

MAR 20 2020

APPLICATION FOR TEMPORARY APPROVAL OF WATER USE

For a use not intended to become an established water right and not to exceed one (1) year in duration in accordance with Idaho Code § 42-202A. Department of Water Resources Eastern Region

Name of applicant Garden Water Company LTD - c/o Wyatt Penfold Phone (208) 709-6810Mailing address 2955 S 1750 E City DriggsState Idaho Zip 83422 Email spudseed@gmail.com1. Source of water Darby Creek tributary to Teton River2. Location of point(s) of diversion. If more than two, attach a Point of Diversion/Place of Use Supplement. ☒

TWP	RGE	SEC	GOVT LOT	1/4	1/4	1/4	County	Source	Local name or tag #

3. Location of place of use. If more rows are needed, attach a Point of Diversion/Place of Use Supplement. ☐

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
4N	46E	6															X		-5.5 A

4. Proposed use of water:

a. ☐ Prevention of flood damage ☒ Ground water recharge ☐ Ground water or surface water remediation☐ Other (Limited to a diverted volume of 5 acre-feet) Describe: _____

b. Attach a detailed description of how the proposal will accomplish the intended objective, such as prevention of flood damage.

5. Amount of water. Complete all three:

a. Maximum rate of diversion: 20 cfs; or _____ gpmb. Maximum daily volume: 39.6 AF; or _____ gallons.c. Maximum volume over the duration of the request: 10,850.4 AF; or _____ gallons.6. Duration of diversion: from April 1 (month-day) to December 31 (month-day)7. Describe proposed diverting works: head gates located at existing PODs with measuring devices and locks8. a. Who owns the property at the requested point of diversion? Elmer Boules and Leon Westonb. Who owns the facilities that will convey water to the place of use? Garden Water Company, LTDc. Who owns the land to be irrigated or place of use? Penfold Farms and Roberts Concreted. If any of the items above is owned by a person or entity other than the applicant, describe the arrangement allowing access and attach written evidence of the arrangement. See Attached

9. Attach an 8 1/2" x 11" map identifying the water source, point(s) of diversion, place(s) of use and conveyance system.

I hereby acknowledge that I assume all risk of the diversion and use of the water under this approval. I certify this is a temporary use and is not intended to become an established water right.

Signature of Applicant [Signature] Title, if any President, Garden Water Company, LTDDate March 13, 2020Received by [Signature] Date 3/20/2020Time 12:30\$50.00 fee received by [Signature] # E045759Date 3/20/2020

Watermaster comments received? _____

Date _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

The Idaho Department of Water Resources ("Department") has examined this application for temporary approval to use water under the provisions of Idaho Code § 42-202A and has determined that:

 A. The application for temporary approval should be denied because _____

- ☒ B. The application for temporary approval should be approved, since
1. The temporary approval can be properly administered.
 2. Other water sources are not readily available.
 3. The approval is in the public interest.
 4. The approval will not injure known public values associated with the water source or any known water rights.
 5. If the temporary approval is within a water district, the Department has sought and considered the recommendations of the watermaster.

This application is therefore hereby:

 A. DENIED

- ☒ B. APPROVED, subject to the following conditions:
1. Diversion and use of water under this approval is subject to all valid existing water rights.
 2. The applicant assumes all risk of the use of the water under this approval.
 3. This approval authorizes a maximum diversion volume of 10,850 A/F and a maximum diversion rate of 20 cfs.
 4. This approval does not grant a right-of-way across the land of another.
 5. The Department may cancel or reduce the rate of flow or volume authorized by this approval. For example, the Department may cancel or reduce this approval if it concludes the water use is injuring other water rights or adversely affecting fish, wildlife or other public values.
 6. The applicant shall not divert water when downstream minimum flow water rights are not being satisfied.
 7. This approval does not create a continuing right to use water.
 8. A temporary approval for ground water recharge or prevention of flood damage shall be an opportunistic use of surplus water and shall not interfere with the filling of surface water reservoirs.
 9. For a temporary approval authorizing ground water recharge or ground water or surface water remediation, the applicant shall measure and record the weekly quantity of water diverted and report the diversion data to the Department upon request.
 10. This temporary approval is not an authorization for the described water use to be used as mitigation or credit for any other purpose.
 11. Other: Diversion under this approval is limited to times when the flow at the Snake River near Minidoka gage (#13081500) exceeds 2700 cfs and excess water is spilling past Milner Dam.
 12. This approval expires on Dec 31, 2020.
- Signed this 24th day of March, 2020.


For the Department

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Ident. No. _____

Point of Diversion/Place of Use Supplement

Attachment to: ☒ Application for Permit to Appropriate Water ☐ Application for Transfer** ☐ Adjudication Claim
☐ Application for Amendment of Permit ☐ Beneficial Use Field Report ☐ Statutory Claim

Location of points of diversion (POD):

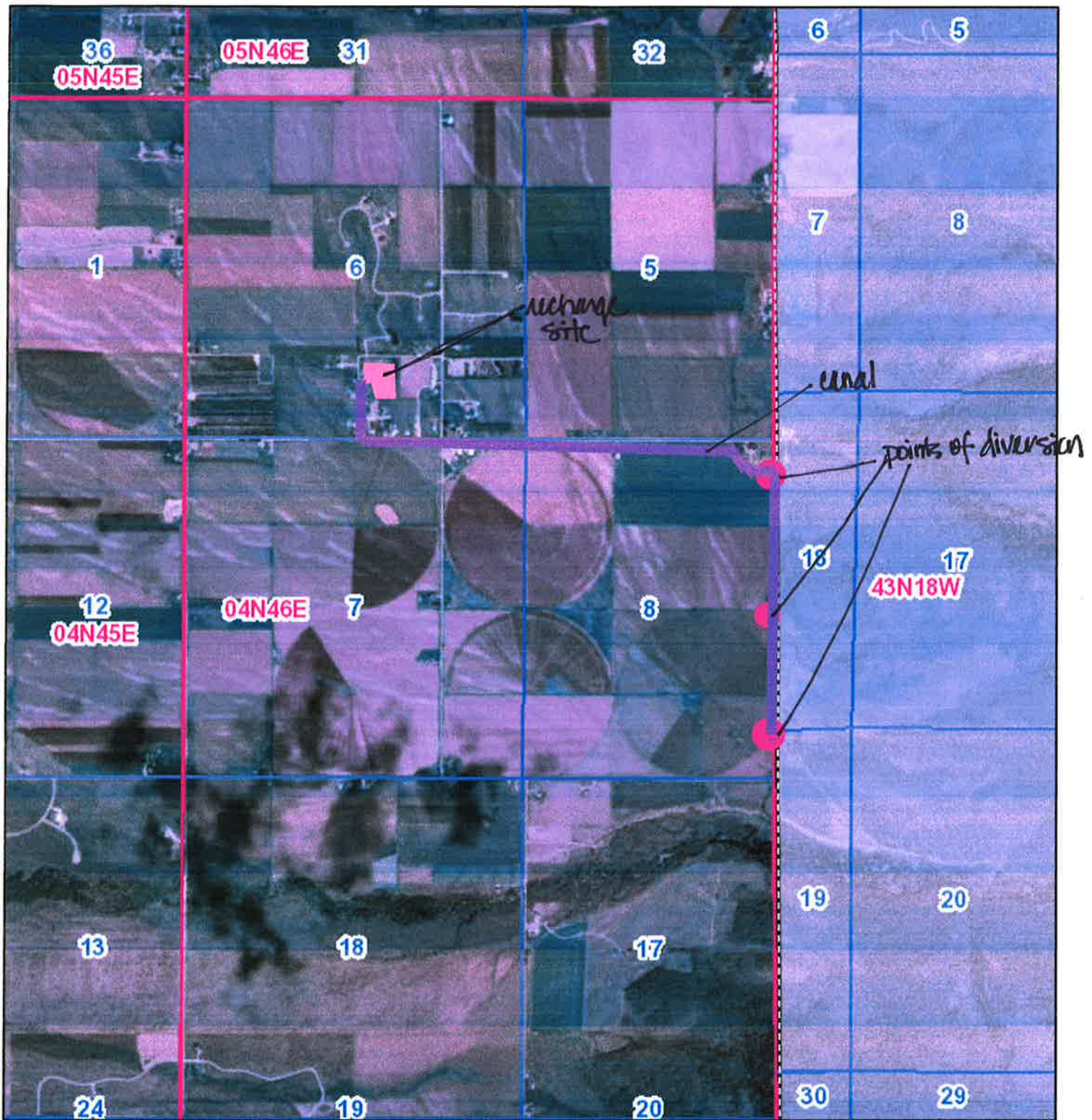
New POD?	Twp	Rge	Sec	Govt Lot	¼	¼	¼	County	Source	Local name or well/diversion tag #
<input type="checkbox"/> Yes	4N	46E	8	1	NE	NW	NE	Teton County	Darby Creek	
<input type="checkbox"/> Yes	4N	46 E	8	3	NE	NW	SE	Teton County	Darby Creek	
<input type="checkbox"/> Yes	4N	46E	8	4	SE	SW	SE	Teton County	Darby Creek	
<input type="checkbox"/> Yes										
<input type="checkbox"/> Yes										
<input type="checkbox"/> Yes										
<input type="checkbox"/> Yes										
<input type="checkbox"/> Yes										
<input type="checkbox"/> Yes										
<input type="checkbox"/> Yes										

Description of place of use (POU):

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below.

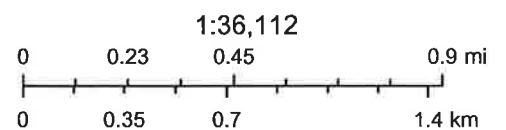
TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Garden Water Co Application for Temp Water Right



3/7/2020, 6:58:16 AM

- Override 1
- Section
- Areas**
- Override 1
- Override 2
- Counties
- Township/Range
- Idaho Outline
- Idaho Mask



Esri, HERE, Garmin, (c) OpenStreetMap contributors, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Created by NRCS from 1:24,000 scale USGS topographic maps., Idaho Department of Water

Penfold Farms, Inc.
2075 S 1750 E
Driggs, ID 83422

Roberts Concrete Holdings, LLC
PO Box 498
Victor, ID 83455

March 9, 2020

Idaho Department of Water Resources
900 N. Skyline Drive #A
Idaho Falls, ID 83402

To Whom It May Concern:

Penfold Farms, Inc. and Roberts Concrete Holdings, LLC own the following property in Teton County, Idaho:

Blk 6 Darby Townsite Gravel Pit, Sec 6 T4N R46E

Lot 1-2-3 Blk 7 Darby Townsite Gravel Pit, Sec 6 T 4N R46E

Penfold Farms, Inc. and Roberts Concrete Holdings, LLC hereby authorizes Garden Water Company, LTD to utilize the above described gravel pit for ground water recharge purposes.

Sincerely,



Wyatt Penfold

Manager, Penfold Farms, Inc.

Supplemental Information

Question 4.b. – Attach a detailed description of how the proposal will accomplish the intended objective, such as prevention of flood damage.

The Application for Temporary Approval of Water Use, if approved, shall be used to support the goals of the Teton Water Users Association which is working to stabilize the local Teton Basin aquifer and improve streamflow in the Teton River during the latter part of the summer. Water will be diverted as part of a two-year pilot project to specific managed recharge sites in the Teton Watershed, including the site operated by Garden Water Company, LTD. More information about the efforts of the Teton Water Users Association is outlined in the attached memorandum dated October 30, 2019. For additional information about the pilot project please contact Sarah Lien, at Friends of the Teton River, at 208-354-3871.

Question 8.d. – If any of the items above is owned by a person or entity other than the applicant, describe the arrangement allowing access and attach written evidence of the arrangement.

The points of diversion associated with this Application for Temporary Approval of Water Use are located on property owned by Leon Weston and Elmer Boules, at locations where Garden Water Company, LTD's ditch cross into Idaho from Wyoming. These points of diversion and the associated canals are used in association with Garden Water Company, LTD's general operations for the diversion of water under all water rights certificated in its name. As such, Garden Water Company, LTD has historically and continues to actively access, utilize, and maintain these points of diversion as part of its operation in accordance with Title 42, Idaho Code and associated prescriptive easements.



MEMORANDUM

To: Streamflow Enhancement and Minimum Streamflow Committee

From: Sarah Lien, Friends of the Teton River

Date: October 30, 2019

Re: Teton River Basin Water Transactions Program – Teton River Flow Transaction

Action Requested: Committee vote recommending that the transaction be presented to the Idaho Water Resource Board for a vote on the associated funding resolution

I. Transaction Summary:

This two-year pilot project aims to generate flow and temperature conditions in the mainstem Teton River to support Yellowstone Cutthroat Trout by increasing flow levels and decreasing temperature during the hottest, driest months of the year. This will be accomplished by conducting managed groundwater recharge efforts, utilizing water from tributary streams during the months of April, May, and June, which will in turn improve flow levels and temperature conditions in the Teton River, via return flows, during the months of June, July, August, September, and October. *See*, attached map depicting approximate location of recharge sites and location of expected response in Teton River.

II. Transaction Overview:

Friends of the Teton River (FTR), in partnership with the Teton Water Users Association (TWUA), present the following flow restoration proposal. *See*, attached document entitled “Description of Teton Water Users Association,” which describes the Teton Water Users Association and provides a list of participating entities. This water transaction proposal aims to generate more favorable conditions for native Yellowstone Cutthroat Trout (YCT) in the Teton River by: (1) stabilizing flow conditions; and (2) decreasing water temperature during the warmest months of the year.

Historically, flow restoration efforts in the Teton River watershed have focused on restoring flows in tributary streams to the Teton River. Those efforts will continue, yet it is critically important to generate favorable conditions for YCT in the Teton River itself. The Teton River is never completely dewatered like most of the tributaries in the watershed, but it is subject to

annual low flow conditions and elevated temperatures, particularly during the latter part of the summer when ~90% of fluvial YCT in the watershed are holding in its waters.

Eight to ten months per year the tributaries to the Teton River are disconnected from the mainstem river itself, limiting the chance to add water via surface flow inputs and demanding the development of an alternative strategy. The watershed demonstrates a three month return flow period, meaning that approximately three months after water seeps into the ground, it will re-emerge as return flow in the Teton River. In short, water recharged during a 60-day window in the spring (April 15 - June 15) will increase base flows and drive down temperatures in the Teton River from June 15 - October 31. Information regarding the groundwater-surface water model upon which this transaction is premised is detailed in a document entitled "Teton Valley Groundwater Surface Water Model," authored by Dr. VanKirk, which is available upon request.

Utilizing the information derived from Dr. VanKirk's model, the TWUA worked to generate water management strategies, appropriate for the Teton River watershed specifically, which will stabilize the local aquifer while improving flow and temperature conditions in the Teton River. As a result, the TWUA implemented an initiative, in 2018 and 2019, that aimed to increase the number of acres being flood irrigated throughout the watershed, in recognition that flood irrigation methods support groundwater levels and, through return flows, have the potential to improve flow and temperature conditions in the Teton River. The TWUA intends to continue this flood irrigation initiative into the foreseeable future.

This two-year pilot project, the subject of this project proposal, builds upon the flood irrigation initiative discussed above through the implementation of a managed groundwater recharge program. Each year of the two-year pilot period, the TWUA aims to recharge 10,000 acre-feet of water, above and beyond any incidental recharge which may result from the flood irrigation initiative. By recharging 10,000 acre-feet of water, the groundwater-surface water model projects an increase in Teton River base flows of ~15-18 cfs from June 15-October 31. The model projects that an additional 4,322 acre-feet of water will accrue to the Teton River, annually, during that June 15-October 31 time period.

The Idaho Department of Water Resources ("IDWR") issues Temporary Water Right Permits, on an annual basis, that allow irrigators to recharge water when the waters of the State of Idaho are abundant. FTR will work with the relevant irrigation entities to apply for, and secure, a Temporary Water Right Permit for the purpose of conducting managed recharge. These permits will be applied for each year of the project and will serve as the legal vehicle by which water is diverted for managed recharge purposes as part of this pilot project. The TWUA anticipates that if this pilot project proves to be a worthwhile effort that it will work with individual irrigation entities to apply for managed recharge water rights.

Friends of the Teton River is actively working with Idaho Department of Environmental Quality to develop appropriate groundwater quality monitoring protocol for this pilot project.

Participating irrigation entities will be contracted to deliver water to identified groundwater recharge sites. The irrigation entities will sign water delivery contracts which specify how water

is to be diverted and delivered to accrue maximum flow and temperature benefits in the Teton River.

III. Transaction Cost and Pricing Information:

Sixty thousand six hundred dollars (\$60,600) is available through the Columbia Basin Water Transaction Program, over the two-year term, to support this transaction. Each year three hundred dollars (\$300) will be utilized to pay the fees associated with applying for Temporary Water Right Permits, while thirty thousand dollars (\$30,000) will be made available for payment to participating irrigation entities.

The pricing structure for this two-year pilot project is as follows:

- If the total quantity of managed recharge in any given year is 7,500 acre-feet or less, participants will be compensated at a rate of \$4/acre-foot recharged.
- If the total quantity of managed recharge in any given year exceeds 7,500 acre-feet, participants will receive a portion of a \$30,000 funding pool, equal to their individual contribution to the total quantity of water recharged. By way of example, for the purpose of illustrating how compensation shall be determined, the following facts are assumed: (1) a participant recharges 750 acre-feet of water; (2) the total quantity of recharge is 10,000 acre-feet; and (3) the funding pool is \$30,000. Compensation shall be calculated as follows:
 1. $750 \text{ AF (participant's recharge)} / 10,000 \text{ AF (total recharge)} = 0.075$
 2. $0.075 \times 100 = 7.5\% = \text{participant's percentage of recharge}$
 3. $\$30,000 \times 7.5\% = \$2,250 = \text{participant's compensation}$

This hybrid payment structure aims to incentivize participation, while simultaneously avoiding the potential that participants may be compensated at a rate in excess of market.

IV. Committee Action Requested:

The transaction has been reviewed by the Columbia Basin Water Transaction Program's technical advisory committee and funding to support the transaction has been authorized.

At this time, FTR requests that the Committee vote to support the transaction and recommend that it be presented to the Idaho Water Resource Board for a vote on the associated funding resolution.

BEFORE THE IDAHO WATER RESOURCE BOARD

**IN THE MATTER OF THE
TETON RIVER WATER
TRANSACTION AGREEMENTS**

**RESOLUTION TO MAKE A FUNDING
COMMITMENT**

1 WHEREAS, the Teton River provides quality habitat for fluvial and resident Yellowstone
2 cutthroat trout, but is flow and temperature limited at certain times of the year; and
3

4 WHEREAS, it is in the interest of the State of Idaho to increase stream flow and decrease
5 temperature in the Teton River and its tributaries to encourage the recovery of Yellowstone
6 cutthroat trout, which are managed as an Idaho Species of Greatest Conservation Need; and
7

8 WHEREAS, the Idaho Water Resource Board (IWRB) is authorized to expend Bonneville
9 Power Administration funds for flow restoration through the Columbia Basin Water Transaction
10 Program; and
11

12 WHEREAS, IWRB staff (staff) has developed a two-year groundwater recharge pilot
13 program to improve flow and temperature conditions for fish in the Teton River; and
14

15 WHEREAS, staff has developed water delivery agreements with local water users to
16 deliver water to identified groundwater recharge sites for the purpose of improving stream flow
17 in the Teton River; and
18

19 WHEREAS, a proposal in the amount of \$60,600.00 has been submitted to the Columbia
20 Basin Water Transaction Program to be used to fund water delivery agreements with irrigators
21 in the Teton River watershed (\$60,000.00) for the transaction cost and pricing structures set forth
22 in the attached October 30, 2019 memorandum and the administrative fees associated with
23 securing Temporary Water Right Permits (\$600.00); and
24

25 WHEREAS, staff anticipates the funds being placed into the IWRB's Revolving
26 Development Account for annual payment to support the pilot program; and
27

28 WHEREAS, the two-year groundwater recharge pilot program and water delivery
29 agreements are in the public interest and in compliance with the State Water Plan.
30

31 NOW THEREFORE BE IT RESOLVED that the IWRB authorizes the Chairman to enter into
32 water delivery agreements for the purpose of conducting managed recharge, using an amount
33 not to exceed \$60,600.
34

35 NOW THEREFORE BE IT FURTHER RESOLVED that this resolution is subject to the
36 conditions that the IWRB receives the requested funding from the Columbia Basin Water
37 Transaction Program in the amount of \$60,600, temporary water right permits authorizing the
38 diversion of water for managed recharge are secured, and an appropriate Ground Water
39 Monitoring Program is developed with Idaho Department of Environmental Quality.

DATED this 14 day of November, 2019.



ROGER W. CHASE, Chairman
Idaho Water Resource Board

ATTEST



VINCE ALBERDI, Secretary

Henman, Christina

From: Olenichak, Tony
Sent: Tuesday, March 24, 2020 8:34 AM
To: Henman, Christina
Subject: RE: TP-22-33, TP-22-34, TP-22-35 Watermaster Comment Request

Christina,

I have no objection to approval of these temp apps except the following condition should be placed on them:

“Water delivered towards these temporary water use permits can only be diverted at times when excess water is spilling past Milner Dam.”

Tony

From: Henman, Christina
Sent: Friday, March 20, 2020 4:58 PM
To: Olenichak, Tony <Tony.Olenichak@idwr.idaho.gov>
Subject: TP-22-33, TP-22-34, TP-22-35 Watermaster Comment Request

Tony,

Please see attached applications for temp apps for your review and comment.

Thank You,

Christina Henman
Administrative Assistant
Idaho Dept. of Water Resources, Eastern Region
900 N Skyline Ste. A
Idaho Falls, ID 83402
Phone: (208) 497-3793



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region • 900 N SKYLINE DR STE A • IDAHO FALLS, ID 83402-1718

Phone: (208)525-7161 • Fax: (208)525-7177 • Website: www.idwr.idaho.gov

Brad Little
Governor

Gary Spackman
Director

March 24, 2020

GARDEN WATER COMPANY
2955 S 1750 E
DRIGGS ID 83422-4721

RE: Application for Temporary Approval of Water Use: TP-22-34

Dear Applicant(s):

Your application for temporary water appropriation has been approved and is enclosed. The approval authorizes the temporary use of water and does not grant trespass or other activity on public land or on private property.

Please review the **conditions of approval on page 2 of the Application for Temporary Approval form** to understand the limitations associated with the temporary use of water.

This temporary approval **expires on** December 31, 2020. The expiration date cannot be extended under this temporary approval.

If you have any questions, please feel free to contact this office, and any of our agents will be able to assist you.

If you require additional information regarding this matter, please call me at (208) 497-3793 or email me at Christina.Henman@idwr.idaho.gov.

Sincerely,

Christina Henman
Administrative Asst. I.

Enclosure(s) Receipt

cc:

TONY OLENICHAK, Water District 01.

FRIENDS OF THE TETON RIVER
C/O SARAH LIEN
PO BOX 768
DRIGGS, ID 83422