

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 79-14275

Priority: October 30, 2019

Maximum Diversion Volume: 19.4 AF

This is to certify that

LODGE AT LOLO CREEK LLC 4307 SNAKE RIVER AVE LEWISTON ID 83501-5195

has applied for a permit to appropriate water from:

Source : UNNAMED STREAM

Tributary: DIVIDE 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>
RECREATION STORAGE	01/01 to 12/31	19.4 AF
FIRE PROTECTION STORAGE	01/01 to 12/31	19.4 AF

Location of Point(s) of Diversion

UNNAMED STREAM NW¼ NW¼, Sec. 33, Twp 30N, Rge 02W, B.M. IDAHO County

Place of Use: RECREATION STORAGE and FIRE PROTECTION 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	
30N	02W	28											X						
30N	02W	33						X											

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **April 01, 2025**.
2. Subject to all prior water rights.
3. The pond established by the storage of water under this right shall not exceed a total capacity of 14.6 acre-feet or a total surface area of 2.6 acres.
4. Right 79-14275 authorizes total annual storage volume of 19.4 acre-feet, 14.6 acre-feet to be used for the initial filling or carryover storage of the pond and 4.8 acre-feet for the replacement of losses caused by seepage and evaporation.
5. Water shall not be diverted from fire protection storage except to fight or repel an existing fire.
6. The impoundment of water under this right is contingent upon the issuance of a certificate of approval per the dam safety provisions of Idaho Code and subsequent written authorization by the dam safety program administered by the Department.
7. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 79-14275

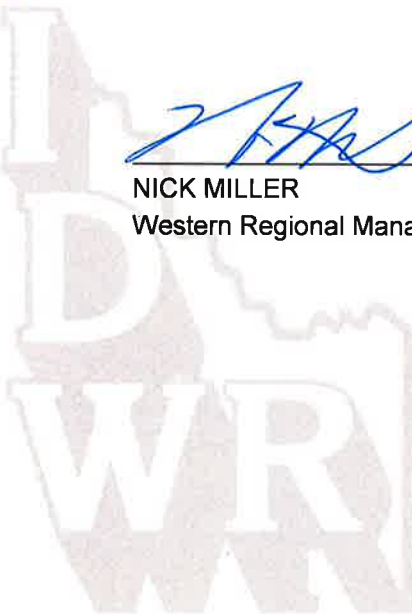
8. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.

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

Signed this 1st day of April, 2020.



NICK MILLER
Western Regional Manager



State of Idaho
Department of Water Resources






Attachment to Permit to Appropriate Water

79-14275

This map depicts the 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.

02W



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

0 0.035 0.07 0.14 Miles





State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 W AIRPORT WAY • BOISE, ID 83705-5082

Phone: (208)334-2190 • Fax: (208)334-2348 • Website: www.idwr.idaho.gov

Brad Little
Governor

Gary Spackman
Director

April 01, 2020

LODGE AT LOLO CREEK LLC
4307 SNAKE RIVER AVE
LEWISTON ID 83501-5195

RE: Permit No. 79-14275

Permit Approval Notice

Dear Permit Holders:

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 me at (208) 334-2190.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kensie Thorneycroft".

Kensie Thorneycroft
For: Nick Miller
Western Regional Manager

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on April 01, 2020, I served a true and correct copy of Permit to Appropriate Water No. 79-14275 by U.S. Mail, postage prepaid, to the following:

LODGE AT LOLO CREEK LLC
4307 SNAKE RIVER AVE
LEWISTON ID 83501-5195



Kensie Thorneycroft
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.

MEMORANDUM

TO: File 79-14275

FROM: Tyler Smith

DATE: 3/20/2020

RE: *Concerns of Flow and Temperature*

The application for permit 79-14275 proposed pond is within Basin 79 and therefore required IDFG and IDEQ comments on the application per Rule 40. The IDFG response was received from Jim Teare, Clearwater Regional Supervisor. He indicated that Steelhead have been documented in the lower portion of Divide Creek, and the creek is protected for cold water aquatic life and recreational beneficial uses. Divide Creek has a Total Maximum Daily Load (TMDL) allocation for water temperature and E. coli bacteria pollutants. Using USGS StreamStats, Jim concluded "If an in-stream pond is created and water from that pond is allowed to drain into this tributary during the summer months, water from the pond is likely to increase temperatures in the tributary."

The IDEQ response was received from Sujata Connell, Surface Water Quality Manager. Sujata also mentioned the TMDL for Divide Creek, and stated that reduction in flow can cause water temperature and bacteria increases that exceed the total maximum daily load. Sujata recommended that the withdrawal from Divide Creek be made during periods of seasonal high flow, and at no time should the stream be allowed to go dry as a result of the proposed dam.

In response, the applicant provided an analysis by Gabe McMasters, a biologist/wildlife specialist. He stated that the type of impoundment being sought in the application allows only cold water to exit through benthic exchange with the water table during non-runoff months.

Given the comments from all parties, and the location of the proposed pond high in the drainage, the pond will likely fill only during spring runoff and will not release warm water into the stream. The Department has concluded that the permit should be approved as submitted.

Application for Permit or Transfer No. 79-14275

Review Sheet for Above Ground Storage Reservoir
Additional Consideration for Question No. 7b on Application for Permit

This one-page worksheet supplements IDWR's review of Question 7b on the *Application for Permit* (Form 202). It serves as a guide to determine whether the applicant shall also complete the *Application for Construction or Enlargement of a New or Existing Dam* and solicit design services from a Professional Engineer.

Water Resource Agent to complete the following:

- a) Height of storage dam (in feet above ground surface) 20 feet
- b) Reservoir volume, one-time fill per year (in acre-feet) 14.6 acre-feet
- c) Calculate/Multiply: Height of storage dam x Reservoir volume (a x b) 292

If part c (above) is less than 60, no additional review by the Dam Safety Engineer is necessary.

☐ **No Additional Review Is Necessary**

If part c (above) is greater than or equal to 60, route this worksheet to the regional dam safety engineer.

☒ **Additional Review Is Requested**

→ I have routed a copy of this worksheet to the dam safety engineer in my office

△ Name of Water Resource Agent: Patroche Kelly date 3-19-20

Regional Dam Safety Engineer to complete the following:

☐ Construction of the proposed structure at the location identified by the applicant does not appear to require design plans and specifications prepared by an Idaho licensed professional engineer.

☐ Proposed structure deserves additional design review due to the following (check as applicable):

Height and Storage exceed the statutory threshold ☐

Downstream Hazard Potential is Significant ☐

Downstream Hazard Potential is High ☐

☐ I have notified the applicant of the need to submit a separate *Application for Construction or Enlargement of a New or Existing Dam*.

☐ I have forwarded a copy of the *Application for Permit* (Form 202) together with my accompanying recommendation to: _____ (Safety of Dams Program Manager)

△ Name of Dam Safety Engineer: _____ date _____

JAN 29 2020

WATER RESOURCES
WESTERN REGION

January 15th, 2020

Kensie Thorneycroft
Idaho Department of Water Resources- Western Region
2735 W Airport Way
Boise, ID 83705

Re: Water Right Application 79-14275

Dear Ms Thorneycroft,

The purpose of this letter is address the local public interest response to water right Application 79-14275. The following comments are to support this application and to provide reasonable evidence in favor of the permit. During the fall of 2019, I was hired by the permit applicant to assess the site for the potential to impound water for wildlife habitat, fire protection and recreation purposes. Below is a summary of my finding and subsequent support for an impoundment in this location.

This particular no named drainage is an intermittent tributary that is approximately 1.5-2 miles from Divide Creek. There were no fish species present, and doesn't appear to support resident nor migratory fish species at any time due to the steepness of the gradient, absence of water, and location in the drainage. No lentic or lotic obligate species exist in the proposed site and a diverse riparian zone is absent throughout the drainage. The dominant species in the drainage are ponderosa pine, red fir and white fir. No riparian zone 1 or 2 species will be lost as a result of impounding water at this location. Water is absent for 9 months of the year in this drainage. It should be noted that the very minimal flows from seasonal runoff go hyporeic within the first mile of the drainage. During periods of seasonal high flows, legally appropriated withdrawals will be a priority. At NO time will water be released from the surface to downstream locations during hot months. Given the drainage's intermittent and hyporheic nature, allowance of appropriated seasonal withdrawals, and natural recharge from the proposed impoundment, I estimate that stream function will not be lost. There is also very few impoundments large enough to dip from in this area in the event that fire suppression is required.

A water impoundment will provide a vital water resource in this drainage the entire year. I predict that by holding water in the upper end of the drainage it will extend the in-stream flowing time in the first mile of the drainage outside seasonal high flows. By holding water in upper end of the drainage it will charge the upper aquifer and allow more available water immediately down stream of the proposed impoundment. As a result of providing a permanent water source, there will be an increase in riparian species diversity in the immediate and downstream locations. By diversifying riparian habitats it will directly diversify the wildlife in the area. A consistent annual water source will greatly benefit amphibians, waterfowl and many other bird species, big and small game animals and many aquatic macroinvertebrates and macrophytes. The nature of these types of impoundments allow only cold water to exit through benthic exchange with the water table during non-runoff months. With the allowance of appropriated seasonal withdrawals, coupled with cold water exchange below the

impoundment, stream function is forecast to increase. This impoundment will be large enough for helicopter and water trucks to dip from in the event that there is a fire in the area.

At this time, I highly recommend moving forward with permit 79-14275. The result of a water impoundment in the area will be the increase in riparian diversity, directly diversifying the wildlife in the area. An impoundment will also aid in fire protection. By mimicing seasonal runoff, legally appropriated withdrawals and cold water exchange below the impoundment, the integrity of the stream function will remain intact and is forecast to increase. Please contact me with any questions about the necessary information.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Gabe McMasters', with a long, sweeping horizontal line extending to the right.

Gabe McMasters
Biologist/ Wildlife Consultant
708 Caribel Rd
Kamiah, ID 83536
208-553-0873



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

January 21, 2020

LODGE AT LOLO CREEK LLC
4307 SNAKE RIVER AVE
LEWISTON, ID 83501

COPY

Re: Notice of Intent to Void Application For Permit 79-14275

Dear Applicant(s),

On October 30, 2019 the Department of Water Resources (IDWR) received your Application for Permit to appropriate water. The Department requested additional information via a letter dated December 17, 2019. The letter stated that a written reply must be made within thirty (30) days or the Department will void the application. As of January 21, 2020 no written correspondence was received by the Department. If it is your intent to further pursue your application, please provide written response to the original letter or request additional time to respond. It is the intent of the Department to void your application within the next fourteen (14) days if no response is received.

IDWR forms and other information are available on the Internet at www.idwr.idaho.gov. Please contact me at 208-334-2190 if you need more information. Thank you for your attention to these matters.

Sincerely,

Tyler Smith
Water Resource Agent
Idaho Department of Water Resources
Phone: (208) 334-2190
Email: tyler.smith@idwr.idaho.gov



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

December 17, 2019

COPY

LODGE AT LOLO CREEK LLC
4307 SNAKE RIVER AVE
LEWISTON ID 83501

Re: Water Right Application 79-14275

Dear Applicant:

Your application for permit no. 79-14275 recently went through the advertisement period in which the Department of Water Resources sought comment letters from the Idaho Department of Fish and Game (F&G) and the Idaho Department of Environmental Quality (DEQ) in regards to your proposal.

The criteria identified in the comment letters outline a concern for the local public interest if your proposal were to be carried out as planned in your application. Those comment letters have been copied and included with this letter.

If you wish to further pursue your application for permit, **please submit reasonable evidence** detailing how your proposal will **not** affect the local public interest as outlined by Idaho F&G and DEQ. Without reasonable evidence otherwise, your application for permit may be voided by the Department of Water Resources in order to protect the local public interest.

Please submit your evidence within the next thirty (30) days. If IDWR does not receive your written response within thirty (30) days, your application may be voided. You may receive future correspondence regarding more specific details of your application. IDWR forms and other information are available on the Internet at www.idwr.idaho.gov. Please consult the IDWR website or contact this office at 208-334-2190 and ask for me if you have any questions about the necessary information.

Sincerely,

Tyler Smith
Water Resource Agent
Western Region

Enclosure: Copied comment letters from Idaho Fish & Game and Idaho Department of Environmental Quality



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

December 17, 2019

LODGE AT LOLO CREEK LLC
4307 SNAKE RIVER AVE
LEWISTON ID 83501

Re: Water Right Application 79-14275

Dear Applicant:

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The criteria identified in the comment letters outline a concern for the local public interest if your proposal were to be carried out as planned in your application. Those comment letters have been copied and included with this letter.

If you wish to further pursue your application for permit, **please submit reasonable evidence** detailing how your proposal will **not** affect the local public interest as outlined by Idaho F&G and DEQ. Without reasonable evidence otherwise, your application for permit may be voided by the Department of Water Resources in order to protect the local public interest.

Please submit your evidence within the next thirty (30) days. If IDWR does not receive your written response within thirty (30) days, your application may be voided. You may receive future correspondence regarding more specific details of your application. IDWR forms and other information are available on the Internet at www.idwr.idaho.gov. Please consult the IDWR website or contact this office at 208-334-2190 and ask for me if you have any questions about the necessary information.

Sincerely,

Tyler Smith
Water Resource Agent
Western Region

Enclosure: Copied comment letters from Idaho Fish & Game and Idaho Department of Environmental Quality

RECEIVED

DEC 11 2019

Affidavit of PublicationSTATE OF IDAHO, }
County of Idaho, } ss.WATER RESOURCES
WESTERN REGION

I, STEVE A. WHERRY, being first duly sworn, depose and say that I am Publisher of the COTTONWOOD CHRONICLE, a weekly newspaper, published and issued weekly at Cottonwood, Idaho County, State of Idaho, which is of general circulation in said county and state, that the said notice, of which the hereto attached is a true copy, was published in said newspaper for

2 weeks, being published 2 times, the

first publication being on the 21st day of

November, 2019, and the last publication on the

28th day of November, 2019; and that

the said notice was published in the newspaper proper and not in a supplement; that said newspaper has been continuously and uninterruptedly published in said county during a period of seventy-eight (78) consecutive weeks prior to the first publication of said notice or advertisement.

Steve A. Wherry

STATE OF IDAHO, }
County of Idaho, }

On this 6th day of December in the year of 2019,

before me, a Notary Public, personally appeared Steve A. Wherry,

know or identified to me to be the person whose name is subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true and acknowledged to me that he executed the same.

GREGORY A. WHERRY
COMMISSION NUMBER 53244
NOTARY PUBLIC
State of Idaho
My Commission Expires 09/22/2020

Gregory A. Wherry
Notary Public for Idaho
Residing at Cottonwood, ID

My commission expires: 9/22/2020

Notice

The following application has been filed to appropriate the public waters of the State of Idaho:

79-14275

LODGE AT LOLO CREEK LLC

4307 SNAKE RIVER AVE

LEWISTON, ID 83501-5195

Point of Diversion NWNW S33

T30N R02W IDAHO County

Source UNNAMED STREAMS

Tributary DIVIDE CREEK

Use: FIRE PROTECTION

STORAGE 01/01 to 12/31 19.4

AF

Use: RECREATION STOR-

AGE 01/01 to 12/31 19.4 AF

Total Diversion: 19.4 AF

Date Filed: 10/30/2019

Place Of Use: RECREATION

STORAGE, FIRE PROTECTION

STORAGE

T30N R02W S28 SWSW

T30N R02W S33 NWNW

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Western Region office at (208) 334-2190; or for a full description of the right(s), please see www.idwr.idaho.gov. Protests may be submitted based on the criteria of Idaho Code § 42-203A. Any protest against the approval of the application(s) must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 12/9/2019. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

Published in the Cottonwood Chronicle on 11/21/2019 and 11/28/2019



RECEIVED

DEC 06 2019

WATER RESOURCES
WESTERN REGION

IDAHO DEPARTMENT OF FISH AND GAME

CLEARWATER REGION

3316 16th Street
Lewiston, Idaho 83501

C.L. "Butch" Otter / Governor
Virgil Moore / Director

December 6, 2019

Kensie Thorneycroft
Idaho Department of Water Resources – Western Region
2735 W Airport Way
Boise, ID 83705

RE: IDFG Comments on Application for Permit No. 79-14275

Dear Ms. Thorneycroft:

Idaho Department of Fish and Game (IDFG) has reviewed the application for permit # 79-14275. The application includes building a dams within a tributary to Divide Creek to collect 19.4 acre feet of water for fire protection and recreation storage purposes.

The purpose of the following comments is to assist the decision-making authority by providing technical information addressing potential effects on fish, wildlife and their habitat. Resident fish and wildlife are property of all Idaho citizens, and IDFG is charged with statutory responsibility to preserve, protect, perpetuate and manage all fish and wildlife in Idaho (Idaho Code 36-103(a)). Assuming all federal, state and local permits have been obtained, regulations met, and reviews completed, we offer the following comments.

Small streams are often taxonomically diverse and serve many important biological and physical functions. Dams and reservoirs often impede migrations of fish, amphibians and other wildlife, and have other potentially adverse impacts on flow, water quality and stream function. It is likely that constructing an instream dam will have negative impacts on fish and wildlife. Dams and reservoirs are likely to shorten the flowing length of the intermittent stream drying up habitat which may be used by multiple wildlife species. In addition, creation of a reservoir will inundate riparian habitat which has potential to affect a diverse array of wildlife that use riparian habitat during portions of their life cycle. IDFG often recommends that off stream ponds with a diversion be developed as an alternative to instream reservoirs and dams. If an off stream pond is approved there should be no discharge back into the stream directly from the pond during the warmer months of June – September to avoid increase temperature loading of the stream. All excess water not allocated to maintain the water appropriation should be left in stream and allowed to proceed past the diversion. At no time should the stream be allowed to go dry as a result of equally appropriated and allowable water withdrawals.

Steelhead have been documented in the lower portion of Divide Creek. In addition, Divide Creek is protected for cold water aquatic life and recreational beneficial uses. Divide Creek has a Total Maximum Daily Load (TMDL) allocation for water temperature and E. coli bacteria

Keeping Idaho's Wildlife Heritage

pollutants. Using USGS StreamStats to determine flow within the proposed diversion site, we believe there may not be sufficient flow to support the intended use of this application. In addition, the withdrawal may not allow the required amount of water necessary for the TMDL allocations. If an in-stream pond is created and water from that pond is allowed to drain into this tributary during summer months, water from the pond is likely to increase temperatures in the tributary.

Thank you for the opportunity to comment on this application. Please contact Zach Swearingen, Environmental Staff Biologist at 208-799-5010 if you have any questions regarding our comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jim Teare', with a long horizontal flourish extending to the right.

Jim Teare
Clearwater Regional Supervisor

ECC: M: Drive



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

RECEIVED
DEC 05 2019
WATER RESOURCES
WESTERN REGION

1118 F Street • Lewiston, ID 83501 • (208) 799-4370
www.deq.idaho.gov

Brad Little, Governor
John H. Tippetts, Director

December 5, 2019

Kensie Thorneycroft
Idaho Department of Water Resources – Western Region
2735 W Airport Way
Boise, ID 83705

Subject: Water Appropriation, Permit # 79-14275

Dear Ms. Thorneycroft:

We received a request for comment on an application for a water appropriation permit to appropriate 19.4 acre feet from a tributary to Divide Creek for fire protection and recreation storage from January 1 to December 31. The applicant proposes a dam across the unnamed tributary stream to impound water for the above uses. Assuming all federal, state and local permits have been obtained, regulations met, and reviews completed, we offer the following comments.

The stream at the point of diversion is included in water body ID# 17060101SL028_02, and is protected for cold water aquatic life and secondary contact recreation assessed beneficial uses. This tributary to Divide Creek is listed in Category 4a of Idaho's 2016 Integrated Report as having a Total Maximum Daily Load (TMDL) allocation for water temperature and *E. coli* bacteria pollutants. The TMDL is a pollution management plan that calculates the maximum amount of a pollutant allowed in the creek based on the volume or flow of water in the creek. Reduction in flow can cause water temperature and bacteria increases that exceed the total maximum daily load and Idaho water quality standards. DEQ stream monitoring data from this water body unit recorded a flow of 0.1 cubic feet per second in July, 2003.

Based on the Lower Salmon River and Hells Canyon Tributaries TMDLs and flow data, DEQ is concerned that there may not be sufficient flow outside the seasonal high flow period to support the beneficial uses, and provide the volume necessary for the TMDL allocations for listed pollutants. We recommend that the legally appropriated withdrawal be made during periods of seasonal high flow or at a minimum, flows greater than 1 cubic foot per second. At no time should the stream be allowed to go dry as a result of legally appropriated and allowable water withdrawals.

Thank you for the opportunity to comment on your application. If you have any questions regarding the Idaho Water Quality Standards, please call us at (208) 799-4370.

Sincerely,

A handwritten signature in cursive script that reads "Sujata Connell".

Sujata Connell
Surface Water Quality Manager

c: Lodge at Lolo Creek, LLC
EDMS