrary requirement for this area that is not warranted by local water supply conditions, and which is simply not necessary for the conservation of water resources in the Salmon River basin. Further, the ambiguous language in condition no. 4 may penalize the Permit Holders because it invites differences in interpretation about when the permit can and cannot be exercised.

Permit Holders request that the Department modify the Permit conditions to not restrict development of ground water for primary irrigation on the Permit acres.

  
Bryan A Yenter 3.16.2020  
Date

  
Cynthia J Yenter 3.16.2020  
Date