

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 71-10941

PRIORITY: June 30, 2011

Maximum Diversion Rate: 0.29 CFS

It is hereby certified that:

PATRICK W LEE
C/O JOHN T BROWN
PO BOX 61
SUN VALLEY ID 83353

And/Or

JOHN T BROWN
PO BOX 61
SUN VALLEY ID 83353

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated June 30, 2011, and has submitted Proof of Beneficial Use on September 30, 2013. An examination confirms water is diverted from:

SOURCE:
LOST CREEK

TRIBUTARY:
SINKS

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
IRRIGATION	05/01 to 07/01	0.29 CFS
STOCKWATER	01/01 to 12/31	0.02 CFS

LOCATION OF POINT(S) OF DIVERSION:

LOST CREEK SE¼SW¼SE¼ Sec. 34, Twp 08N, Rge 14E, B.M. CUSTER County(Injection)
LOST CREEK SE¼SW¼SE¼ Sec. 34, Twp 08N, Rge 14E, B.M. CUSTER County(Rediversion)
LOST CREEK SE¼SE¼SE¼ Sec. 34, Twp 08N, Rge 14E, B.M. CUSTER County

PLACE OF USE: STOCKWATER

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
08N	14E	34															X		

PLACE OF USE: IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
08N	14E	34															11.0	4.0	15.0

Total Acres: 15

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CONDITIONS OF APPROVAL

1. A lockable device subject to the approval of the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.
2. Use of water under this right will 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. 71.
3. Prior to the diversion and use of water under this right, the right holder shall install and maintain acceptable measuring device(s), including data logger(s), at the authorized point(s) of diversion and in accordance with Department specifications, or shall obtain an approved variance from the Department to employ an alternative method to determine and record the amount of water diverted.
4. Rights 71-10940 and 71-10941 when combined shall not exceed a total diversion rate of 0.30 cfs, a total annual maximum diversion volume of 45.0 af at the field headgate, and the irrigation of 15 acres.
5. This right does not grant any right-of-way or easement across the land of another. Specifically, this right does not grant or modify existing scenic easements held by the federal government which may limit use of this right. This right does not grant approval of other local, state or federal authorities that may be required to perfect use of this right.
6. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.0 afa per acre at the field headgate for irrigation of the place of use.
7. 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.
8. The Director retains jurisdiction to require a bypass flow for maintenance of fish, wildlife, riparian and aquatic habitat.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

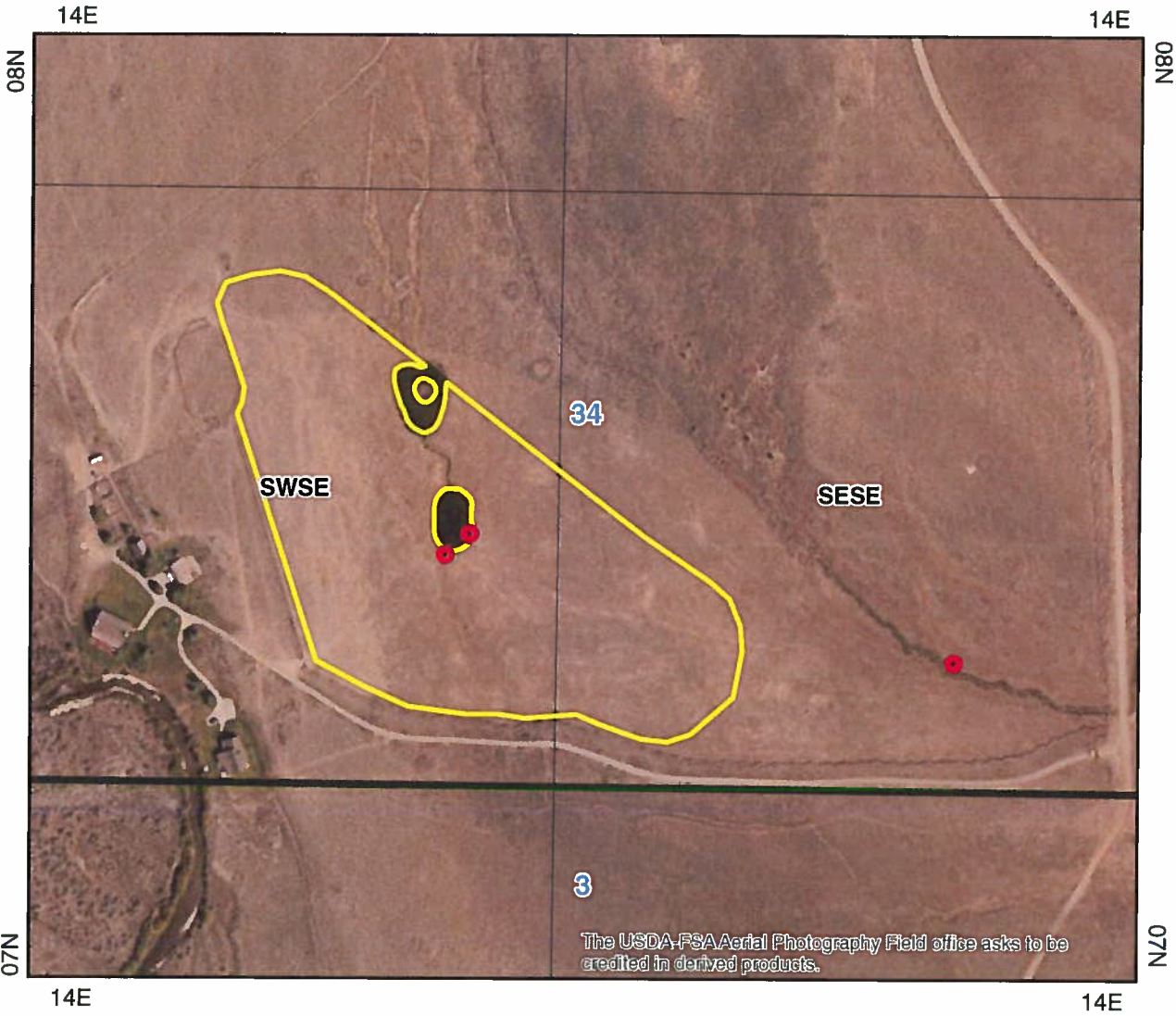
Signed this 22nd day of September, 2017.



COREY SKINNER
Southern Regional Manager

State of Idaho
Department of Water Resources
Attachment to Water Right License
71-10941

This map depicts the IRRIGATION 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.



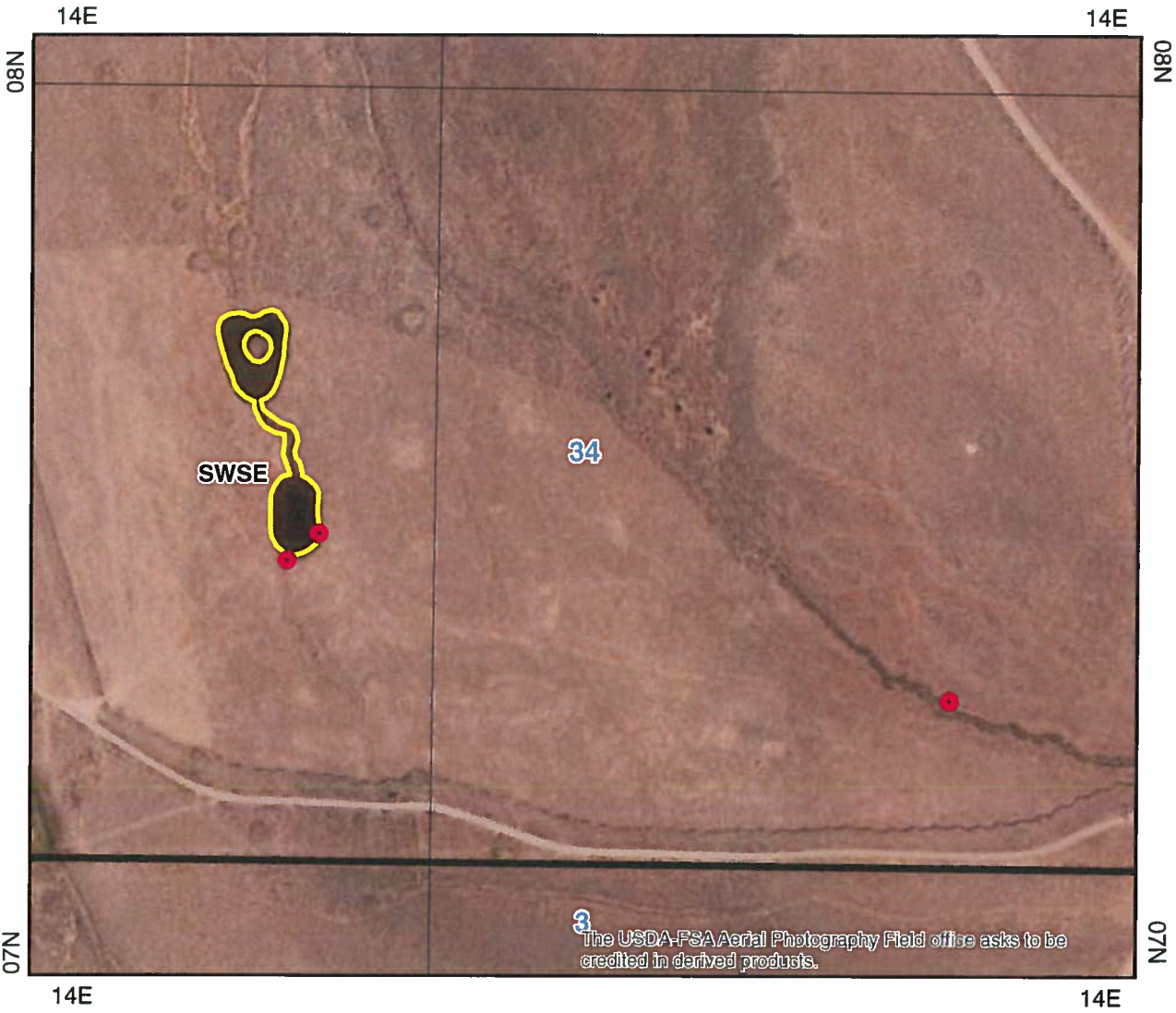
- Point of Diversion
- Place Of Use Boundary
- Townships
- PLS Sections

0 0.0475 0.095 0.19 Miles



State of Idaho
Department of Water Resources
Attachment to Water Right License
71-10941

This map depicts the STOCKWATER 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.



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

0 0.035 0.07 0.14 Miles





State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region • 650 Addison Ave W, Suite 500 • Twin Falls, Idaho 83301-5858

Phone: (208) 736-3033 • Fax: (208) 736-3037 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

September 25, 2017

PATRICK W LEE
C/O JOHN T BROWN
PO BOX 61
SUN VALLEY ID 83353

JOHN T BROWN
PO BOX 61
SUN VALLEY ID 83353

RE: License No. 71-10940, 71-10941

Issuance of License

Dear Water Right Holder(s):

The Department of Water Resources has issued the enclosed Water Right License confirming that a water right has been established in accordance with your permit. Please be sure to thoroughly review the conditions of approval and remarks listed on your license.

The license 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.

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 me at 208-736-3033.

Sincerely,

Corey Skinner
Southern Regional Manager

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2017 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Approved License) to the person(s) listed below:

RE: WATER RIGHT NO.

71-10940, 71-10941

**PATRICK W LEE
C/O JOHN T BROWN
PO BOX 61
SUN VALLEY ID 83353**

**JOHN T BROWN
PO BOX 61
SUN VALLEY ID 83353**



**Denise Maline
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.

Reeder, Jana

From: Yenter, Cindy
Sent: Thursday, September 21, 2017 9:38 AM
To: Reeder, Jana
Cc: mvm_32_rs@hotmail.com
Subject: RE: Waiver for 71-10940 and 71-10941

Jana, since measurement is required for B71 I really can't approve removing the measurement conditions. 215 is a standard condition for the Upper Salmon and the original language needs to stay in place. The language should not be changed to "Upon specific notification.." as the measurement order has already been issued and notification given. However, I am willing to approve a measurement variance and waiver of logger requirements which should allow the region to proceed with licensing. The inclusion of this message in the file should be sufficient documentation of the variance and I would prefer that no other modification of the conditions be placed in the rights as that may limit the watermaster's ability to require different measurement methods in the future.

This message documents approval of a variance for the ground water diversion under 71-10940 to use the PCC method of measurement, pending an updated measurement, and until water users are notified otherwise by the watermaster. The PCC method is a totalizing method of estimating diversion volume so a data logger is not required.

This message also grants a waiver of the data logger requirement for 71-10941. The Lost Creek diversion has a headgate and weir, and that satisfies the basic measurement requirement. The WD71 watermaster makes regular readings of all active diversions and will be directed to include readings from LTC1 (the 71-10941 diversion) in order to compute annual diversion volume. Requiring a data logger on this intermittent diversion would be burdensome for both the water user and the watermaster.

Please let me know if you have other questions.

*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*

From: Reeder, Jana
Sent: Wednesday, September 20, 2017 2:30 PM
To: Yenter, Cindy <Cindy.Yenter@idwr.idaho.gov>
Cc: Skinner, Corey <Corey.Skinner@idwr.idaho.gov>
Subject: Waiver for 71-10940 and 71-10941

Cindy,

Southern region is in the process of licensing permits 71-10940 and 71-10941 in the name of John T Brown and Patrick W Lee. We were wondering if the water district is willing to issue a waiver for the following condition "Prior to the diversion and use of water under this right, the right holder shall install and maintain acceptable measuring device(s),

including data loggers, at the authorized points of diversion and in accordance with Department specifications, or shall obtain an approved variance from the Department to employ an alternative method to determine and record the amount of water diverted.' And Changing the language to "Upon specific notification..."

Great to talk to you again.
Thanks,

Jana