

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 84-12292

Priority: September 25, 2018

Maximum Diversion Volume: 44.6 AF

This is to certify that

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

has applied for a permit to appropriate water from:

Source : UNNAMED STREAM

Tributary: TOM TAHA 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>
WILDLIFE STORAGE	01/01 to 12/31	44.6 AF
RECREATION STORAGE	01/01 to 12/31	44.6 AF
FIRE PROTECTION STORAGE	01/01 to 12/31	44.6 AF

Location of Point(s) of Diversion

UNNAMED STREAM SW¼ NW¼, Sec. 25, Twp 34N, Rge 04E, B.M. IDAHO County

Place of Use: WILDLIFE STORAGE, RECREATION STORAGE, AND FIRE PROTECTION STORAGE

Twp	Rng	Sec	NE				NW				SW				SE				No QQ	Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
34N	04E	25						X	X											

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **May 01, 2020**.
2. Subject to all prior water rights.
3. Water shall not be diverted from fire protection storage except to fight or repel an existing fire.
4. Right 84-12292 authorizes a total annual storage volume of 44.6 acre-feet, 34.4 acre-feet to be used for the initial filling of the pond and 10.2 acre-feet for the replacement of losses caused by seepage and evaporation.
5. The pond established by the storage of water under this right shall not exceed a total capacity of 34.4 acre-feet or a total surface area of 8.0 acres.
6. Recreation storage is for fishing and swimming.
7. Water shall not be diverted under this right when flows in Tom Taha Creek are below minimum flow amounts as defined by Right 84-12223.
8. This right does not grant any right-of-way or easement across the land of another.

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

Signed this 23rd day of April, 2019.


DOUGLAS JONES
Northern Regional Manager

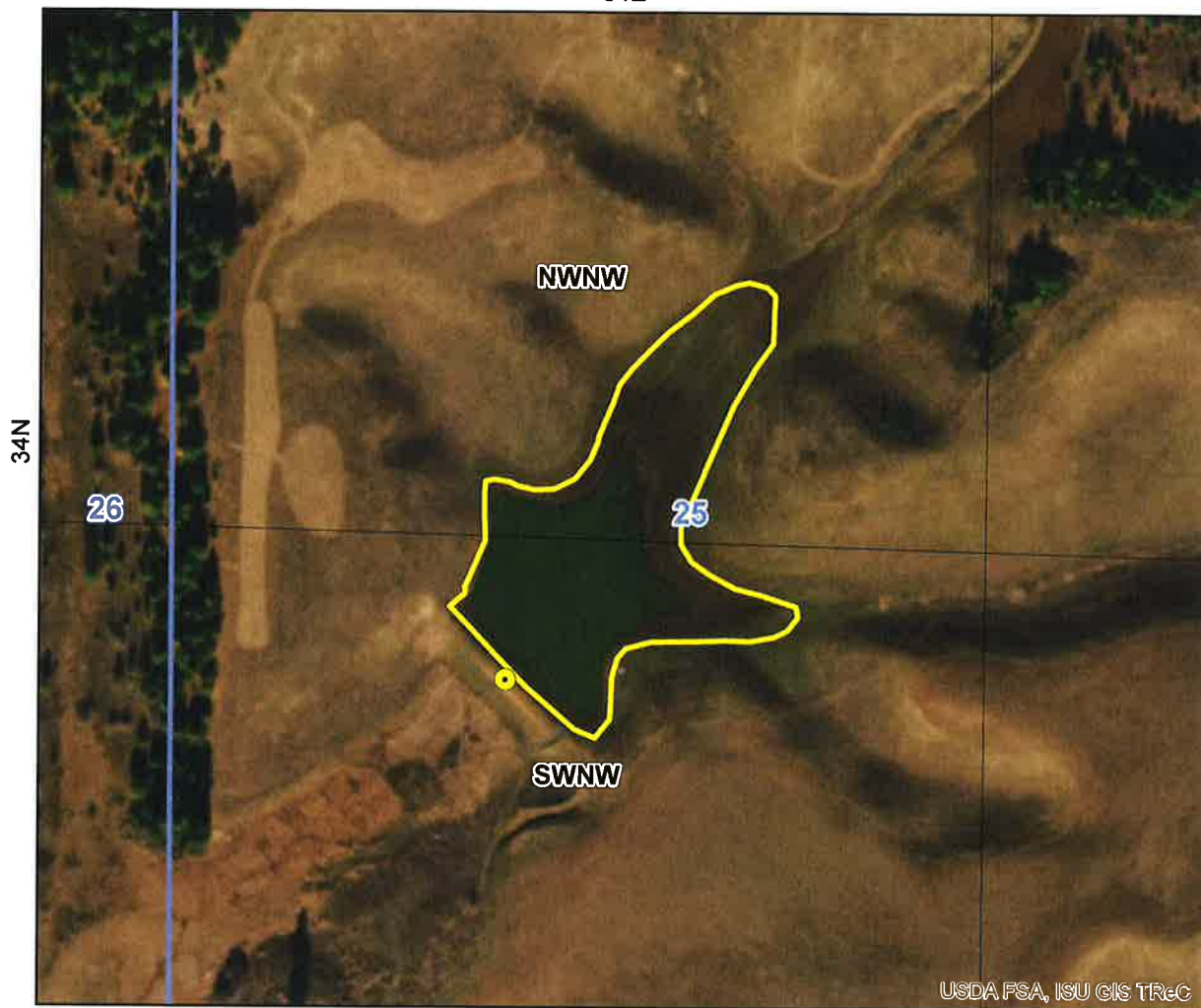
State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

84-12292

This map depicts the FIRE PROTECTION STORAGE, RECREATION STORAGE, and WILDLIFE STORAGE 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.

04E



-  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

Northern Region • 7600 N MINERAL DR STE 100 • COEUR D'ALENE, ID 83815-7763
Phone: (208)762-2800 • Fax: (208)769-2819 • Website: www.idwr.idaho.gov

Brad Little
Governor

Gary Spackman
Director

April 23, 2019

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

RE: Permit No. 84-12292

Permit Approval Notice

Dear Permit Holder(s):

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.

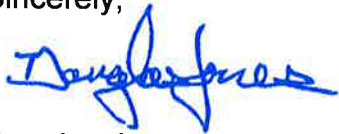
The final step in the water right process is issuance of a water right license. To receive a water right license, you must divert and use water to the full extent intended and submit a *Statement of Completion for Submitting Proof of Beneficial Use* ("Proof") by the date shown in condition no. 1 of your 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. If you have already diverted and used water to the full extent intended, you may complete and submit the enclosed Proof form immediately.

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 the Northern Region Office at (208) 762-2800.

Sincerely,

A handwritten signature in blue ink, appearing to read "Douglas Jones", is written over the typed name.

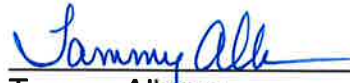
Douglas Jones
Northern Regional Manager

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2019, I served a true and correct copy of Permit to Appropriate Water No. 84-12292 by U.S. Mail, postage prepaid, to the following:

LODGE AT LOLO CREEK LLC (Current Owner)
4307 SNAKE RIVER AVE
LEWISTON ID 83501



Tammy Alleman
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: Water Right Application 84-12292

From: Adam Frederick *AF*

Date: 4/11/2019

Re: Application for a Permit to Appropriate Water within the Salmon and Clearwater River Basins.

Re: Regional Analysis and Recommendation in accordance with Water Appropriation Rules (IDAPA 37.03.08.040.05).

Water Supply Information

Water from the unnamed stream should be available during times of high flow. However, Tom Taha Creek is covered under minimum stream flow (MSF) 84-12223 and water should be made available at times when MSF is not met.

Good Faith, Delay, or Speculative Information

The applicant plans to divert water for his/her own property and there are no known issues with any other party.

Financial Resources Information

No significant resources required.

Local Public Interest

The Idaho Department of Fish & Game and the Department of Environmental Quality have been asked to comment by the Idaho Department of Water Resources. Both departments commented and stated water should only be taken during times of high flow and should not impair existing beneficial uses when stream flow is adequate to sustain existing aquatic life. The Idaho Water Resource Board, who owns the MSF was also asked for comment but did not submit any. None of the agencies protested this application.

Injury to Other Water Rights

This unnamed stream is intermittent and probably does not flow much past spring runoff. Thus, the contribution of water to the MSF when it's needed is probably minimal. There will be a MSF condition added to the permit to make the applicant aware that a future watermaster could curtail this water.

Recommendation

The Northern Region recommends proceeding with the processing of this water right application.

Jones, Doug

From: Jones, Doug
Sent: Tuesday, April 09, 2019 4:50 PM
To: Carlson, Joseph; Frederick, Adam
Subject: RE: Water Right 84-12292, Dam Safety Evaluation

We won't hold up permitting for the inspection. When you are down in the vicinity for other dam work please arrange to visually inspect and roughly measure dimensions. Look to see what the inflow stream is like and inquire when it dries up. We may license it for much different volumes. For instance, we may determine that the max depth is 13 ft and the NRCS factor is 0.3 (rather than 0.4). We shouldn't use the hydraulic height (hh) X surface area x NRCS factor. Even if we do use hh the volumes might be 34.4 Fire, 34.4 wildlife and 44.6 9 (w/ seep and evap) Rec storages.

Doug

From: Carlson, Joseph
Sent: Tuesday, April 09, 2019 2:48 PM
To: Jones, Doug <Doug.Jones@idwr.idaho.gov>
Subject: FW: Water Right 84-12292, Dam Safety Evaluation

FYI

From: Carlson, Joseph
Sent: Tuesday, March 19, 2019 2:40 PM
To: Jones, Doug <Doug.Jones@idwr.idaho.gov>
Subject: Water Right 84-12292, Dam Safety Evaluation

Doug,

I provided a brief cursory review of the *App for Permit*. This structure appears to have a left-side spillway (observed by aerial). From a 2017 ArcMap aerial, I concur that 4.3 acres is an accurate representation of surface area. Applying the NRCS equation then yields ~34 acre-feet. This value assumes a hydraulic height equal to the dam height, thereby being conservative (in consideration of the apparent spillway). Downstream/downgradient of the dam, there are residences/structures to the east and west of the drainage channel/creek. The nearest being on the south side of the roadway, and ~400 feet to the east, as well as slightly uphill. A dam breach would need to travel nearly 1,400 feet before reaching the downstream roadway. Water would likely begin pooling before overtopping. It's possible that an overtopping of the road would occur immediately, by way of the breach wave. In either case, the roadway would likely buffer the momentum of the breach, and any waters that might reach the residences would most likely not cause significant property damage, nor loss of life. This due to the fact that they do not appear to be in the direct pathway of a potential breach. John Falk contends that roadways (at least secondary) does not qualify as "significant property damage", nor "potential for loss of life". At times this policy has been a little vague/inconsistent, as you may recall from prior Dam Safety Annual Meetings. With that said, in my judgement, this dam would pose only very limited hazard to property damage, and not likely to loss of life (unless someone were to be driving/walking in the area below the dam). As this dam does not appear to meet the 50 acre-feet threshold, my inclination would be to not recommend a *Regulated* status for this dam. I have been directed by John Falk, in the past, to question any embankment structures that are relatively close to meeting the "Regulated" threshold criteria, especially so when relying upon the measurements of the applicant. So, I recommend a site visit to measure/confirm that actual hydraulic height, due to the closeness to the 50 acre-feet threshold. If this structure were to be greater than 20 feet in HH, it would then need to be *Regulated*. While onsite, I would further recommend evaluating the finished floor elevations of the downstream/downgradient residences, relative to the thalweg and adjacent roadway. As an alternative, we could call John, and review this one with him, and to also determine if it would make sense to run a crude inundation evaluation.

Carlson, Joseph

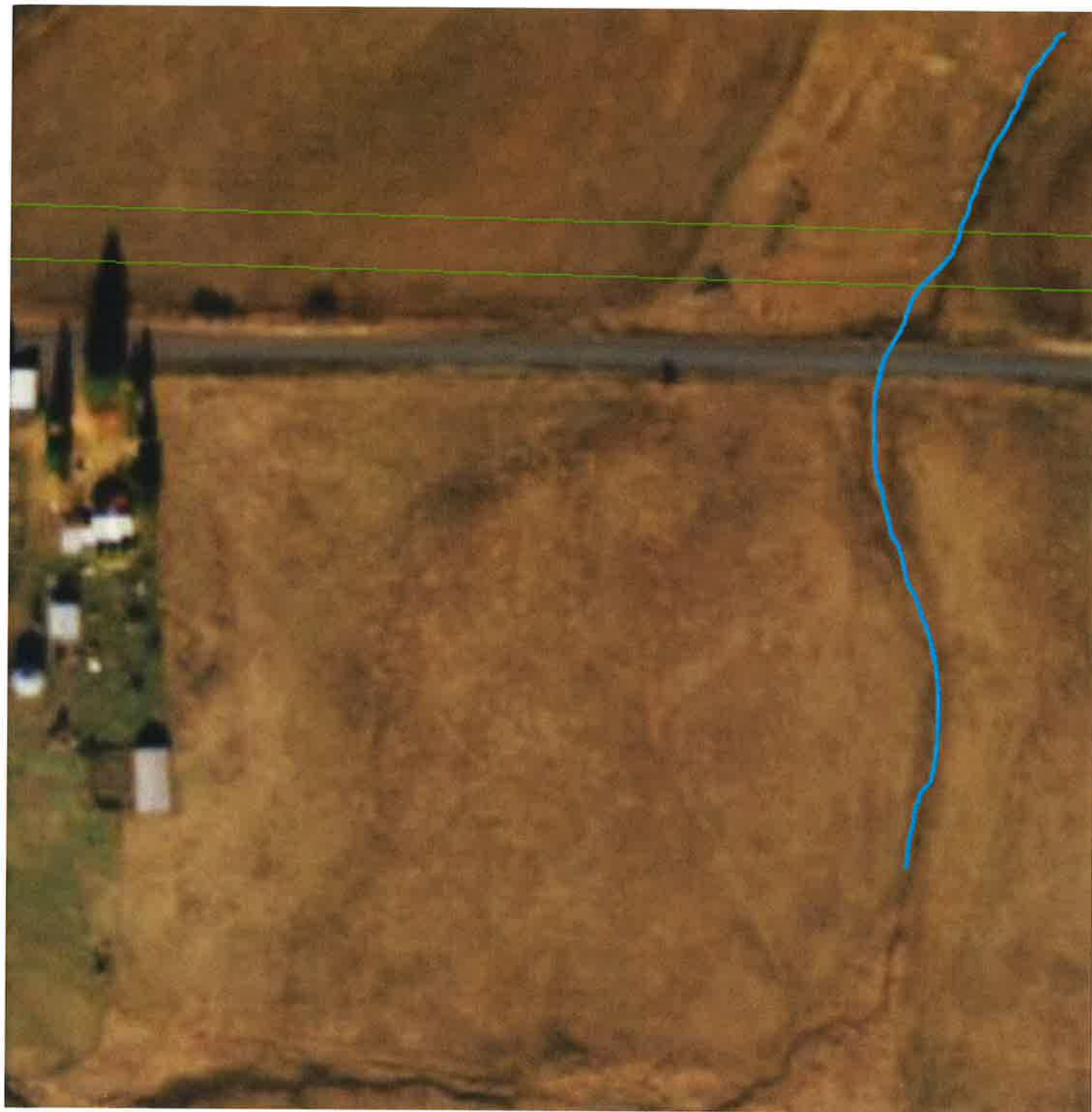
From: Carlson, Joseph
Sent: Tuesday, March 19, 2019 2:40 PM
To: Jones, Doug
Subject: Water Right 84-12292, Dam Safety Evaluation

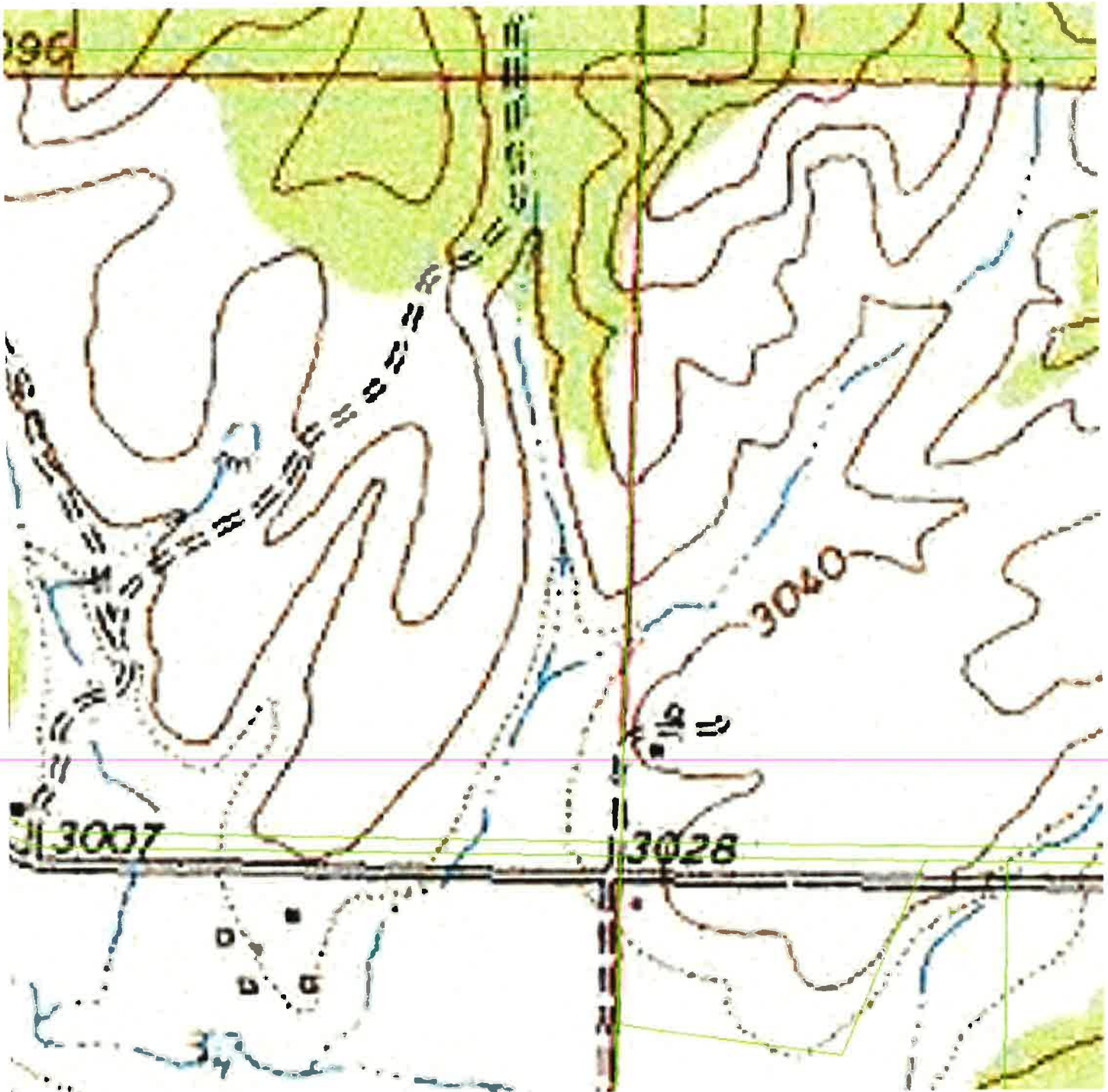
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Thank you for your consideration,
Joe







Joseph Carlson, P.E., PMP
Dam Safety Engineer – Northern Region
Idaho Department of Water Resources
7600 N Mineral Dr. Suite 100
Coeur d'Alene, ID 83815
office: 208.762.2801
cell: 208.819.6713
Joseph.Carlson@idwr.idaho.gov



IDAHO DEPARTMENT OF FISH AND GAME

CLEARWATER REGION

3316 16th Street
Lewiston, Idaho 83501

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

October 22, 2018

Adam Fredrick
Idaho Department of Water Resources
7600 Mineral Drive, Suite 100
Coeur d'Alene, ID 83815

RE: IDFG Comments on Application for Permit No. 84-12292

Dear Mr. Fredrick:

Idaho Department of Fish and Game (IDFG) has reviewed the application for permit # 84-12292. The application includes a 44.6 ac-ft pond to collect surface water run off for fire protection storage, wildlife storage, and recreation storage.

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; it is not the purpose of Idaho Department of Fish and Game to support or oppose this proposal. 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)). In fulfillment of our statutory charge and direction provided by the Idaho Legislature, we offer the following comments and suggestions.

Tom Taha Creek (which the pond is built in a tributary of) has a minimal flow water right in place. We recommend the applicant be made aware of the minimum flow and the minimum flow be maintained. Current USGS StreamStats reports suggest that Tom Taha Creek is not meeting its current minimum flow. In addition, DEQ BURP surveys of Tom Taha Creek show it is likely not meeting its minimum flow.

While this pond has already been constructed it is important to mention that IDFG recommends against permitting construction of ponds within streams. Even small perennial and intermittent streams serve many important biological functions that deserve protection. An in-stream impoundment is likely to contribute to elevated stream temperatures, may impede migrations of fish, amphibians and other wildlife and have other potentially adverse impacts on flow, water quality and stream function.

The application notes that recreation use of the pond will include fishing. Our records show the applicant has received the appropriate IDFG permits to stock the pond.

Keeping Idaho's Wildlife Heritage

Equal Opportunity Employer • 208-799-5010 • Fax: 208-799-5012 • Idaho Relay (TDD) Service: 1-800-377-3529 •
<http://fishandgame.idaho.gov>

The application also notes wildlife storage as an intended purpose for the water right. It is our opinion that to be beneficial to wildlife, diverted or impounded water must be managed with the primary purpose of developing habitat that corresponds to the range of characteristics required by a targeted species. IDFG contends that in order to benefit wildlife, diverted or stored water should primarily be managed to enhance the stability or growth of the targeted wildlife population(s). As written, the application only mention wildlife storage and does not describe which wildlife it is intended to benefit or management actions necessary to create habitat that would increase survival or productivity rates of the targeted population(s). We recommend wildlife storage be removed as a purpose for the water appropriation.

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

Sincerely,



Jim Teare
Clearwater Regional Supervisor

ECC: Gary Vecellio, IDFG
M: Drive

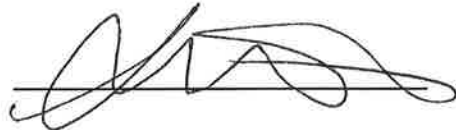
The following application(s) have been filed to appropriate the public waters of the State of Idaho:
 84-12292
 LODGE AT LOLO CREEK LLC
 4307 SNAKE RIVER AVE LEWISTON, ID 83501 Point of Diversion SWNW S25 T34N R04E IDAHO County
 Source UNNAMED STREAM Tributary TOM TAHA CREEK
 Use: FIRE PROTECTION STORAGE
 01/01 to 12/31 44.6 AF
 Use: RECREATION STORAGE
 01/01 to 12/31 44.6 AF
 Use: WILDLIFE STORAGE
 01/01 to 12/31 44.6 AF
 Total Diversion: 44.6 AF
 Date Filed: 9/25/2018
 Place Of Use: FIRE PROTECTION STORAGE
 T34N R04E S25 NWNW SWNW
 Place Of Use: WILDLIFE STORAGE T34N R04E S25 NWNW SWNW
 Place Of Use: RECREATION STORAGE
 T34N R04E S25 NWNW SWNW
 Permits will be subject to all prior water rights. For additional information concerning the property location, contact Northern Region office at (208) 762-2800. Protests may be submitted based on the criteria of Idaho Code § 42-203A. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resources, Northern Region, 7600 N MINERAL DR STE 100, COEUR D'ALENE ID 83815-7763 together with a protest fee of \$25.00 for each application on or before 10/22/2018. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN,
 Director
 Published
 on 10/3/2018 and 10/10/2018

AFFIDAVIT OF PUBLICATION

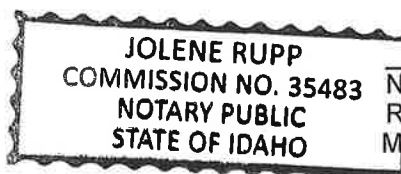
STATE OF IDAHO
 County of Idaho - ss.

Sarah S. Klement, being first duly sworn, says she is the Publisher of the IDAHO COUNTY FREE PRESS, a weekly newspaper published and issued weekly at Grangeville, Idaho County, State of Idaho, and is of general circulation in said county and state, that the said legal notice, of which the one hereto attached is a true copy, was published in said paper for two weeks, being published two times, the first publication being on the 3rd day of October, 2018; and the last publication on the 10th day of October, 2018; and that the said legal notice was published in the newspaper proper and not a supplement; that said newspaper has been continuously and uninterruptedly published in said county during a period of seventy-eight consecutive weeks prior to the publication of said legal notice of advertisement.



STATE OF IDAHO)
)
 COUNTY OF IDAHO)

On this 10th day of October in the year of 2018, before me a Notary Public personally appeared Sarah S. Klement, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.



Jolene Rupp
 Notary Public for Idaho
 Residing at Grangeville, ID
 My commission expires: 1-29-19

RECEIVED
 OCT 15 2018
 IDWR / NORTH



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

RECEIVED
SEP 28 2018
IDWR / NORTH

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

C.L. "Butch" Otter, Governor
John H. Tippetts, Director

September 27, 2018

Adam Frederick
Idaho Department of Water Resources
7600 North Mineral Drive, Suite 100
Coeur d'Alene, Idaho 83815

Subject: Water Right Application #84-12292

Dear Mr. Frederick:

DEQ has received a request for comment on the approval of a water right application to draw 44.6 acre feet from an unnamed tributary to Tom Taha Creek. The source is located at Township 34N, Range 04E, and Section 25. The activity will be from January 1 to December 31. The unnamed tributary would be a water source for an existing pond for recreation, wildlife, and fire protection.

Assuming all federal, state, and local permits have been obtained, regulations met, and reviews completed, we can offer the following comments. Tom Taha Creek (AU17060306CL022_02) is listed in Category 2 of Idaho's 2014 Integrated Report as supporting the beneficial use of cold water aquatic life.

There may not be sufficient flow outside the seasonal high flow period to support the designated beneficial use. We recommend that the withdrawal be made during periods of seasonal high flow or at a minimum, flows greater than 1 cfs. At no time should the stream be allowed to go dry as a result of legally appropriated and allowable water withdrawals.

Idaho water quality standards require existing aquatic life be protected and maintained when flows are equal to or greater than 1 cfs in intermittent streams. At no time should the proposed action be allowed to impair existing beneficial uses when stream flow is adequate to sustain existing aquatic life.

Thank you for the opportunity to comment on your application. If you have any questions regarding the Idaho Water Quality Standards or the conditions listed above, please contact me at (208) 983-0808, or by email at daniel.stewart@deq.idaho.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel D. Stewart".

Daniel D. Stewart
Water Quality Analyst

c: Lodge at Lolo Creek, Lewiston, ID
Sujata Connell, DEQ