

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 65-23753

Priority: February 13, 2018

Maximum Diversion Rate: 0.04 CFS

This is to certify, that D & A COMMERICAL WAREHOUSING LLC
PO BOX 51092
6261 S DOUG ANDRUS DR
IDAHO FALLS ID 83402

has applied for a permit to appropriate water from:

Source: GROUND WATER

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>	<u>ANNUAL VOLUME</u>
COMMERCIAL	01/01 to 12/31	0.04 CFS	
DIVERSION TO STORAGE	01/01 to 12/31	0.04 CFS	
FIRE PROTECTION STORAGE	01/01 to 12/31		0.7 AF
FIRE PROTECTION FROM STORAGE	01/01 to 12/31		0.7 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER NE ¼ SW ¼ Sec. 2, Twp 07N, Rge 05W, B.M. PAYETTE County

PLACE OF USE: COMMERCIAL

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07N 05W 2									X	X							

PLACE OF USE: FIRE PROTECTION STORAGE

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07N 05W 2									X	X							

PLACE OF USE: FIRE PROTECTION FROM STORAGE

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07N 05W 2									X	X							

State of Idaho
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NO. 65-23753

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **July 01, 2023**.
2. Subject to all prior water rights.
3. 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.
4. Water shall not be diverted from fire protection storage except to fight or repel an existing fire.
5. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable water quality monitoring and/or permitting requirements administered by the Department of Environmental Quality or the Department of Agriculture.
6. Commercial use is for potable uses associated with a container warehouse.
7. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
8. 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 Section 42-204, Idaho Code.

Signed this 13th day of JULY, 2018.



Angela M. Grimm
Water Rights Supervisor

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

65-23753

This map depicts the COMMERCIAL, FIRE PROTECTION STORAGE, and FIRE PROTECTION from STORAGE places of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.



0 0.035 0.07 0.14 Miles

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





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

C.L. "Butch" Otter
Governor

Gary Spackman
Director

July 13, 2018

D & A COMMERICAL WAREHOUSING LLC
PO BOX 51092
6261 S DOUG ANDRUS DR
IDAHO FALLS ID 83402

RE: Permit No. 65-23753

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 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,

A handwritten signature in cursive script, appearing to read "Rachel Nechyfer".

Nick Miller
Regional Manager

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2018, I served a true and correct copy of Permit to Appropriate Water No. 65-23753 by U.S. Mail, postage prepaid, to the following:

D & A COMMERICAL WAREHOUSING LLC (Current Owner)
PO BOX 51092
6261 S DOUG ANDRUS DR
IDAHO FALLS ID 83402

SPF WATER ENGINEERING LLC (Representative)
C/O LORI GRAVES
300 E MALLARD DR STE 350
BOISE ID 83706



Rachel Neely
Administrative Assistant 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.

The following application has been filed to appropriate the public waters of the State of Idaho:

65-23753

✓ OK RN 6/17/18
D & A COMMERCIAL WAREHOUSING LLC
PO BOX 51092
6261 S DOUG ANDRUS DR
IDAHO FALLS, ID 83402
Point of Diversion NESW S2 T07N R05W
PAYETTE County Source GROUND WATER
Use: COMMERCIAL 01/01 to 12/31 0.04 CFS
Use: DIVERSION TO STORAGE 01/01 to 12/31 0.04 CFS
Use: FIRE PROTECTION FROM STORAGE 01/01 to 12/31 0.7 AF
Use: FIRE PROTECTION STORAGE 01/01 to 12/31 0.7 AF
Total Diversion: 0.04 CFS, 0.7 AF
Date Filed: 2/13/2018
Places of Use: COMMERCIAL, FIRE PROTECTION STORAGE, FIRE PROTECTION FROM STORAGE
T07N R05W S2 NESW NWSW

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 right(s), 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 application(s) 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 6/4/2018. The protestant must also send a copy of the protest to the applicant.
GARY SPACKMAN, Director
Published on 5/16/2018 and 5/23/2018

Legal Number 97838 May 16, 23, 2018

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO }
County of Payette }

Jone B Hansen
Of Payette, Payette County, Idaho, being
First duly sworn, deposes and says:

RECEIVED
MAY 29 2018
WATER RESOURCES
WESTERN REGION

- 1) That I am a citizen of the United States, and at all times hereinafter mentioned was over the age of eighteen years, and not party to the above entitled action.
- 2) That I am the representative of the Independent Enterprise, a weekly newspaper published in the County of Payette and State of Idaho; that the said newspaper is in general circulation in the said Count of Payette, and has been uninterruptedly published in said County during a period of seventy-eight consecutive weeks prior to the first publication of this notice, a copy of which is hereto attached.
- 3) That the notice, of which the annexed is a printed copy, was published in said newspaper 2 time(s) in the regular and entire issue of said paper and was printed in the newspaper proper, and not in a supplement.

That said notice was published the following:
May 16, 23, 2018

Legal # 97838
App Permit 65-23753
Dept. of Water Resources
2735 Airport Way
Boise, ID 83705

Jone B Hansen

State of Idaho }
County of Payette }

On this 23rd day of May in the year 2018
Before me a Notary Public, personally appeared.
Jone B Hansen, known 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 acknowledge to me that he/she executed the same.

TINA MARIE MARSING
Notary Public
State of Idaho

[Signature]
Notary Public for Idaho
Residing at Payette County
My Commission expires 7/24/23