

State of Idaho
 Department of Water Resources
Permit to Appropriate Water

NO. 94-07389

Priority: November 07, 2001

Maximum Diversion Rate: 15.00 CFS

This is to certify, that GOLD CREEK MINES INC
 PO BOX 709
 WALLACE ID 83873

has applied for a permit to appropriate water from:

Source: GOLD CREEK

Tributary: SOUTH FORK COEUR D ALENE 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>
POWER	01/01 to 12/31	15.00 CFS

LOCATION OF POINT(S) OF DIVERSION:

GOLD CREEK NE1/4SE1/4 Sec. 4, Twp 47N, Rge 05E, B.M. SHOSHONE County

PLACE OF USE: POWER

Twp Rge Sec	NE				NW				SW				SE				
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
48N 05E 33															X		

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **June 01, 2022**.
2. Subject to all prior water rights.
3. Proof of application of water to beneficial use shall be submitted no sooner than December 1, 2021 and received no later than the beneficial use due date of June 1, 2022.
4. Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.
5. When diverting and using water in connection with this right, the right holder will allow at least 2.0 cfs to bypass the point of diversion and continue to flow down Gold Creek.
6. Prior to diversion under this right, a measuring location and device approved by the Department shall be installed by the right holder and maintained downstream of the point of diversion in T47N, R5E, S4 to monitor the 2.0 cfs bypass flow described in this right.
7. 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.
8. To facilitate determination of the volume of water beneficially used by this project, the right holder shall provide the Department a copy of the characteristic performance curve for the turbine(s) and a copy of the monthly power generation figures during the development period. These items shall be submitted with the required Proof of Beneficial Use statement. Failure to submit these items shall be cause for the Director to reject the Proof of Beneficial Use statement.

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9. The right holder shall install a measuring device that can be used to determine the instantaneous rate of flow of water through the system, or the right holder shall provide to the department a flow rate measurement or computation made by a certified water right examiner in accordance with actual system design and operation.
10. Use of water under this right shall be non-consumptive.
11. The term of this permit shall extend to June 1, 2037. Prior to the expiration of the term, the Director may issue an order canceling all or any part of the use authorized herein, may establish a new term, or may revise, delete, or add conditions under which the water right permit or subsequent water right license may be exercised. The order shall take effect on the date the current term expires. If the Director does not issue such an order, the term shall automatically extend to a length equal to the project's prior term and any prior conditions on the water right permit or subsequent water right license shall remain in effect.
12. If it has not been previously provided, the permit holder shall submit a copy of the FERC exemption order and a copy of the effective energy sales/purchase agreement for this project in conjunction with the Proof of Beneficial Use statement.
13. This right is subject to the provisions of Sections 42-205 through 42-210, Idaho Code, restricting the sale, transfer, assignment, or mortgage of this right. Failure to comply with these provisions is cause for immediate cancellation of this right.
14. The rights for the use of water acquired under this right shall be junior and subordinate to all other rights for the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.
15. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
16. 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 5th day of June, 20 17.

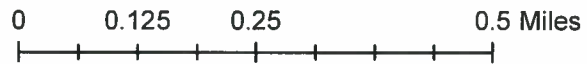
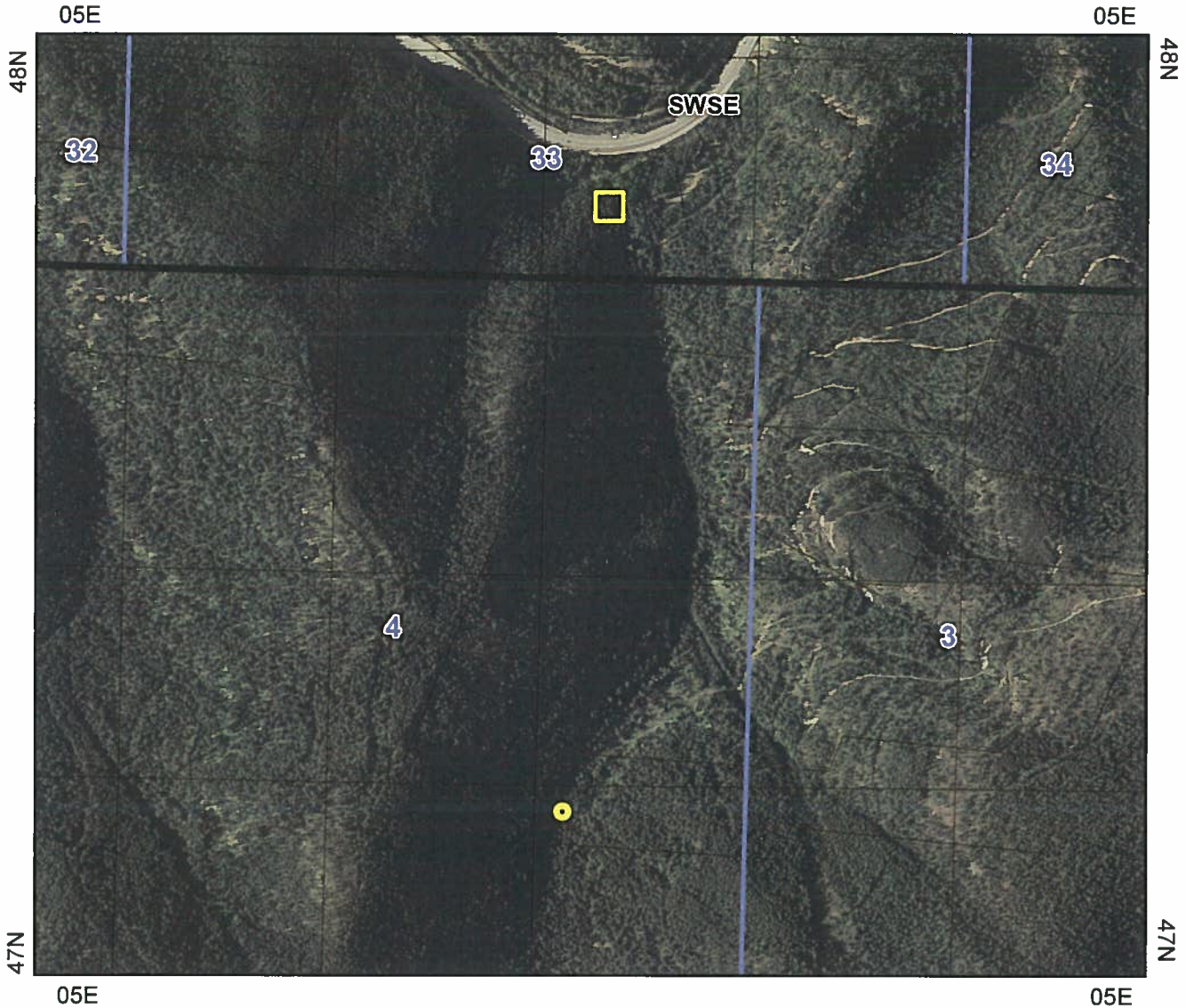

MORGAN CASE, Northern Regional Manager





State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

94-7389

This map depicts the POWER 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





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

June 6, 2017

GOLD CREEK MINES INC
PO BOX 709
WALLACE ID 83873

RE: Permit No. 94-7389

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.

As a permit owner you must commence the excavation or construction of the diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed. The date shown under condition no. 1 is the date when the project must be completed.

The Department will send you a 'Proof Due Notice' approximately 60 days prior to the above referenced date requesting you to file either a Proof of Beneficial Use form or a Request for Extension of Time form.

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 me at 208-762-2800.

Sincerely,



Morgan Case

Northern Regional Manager

Enclosure(s)

cc: MICHAEL K BRANSTETTER
STATE OF IDAHO, DEPT OF FISH & GAME
ANN Y VONDE, DEPUTY ATTORNEY GENERAL

CERTIFICATE OF SERVICE

I hereby certify that on June 6, 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. 94-7389

**MICHAEL K BRANSTETTER
HULL & BRANSTETTER CHARTERED
PO BOX 709
WALLACE ID 83873**

**GOLD CREEK MINES INC
PO BOX 709
WALLACE ID 83873**

**STATE OF IDAHO
DEPT OF FISH & GAME
2885 WEST KATHLEEN AVE
COEUR D ALENE ID 83815**

**ANN Y VONDE
DEPUTY ATTORNEY GENERAL
PO BOX 83720
BOISE ID 83720-0010**



**Natalie Steading
Technical Records Specialist**

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.

Case, Morgan

From: Michael Branstetter <branstetter83873@yahoo.com>
Sent: Monday, June 05, 2017 12:29 PM
To: Case, Morgan; Vonde, Ann
Cc: Siitari,Kiira
Subject: Re: Application for Permit 94-7389

Ms Case, Thanks for your modification of #1 to 2022 and removal of #16. Thus, all is fine. We appreciate your consideration and promptness. Mike B.

From: "Case, Morgan" <Morgan.Case@idwr.idaho.gov>
To: Michael Branstetter <branstetter83873@yahoo.com>; "Vonde, Ann" <ann.vonde@ag.idaho.gov>
Cc: "Siiitari,Kiira" <kiira.siiitari@idfg.idaho.gov>
Sent: Monday, June 5, 2017 12:20 PM
Subject: RE: Application for Permit 94-7389

Mr. Branstetter,

Thank you for your prompt review. The application for permit proposes a 2 year development period, which is why the beneficial use date on the draft was set for 2019. Our standard approach is to give the maximum development period of 5 years for off-stream hydropower projects, so we have a longer period of record on which to base the licensed volume. In this case, we will extend the proof due date to 2022, which will make it match up with the dates entered into Condition #3. We will remove all brackets from the conditions; those were intended to denote draft dates that will be finalized based on the date of permit approval.

Per the email from Ann Vonde, we will also remove Condition # 16, if that is agreeable to your client.

Thank you,

Morgan

*Morgan Case
IDWR Northern Regional Manager
7600 N Mineral Dr. Ste 100
Coeur d'Alene, ID 83815
208.762.2800*

From: Michael Branstetter [mailto:branstetter83873@yahoo.com]
Sent: Friday, June 02, 2017 10:13 AM
To: Case, Morgan <Morgan.Case@idwr.idaho.gov>; Vonde, Ann <ann.vonde@ag.idaho.gov>
Cc: Siitari,Kiira <kiira.siiitari@idfg.idaho.gov>
Subject: Re: Application for Permit 94-7389

Ms. Case, I have reviewed the Letter and draft Permit.

My only concern has to do with #1 and #3. The two terms seem to conflict. We would like 5 years (per 42-204) to submit proof of application to beneficial use. Could you review and clarify for me?

Also, #11 has June 1, 2037 in brackets.

Otherwise, the conditions are consistent with the Stipulation and we have no objections.

Please feel free to call me if you have questions. Thanks, Mike B.

From: "Case, Morgan" <Morgan.Case@idwr.idaho.gov>

To: "Vonde, Ann" <ann.vonde@ag.idaho.gov>; "branstetter83873@yahoo.com" <branstetter83873@yahoo.com>

Cc: "Siitari,Kiira" <kiira.sitari@idfg.idaho.gov>

Sent: Thursday, June 1, 2017 11:28 AM

Subject: Application for Permit 94-7389

All:

The attached letter will go out in today's mail. I wanted to send it out electronically to give you sufficient time to review the draft permit. Please let me know if you have any questions.

Morgan

Morgan Case

IDWR Northern Regional Manager

7600 N Mineral Dr. Ste 100

Coeur d'Alene, ID 83815

208.762.2800



Virus-free. www.avg.com

Case, Morgan

From: Case, Morgan
Sent: Thursday, June 01, 2017 11:28 AM
To: Vonde, Ann; 'branstetter83873@yahoo.com'
Cc: 'Siitari,Kiira'
Subject: Application for Permit 94-7389
Attachments: DOC075.pdf

All:

The attached letter will go out in today's mail. I wanted to send it out electronically to give you sufficient time to review the draft permit. Please let me know if you have any questions.

Morgan

*Morgan Case
IDWR Northern Regional Manager
7600 N Mineral Dr. Ste 100
Coeur d'Alene, ID 83815
208.762.2800*

Case, Morgan

From: Vonde, Ann <ann.vonde@ag.idaho.gov>
Sent: Monday, June 05, 2017 10:55 AM
To: Case, Morgan; branstetter83873@yahoo.com
Cc: Siitari,Kiira
Subject: RE: Application for Permit 94-7389

Hi Morgan,

#16 may not be necessary as there wasn't really a side agreement between IDFG and Gold Creek. We just stipulated to conditions. But it's up to you if you want to take it off or just leave it. Other than that it looks good from IDFG's perspective.

Thanks,

Ann Vonde

Deputy Attorney General
Natural Resources Division
Office of Attorney General
P.O. Box 83720
Boise ID 83720-0010
(208) 334-4141
fax (208) 854-8072
ann.vonde@ag.idaho.gov

From: Case, Morgan [mailto:Morgan.Case@idwr.idaho.gov]
Sent: Thursday, June 01, 2017 12:28 PM
To: Vonde, Ann; branstetter83873@yahoo.com
Cc: Siitari,Kiira
Subject: Application for Permit 94-7389

All:

The attached letter will go out in today's mail. I wanted to send it out electronically to give you sufficient time to review the draft permit. Please let me know if you have any questions.

Morgan

Morgan Case
IDWR Northern Regional Manager
7600 N Mineral Dr. Ste 100
Coeur d'Alene, ID 83815
208.762.2800



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

June 1, 2017

GOLD CREEK MINES INC
PO BOX 709
WALLACE, ID 83873

ANN Y VONDE
DEPUTY ATTORNEY GENERAL
PO BOX 83720
Boise, ID 83720-0010

MICHAEL BRANSTETTER
HULL & BRANSTETTER
416 RIVER ST
PO BOX 709
WALLACE, ID 83873-0709

Re: Stipulation for Withdrawal of Protest in the Matter of Application for Permit 94-7389

Dear Parties:

The Idaho Department of Water Resources ("Department") acknowledges receipt of the Notice of Stipulation and Joint Motion to Approve Conditions ("stipulation") on April 24, 2017. The stipulation was signed by counsel for the Idaho Department of Fish and Game ("IDFG") and a counsel for Gold Creek Mines, Inc. The stipulation withdraws the protest from IDFG, if certain conditions are included in a permit issued for right no. 94-7389.

The stipulation included a motion for an order by the Department approving the stipulation and confirming that the conditions will be included in any approval of the application. In any conditional withdrawal, the Department must review the agreement to ensure that conditions to be included in an approval are acceptable. Rule 612 of the Department's Rules of Procedure (IDAPA 37.01.01) addresses review of settlements. Rule 612 directs the presiding officer in a contested matter to prescribe procedures to consider a settlement. Because all protests are resolved, the Department is prepared to issue a permit approving the application with the conditions as stipulated by the Department, with some minor language modifications.

All parties will have the opportunity to review the Department's draft permit (enclosed) to ensure the conditions of their protest withdrawal are met. If you have any objections to the conditions, as proposed in the draft permit, please contact me within 14 days. If no objections are raised, the Department will issue the permit as drafted.

If you have any questions, please contact me at 208.762.2800.

Sincerely,


Morgan Case
Northern Regional Manager

Enclosure: Draft Permit

State of Idaho
 Department of Water Resources
Permit to Appropriate Water

NO. 94-07389

Priority: November 07, 2001

Maximum Diversion Rate: 15.00 CFS

This is to certify, that GOLD CREEK MINES INC
 PO BOX 709
 WALLACE ID 83873

has applied for a permit to appropriate water from:

Source: GOLD CREEK **Tributary:** SOUTH FORK COEUR D ALENE 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>
POWER	01/01 to 12/31	15.00 CFS

LOCATION OF POINT(S) OF DIVERSION:

GOLD CREEK NE1/4SE1/4 Sec. 4, Twp 47N, Rge 05E, B.M. SHOSHONE County

PLACE OF USE:

Twp Rge Sec	POWER												Totals				
	NE				NW				SW					SE			
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
48N 05E 33															X		

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **June 01, 2019**.
2. Subject to all prior water rights.
3. Proof of application of water to beneficial use shall be submitted no sooner than <permit issue date plus 4.5 years> and received no later than the beneficial use due date of <permit issue date plus 5 years>.
4. Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.
5. When diverting and using water in connection with this right, the right holder will allow at least 2.0 cfs to bypass the point of diversion and continue to flow down Gold Creek.
6. Prior to diversion under this right, a measuring location and device approved by the Department shall be installed by the right holder and maintained downstream of the point of diversion in T47N, R5E, S4 to monitor the 2.0 cfs bypass flow described in this right.
7. 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.
8. To facilitate determination of the volume of water beneficially used by this project, the right holder shall provide the Department a copy of the characteristic performance curve for the turbine(s) and a copy of the monthly power generation figures during the development period. These items shall be submitted with the required Proof of Beneficial Use statement. Failure to submit these items shall be cause for the Director to reject the Proof of Beneficial Use statement.
9. The right holder shall install a measuring device that can be used to determine the instantaneous rate of flow of water through the system, or the right holder shall provide to the department a flow rate measurement or computation made by a certified water right examiner in accordance with actual system design and operation.

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 94-07389

10. Use of water under this right shall be non-consumptive.
11. The term of this permit shall extend to <June 1, 2037>. Prior to the expiration of the term, the Director may issue an order canceling all or any part of the use authorized herein, may establish a new term, or may revise, delete, or add conditions under which the water right permit or subsequent water right license may be exercised. The order shall take effect on the date the current term expires. If the Director does not issue such an order, the term shall automatically extend to a length equal to the project's prior term and any prior conditions on the water right permit or subsequent water right license shall remain in effect.
12. If it has not been previously provided, the permit holder shall submit a copy of the FERC exemption order and a copy of the effective energy sales/purchase agreement for this project in conjunction with the Proof of Beneficial Use statement.
13. This right is subject to the provisions of Sections 42-205 through 42-210, Idaho Code, restricting the sale, transfer, assignment, or mortgage of this right. Failure to comply with these provisions is cause for immediate cancellation of this right.
14. The rights for the use of water acquired under this right shall be junior and subordinate to all other rights for the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.
15. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
16. The diversion and use of water described in this right may be subject to additional conditions and limitations agreed to by the protestant and the right holder under a separate agreement to which the Department is not a party. Because the Department is not a party, the Department is not responsible for enforcement of any aspect of the agreement not specifically addressed in other conditions herein. Enforcement of those portions of the agreement not specifically addressed in other conditions shall be the responsibility of the protestant and the water right holder.
17. 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 _____ day of _____, 20_____.

MORGAN CASE, Northern Regional Manager