

State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 72-16968

Priority: July 23, 2018

Maximum Diversion Rate: 0.80 CFS

This is to certify, that STATE OF IDAHO
IDAHO FISH & GAME COMMISSION
PO BOX 25
BOISE ID 83707-0025

has applied for a permit to appropriate water from:

Source: BAYHORSE CREEK**Tributary:** SALMON 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>
FISH PROPAGATION	04/01 to 11/01	0.80 CFS

LOCATION OF POINT(S) OF DIVERSION:

BAYHORSE CREEK L8 (NW1/4SW1/4) Sec. 7, Twp 12N, Rge 19E, B.M.
CUSTER County

PLACE OF USE: FISH PROPAGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
12N 19E 7											X						
											L 8						

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **January 01, 2020**.
2. Subject to all prior water rights.
3. Use of water under this right may 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 No. #72D.
4. Prior to diversion of water under this right, the right holder shall install a lockable device, subject to the approval of the Department, in a manner that will provide the watermaster suitable control of the diversion.
5. When notified by the Department or by a watermaster with regulatory authority over this right, the right holder shall report the amount of water diverted in connection with this right. The report shall be submitted in the manner and frequency specified by the Department or the watermaster.
6. This right does not grant any right-of-way or easement across the land of another.

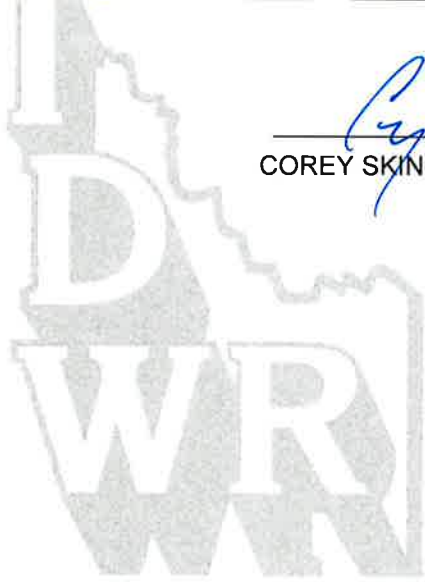
State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 72-16968

7. Use of water under this right shall be non-consumptive.
8. Fish propagation use is for fish protection through the installation of a screen and bypass pipe to provide passage for fish back to Bayhorse Creek.

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

Signed this 28th day of December, 20 18.


COREY SKINNER, Southern Region Manager



State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

72-16968

This map depicts the FISH PROPAGATION 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.

19E



-  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

Southern Region • 650 ADDISON AVE W STE 500 • TWIN FALLS, ID 83301-5858
Phone: (208)736-3033 • Fax: (208)736-3037 • Website: www.idwr.idaho.gov

C.L. "Butch" Otter
Governor

Gary Spackman
Director

January 4, 2019

STATE OF IDAHO
IDAHO FISH & GAME COMMISSION
PO BOX 25
BOISE ID 83707-0025

RE: Permit No. 72-16968

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 water master 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 me at (208) 736-3033.

Sincerely,

A handwritten signature in blue ink, appearing to read "Corey Skinner", with a stylized flourish at the end.

Corey Skinner
Southern Regional Manager

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2019, I served a true and correct copy of Permit to Appropriate Water No. 72-16968 by U.S. Mail, postage prepaid, to the following:

STATE OF IDAHO (Current Owner)
IDAHO FISH & GAME COMMISSION
PO BOX 25
BOISE ID 83707-0025

STATE OF IDAHO (Representative)
IDAHO FISH & GAME COMMISSION
97 HWY 93 N
SALMON ID 83467

WATER DISTRICT #72D
BRENT CUTLER (Watermaster)
PO BOX 208
CHALLIS ID 83226

WATER DISTRICT #170 *via e-mail*
CINDY YENTER (Water master)
102 S WARPATH
SALMON ID 83467



Denise Maline
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.

Maline, Denise

From: Yenter, Cindy
Sent: Wednesday, December 05, 2018 2:39 PM
To: Maline, Denise
Subject: 72-16967, 72-16968

I did not get comments sent on these before the protest deadline, but I have no objections to either. Were there any protests?

Both will be administered by **WD72D**.

72-16967 Carr- less than 5 acres, measurement is waived, can use conditions 01H, 196, 197, 198

72-16968 – IDFG is a fish screen, non consumptive use and diversion is already controlled and measured.

*Cindy Yenter
Watermaster, Water District 170
IDWR Salmon Field Office
102 S Warpath, Salmon ID 83467
cindy.yenter@idwr.idaho.gov
208-742-0655
208-731-0901 cell*

AFFIDAVIT OF PUBLICATION

State of Idaho, County of Custer, ss:

I, James M. Smith representing the Challis Messenger, a weekly newspaper, published at Challis, Idaho, do solemnly swear that the notice hereto attached and made a part hereof, was published in the regular and entire issue of the Challis Messenger for 2 consecutive weeks, commencing with the issue dated November 15th 2018 and ending with the issue dated November 21st 2018

James M. Smith

STATE OF IDAHO

COUNTY OF CUSTER

On this 22nd day of November in the year of 2018, before me, a Notary Public, personally appeared James Smith, 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 (s)he executed the same.

Veronica M. Weisbeck
Notary Public of Idaho
Residing at Challis, Idaho
My commission expires 1/9/21



THE FOLLOWING APPLICATION(S) HAVE BEEN FILED TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO:

72-16967
LLOYD CARR
PAMELA CARR
22920 HWY 75
CHALLIS, ID 83226
Point of Diversion L8(SWSE) S11 T11N R18E
CUSTER County Source SALMON RIVER Tributary SNAKE RIVER

Use: IRRIGATION 04/01 to 10/31 0.08 CFS
Total Diversion: 0.08 CFS
Date Filed: 8/30/2018
Place Of Use: IRRIGATION
T11N R18E S11 L8(SWSE)
Total Acres: 4

Application proposes to divert 0.08 cfs of water from the Salmon River for the irrigation of 4 acres of land located approximately 12.7 miles south and 4.5 miles west of the Highway 75 & Highway 93 intersection south of Challis. This application proposes the diversion and use of water tributary to a federally designated Wild & Scenic River. The decreed minimum stream flow rights for the federal Wild & Scenic Rivers are subordinate to certain categories of water use and to specific amounts of water use established after the minimum stream flow. The water use proposed in this application will benefit from the subordination provision because 0.08 cfs and 4 acres will be applied to the subordination amounts specified in the decree for the applicable Wild & Scenic River.

72-16968
STATE OF IDAHO
IDAHO FISH & GAME COMMISSION
PO BOX 25
BOISE, ID 83707-0025
Point of Diversion L8(NWSW) S7 T12N R19E
CUSTER County Source BAYHORSE CREEK Tributary SALMON RIVER
Use: FISH PROPAGATION 04/01 to 11/01 0.8 CFS

Total Diversion: 0.8 CFS
Date Filed: 7/23/2018
Place Of Use: FISH PROPAGATION
T12N R19E S7 L8(NWSW)

Application for permit proposes to divert 0.8 cfs from Bayhorse Creek for a non-consumptive use of water through an existing fish screen. The proposed POD and POU are located approximately 6.5 miles south and 2.9 miles west of the Highway 75 & Highway 93 intersection south of Challis. This application proposes the diversion and use of water tributary to a federally designated Wild & Scenic River. The decreed minimum stream flow rights for the federal Wild & Scenic Rivers are subordinate to certain categories of water use and to specific amounts of water use established after the minimum stream flow. The water use proposed in this application will benefit from the subordination provision because it is for fish propagation purposes/the diversion rate will be applied to the subordination amounts specified in the decree for the applicable Wild & Scenic River.

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Southern Region office at (208) 736-3033; or for a full description of the right (s), please see research.idwr.idaho.gov. 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, Southern Region, 650 ADDISON AVE W, STE 500, TWIN FALLS, ID 83301-5858 together with a protest fee of \$25.00 for each application on or before **December 3, 2018**. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director
Published: November 15 and 21, 2018 (123290)

RECEIVED

NOV 28 2018

DEPT OF WATER RESOURCES
SOUTHERN REGION

✓ OK AM 12/3/2018