

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**TRANSFER OF WATER RIGHT
TRANSFER NO. 81765**

This is to certify that: **HEATHER KATHERINE MACK**
PO BOX 597
MOUNTAIN HOME, ID 83647

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Changes

<u>Water Right</u>	<u>Origin/Basis</u>	<u>Priority Date</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
72-216	WR/DECREED	5/1/1925	0.800 cfs	N/A	N/A	17.2	BOWERY CREEK

Purpose of Transfer (Changes Proposed)

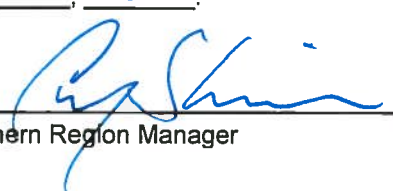
<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
72-216	NO	YES	NO	YES	NO	NO

Summary Of Water Rights After the Approved Change

<u>Existing Right</u>	<u>New No. (Changed Portion)</u>	<u>Transfer Rate</u>	<u>Transfer Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>New No. (remaining portion)</u>	<u>Remaining Rate</u>	<u>Remaining Volume</u>	<u>Remaining Acre Limit</u>	<u>Remaining Total Acres</u>
72-216	72-216	0.800 cfs	N/A	N/A	17.2	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		0.800 cfs	N/A	N/A	17.2		N/A	N/A	N/A	N/A

This water right(s) is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources. Detailed Water Right Description(s) attached.

Dated this 30th day of August, 2017.



Southern Region Manager

WATER RIGHT NO. 72-216

As Modified by Transfer No. 81765

In accordance with the approval of Transfer No. 81765, Water Right No. 72-216 is now described as follows:

Right Holder: HEATHER KATHERINE MACK
PO BOX 597
MOUNTAIN HOME, ID 83647

Priority Date: 5/1/1925

Source: EAST FORK SALMON RIVER **Tributary:** SALMON RIVER
Source: BOWERY CREEK **Tributary:** EAST FORK SALMON RIVER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
IRRIGATION	4/01	to 10/31	0.800 cfs 0.800 cfs

LOCATION OF POINT(S) OF DIVERSION

EAST FORK SALMON RIVER NESW	Sec 9 Twp 08N Rge 17E CUSTER County
BOWERY CREEK SESW	Sec 9 Twp 08N Rge 17E CUSTER County

PLACE OF USE: IRRIGATION

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
08N	17E	9			5.3					4.9	5.1						1.9		17.2

POU Total Acres: 17.2

CONDITIONS OF APPROVAL

1. 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.
2. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
3. Diversion of water from the East Fork of the Salmon River is limited to those times water is available for diversion under this right and priority from Bowery Creek.
4. This right does not grant any right-of-way or easement across the land of another.
5. Prior to the diversion and use of water under this approval, the right holder shall comply with all fish screening and/or fish passage requirements of the Idaho Department of Fish and Game.
6. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.

Transfer No. 81765

WATER RIGHT NO. 72-216

As Modified by Transfer No. 81765

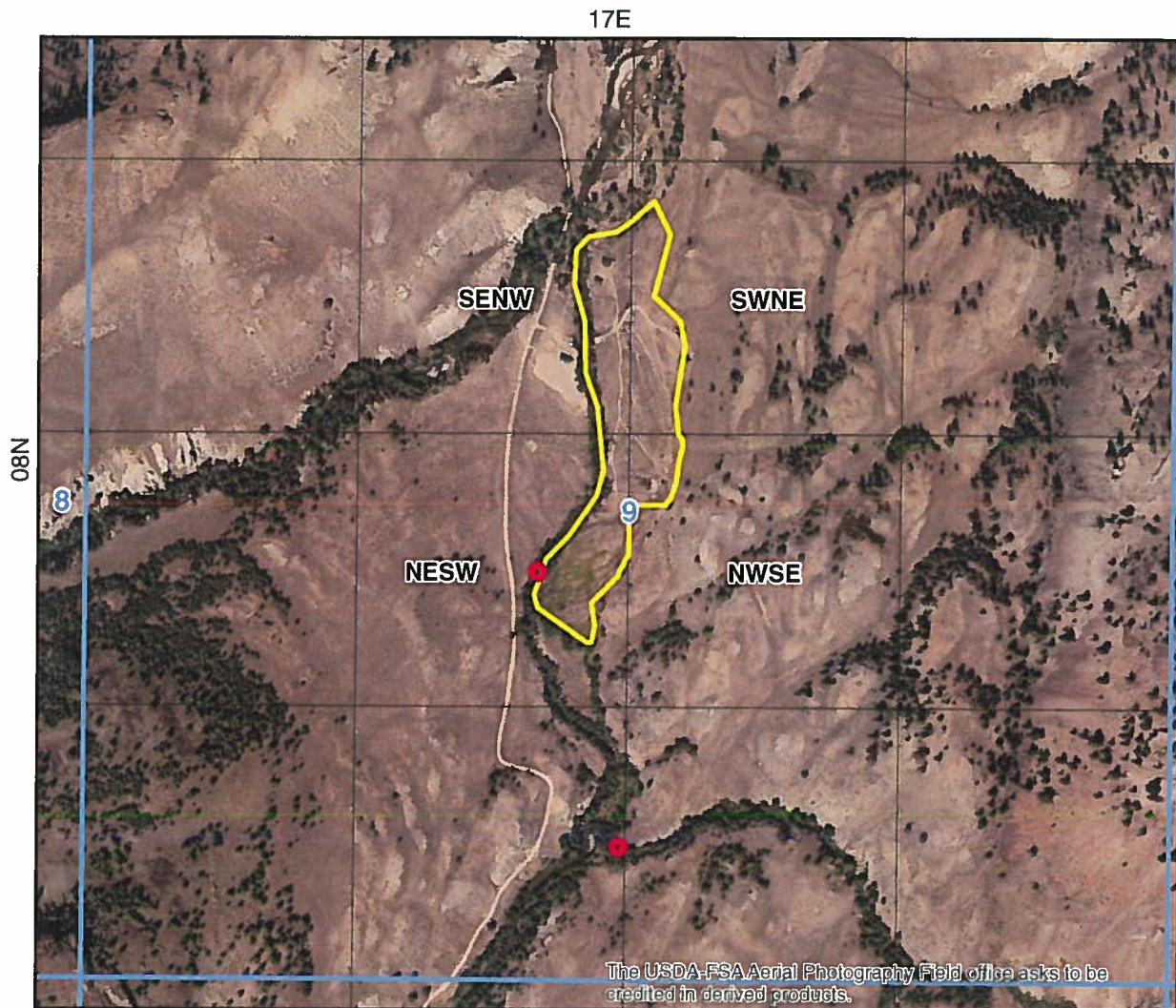
CONDITIONS OF APPROVAL

7. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
8. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as determined by the Snake River Basin Adjudication court in the final unified decree entered 08/26/2014.



State of Idaho
Department of Water Resources
Attachment to Transfer # 81765
72-216

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 0.1 0.2 0.4 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

August 30, 2017

HEATHER KATHERINE MACK
PO BOX 597
MOUNTAIN HOME ID 83647

Re: Transfer No: 81765
Water Right No(s): 72-216

Transfer Approval Notice

Dear Water Right Holder and other Interested Persons:

The Department of Water Resources has issued the enclosed approved Transfer of Water Right(s). Please be sure to thoroughly review the conditions of approval and remarks listed on the approval document.

The Transfer of Water Right(s) 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 the APPLICANT 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.

ANY PERSON aggrieved by any decision, determination, order or action 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 Department and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

If the transfer approval includes a condition requiring measuring and recording devices, such devices shall comply with specifications established by the Department. Detailed specifications are available on the Department's home page on the Internet, or you can request a copy by contacting any office of the Department. Please be sure to thoroughly review the specifications to avoid unnecessary costs for reinstallation or modification due to non-conforming or improperly installed devices.

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,

A handwritten signature in black ink, appearing to read "Corey Skinner". The signature is fluid and cursive, with the first name "Corey" written in a larger, more prominent script than the last name "Skinner".

Corey Skinner
Southern Regional Manager

Enclosure

cc:

WATER DISTRICT 170
CINDY YENTER
102 S WARPATH
SALMON ID 83467

WATER DISTRICT 72D
BRENT CUTLER
PO BOX 208
CHALLIS ID 83226

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2017 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Approved Transfer) to the person(s) listed below:

**Re: Transfer No.: 81765
Water Right No(s): 72-216**

**HEATHER KATHERINE MACK
PO BOX 597
MOUNTAIN HOME ID 83647**

**WATER DISTRICT 170
CINDY YENTER
102 S WARPATH
SALMON ID 83467**

via e-mail

**WATER DISTRICT 72D
BRENT CUTLER
PO BOX 208
CHALLIS ID 83226**



**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.



IDAHO DEPARTMENT OF FISH AND GAME
SALMON REGION
99 Highway 93 North
Salmon, Idaho 83467

C.L. "Butch" Otter / Governor
Virgil Moore / Director

August 21, 2017

RECEIVED

AUG 24 2017

DEPT OF WATER RESOURCES
SOUTHERN REGION

State of Idaho Department of Water Resources, Southern Region
ATTN: Denise Maline, Administrative Assistant
650 Addison Ave. W., Ste. 500
Twin Falls, ID 83301

Heather Katherine Mack
P.O. Box 597
Mountain Home, ID 83647

RE: Water Right Application for Transfer No. 81765 (WR 72-216)

Dear Denise and Heather:

The IDFG has reviewed the application for Transfer No. 81765 submitted by Heather K. Mack (Applicant).

Based on the detail of the Water Right Transfer application, the IDFG has no environmental or wildlife comments relative to this application. If you have any questions, please contact the Region's Environmental Staff Biologist, Jeff Richards at (208) 756-2271.

Sincerely,

Tom Curet
Regional Supervisor

TC: jr

Keeping Idaho's Wildlife Heritage

MEMORANDUM

Date: August 23, 2017
To: Mack Transfer #81765 File
From: Jim Bitzenburg
Re: Forfeiture

The possibility of forfeiture as a result of Transfer #81765 has been raised by the Watermaster comments submitted by WD-170 Watermaster, Cindy Yenter. She has noted approximately 12 acres of irrigation during visits this summer, and proposes protection of the other acres due to the lack of water in Bowery Creek. She notes that Watermaster records show that the diversions from the Bowery Creek POD are at or near the limit of the right.

It is possible that the remaining acres could be protected from forfeiture using Idaho Code 42-223 (6) as a defense. The ditch from Bowery Creek may have large seepage losses which could be used as a forfeiture defense under that section of Idaho Code.

MEMORANDUM

Date: August 22, 2017
To: Transfer 81765, Heather Mack File
From: Jim Bitzenburg
Re: Evaluation of Sufficiency of Information Submitted

Application for transfer proposes to add a point of diversion (POD) to water right 72-216 (0.80 cfs, 17.2 acres) which is currently diverted from a single POD on Bowery Creek, tributary to the East Fork of the Salmon River. The transfer also proposes to correct the POD description for the existing Bowery Creek diversion which is currently described at a point approximately 15.8 miles south and 2.8 miles west of Clayton. The actual location is approximately 500' downstream on Bowery Creek in the adjacent QQ. The proposed new diversion on the East Fork of the Salmon River is located approximately 15.5 miles south and 3.0 miles west of Clayton.

The transfer involved changing a POD on a surface water source, so it was advertised. No protests were filed, though the U.S. Forest Service appears unlikely to approve the use of the Bowery Creek diversion.

- **Authority to File:**
Pre-transfer, the applicant and her father, Thomas E. Mack, both appeared as current owners of the right, but Ms. Mack submitted a copy of her father's death certificate in order to have his name taken off the right. The application was signed by Heather Mack.
- **Water Right Validity:**
Water right 72-216 was decreed in February of 2000. Aerial imagery shows limited irrigation, but the Watermaster of WD-170 has witnessed irrigation of 10-12 acres in 2017. Imagery from 2016 and 2017 is not detailed enough for an accurate estimate of irrigated acres.
- **Injury to Other Water Rights:**
None anticipated or foreseen. The additional POD is moving downstream, and no diversions appear to be located between the two points.
- **Enlargement of Use:**
None anticipated. If forfeiture reduces the water right acreage, a proportional decrease in flow rate will occur as a result.
- **Local Public Interest:**
No issues anticipated. The transfer was advertised.
- **Beneficial Use/Conservation of Water Resources:**
Proposed use is recognized as a beneficial use of water.
- **Effect on the Economy of the Local Area:**
None Anticipated
- **Effect of the Agricultural Base of the Area:**
None Anticipated

Review of the application finds there is no clear inconsistency with criteria set forth in Section 42-222 Idaho Code preventing processing of this application.

RECEIVED

AUG 18 2017

AFFIDAVIT OF PUBLICATION

DEPT OF WATER RESOURCES
SOUTHERN REGION

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 August 3rd 2017 and ending with the issue dated August 10th 2017

James M. Smirch

STATE OF IDAHO

COUNTY OF CUSTER

On this 10th day of August in the year of 2017, 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 1/9/21

**NOTICE OF PROPOSED
CHANGE OF WATER RIGHT
TRANSFER NO. 81765**

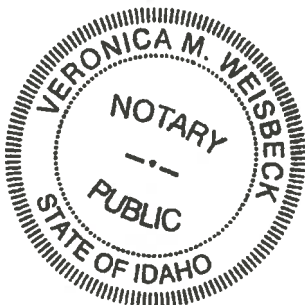
HEATHER KATHERINE MACK, PO BOX 597, MOUNTAIN HOME, ID 83647; has filed Application No. 81765 for changes to the following water rights within CUSTER County(s): Right No(s). 72-216; to see a full description of these rights and the proposed transfer, please see www.idwr.idaho.gov/apps/wr/QueryNewTransfers/QueryNewTransfers.aspx. The purpose of the transfer is to change a portion of the above rights as follows: Application for transfer proposes to add a point of diversion (POD) to water right 72-216 (0.80 cfs, 17.2 acres) which is current-

ly diverted from a single POD on Bowery Creek, tributary to the East Fork of the Salmon River. The transfer also proposes to correct the POD description for the existing Bowery Creek diversion which is currently described at a point approximately 15.8 miles south and 2.8 miles west of Clayton. The actual location is approximately 500' downstream on Bowery Creek in the adjacent QQ. The proposed new diversion on the East Fork of the Salmon River is located approximately 15.5 miles south and 3.0 miles west of Clayton.

For additional information concerning the property location, contact Southern Region office at (208) 736-3033. Protests may be

submitted based on the criteria of Idaho Code Sec. 42-222. Any protest against the proposed change must be filed with the Department of Water Resources, Southern Region, 650 Addison Ave W Ste 500, Twin Falls ID 83301 together with a protest fee of \$25.00 for each application on or before August 21, 2017. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director
Published: August 3 and 10, 2017



✓ OK DM 8-21-2017

State of Idaho
Department of Water Resources
Transfer of Water Right(s)
RECOMMENDATION FORM

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AUG 17 2017

DEPT OF WATER RESOURCES
SOUTHERN REGION

Transfer Application No.: 81765

Water Right No(s): 72-216

Transfer Applicant's Name: HEATHER KATHERINE MACK
PO BOX 597
MOUNTAIN HOME, ID 83647

Water master's Recommendation:

- a) _____ I do not oppose approval of this application.
- b) SC I do not oppose approval of this application if it is conditioned as follows:
Need access to measuring device
- c) _____ I oppose approval of this application for the following reasons:
- d) _____ Additional comments:

Dated this 3rd day of Aug, 2017

Water District No. 72D



Water master's Signature

Brent Cutler

Printed Name

Bitzenburg, James

From: Yenter, Cindy
Sent: Wednesday, August 02, 2017 4:06 PM
To: Bitzenburg, James
Subject: FW: Bowery Creek diversion
Attachments: 08022017MarkMackBoweryCreekDiversiion.pdf; FSM2703.2.pdf

Here's the bad news from USFS. They will not allow Heather to pump from Bowery Creek within the new wilderness area, and they can't process her application for easement without a re-construction plan. And then they may not approve it anyway. Where does that leave us? Will she have to amend the transfer to remove the Bowery diversion entirely, in order to make it approvable?

I sent Gail a message explaining this was NOT an additional water right. Although Heather would also have that option for additional water from the EF if Bowery dries up. She may want to pursue that in the future. I don't see any other options for this year except wait for the transfer. We're this far in; with a new filing we'd be starting over.

From: Baer, Gail -FS [mailto:gbaer@fs.fed.us]
Sent: Wednesday, August 02, 2017 12:08 PM
To: Yenter, Cindy <Cindy.Yenter@idwr.idaho.gov>
Subject: FW: Bowery Creek diversion

Hi Cindy, can you send this to Jim Bitzenburg at IDWR. I don't have his correct email. He sent me a letter about Heather's application for an additional water right. Thank you.

Also, what are her options for using water from the East Fork this summer – does she need to wait until the protest period ends?

Thanks, Gail



Gail Baer
Lands and Non-Recreation Special
Uses Program Manager

Forest Service
Salmon-Challis National Forest

p: 208-756-5128

f: 208-756-5151

gbaer@fs.fed.us

1206 So. Challis St.

Salmon, ID 83467

www.fs.fed.us



Caring for the land and serving people

From: Baer, Gail -FS
Sent: Wednesday, August 02, 2017 11:39 AM
To: Kuhnel, Dennis -FS <dkuhnel@fs.fed.us>; Baer, Gail -FS <gbaer@fs.fed.us>; Spencer, Steven M -FS <sspencer@fs.fed.us>; Flannigan, Kirk E -FS <kflannigan@fs.fed.us>; Yenter, Cindy <Cindy.Yenter@idwr.idaho.gov>; jim.bitzenburg@idwr.idaho.gov
Subject: Bowery Creek diversion

Hi All, I sent this letter to Heather via email today with a hard copy following.

Thanks, Gail



Gail Baer
Lands and Non-Recreation Special
Uses Program Manager

Forest Service
Salmon-Challis National Forest

p: 208-756-5128

f: 208-756-5151

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Caring for the land and serving people

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**FSM 2700 - SPECIAL USES MANAGEMENT
CHAPTER 2700 - ZERO CODE**

2700 - zero code
Page 11 of 18
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AUG 02 2017
DEPT OF WATER RESOURCES
SOUTHERN REGION

2. Administer special uses based on resource management objectives and sound business management principles;
3. Develop and maintain a well-trained workforce to properly manage and administer special uses; and
4. Facilitate the delivery of recreational opportunities on National Forest System lands for services not provided by the Forest Service.

2703 - POLICY

2703.1 - Evaluation of Proposed Use

Apply the first and second-level screening criteria per 36 CFR 251.54 and FSH 2709.11, sections 11 and 12, to proposals for the use of National Forest System lands.

2703.2 - Use of National Forest System Lands

See FSM 2720 for the types of uses that may be authorized.

In applying the second-level screening criterion regarding the public interest (36 CFR 251.54(e)(5)(ii)), consider the following:

1. Section 368(c) of the Energy Policy Act of 2005 provides that the Forest Service has an ongoing responsibility to establish procedures for identifying and designating additional energy transmission corridors on federal lands and to expedite applications for electric transmission and distribution facilities within those corridors. Cooperate and coordinate with other federal agencies to optimize siting of rights-of-way for energy transmission corridors (30 U.S.C. 185(p); 43 U.S.C. 1763), and endeavor to expedite applications for electric transmission and distribution facilities on National Forest System lands through coordination with other affected federal agencies.

2. Authorize use of National Forest System lands other than noncommercial group uses only if:

- a. The proposed use is consistent with the mission of the Forest Service to manage National Forest System lands and resources in a manner that will best meet the present and future needs of the American people, taking into account the needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific, and historical values; and

**FSM 2700 - SPECIAL USES MANAGEMENT
CHAPTER 2700 - ZERO CODE**

AUG 02 2017
DEPT OF WATER RESOURCES
SOUTHERN REGION

- b.** The proposed use cannot reasonably be accommodated on non-National Forest System lands, and the application for electric transmission and distribution facilities does not conflict with paragraph 1.
- 3.** Do not authorize the use of National Forest System lands solely because it affords the applicant a lower cost or less restrictive location when compared with non-National Forest System lands.
4. See FSM 2340.3 for specific policy related to proposals for recreation special uses.

2703.3 - Authorization of Use

Authorize the use of National Forest System lands under the proper statutory or regulatory authority with terms and conditions which protect the resource values and the interests of the Federal Government. Limit the use to the minimum area and period of time required to accommodate the use. Establish fees reflecting the fair market value prior to authorizing the use.

2703.4 - Administration

Administer all special-uses in accordance with the terms and conditions of the authorization. Conduct field inspections and audits to ensure compliance with permit provisions. Document observed breach of terms and conditions and follow through with corrective action. Provide timely billings for all fees due the Federal Government.

2703.5 - Information Systems

Maintain an accurate database using the Special Uses Data System (SUDS) for administering, budgeting, planning, and reporting activities associated with the special uses program (FSM 2704.22).

2703.6 - Training

Develop and maintain a well-trained workforce to manage and administer special uses properly.

2704 - RESPONSIBILITY

2704.1 - Washington Office

2704.11 - Deputy Chief for National Forest System

The Deputy Chief for the National Forest System has the responsibility to provide direction, leadership, and administration of servicewide special use programs, policies, and procedures, and to advise the Chief of current, national special-uses related issues.



RECEIVED

File Code: 2720
Date: August 2, 2017

AUG 02 2017

DEPT OF WATER RESOURCES
SOUTHERN REGION

Heather Mack
P.O. Box 597
Mountain Home, ID 83462

Dear Ms. Mack,

I received your special use application for your Bowery Creek water diversion on 7/3/2017. Your application has two requests which I will address separately in this letter.

Although this diversion has been in place since the 1920's, it has never been authorized by either the Salmon-Challis National Forest or the Sawtooth National Forest. My staff has consulted with the Sawtooth NF and we could not locate any previous applications on file. The priority date for your water right of 1925 indicates that it does not predate the establishment of the Salmon and Sawtooth Forest Reserves in 1906.

The first request on your application is to utilize a motorized pump in Bowery Creek to pump water into your ditch for gravity fed irrigation water because high water destroyed your point of diversion this spring. You would use this option as a temporary fix. You have indicated that you have submitted an application to the Idaho Department of Water Resources for a secondary point of diversion from the East Fork of Salmon River on your private land.

As you are aware, the diversion and portions of the ditch are within the newly designated Jim McClure-Jerry Peak and Hemingway-Boulder Wilderness areas. Wilderness areas do not allow motorized or mechanized equipment. Due to the Wilderness designation I must deny your request to utilize a motorized pump at Bowery Creek.

The second request involves your plan to consult with an engineer, hydrologist, fish biologist and other needed specialists to develop a permanent remedy to your Bowery Creek point of diversion.

Because your application does not have a design as yet, I cannot accept your application. When/If you submit a proposal to rebuild the Bowery Creek diversion it is possible that your proposal would be denied based on FSM 2703.2 item 2b and item 3 (see enclosure) due to the option of diverting water from the East Fork of Salmon River on your private land.

I encourage you to consider all options for use of your water right, including options other than the Bowery Creek diversion on the National Forest.



Heather Mack

RECEIVED

2

AUG 02 2017

If you have any questions or would like to schedule a meeting with me, please contact Gail Baer, Diversion Coordinator, 208-756-5128, gbaer@fs.fed.us.

FOR WATERS RESOURCES
SOUTHERN REGION

Sincerely,

Charles A. Mark

CHARLES A. MARK
Forest Supervisor

Enclosure: FSM 2703.2

via E-mail
RECEIVED

AUG 01 2017

State of Idaho
Department of Water Resources

DEPT OF WATER RESOURCES
SOUTHERN REGION

RECOMMENDATION OF WATERMASTER

Application No: X81765
Water Right No: 72-216
Applicant Name: Mack

Watermaster's Recommendation:

a) ☐ I do not oppose approval of this application

b) ☒ I do not oppose approval of this application under the following terms:

diversions from EF Salmon River shall be limited to flows available at the original Bowery Ck POD and/or flows available at the confluence of Bowery Ck and EF Salmon River.

c) ☐ I oppose approval of this application(s) for the following reasons:

d) ☒ Additional comment:

Forfeiture of acres may be indicated but irrigation has resumed on some acres and there may be valid defense for the balance. 2015 aerial images show only 5 acres irrigated in NESW Sec 9. During 2017 I observed an additional 5-7 acres had been placed back under irrigation in NESW/SENE, to the west and south of the residence (middle pasture). Unfortunately I did not take photos and 2017 landsat images are supportive but not conclusive. However those acres should be protected. Applicant's statement that the north end of the property cannot usually be irrigated due to lack of water in Bowery Creek, is likely accurate and should be considered as a defense to forfeiture. Watermaster records show historic diversions at or near water right limit but ditch losses are significant. The addition of a pump station on the Bowery ditch enabled applicant to sprinkle the middle pastures the past 2 years. The south pasture is still flood irrigated. There still may not be adequate water for the north lands in many years.

Dated: August 1, 2017

Water District 170



Cindy Yenter, Watermaster