

State of Idaho
Department of Water Resources
Water Right License
Water Right No. 74-16008

Priority: June 26, 2015

Maximum Diversion Rate: 3.72 CFS

Maximum Diversion Volume: 651.7 AF

It is hereby certified that:

ROBIN R HERBST AND
LYNN A HERBST
26 PINE CREEK RANCH RD
SALMON ID 83467-1263

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated December 04, 2013, and has submitted Proof of Beneficial Use on July 19, 2017. An examination confirms water is diverted from:

Source : SPRINGS

Tributary: AGENCY CREEK

Beneficial Use

IRRIGATION

Period of Use

03/15 to 11/15

Rate of Diversion

3.72 CFS

Annual Volume

651.7 AF

Location of Point(s) of Diversion

SPRINGS NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 20, Twp 19N, Rge 24E, B.M. LEMHI County (Rediversion)
SPRINGS SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 29, Twp 19N, Rge 24E, B.M. LEMHI County
SPRINGS NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 20, Twp 19N, Rge 24E, B.M. LEMHI County
SPRINGS SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 20, Twp 19N, Rge 24E, B.M. LEMHI County (Injection)
SPRINGS SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 20, Twp 19N, Rge 24E, B.M. LEMHI County (Rediversion)

Place of Use: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
19N	24E	17			0.2					17.4	31.4			36.1		3.2	1.6		89.9
19N	24E	20					33.9	15.0	12.1	27.9	6.2	1.2							96.3

Total Acres: 186.2

Conditions of Approval

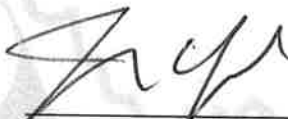
1. Rights 74-740, 74-741, 74-742, 74-7147, and 74-16008 when combined shall not exceed a total diversion rate of 5.35 cfs and the irrigation of 186.2 acres. However, when Rights 74-740, 74-741, and/or 74-742 are completely or partially unavailable for use, water right 74-16008 shall provide only two-thirds (0.67%) of the diversion rate unavailable from those rights.
2. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District Nos. 74 and 74M.
3. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s) at the following locations: 1) on the point of rediversion from Agency Creek located west of Hwy 28, and 2) on the L-31 Ditch where the ditch crosses Tendoy Lane at a location that can be easily accessed by the watermaster.
4. This right authorizes the diversion of water from springs, injection of diverted water into Agency Creek, and two points of rediversion of the injected water from Agency Creek.

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5. This right is limited to a maximum diversion rate of 0.02 cfs per acre.
6. The right holder shall limit the diversion of water under this right to those times when water rights 74-740, 74-741, 74-742, and 74-7147 are not available or reasonably sufficient to irrigate the place of use authorized under this right.
7. If water rights 74-740, 74-741, 74-742, or 74-7147 are abandoned, forfeited, sold, transferred, leased, or used on any other place of use, right 74-16008 shall not be used.
8. This right when combined with all other rights shall provide no more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
9. This right does not grant any right-of-way or easement across the land of another.

This license is issued pursuant to the provisions of Idaho Code § 42-219. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed this 5th day of February, 2020.



JAMES CEFALO
Eastern Regional Manager



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

February 05, 2020

LYNN A HERBST
ROBIN R HERBST
26 PINE CREEK RANCH RD
SALMON ID 83467-1263

RE: License No. 74-16008

Issuance of License

Dear Water Right Holder(s):

The Department of Water Resources ("Department") has issued the enclosed Water Right License confirming that a water right has been established in accordance with your permit. Please be sure to thoroughly review all the conditions of approval listed on your license. The conditions may include ongoing requirements, such as maintenance of a measuring device or implementation of mitigation, as well as information about how your water use may be administered, such as regulation by a watermaster in a water district. Also enclosed is a copy of the approved application for amendment.

The license is a PRELIMINARY ORDER issued by the Department 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.

Also, please note that water right owners are required to report any change of water right 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. Water right forms are available from any office of the Department or on the Department's website at idwr.idaho.gov

If you have any questions concerning the enclosed information, please contact me at (208) 497-3784.

Sincerely,

A handwritten signature in dark ink, appearing to read 'J. Cefalo', is written over a light blue horizontal line.

James Cefalo
Eastern Regional Manager

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on February 05, 2020, I served a true and correct copy of Water Right License No. 74-16008 by U.S. Mail, postage prepaid, to the following:

LYNN A HERBST (Current Owner)
ROBIN R HERBST (Current Owner)
26 PINE CREEK RANCH RD
SALMON ID 83467-1263

WATER DISTRICT #74M
JEROME L EASTMAN (Watermaster)
PO BOX 57
TENDON ID 83468-0057

ROBERT L. HARRIS
HOLDEN, KIDWELL, HAHN, & CRAPO
PO BOX 50130
IDAHO FALLS, ID 83405

RICK SAGER
Water District 74
985 Hwy 28
Salmon ID 83467



Christina Henman
Administrative Asst. I

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.