

RECEIVED

DEC 04 2013

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT
To appropriate the public waters of the State of Idaho

Ident. No. 74-16008

Department of Water Resources

1. Name of applicant(s) Eastern Region Lynn HerbstPhone 208-756-2584Name connector (check one): ☐ and ☐ or ☐ and/orMailing address: PO Box 21City TendoyState ID Zip 83468

Email: _____

2. Source of water supply Springs/Waste Water which is a tributary of Agency Creek

3. Location of point(s) of diversion:

Twp	Rge	Sec	Govt Lot	¼	¼	¼	County	Source	Local name or tag #
19N	24E	29		SW	NE	NW	Lemhi	Springs/Waste Water	
19N	24E	20		NW	SE	SW	Lemhi	Springs/Waste Water	
19N	24E	20		SW	NE	SW	Lemhi	Springs/ Waste Water	Injection
19N	24E	20		SW	NE	SW	Lemhi	Springs/Waste Water	Rediversion

4. Water will be used for the following purposes:

Amount 3.17 for Irrigation purposes from 03/15 to 11/15 (both dates inclusive)
(cfs or acre-feet per year)Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year)Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year)Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year)5. Total quantity to be appropriated is (a) 3.17 cubic feet per second (cfs) and/or (b) _____ acre-feet per year (af).

6. Proposed diverting works:

a. Describe type and size of devices used to divert water from the source. Ditch, Headgate, existing
Diversion, fish screen

b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet. If the reservoir will be filled more than once each year, describe the refill plan in item 11.

For dams 10 feet or more in height OR reservoirs with a total storage capacity of 50 acre-feet or more, submit a separate Application for Construction or Enlargement of a New or Existing Dam. Application required? ☐ Yes ☐ No

c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.

d. Is ground water with a temperature of greater than 85°F being sought? ☐ Yes ☐ Noe. If well is already drilled, when? _____; drilling firm _____;
Well was drilled for (well owner) _____; Drilling Permit No. _____

7. Description of proposed uses (if irrigation only, go to item 8):

a. Hydropower; show total feet of head and proposed capacity in kW. _____

b. Stockwatering; list number and kind of livestock. _____

c. Municipal; show name of municipality or the applicant's qualifications as a municipal provider. _____

d. Domestic; show number of households _____

e. Other; describe fully. _____

74-16008

EXHIBIT 204

8. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
19N	24E	17			0.1					9.7	20.3		3.1	30.7			1.3		65.2
19N	24E	20					33.1	14.7	11.7	27.4	5.3	1.2							93.4

Total number of acres to be irrigated: 158.6

9. Describe any other water rights used for the same purposes as described above. Include water delivered by a municipality, canal company, or irrigation district. If this application is for domestic purposes, do you intend to use this water, water from another source, or both, to irrigate your lawn, garden, and/or landscaping? 74-740, 74-741, 74-742

74-7147

10. a. Who owns the property at the point of diversion? Lynn Herbst
- b. Who owns the land to be irrigated or place of use? Lynn Herbst
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: 74-740, 74-741, 74-742, 74-747, 74-7447
11. Describe your proposal in narrative form, and provide additional explanation for any of the items above. Attach additional pages if necessary. see attachment

12. Time required for completion of works and application of water to proposed beneficial use is 1 years (minimum 1 year).
13. MAP OF PROPOSED PROJECT REQUIRED - Attach an 8½" x 11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.

The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.

Lynn A. Herbst

Signature of Applicant

Signature of Applicant

Print Name (and title, if applicable)

Print Name (and title, if applicable)

For Department Use:

Received by Blake Date 12/4/2013 Time _____ Preliminary check by _____

Fee \$ 1370.00 Received by Blake Receipt No. ED39348 Date _____

74-16008

The water I am applying for enters my existing irrigation ditch on my property. This ditch enters Agency Creek and directly across is rediverted through a headgate and fish screen.

No other means to return to the Lemhi River.

Agency Creek is not part of the Lemhi Water District. This water has never been delivered to the Lemhi Water District

This water has always been used on the described lands in this application. There is no other water user down stream on Agency Creek

Cox, Sharla

From: Cox, Sharla
Sent: Monday, December 23, 2013 3:22 PM
To: 'Recorder Herald (rhlegals@custertel.net)'
Subject: AMENDED - Legal Notice for your paper
Attachments: Recorder Herald.doc

Contacts: Recorder Herald

Please use the enclosed legal notice verses the one I sent you this morning. If you have any questions, please feel free to contact me. Also, I will send up a fax.

Thank you.

Sharla

*Sharla Cox
Administrative Assistant
Idaho Dept of Water Resources
900 N Skyline Dr. Ste A.
Idaho Falls ID 83402
sharla.cox@idwr.idaho.gov
208-525-7161 phone
208-525-7177 fax*

A COPY WILL BE FAXED TO YOU ALSO. Thank you. Sharla
December 23, 2013

208-756-2222

AMENDED

Legal Notice Department
Recorder Herald
PO Box 310
Salmon ID 83467

RE: Legal Ad for your paper

Dear LEGAL NOTICE DEPARTMENT:

Enclosed you will find a legal notice which we wish to have published in your newspaper on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before January 21, 2014. Your cooperation is appreciated.

Sincerely

Sharla Cox
Idaho Department of Water Resources
900 N Skyline Dr Ste A
Idaho Falls ID 83402
208-525-7161 – telephone
208-525-7177 – Fax
Sharla.cox@idwr.idaho.gov

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

74-16008
LYNN A HERBST
PO BOX 21
TENDON, ID 83468
Points of Diversion
SWNENW S29 T19N R24E
NWSESW S20 T19N R24E
SWNESW S20 T19N R24E
SWNESW S20 T19N R24E
LEMHI County
Source SPRINGS / WASTEWATER Tributary AGENCY CREEK
Use: IRRIGATION
03/15 to 11/15 3.17 CFS
Total Diversion: 3.17 CFS
Date Filed: 12/4/2013
Place Of Use: IRRIGATION
T19N R24E S17 SWNE SENW NESW SWSW SESW SWSE
T19N R24E S20 NENW NWNW SWNW SENW NESW NWSW
Total Acres: 158.6

This application proposes the diversion and use of water from springs tributary to Agency Creek a tributary of the Salmon Wild & Scenic River. The decreed minimum stream flow rights for the federal Wild & Scenic Rivers are subordinate to certain categories of water use and to specific amounts of water use established after the minimum stream flow. The water use proposed in this application will benefit from the subordination provision because the diversion rate 3.17 cfs and 158.6 acres will be applied to the subordination amounts specified in the decree for the Wild & Scenic River listed above.

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Eastern Region office at (208) 525-7161. 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, Eastern Region, 900 N Skyline Dr Ste A, Idaho Falls ID 83402 together with a protest fee of \$25.00 for each application on or before January 21, 2014. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

Published on January 2 and 9, 2014



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N Skyline Dr., Ste A, Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 FAX: (208) 525-7177 www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

December 23, 2013

GARY SPACKMAN
Director

LYNN A HERBST
PO BOX 21
TENDROY, ID 83468

Application For Permit No. 74-16008

Dear Applicant(s):

The Department of Water Resources has received your water right application. Please refer to the number referenced above in all future correspondence regarding this application.

A legal notice of the application has been prepared and is scheduled for publication in the RECORDER HERALD on January 2 and 9, 2014. Protests to this application may be submitted for a period ending ten (10) days after the second publication.

If the application is protested, you will be sent a copy of each protest. All protests must be resolved before the application can be considered for approval. If the protest(s) cannot be resolved voluntarily, the Department will conduct a conference and/or hearing on the matter.

If the application is not protested, the Department will process your application and notify you of any action taken on the application. If your application is approved, the Department will send you a copy of the permit.

Please contact this office if you have any questions regarding the application.

Sincerely,

Sharla Cox
Administrative Assistant

Cox, Sharla

From: Cox, Sharla
Sent: Monday, December 23, 2013 11:39 AM
To: 'Recorder Herald (rhlegals@custertel.net)'
Subject: Legal Notice for your paper
Attachments: Recorder Herald.doc

Contacts: Recorder Herald

Sharla

*Sharla Cox
Administrative Assistant
Idaho Dept of Water Resources
900 N Skyline Dr. Ste A.
Idaho Falls ID 83402
sharla.cox@idwr.idaho.gov
208-525-7161 phone
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The following application(s) have been filed to appropriate the public waters of the State of Idaho:

74-16008

LYNN A HERBST

PO BOX 21

TENDON, ID 83468

Points of Diversion

SWNENW S29 T19N R24E

NWSESW S20 T19N R24E

SWNESW S20 T19N R24E

SWNESW S20 T19N R24E

LEMHI County

Source SPRINGS Tributary AGENCY CREEK

Use: IRRIGATION

03/15 to 11/15 3.17 CFS

Total Diversion: 3.17 CFS

Date Filed: 12/4/2013

Place Of Use: IRRIGATION

T19N R24E S17 SWNE SENW NESW SWSW SESW SWSE

T19N R24E S20 NENW NWNW SWNW SENW NESW NWSW

Total Acres: 158.6

This application proposes the diversion and use of water from springs tributary to Agency Creek a tributary of the Salmon Wild & Scenic River. The decreed minimum stream flow rights for the federal Wild & Scenic Rivers are subordinate to certain categories of water use and to specific amounts of water use established after the minimum stream flow. The water use proposed in this application will benefit from the subordination provision because the diversion rate 3.17 cfs and 158.6 acres will be applied to the subordination amounts specified in the decree for the Wild & Scenic River listed above.

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GARY SPACKMAN, Director

Published on January 2 and 9, 2014



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N Skyline Dr., Ste A, Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 FAX: (208) 525-7177 www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

December 18, 2013

Water Resource Board
PO Box 83720
Boise ID 83720

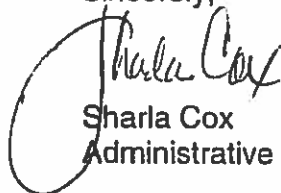
Application to Permit No. 74-16008

Water Resource Board:

The Department of Water Resources is seeking written comment and/or recommendations from your agency regarding the above referenced water right application. A copy of the application is enclosed for your reference.

Please contact this office if you have any questions regarding the application.

Sincerely,



Sharla Cox
Administrative Assistance

Enclosure(s)



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N Skyline Dr., Ste A, Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 FAX: (208) 525-7177 www.idwr.idaho.gov

December 18, 2013

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

Rick Sager
Water District 74
985 Hwy 28
Salmon ID 83467

RE: Application for Permit No. 74-16008

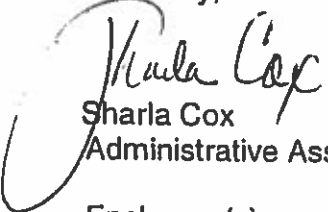
Dear Watermaster:

A copy of the above referenced application is enclosed. Please review the application, then complete the enclosed recommendation form and return it to this office within 21 days of the date of this letter.

IDWR's regional offices can finish reviewing an unprotested application as soon as the protest period has past. Your prompt response to this request will ensure that your recommendation can be considered during regional review. If IDWR has not received your written recommendation within 21 days from the date of this letter, IDWR will presume that you do not oppose approval of the application and that you have no comments for IDWR to consider.

Please contact this office if you have any questions regarding the application.

Sincerely,


Sharla Cox
Administrative Assistant

Enclosure(s)



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N Skyline Dr., Ste A, Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 FAX: (208) 525-7177 www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

December 18, 2013

Idaho Department of Environmental Quality
900 North Skyline, Suite B
Idaho Falls, ID 83402

Application to Permit No. 74-16008 and 22-14103

DEQ:

The Department of Water Resources is seeking written comment and/or recommendations from your agency regarding the above referenced water right application. A copy of the application is enclosed for your reference.

This office can publish notice of the application as soon as the initial review is completed; therefore, your prompt response to this request is appreciated. If your agency desires to formally protest the approval of this application, you may do so after the notice is published by filing a written protest along with a \$25.00 filing fee within 10 days after final publication.

Please contact this office if you have any questions regarding the application.

Sincerely,

Sharla Cox
Administrative Assistance

Enclosure(s)



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N Skyline Dr., Ste A, Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 FAX: (208) 525-7177 www.idwr.idaho.gov

December 18, 2013

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

Idaho Department of Fish & Game
Attn: Tom Bassista
4279 Commerce Way
Idaho Falls ID 83401

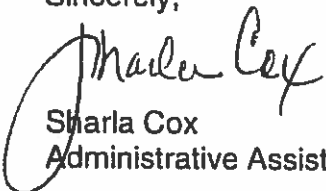
Application to Permit No. 74-16008 and 22-14103

IDF&G:

The Department of Water Resources is seeking written comment and/or recommendations from your agency regarding the above referenced water right application. A copy of the application is enclosed for your reference.

Please contact this office if you have any questions regarding the application.

Sincerely,



Sharla Cox
Administrative Assistance

Enclosure(s)



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N Skyline Dr., Ste A, Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 FAX: (208) 525-7177 www.idwr.idaho.gov

December 18, 2013

C.L. "BUTCH" OTTER
Governor

Lynn Herbst
PO Box 21
Tendoy ID 83468

GARY SPACKMAN
Director

RE: Application to Appropriate Water in the Upper Salmon River Basin 74-16008
Dear Water Right Applicant:

The Department of Water Resources' (IDWR) records show you filed an application to establish a new use of water in the upper Salmon River basin. Idaho Code § 42-203A(5) requires IDWR to determine whether each water right application satisfies all the criteria necessary for appropriating water in Idaho. One statutory criterion requires IDWR to determine the local public interest relative to the proposed water use. Idaho Code § 42-202B(3) defines the local public interest as "the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource." The local public interest has many facets, including the effects of a proposed water use on aquatic habitat for fish and wildlife resources.

The upper Salmon River basin is home to stocks of chinook salmon, sockeye salmon, steelhead trout, and bull trout, all of which are listed as threatened or endangered under the Endangered Species Act (ESA). Since the early 1990s, local water users, conservation districts, and federal and state agencies have cooperated to implement conservation measures intended to protect and restore habitat for ESA-listed species in the upper Salmon River watershed. For example, at the request of local water users the Idaho Legislature directed the Idaho Water Resource Board (IWRB) to establish a minimum stream flow in the lower Lemhi River for fish passage. The minimum stream flow is maintained through a water supply bank and temporary or permanent acquisition of additional water supplies by willing buyers from willing sellers.

Pursuant to the Snake River Water Rights Agreement of 2004, Idaho has been developing a long term conservation plan for the benefit of ESA-listed species in the Lemhi River basin. Improving conditions in flow-limited river reaches and streams is a fundamental component of the Lemhi plan. In addition to IDWR, numerous state agencies, including the Office of Species Conservation, Idaho Department of Fish and Game, Idaho Department of Environmental Quality, Idaho Soil and Water Conservation Commission, and Idaho Department of Lands, have committed and continue to commit significant resources toward this objective under the following programs:

- Columbia Basin Water Transactions Program
- National Marine Fisheries Service Pacific Coastal Salmon Recovery Fund
- U. S. Fish & Wildlife Service Aquatic Species Conservation Fund
- Salmon and Clearwater River Basins Habitat Fund
- 2008 Columbia Basin Fish Accords

Letter to Upper Salmon River Basin Water Right Applicants

A myriad of habitat restoration projects are being constructed/implemented in other parts of the upper Salmon River basin. These projects have been coordinated with the local communities and water users through the Upper Salmon River Basin Watershed Program and predecessor programs, including the model watersheds. Furthermore, the Snake River Water Rights Agreement of 2004 contemplates the development of additional conservation plans for other upper Salmon River basin watersheds. Accordingly, the draft Comprehensive State Water Plan under revision by the IWRB contains policies for the Salmon River basin that focus on the protection and restoration of instream habitat for ESA-listed species through voluntary participation in conservation programs.

Because of the ESA-listed species recovery efforts in the upper Salmon River basin, IDWR must determine on a case-by-case basis whether it is in the local public interest to authorize proposed water uses that would further deplete flow-limited stream reaches.

Pursuant to Rule 40.04.c of the Water Appropriation Rules (IDAPA 37.03.08.040.04.c), the applicant has the ultimate burden of persuasion regarding the items that must be evaluated in connection with each water right application. Before proceeding further with your application, IDWR requests you submit additional information about how your proposal invokes any local public interest concerns for ESA species recovery. Within 30 days, please submit any additional information you believe IDWR may need to evaluate and determine the local public interest in the water you propose to divert and use. If IDWR has not received a response from you within 30 days, IDWR will assume you have no comment regarding the local public interest, and processing of your application will resume with the information currently on file. Processing will include public notice and the potential for formal protests by other interested parties. Applications that are not in the local public interest will be denied. If you wish to withdraw your application before it is processed, please notify IDWR in writing.

If you have any questions, please call me at 208-525-7161, or email me at james.cefalo@idwr.idaho.gov.

Sincerely,



James Cefalo
Water Resources Program Manager

Enclosure

JC:sc