

State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 73-12263

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: SULPHUR CREEK**Tributary:** PAHSIMEROI 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 10/31	0.80 CFS

LOCATION OF POINT(S) OF DIVERSION:

SULPHUR CREEK NW1/4SE1/4 Sec. 13, Twp 14N, Rge 21E, B.M. CUSTER County

PLACE OF USE: FISH PROPAGATION

Twp Rge Sec	NE				NW				SW				SE				
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
14N 21E 13														X			

CONDITIONS OF APPROVAL

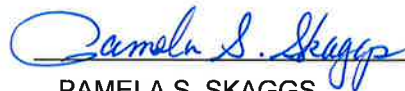
1. Proof of application of water to beneficial use shall be submitted on or before **October 01, 2019**.
2. Subject to all prior water rights.
3. Fish propagation use is for fish protection through the installation of a deflection screen and a bypass pipe to provide passage for fish back to Sulphur Creek.
4. 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. 73.
5. 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.
6. 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.
7. 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. 73-12263

8. Use of water under this right shall be non-consumptive.
9. Point of diversion is also identified by Idaho Fish and Game Commission as PSC-01.

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

Signed this 16th day of October, 2018.



PAMELA S. SKAGGS
Water Rights Section Manager

State of Idaho
Department of Water Resources
Permit to Appropriate Water
73-12263

This map depicts the FISH PROPAGATION place of use boundary and point of diversion for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.



-  Point of Diversion
-  Place Of Use Boundary
-  Townships
-  PLS Sections



0 250 500 750 Feet



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 E FRONT ST STE 648 PO BOX 83720 • BOISE, ID 83720-0098

Phone: (208)287-4800 • Fax: (208)287-6700 • Website: www.idwr.idaho.gov

C.L. "Butch" Otter
Governor

Gary Spackman
Director

October 18, 2018

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

RE: Permit Nos. 73-12263, 74-16174, 74-16175 & 74-16176

Permit Approval Notice

Dear Permit Holder(s):

The Department of Water Resources ("Department") has issued the enclosed permits authorizing you to establish new water rights. Please be sure to thoroughly review all the conditions of approval listed on your permits. The conditions include requirements that you must accomplish, such as timely submittal of proofs of beneficial use or installation of measuring devices, 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 permits lapsing or being canceled.

The permits are PRELIMINARY ORDERS issued pursuant to Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730). They can and will become final orders 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 permits. The Department will send you a *Proof Due Notice* approximately 60 days prior to the date listed in condition no. 1 of your permits. If you have already diverted and used water to the full extent intended, you may complete and submit the enclosed Proof forms 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) 287-4951.

Sincerely,



Pamela S. Skaggs, Manager
Water Rights Section

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on October 22, 2018, I served true and correct copies of Permits to Appropriate Water Nos. 73-12263, 74-16174, 74-16175 & 74-16176 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

WATER DISTRICT #73 → 73-12263
TED O NEAL (Watermaster)
11 O NEAL LN
MAY ID 83253

WATER DISTRICT #74W → 74-16174 thru 74-16176
DEREK PAPATHEORDORE
PO BOX 82
LEADORE ID 83464



Darla Block
Technical Records Specialist 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.

AFFIDAVIT OF PUBLICATION

State of Idaho, County of Custer, ss:

I, James M. Smirch, representing the Challis Messenger, a weekly newspaper, published ad 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 September 20th 2018 and ending with the issue dated September 27th 2018

James M. Smirch

STATE OF IDAHO

COUNTY OF CUSTER

On this 27th day of September in the year of 2018, before me, a Notary Public, personally appeared James Smirch, 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 11/9/21



THE FOLLOWING APPLICATION(S)
HAVE BEEN FILED TO APPROPRIATE THE
PUBLIC WATERS OF THE STATE OF IDAHO:
73-12263
STATE OF IDAHO
IDAHO FISH & GAME COMMISSION
PO BOX 25
BOISE, ID 83707-0025
Point of Diversion NWSE S13 T14N R21E
CUSTER County
Source SULPHUR CREEK Tributary
PAHSIMEROI RIVER
Use: FISH PROPAGATION
04/01 to 10/31
0.8 CFS
Total Diversion:
0.8 CFS
Date Filed: 7/23/2018
Place Of Use: FISH PROPAGATION
T14N R21E S13 NWSE
This application proposes the diversion and use of water from Sulphur Creek tributary to Pahsimeroi River a tributary of the Salmon 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 non-consumptive.
Permits will be subject to all prior water rights. For additional information concerning the property location, contact the State office at (208) 287-4800; or for a full description of the right(s), please see <https://idwr.idaho.gov/apps/ExtSearch/WRAApplicationResults/>. 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, State Office, 322 E Front St, PO Box 83720, Boise, ID 83720, together with a protest fee of \$25.00 for each application on or before 10/09/2018. The protestant must also send a copy of the protest to the applicant.
GARY SPACKMAN, Director
Published: September 20 and 27, 2018
(114678)

RECEIVED
OCT 01 2018
DEPARTMENT OF
WATER RESOURCES

*to
John
10-3-18*

Hersley, Jean

From: Yenter, Cindy
Sent: Friday, September 21, 2018 3:57 PM
To: Hersley, Jean
Subject: Watermaster Comment 73-12263

I have no objections to approval. This is an existing fish screen on an administered diversion.

Water District Flag is correctly set to 73.

*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*