

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 77-14361

Priority: June 01, 2015

Maximum Diversion Rate: 0.11 CFS

This is to certify, that SALMON RIVER TOURS CO
PO BOX 7
NORTH FORK ID 83466

has applied for a permit to appropriate water from:

Source: LEMHI CREEK**Tributary:** SALMON RIVER

and a permit is APPROVED for development of water as follows:

BENEFICIAL USE

COMMERCIAL

PERIOD OF USE

01/01 to 12/31

RATE OF DIVERSION

0.10 CFS

IRRIGATION

03/15 to 10/31

0.01 CFS

LOCATION OF POINT(S) OF DIVERSION:

LEMHI CREEK SW¼SW¼ Sec. 29, Twp 25N, Rge 09E, B.M. IDAHO County

PLACE OF USE: COMMERCIAL

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
25N	09E	29												X					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	
25N	09E	29											0.1	0.1					0.2

Total Acres: 0.2

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **May 01, 2017**.
2. Subject to all prior water rights.
3. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 3.0 afa per acre for irrigation of the lands above.
4. Prior to diversion of water under this right, the right holder shall install a lockable device, subject to the approval of the Department, in a manner that will provide suitable control of the diversion.
5. The right holder shall install or construct a straight length of conduit or ditch suitable for installation of a device for measuring the entire flow of water being diverted in connection with this right. If the right holder uses conduit, the straight length of conduit shall be at least fifteen times the diameter of the conduit and shall be above ground or otherwise easily accessible.
6. Upon specific notification by the Department, the right holder shall install and maintain acceptable measuring device(s), including data logger(s), at the authorized point(s) of diversion, in accordance with Department specifications.

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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. 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.
9. Prior to diversion and use of water under this approval, the right holder shall obtain Forest Service authorization necessary to access the point of diversion or place of use or to convey water across federal land.
10. This right does not grant any right-of-way or easement across the land of another.
11. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.
12. Property is also known as Homestead Entry Survey No.707.
13. The point of diversion and part of the place of use for this water right are unsurveyed land. The quarter-quarter description has been protracted from the adjacent public land survey.
14. Commercial use is for lodge and three cabins for maximum of 30 people with bathrooms and restaurant service.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code.

Signed this 26th day of April, 2016.


Nick Miller
Manager, IDWR Western Region

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

77-14361

This map depicts the COMMERCIAL and 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 0.035 0.07 0.14 Miles





State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

April 26, 2016

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

SALMON RIVER TOURS CO
PO BOX 7
NORTH FORK ID 83466

RE: Permit No.77-14361

Permit Approval Notice

Dear Permit Holder:

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

The permit is a PRELIMINARY ORDER issued by the Department pursuant to Section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

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

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

Also, please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at (208)334-2190.

Sincerely,

A handwritten signature in black ink, appearing to read "Nick Miller for".

Nick Miller
Western Regional Manager

Enclosure(s)

cc: RACINE OLSON NYE BUDGE & BAILEY CHTD

CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2016 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. 77-14361

**RACINE OLSON NYE BUDGE & BAILEY CHTD
C/O RANDALL C BUDGE
PO BOX 1391
POCATELLO ID 83204-1391**

**SALMON RIVER TOURS CO
PO BOX 7
NORTH FORK ID 83466**



**Rachel Neely
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.

Merriman, Danielle

From: Spencer, Steven M -FS [sspencer@fs.fed.us]
Sent: Monday, March 21, 2016 2:51 PM
To: Merriman, Danielle
Subject: RE: Application 77-14361

Danie,

Thank you for talking with me on the phone about this matter a few moments ago. As we discussed use of IDWR standard condition 939 would be appropriate as long as the applicant understands that Forest Service approval is not certain but nevertheless mandatory before any activity on National Forest System (NFS) land occurs. I know that Molly Puchlerz of the Forest Service is working with him on this matter. The major complication is that the NFS land involved is in the Salmon River W&S River Corridor. I can't prognosticate a possible time-frame for a decision on the occupancy.

If you have any questions about this please contact me.

Steve

From: Merriman, Danielle [mailto:Danielle.Merriman@idwr.idaho.gov]
Sent: Monday, March 21, 2016 2:13 PM
To: Spencer, Steven M -FS <sspencer@fs.fed.us>
Subject: RE: Application 77-14361

Hi Steve,

Thank you for your comments regarding Application for Permit 77-14361. Although the application states that the applicant is the owner of the land at the POD, it is known that the land is, in fact, owned by the Payette National Forest. In the backfile for the Application, there is a memo dated 11/30/15 of a conversation between Mike McClain and I that discusses the ownership of the land. On February 10, 2016, Mr. McClain submitted a letter (also in the backfile) that states that he has been in contact with Anthony Botello of the Krassel District of the Forest Service regarding applying for a special use permit for the project.

Based on similar filings, such as Application for Permit 77-14359, the Department has been inclined to approve Applications for Permit that are on Forest Service land with condition 939 that states, "Prior to diversion and use of water under this approval, the right holder shall obtain Forest Service authorization necessary to access the point of diversion or place of use or to convey water across federal land." Would including this condition be sufficient to address the Forest Service's concerns regarding this Application for Permit?

Thank you for reviewing this Application. Please let me know if you have any questions about the request and your thoughts on potential conditioning.

Best,

Danie Merriman
Water Resource Agent
Idaho Department of Water Resources
Phone: (208) 334-2190
Fax: (208) 334-2348

Merriman, Danielle

From: Spencer, Steven M -FS [sspencer@fs.fed.us]
Sent: Friday, March 18, 2016 2:11 PM
To: Merriman, Danielle
Cc: Puchlerz, Molly E -FS; Becker, Holly -FS
Subject: Application 77-14361
Attachments: HES 707 - Lemhi Bar.pdf; HES 707 and Lemhi Creek.docx

Danielle,

I coordinate water right business for the Forest Service in Idaho. We have reviewed Application For Permit 77-14361 and have a concern about the location of the POD. The entry in number 10.a. of the application indicates that the applicant owns the property at the POD. In contrast the source of water in number 2 is Lemhi Creek and the response in number 11 is 'Homestead Entry Survey No. 707'.

Information available to us shows on the HES 707 Plat that Lemhi Creek does not flow through HES 707. In other words Lemhi Creek is on National Forest System (NFS) land. See attachments 1 and 2. Our surveyor reviewed the survey notes for HES 707. His comments are below with the conclusion that Lemhi Creek is outside of HES 707.

" . . . it is pretty obvious from looking at the original 1921 GLO plat that the creek never enters the patent. The field notes confirm this as well. There were no calls to the creek, and if the creek would have crossed the boundary lines, the original surveyor would have called that in his notes. In the notes, the mouth of the creek is SE, 50 links from the USLM. Corner 1 is SE, 29.3 links from the USLM. Thus the creek is SE, 20.7 links from Corner 1. Clearly on the north side of the creek.

The original surveyor also states that one of the bearing trees for Corner 1 is on the south side of Lemhi Creek. He would not have stated this in his notes unless he had to cross the creek to get to the bearing tree. Another indicator that Corner 1 is on the north side of the creek.

As for the conditions now, I cannot say as we have not visited the site. However, in 1966, everything was found as per the 1921 record. The original stone was found, as well as the original bearing trees. Even though the creek was not called for in the 1966 record, if the creek would have moved to be within the claim, the original monument and bearing trees would not have been located as they would have been washed away with the moving of the creek. Based upon that fact, my guess would be that the creek had not moved substantially and is still outside the patented ground."

The applicant is not authorized to occupy and use NFS land for this purpose. We are in contact with the owner of Salmon River Tours about this matter and the need for proper authorization of this new POD on NFS land. This will be a complicated matter because this area is within the Salmon River Wild and Scenic River Corridor.

For these reasons we are requesting pursuant to Idaho Water Appropriation Rule 37.03.08, also known as Rule 45, that processing of Application For Permit 77-14361 cease because the applicant does not have legal access to NFS land to construct and operate the proposed project. In addition, because the POD in question is on NFS land within Salmon Wild & Scenic River Corridor there is an obvious impediment preventing a rapid decision by the Forest Service for the authorization necessary for successful completion of the project.

If you have any questions about this matter please contact me.

Thank you,

Steve



Steven M. Spencer
Water Use Specialist
Forest Service
Intermountain Region

p: 208-365-7055

sspencer@fs.fed.us

1805 Hwy 16 Rm 5
Emmett, ID 83617

www.fs.usda.gov



Caring for the land and serving people

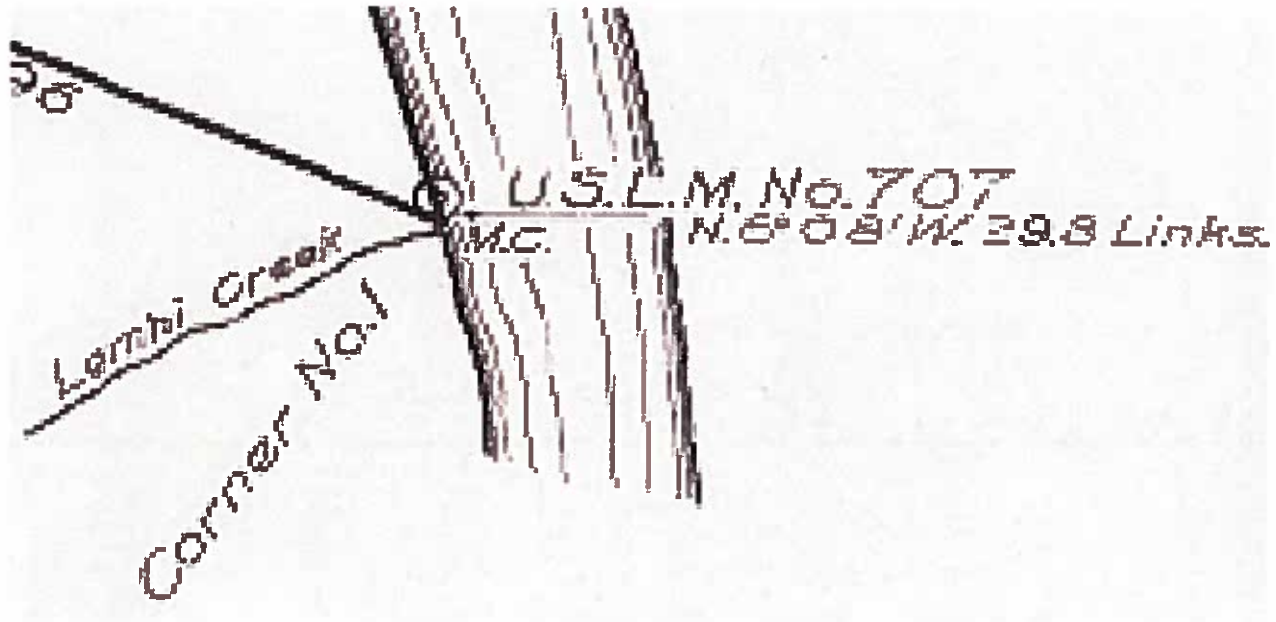
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RECEIVED

MAR 21 2016

WATER RESOURCES
WESTERN REGION

from these blown up views of the HES 707 Map that Lemhi Creek does not flow through HES 707.



MAR 1 1921 MAR 2 1921

WATER RESOURCES WATER RESOURCES
WESTERN REGION WESTERN REGIONSurvey accepted Oct. 23, 1921
General Land Office

Plat of
**HOMESTEAD
ENTRY SURVEY**
No. 707 PAIENED
in the
IDAHO
NATIONAL FOREST

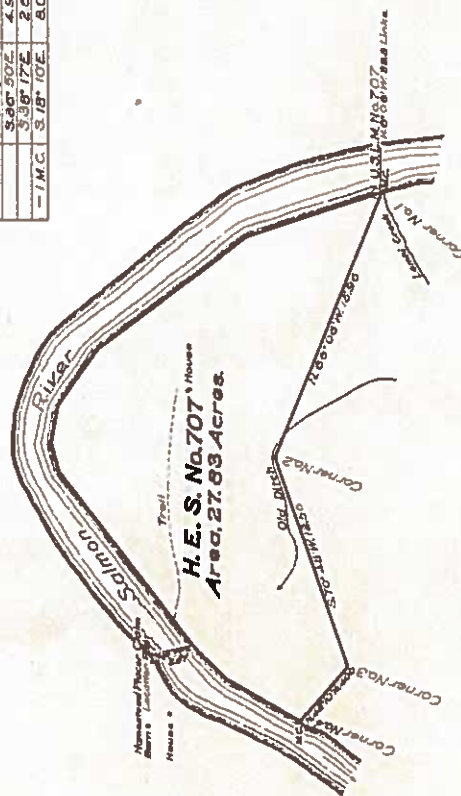
Approximate Section 29.
T. 25 N., R. 9 E.
Unsurveyed.
of the

BOISE BASE AND MERIDIAN.
IDAHO.

This plat of Homestead Entry Survey
No. 707 State of Idaho
is strictly conformable to the field notes
thereof on file in this office, which
have been examined and approved.
U.S. Surveyor General's Office
Boise, Idaho, May 13, 1921.

Edward Hadden
U.S. Surveyor General

Course	Distance
4 M.C. -	4.80
N 28° 37' E	2.88
N 43° 58' E	12.67
N 58° 29' E	1.77
N 79° 41' E	2.10
S 79° 58' E	3.00
S 55° 52' E	3.01
S 96° 28' E	2.98
S 66° 50' E	2.97
S 38° 17' E	2.97
- 1 M.C.	8.05



T. 25 N., R. 9 E.
Unsurveyed.
Approximate Section 29.

SCALE: 5 chains to 1 inch

Act of June 11, 1906	Act of May 30, 1920
List No. 4-2343	Dated February 16, 1918
Latitude 45° 29' 22" N.	Observations of
Longitude 115° 29' 30" W.	House
Mean Mag. Decl. 20° 45' E.	

H. E. Survey No.	707	Area in Acres
By Section		Conflicts
By Section		
By Section		
By Section		
Total	27.83	

Survey Designated	By whom Surveyed	When Surveyed	When Surveyed	Date of Approval
H. E. S. No. 707	Marshall S. Wright, Sue U.S. Forest Service	1920	Completed	May 13, 1921

RECEIVED

MAR 14 2016

WATER RESOURCES
WESTERN REGION

AFFIDAVIT OF PUBLICATION

The following application has been filed to appropriate the public waters of the State of Idaho:

77-14361

SALMON RIVER TOURS CO
PO BOX 7
NORTH FORK, ID 83466
Point of Diversion SWSW S29
T25N R09E IDAHO County
Source LEMHI CREEK Tributary
SALMON RIVER

Use: COMMERCIAL 01/01 to
12/31 0.1 CFS

Use: IRRIGATION 03/15 to 10/31
0.01 CFS

Total Diversion: 0.11 CFS

Date Filed: 6/1/2015

Places of Use: COMMERCIAL,
IRRIGATION

T25N R09E S29 SWSW SESW

Total Acres: 0.2

This application proposes the diversion and use of water tributary

to a federally designated 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 it is for 0.11 cfs and 0.2 acres for irrigation/commercial purposes that will be applied to the subordination amounts specified in the decree for the applicable Wild & Scenic River.

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Western Region office at (208) 334-2190; or for a full description of the right(s), please see www.idwr.idaho.gov/Water-Management/WaterRights. Protests may be submitted based on the criteria of Idaho Code § 42-203A. Any protest against the approval of the application(s) must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 3/21/2016. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director
Published on 3/2/2016
and 3/9/2016

M2-9

VOR RN
3/22/16

STATE OF IDAHO
County of Idaho - ss.

Sarah S. Klement, being first duly sworn, says she is the Publisher of the IDAHO COUNTY FREE PRESS, a weekly newspaper published and issued weekly at Grangeville, Idaho County, State of Idaho, and is of general circulation in said county and state, that the said legal notice, of which the one hereto attached is a true copy, was published in said paper for two weeks, being published two times, the first publication being on the 2nd day of March, 2016; and the last publication on the 9th day of March, 2016; and that the said legal notice was published in the newspaper proper and not a supplement; that said newspaper has been continuously and uninterruptedly published in said county during a period of seventy-eight consecutive weeks prior to the publication of said legal notice of advertisement.

STATE OF IDAHO)
COUNTY OF IDAHO)

On this 9th day of March in the year of 2016, before me a Notary Public personally appeared Sarah S. Klement, 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 she executed the same.



Jolene Rupp
Notary Public for Idaho

Residing at Grangeville, ID

My commission expires: 7-29-19