

State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 83-11987

Priority: July 24, 2017

Maximum Diversion Volume: 162.8 AF

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

has applied for a permit to appropriate water from:

Source: DEER CREEK

Tributary: REEDS 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>
RECREATION STORAGE	01/01 to 12/31	162.8 AF

LOCATION OF POINT(S) OF DIVERSION:

DEER CREEK NW1/4NW1/4 Sec. 24, Twp 38N, Rge 05E, B.M. CLEARWATER County

PLACE OF USE: RECREATION 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	
38N 05E 13			X					X	X		X	X		X			
38N 05E 24					X	X	X										

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **November 01, 2018**.
2. Subject to all prior water rights.
3. The storage of water under this right is contingent upon continued certification by the Department of Water Resources under the dam safety provisions of the Idaho Code, authorizing storage.
4. Rights 83-11930 and 83-11987 authorize a total annual storage volume of 1,062.8 acre-feet, 979.6 acre-feet to be used for the initial filling or carryover storage of the reservoirs and 83.2 acre-feet for the replacement of losses caused by seepage and evaporation.
5. The reservoir established by the storage of water under this right and right 83-11930 shall not exceed a total capacity of 979.6 acre-feet or a total surface area of 62 acres.
6. Recreation storage is for fishing and boating.
7. 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 Section 42-204, Idaho Code.

Signed this 26th day of October, 20 17.

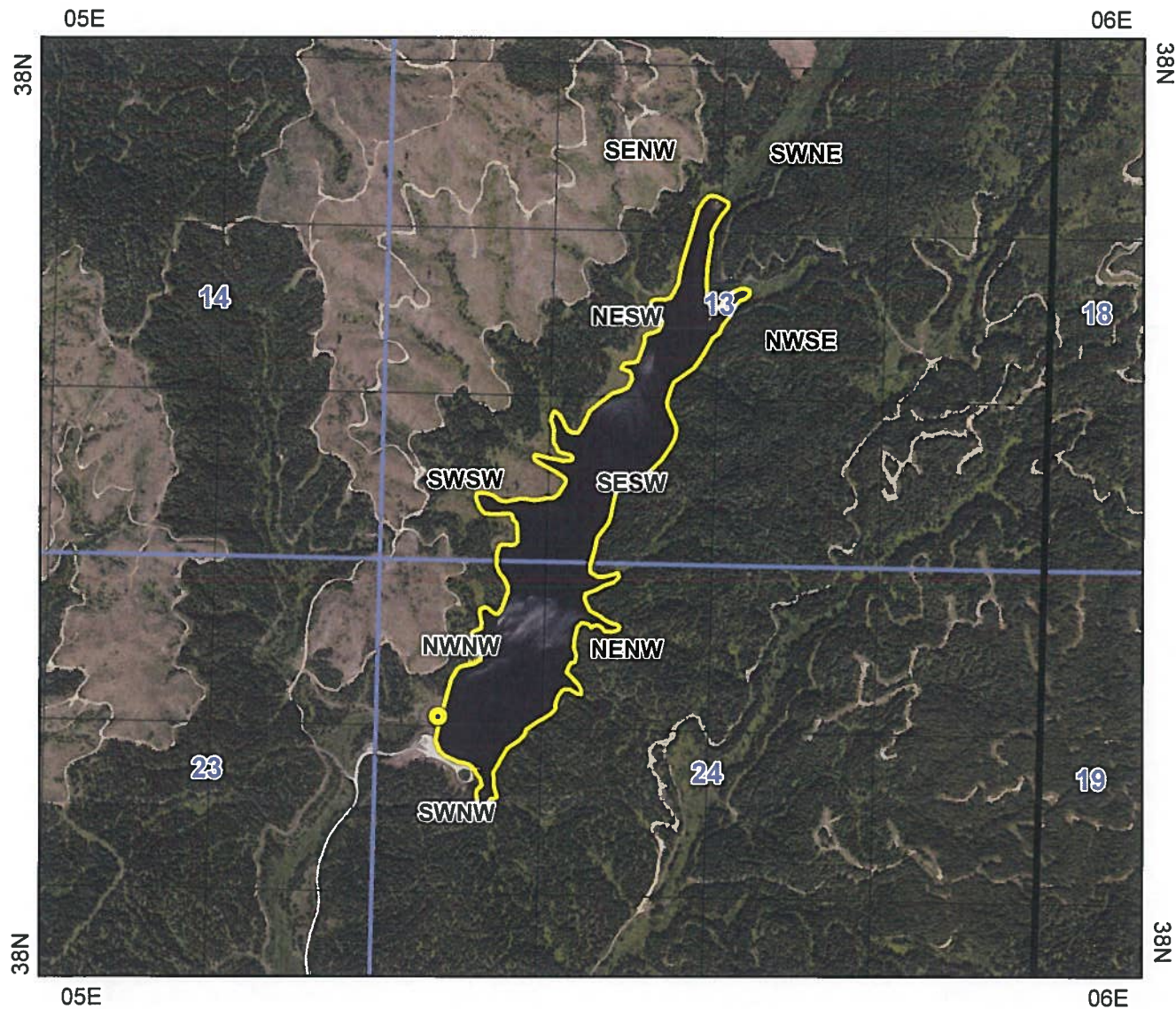

DOUGLAS JONES, Northern Regional Manager

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

83-11987

This map depicts the RECREATION 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.



0 0.15 0.3 0.6 Miles

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





State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region • 7600 N. Mineral Drive, Suite 100 • Coeur d'Alene, Idaho 83815-7763
Phone: (208) 762-2800 • Fax: (208) 762-2819 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

October 26, 2017

STATE OF IDAHO
DEPT OF FISH & GAME
PO BOX 25
BOISE ID 83707

RE: Permit No. 83-11987

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review the conditions of approval and remarks listed on your permit.

The permit 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 by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

Enclosed is a form entitled 'Instructions for Proof of Beneficial Use.' Please read the instructions carefully since you must take further action to develop this permit into a licensed water right. Also enclosed is a form entitled 'Proof of Beneficial Use.' If your project is already completed, you should complete and submit this form immediately.

Please note that a separate stream channel alteration permit must be obtained from the Department prior to any activity in the stream channel other than construction or maintenance of the diversion structure for your water right(s). Applications for stream channel alteration permits must be filed at least sixty days prior to the commencement of work in the stream.

Also, please note that water right owners are required to report any change of water right 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. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact the Northern Regional Office at 208-762-2800.

Sincerely,

A handwritten signature in blue ink, appearing to read "Douglas Jones", written over a horizontal line.

Douglas Jones, P.E.

Northern Regional Manager

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2017 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO.

83-11987

**STATE OF IDAHO
DEPT OF FISH & GAME
PO BOX 25
BOISE ID 83707**



**Tammy Alleman
Administrative Assistant**

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.

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

INSTRUCTIONS FOR FILING PROOF OF BENEFICIAL USE

HOW TO MAKE PROOF:

In order for a permit holder to fulfill the conditions of the permit to obtain a water right license, the permit holder must submit the Statement of Completion for Submitting Proof of Beneficial Use form (proof) together with the license examination fee (if required) **OR** submit the proof together with a completed field examination report prepared by a certified water right examiner on or before the date set in the permit for the proof. The information submitted by the permit holder will enable the department to determine the extent of beneficial use before the license is issued. The information entered on the proof form should show the extent of actual development of the project and should correspond to that authorized by the permit. If it does not, an amendment (change) to the permit may be required.

WHAT TO DO IN CASE YOU HAVE NOT FULLY APPLIED THE WATER TO BENEFICIAL USE:

If the development authorized by the permit has not been completed in the time allowed, the permit holder may submit a request for extension of time in which to submit the proof. In order for a request for extension of time to be considered without loss of priority, it must be filed prior to the date on which proof of beneficial use is due. Each request for extension of time will be considered on its own merits.

WHAT IF YOU FAIL TO MAKE PROOF OF BENEFICIAL USE ON TIME:

If you have applied the water to beneficial use, but did not submit the proof of beneficial use on or before the date set for the proof, the permit will lapse. A lapsed permit may be reinstated **within sixty (60) days** from the date the department sends the lapse notice. In order for the department to reinstate the permit, the permit holder must show reasonable cause why the permit should be reinstated. Submission of an acceptable proof of beneficial use form within the sixty (60) day period will be considered as reasonable cause for reinstatement.

If you applied the water to beneficial use and **more than sixty (60) days** have passed since mailing of the lapse notice, proof of beneficial use must be submitted with a statement of reasonable cause for filing late proof of beneficial use, a Beneficial Use Field Report prepared by a certified water right examiner, and a reinstatement application fee of \$250 pursuant to Idaho Code § 42-218a(2).

EXAMINATION FEE:

Idaho Code §§ 42-217 and 42-221 require an examination fee as part of the proof of beneficial use submittal if a completed field examination report prepared by a certified water right examiner is not submitted as part of the proof. The fee is based upon the rate of diversion or volume of storage water claimed on the proof of beneficial use form. **The appropriate fee can be determined from the license examination fee schedule on the back of these instructions.**

ISSUANCE OF LICENSE:

The department will issue a license of water right based on the determination of the amount of water beneficially used in compliance with existing law. The license will include specific information to describe the water right developed.

NOTE - You must comply with the conditions of approval of your permit or seek to have the department waive the conditions. (See the section titled "Conditions of Approval" near the bottom of your permit).

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

A license examination fee is not required in connection with permits which use a ground water (well) source **AND** have a total rate of diversion of 0.04 cfs or less or where the total volume stored is 4.0 AF per annum or less.

A license exam fee is required for ANY permit which uses surface water.

The license examination fee is based on the storage volume (acre-feet per year or AFY) or on the diversion rate (cubic feet per second or CFS). For permits proposing both a diversion rate and a storage volume, determine each fee separately and pay the greater of the two.

Checks should be made payable to the Idaho Department of Water Resources (IDWR).

LICENSE EXAMINATION FEE SCHEDULE

Per [Idaho Code § 42-221](#)

FLOW RATE (CFS)			STORAGE VOLUME(AF)			FEE
0	—	0.20	0.0	—	20.0	\$50
0.21	—	1.00	20.1	—	100.0	\$100
1.01	—	2.00	100.1	—	200.0	\$125
2.01	—	3.00	200.1	—	300.0	\$150
3.01	—	4.00	300.1	—	400.0	\$175
4.01	—	5.00	400.1	—	500.0	\$200
5.01	—	6.00	500.1	—	600.0	\$225
6.01	—	7.00	600.1	—	700.0	\$250
7.01	—	8.00	700.1	—	800.0	\$275
8.01	—	9.00	800.1	—	900.0	\$300
9.01	—	10.00	900.1	—	1,000.0	\$325
10.01	—	11.00	1,000.1	—	1,100.0	\$350
11.01	—	12.00	1,100.1	—	1,200.0	\$375
12.01	—	13.00	1,200.1	—	1,300.0	\$400
13.01	—	14.00	1,300.1	—	1,400.0	\$425
14.01	—	15.00	1,400.1	—	1,500.0	\$450
15.01	—	16.00	1,500.1	—	1,600.0	\$475
16.01	—	17.00	1,600.1	—	1,700.0	\$500
17.01	—	18.00	1,700.1	—	1,800.0	\$525
18.01	—	19.00	1,800.1	—	1,900.0	\$550
19.01	—	20.00	1,900.1	—	2,000.0	\$575
20.01	—	21.00	2,000.1	—	OVER	\$600

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
STATEMENT OF COMPLETION
FOR SUBMITTING PROOF OF BENEFICIAL USE

FOR OFFICE USE ONLY

Amt. of Fee \$ _____
Receipt No. _____
Received By _____
Date Received _____

The Idaho Department of Water Resources considers this form a statement by the permit holder(s) that development of a water right has been **completed** and that water has been applied to beneficial use to the extent described below. **This form must be accompanied by an examination fee, when necessary, or by a completed Beneficial Use Field Report prepared by a certified water right examiner.** Please refer to the instructions and fee schedule for this form. If ownership of the permit has changed, contact any Department office or visit the Department's website at idwr.idaho.gov for an *Assignment of Permit* form. If you wish to relinquish your permit because you have not established the authorized use of the water and are not applying for an extension, please notify the Department in writing.

1. Permit No. _____ Telephone No. _____
2. Name of Permit Holder(s) _____
3. Mailing Address _____ City _____
State _____ Zip _____ Email _____
4. Source of Water _____ If **GROUND WATER** (well), Date Drilled mo. _____ / yr. _____
Well Driller _____ Drilling Permit Number _____
5. Extent of use(s) completed **as authorized by the water right permit:**
Domestic (No. of households) _____ Stockwater (No. and type of stock) _____
Irrigation (No. of acres) _____ Other _____
6. Total rate of diversion or storage volume for which proof is submitted _____ cfs **OR** _____ acre-feet.

7. Compliance with a measuring device requirement, lockable controlling device requirement, and/or other conditions of permit:
Refer to the approval conditions on your permit and respond accordingly.

The Department will not issue a license if permit conditions are not met.

Measuring Device	Is a measuring device required?	Yes ☐	No ☐
	If yes, has the measuring device been installed?	Yes ☐	No ☐
Lockable Controlling Device	Is a lockable device required to control the diversion?	Yes ☐	No ☐
	If yes, has the lockable device been installed?	Yes ☐	No ☐
Fish Screen	Is a fish screen required?	Yes ☐	No ☐
	If yes, has the fish screen been installed?	Yes ☐	No ☐

Other Conditions of Permit

Do the approval conditions on your permit require you to submit additional information in connection with your proof of beneficial use? If yes, list the conditions below and attach documents with the required information.

_____ Completed? Yes ☐ No ☐

8. Fee Enclosed \$ _____ or not applicable ☐. See fee schedule on page 2 of the instructions.
Proof statements filed without an appropriate fee, will be considered incomplete.
9. Person to contact to accompany the Department representative during field examination of the water system.

Name _____ Telephone Number _____
Mailing Address _____ City _____
State _____ Zip _____ Email _____

The information given on this form is my true statement of the extent to which the above numbered permit has been developed and water has been diverted and applied to a beneficial use. I understand that any undeveloped portion of the permit is relinquished to the State of Idaho.

Signature of Permit Holder _____ Date _____
(Include your title, if on behalf of company or organization)

MEMORANDUM

To: Water Right Application 83-11987

From: Adam Frederick AF

Date: 10/11/2017

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 Deer Creek should be available during high flow periods for impoundment to cover additional storage, seepage, and evaporation that was not covered by Water Right No. 83-11930.

Good Faith, Delay, or Speculative Information

The applicant has already built reservoir.

Financial Resources Information

The applicant has already built reservoir.

Local Public Interest

The Idaho Department of Environmental Quality was asked to comment by the Idaho Department of Water Resources. The Department of Environmental Quality responded that withdrawals should be made during high flow periods and that Deer Creek should not be allowed to dry up.

Injury to Other Water Rights

None anticipated.

Recommendation

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

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO)
) ss.
County of Clearwater)

CLOANN MCNALL

being first duly sworn in, on oath, deposes and says:

That I am and at all times herein mentioned have been a citizen of the United States and of the State of Idaho, over 21 years of age, and that I am not a party to nor interested in the above entitled proceeding; that I am and at all times herein mentioned have been the Editor, Foreman, of THE CLEARWATER TRIBUNE; that said Clearwater Tribune is a newspaper of general circulation, printed and published weekly at Orofino, in the County of Clearwater and State of Idaho; that the Clearwater Tribune has been continuously and uninterruptedly published in Clearwater County, Idaho, during the period of seventy-eight consecutive weeks prior to the first publication of attached copy of:

Idaho Department of Water Resources FISH & GAME APPLICATION

of which the annexed is a full, true and correct printed copy, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for a period of two consecutive weeks, commencing on the 21st day of September 2017 and ending on the 28th day of September 2017.

CloAnn McNall

STATE OF IDAHO)
)
COUNTY OF CLEARWATER)

On this 28th day of September in the year of 2017, before me, a Notary Public, personally appeared

CloAnn McNall

known or identified to me to be the person whose name subscribed to the within instrument, and being by me duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Marcie Stanton

Notary Public for Idaho
Resident at Orofino, Idaho
My commission expires: 5-16-20

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

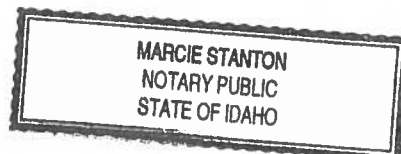
83-11987

STATE OF IDAHO
DEPT OF FISH & GAME
PO BOX 25
BOISE, ID 83707
Point of Diversion NWNW
S24 T38N R05E
CLEARWATER County
Source DEER CREEK
Use: RECREATION STORAGE
01/01 to 12/31 162.8 AF
Total Diversion: 162.8 AF
Date Filed: 7/24/2017
Place Of Use: RECREATION STORAGE
T38N R05E S13
SWNE SENW NESW SWSW SESW NWSE
T38N R05E S24 NENW 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 Mineral Drive, Suite 100, Coeur D' Alene ID 83815 together with a protest fee of \$25.00 for each application on or before 10/10/2017. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN,
Director

9-21,28-17c





STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

RECEIVED
SEP 22 2017
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 20, 2017

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

Subject: Water Appropriation, Permit #83-11987

We received a request for comment on an application for a water appropriation permit to appropriate 162.8 acre feet from Deer Creek for recreation storage for fishing and boating use from January 1 to December 31. The applicant proposes to divert water from Deer Creek to cover the remaining storage capacity of Deer Creek Reservoir to account for evaporation and seepage. Assuming all federal, state and local permits have been obtained, regulations met, and reviews completed, we offer the following comments.

Deer Creek, a tributary to Reeds Creek, is included in water body ID#17060308CL004_02, and is protected for cold water aquatic life, salmonid spawning, and contact recreation designated beneficial uses. Deer Creek is listed in Category 4a of the Idaho 2014 Integrated Report as having a Total Maximum Daily Load (TMDL) allocation for water temperature and sediment pollutants. The TMDL is a pollution management plan that calculates the maximum amount of a pollutant allowed in the creek based on the volume or flow of water in the creek. Reduction in flow in Deer Creek can cause water temperature and sediment increases that exceed the total maximum daily load and Idaho water quality standards. DEQ stream monitoring data from Deer Creek recorded a flow of 0.1 cfs in 2005.

Based on the TMDLs and DEQ flow data, there may not be sufficient flow outside the seasonal high flow period to support the designated beneficial uses, and provide the volume necessary for the TMDL allocations for listed pollutants. We recommend that the legally appropriated 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.

Thank you for the opportunity to comment on your application. If you have any questions regarding the Idaho Water Quality Standards, please call us at (208) 799-4370.

Sincerely,

A handwritten signature in cursive script that reads "Sujata Connell".

Sujata Connell
Surface Water Quality Manager

c: Brett Bowersox, IDFG
John Cardwell, DEQ
TRIM