

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 79-14269

Priority: April 29, 2019

Maximum Diversion Rate: 0.07 CFS

This is to certify that

MALCOLM T PORTER 227 DEASY RD WHITE BIRD ID 83554-5057 AND
RHONDA J BARKER 227 DEASY RD WHITE BIRD ID 83554-5057

has applied for a permit to appropriate water from:

Source : SALMON RIVER

Tributary: SNAKE 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>
IRRIGATION	02/15 to 11/30	0.02 CFS
FIRE PROTECTION	01/01 to 12/31	0.07 CFS

Location of Point(s) of Diversion

SALMON RIVER SE¼ NE¼, Sec. 23, Twp 27N, Rge 01E, B.M. IDAHO County

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	
27N	01E	23													0.5 L7				0.5

Total Acres: 0.5

Place of Use: FIRE PROTECTION

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
27N	01E	23													X L7				

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **October 01, 2024**.
2. Subject to all prior water rights.
3. Place of use is located within Lot 6 Twin Bridges Subdivision.
4. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
5. This right does not grant any right-of-way or easement across the land of another.
6. 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.
7. Water shall not be diverted for fire protection use under this right except to fight or repel an existing fire.

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8. 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.
9. 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.

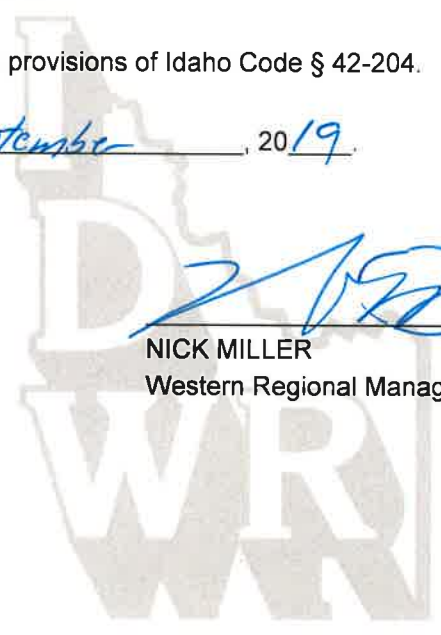
This permit is issued pursuant to the provisions of Idaho Code § 42-204.

Signed this 30th day of September, 2019.



NICK MILLER

Western Regional Manager



State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

79-14269

This map depicts the IRRIGATION 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.

01E



-  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

Attachment to Permit to Appropriate Water

79-14269

This map depicts the FIRE PROTECTION 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.

01E



-  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

September 30, 2019

RHONDA J BARKER
MALCOLM T PORTER
227 DEASY RD
WHITE BIRD ID 83554-5057

RE: Permit No. 79-14269

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,


Anna Kaiser

For

Nick Miller
Western Regional Manager

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2019, I served a true and correct copy of Permit to Appropriate Water No. 79-14269 by U.S. Mail, postage prepaid, to the following:

RHONDA J BARKER (Current Owner)
MALCOLM T PORTER (Current Owner)
227 DEASY RD
WHITE BIRD ID 83554-5057



Anna Kaiser
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: Application No. 79-14269

FROM: Allen Bradbury

DATE: 8/7/2019

RE: Evaluation of Sufficiency of Information Submitted for Salmon-Clearwater Processing, Basins 77, 78, & 79 for Western Region

The application proposes irrigation from the Salmon River for 0.5 acres. The site is on the southern bank of the river approximately 8.3 miles south of Riggins, Idaho and about 0.5 miles off of State Highway 95.

The place of use is located within the Twin Bridges Subdivision, Lot 6. The point of diversion is located about 0.30 miles downstream of the Highway 95 Bridge across the Salmon River on Idaho Department of Lands.

Contacts for the application are Malcolm T. Porter and Rhonda J. Barker.

Summary of Information Submitted

On April 25, 2019, I spoke with Ian Bridges from the Kamiah office for Idaho Department of Lands, he assured me that Porter and Barker do not need an easement from IDL for their POD due to an irrigation exemption for this activity.

Emails were sent to the Idaho Department of Fish and Game (IDFG), Idaho Department of Lands, and IDWR Planning Bureau, on May 8, 2019 seeking written comment and/or recommendations concerning this application. No responses were received by the June 3, 2019 protest deadline.

Effect on Existing Water Rights: Impacts on other rights are not expected for the limited amount requested for this remote area.

Sufficiency of Water Supply: The Salmon River has sufficient supply of water for the small amount requested.

Good Faith, Delay or Speculative Purposes: This application is filed in good faith.

Financial Resources: Project will be using a small electrical pump for ½ acre and is expected to have minimal implementation costs.

Local Public Interest: No protests were received. The application is in the local public interest by providing a reliable source of water to improve the site.

Wild & Scenic River (WSR) Processing

General Information - WSR processing applies to portions of Bs 78, though it is rarely expected since WSR right 78-11961 covers federal land upstream from the Rapid River Fish Hatchery slightly southwest of Riggins.¹

Specific Information for this Application - WSR processing is not required because the proposed source/diversion are downstream from Rapid River WSR rights.

Minimum Streamflow Rights (MSF)

General Information - MSF analysis applies to all surface water upstream² from any MSF rights. Basins 77-79 have various MSF rights that might affect applications. By agreement with SO regarding these basins, specific MSF conditions of approval are not necessary provided the reviewer checks MSF issues and documents the file with the results.

Downstream Salmon River MSF right 79-14119³ is subordinated to future dcmi uses but not to future non-dcmi uses.

All Basin 77-79 MSF rights upstream from the ending point of 79-14119 (mouth of Salmon River) include subordination to future dcmi uses. Most of those upstream MSF rights are also subordinate to various amounts of future non-dcmi uses. None of the future non-dcmi cfs rates have been exceeded yet by new approvals. Further MSF analysis is generally not needed until a specific future non-dcmi cfs rate is exceeded.

Because the review memo extensively covers WSR and MSF issues, SO Planning Bureau comments are not needed yet (prior agreement with SO). Planning will be contacted for comments during the legal notice process as a precaution.

Specific Information for this Application – MSF analysis is required for the proposed source and use upstream from MSF rights 3-8 and 79-14119.

This application also involves MSF right 79-14119.

This leads to the following MSF conclusions for this application: Irrigation

- Senior MSF right 79-14119 will not be subordinated to the proposed non-dcmi use.

The attached MSF spreadsheet shows the application meets the criteria for MSF rights in the same basin.

Conditions of Approval

X60 Place of use is located within Lot 6 Twin Bridges Subdivision.

R68 This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.

¹ POD = T23N-R1W-S12.

² Shallow ground water tributary to surface water might involve MSF issues under conjunctive management thinking. Discuss with your supervisor if this comes up.

³ From mouth of river T29N-R4W-S14 upstream thru about Shepp Ranch T24N-R6E-S12.

004 This right does not grant any right-of-way or easement across the land of another.

029 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.

077 Water shall not be diverted for fire protection use under this right except to fight or repel an existing fire.

26A 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.

121 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.

Process	Basin Sequence	Draft	Owner	Source	POD	POU	Use	NENE	NWNE	SWNE	SENE	NENW	NW/NW	SW/NW	SE/NW	NESW	NWSW	SESW	NESE	NWSE	SWSE	SESE	Total Acres
Water Right	79-14269	N	MALCOLM T PORTER, RHONDA J BARKER	SALMON RIVER	POU	IRRIGATION													0.5				0.5
Water Right	79-14231	N	KILGORES SALMON RIVER FRUIT CO	SALMON RIVER	POU	IRRIGATION		34.6	11.7	17.7	19												83
Water Right	79-14232	N	KILGORES SALMON RIVER FRUIT CO	SALMON RIVER	POU	IRRIGATION				0.7					5.5	12.6							20.1
Water Right	79-14233	N	KILGORES SALMON RIVER FRUIT CO	JOE CREEK	POU	IRRIGATION		34.6	11.7	17.7	19									1.3			83
Water Right	79-14234	N	KILGORES SALMON RIVER FRUIT CO; MULLINIX, DARYL K; MULLINIX, LINDA L	JOE CREEK	POU	IRRIGATION				0.7					5.5	12.6				1.3			20.1
Water Right	79-14239	N	GRANT BAKER SERVICE CORP; MAREK, JACK J; MAREK, PEGGY J	SALMON RIVER	POU	IRRIGATION													4.2				28.8
Water Right	79-14241	N	GRANT BAKER SERVICE CORP; MAREK, PEGGY J	SALMON RIVER	POU	IRRIGATION													4.2				28.8
Water Right	79-4026	N	RUSSELL, GEORGE R; RUSSELL, LOIS S	SALMON RIVER	POU	IRRIGATION								11									11
Water Right	79-7041	N	UNITED STATES OF AMERICA ACTING THROUGH	SALMON RIVER	POU	IRRIGATION						8			9								17
Water Right	79-7170	N	LOVE, ARCHIE; LOVE, KATHERINE M; ROGER Z BROWN & CATHERINE M BROWN TRUST	SALMON RIVER	POU	IRRIGATION													1.5				1.5

Affidavit of Publication

STATE OF IDAHO, }
County of Idaho, } ss.

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 20th day of

June, 2019, and the last publication on the 27th day of June, 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 5th day of July 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

Gary A. Wherry
Notary Public for Idaho
Residing at Cottonwood, ID
My commission expires: 9/22/2020

RECEIVED

JUL 10 2019

WATER RESOURCES
WESTERN REGION

Notice

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

78-12512

RICHARD STILES
LISA MCCONNELL
152 E SHINGLE CREEK RD
RIGGINS, ID 83549

Point of Diversion SWNE S1
T23N R01W IDAHO County
Source SHINGLE CREEK
Tributary RAPID RIVER

Use: IRRIGATION 02/15 to
11/30 0.03 CFS

Total Diversion: 0.03 CFS

Date Filed: 4/15/2019

Place Of Use: IRRIGATION

T23N R01W S1 NESE

Total Acres: 1

79-14269

MALCOLM T PORTER
RHONDA J BARKER
227 DEASY RD

WHITE BIRD, ID 83554-5057

Point of Diversion SENE S23
T27N R01E IDAHO County
Source SALMON RIVER Tribu-
tary SNAKE RIVER

Use: FIRE PROTECTION
01/01 to 12/31 0.07 CFS

Use: IRRIGATION 02/15 to
11/30 0.02 CFS

Total Diversion: 0.07 CFS

Date Filed: 1/30/2019

Place Of Use: IRRIGATION,
FIRE PROTECTION

T27N R01E S23 L7(NESE)

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 rights, 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 applications 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 7/8/2019. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

Published in the Cottonwood
Chronicle on 6/20/2019 and
6/27/2019