

State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 91-07916

Priority: January 25, 2016

Maximum Diversion Volume: 4.0 AF

This is to certify, that DAVID SCHELL
S 4515 CHAPMAN RD
GREENACRES WA 99016

has applied for a permit to appropriate water from:

Source: UNNAMED STREAM **Tributary:** ST JOE RIVER
GROUND WATER

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>ANNUAL VOLUME</u>
FIRE PROTECTION STORAGE	01/01 to 12/31	4.0 AF
WILDLIFE STORAGE	01/01 to 12/31	4.0 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER NW1/4NW1/4 Sec. 20, Twp 46N, Rge 01E, B.M. BENEWAH County
UNNAMED STREAM NW1/4NW1/4 Sec. 20, Twp 46N, Rge 01E, B.M. BENEWAH County

PLACE OF USE: FIRE PROTECTION STORAGE AND WILDLIFE STORAGE

Twp Rge Sec	NE				NW				SW				SE				
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
46N 01E 20						X											

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **April 01, 2017**.
2. Subject to all prior water rights.
3. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable county zoning and use ordinances.
4. Water shall not be diverted from fire protection storage except to fight or repel an existing fire.
5. Right 91-7916 authorizes a total annual storage volume of 4.0 acre-feet to be used for the initial filling of the pond, for the replacement of losses caused by evaporation, and for the storage of water for wildlife and fire protection purposes.
6. The pond established by the storage of water under this right shall not exceed a total capacity of 2.5 acre-feet or a total surface area of 0.5 acres.
7. Water shall not be diverted under this right when flows in the St. Joe River are below established minimum flow amounts as defined by Right 91-7122.
8. 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 13th day of April, 20 16.


MORGAN CASE, Northern Regional Manager

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

91-7916

This map depicts the FIRE PROTECTION STORAGE and WILDLIFE STORAGE 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.

01E



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



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region, 7600 Mineral Drive, Suite 100, Coeur d'Alene, Idaho 83815

Phone: (208) 762-2800 FAX: (208) 762-2819 www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

April 21, 2016

DAVID SCHELL
S 4515 CHAPMAN RD
GREENACRES WA 99016

RE: Permit No.91-7916

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.

The right to drill a well is not a part of this permit to appropriate water. Beginning in July of 1987, a statute was enacted which requires a drilling permit for new well construction and deepening of existing wells. If the well(s) proposed for use under this water right permit were drilled or deepened after July 1, 1987, a separate drilling permit must be obtained from this Department. Please contact the Ground Water Protection Section located here at this office or our regional office nearest you.

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)

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 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.

91-7916

**DAVID SCHELL
S 4515 CHAPMAN RD
GREENACRES WA 99016**



**Dianne L Ball
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

PANHANDLE REGION

2885 West Kathleen Avenue
Coeur d'Alene, Idaho 83815

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

March 7, 2016

Mr. Adam Frederick
Idaho Department of Water Resources
7600 N Mineral Drive, Suite 100
Coeur d'Alene, ID 83815

RECEIVED

MAR - 9 2016

IDWR/NORTHERN

Dear Adam:

REFERENCE: 91-7916 SCHELL POND

We have reviewed the above-named application for 4.0 acre-feet of water by David Schell for fire protection and wildlife storage pond. The purpose of these comments is to assist the decision-making authority by providing technical information addressing potential effects on wildlife and wildlife habitat and how any adverse effects might be mitigated. It is not the purpose of Idaho Department of Fish and Game to support or oppose this proposal.

According to USDA aerial imagery, this pond was constructed between 2004 and 2009. Water is retained using a 9 ft. high storage dam on an unnamed stream. The stream is a direct tributary to a reach of the St. Joe River that is protected by a State-decreed minimum stream flow water right (91-7122). The St. Joe is federally designated critical habitat for bull trout and home to native sportfish including westslope cutthroat trout. In-stream ponds such as this not only divert water away from public recreation and aquatic wildlife beneficial uses, unregulated stocking of the pond could threaten fish and wildlife throughout the St. Joe drainage.

If fish have been stocked or are planned to be stocked, Mr. Schell must obtain a private pond permit from the Idaho Department of Fish and Game. To do this, he may contact Regional Fisheries Manager Andy Dux at 208-769-1414.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Chip Corsi".

Chip Corsi
Regional Supervisor

CEC:KJS:njk

C: Sharon Kiefer, IDFG Boise

File: 91-7916_Schell

Keeping Idaho's Wildlife Heritage

Equal Opportunity Employer • 208-769-1414 • Fax: 208-769-1418 • Idaho Relay (TDD) Service: 1-800-377-3529 • <http://fishandgame.idaho.gov>

Affidavit of Publication

RECEIVED
MAR 01 2016
IDWR / NORTH

STATE OF IDAHO

County of Benewah, ss.

Cynthia Ann Hammes, being first duly sworn on oath, deposes and says that she is vice president of The Corporation, owner of the St. Maries Gazette Record, a weekly newspaper printed and published at St. Maries, Benewah County, State of Idaho; the St. Maries Gazette Record is a newspaper having general circulation in Benewah County, State of Idaho, and has been continuously and uninterruptedly published in Benewah County, State of Idaho, during a period of more than seventy-eight consecutive weeks prior to the first publication of notice of advertisement herein.

That the notice, of which the one hereto attached is a true copy, was published in said newspaper for a period of 2 issues, the first publication being on the 17 day of Feb, 2016 and the last on the 24 day of Feb, 2016.

That said newspaper was regularly distributed to its subscribers during the time of the same period; that said notice was published in the regular and entire issue of said paper.

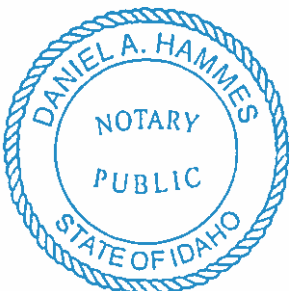
Dated this 24 day of February, 2016

Cynthia Ann Hammes

STATE OF IDAHO

COUNTY OF BENEWAH

On this 24 day of February, in the year of 2016 before me, a Notary Public, personally appeared Cynthia Ann Hammes, known or identified to me to be the person whose name subscribed to 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.



Daniel A. Hammes
Notary Public for Idaho
Residing at St. Maries, Idaho
My commission expires:

July 13, 2019

PUBLIC NOTICE

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

91-7916

DAVID SCHELL

S 4515 CHAPMAN RD

GREENACRES, WA 99016

Point of Diversion NWNW S20 T46N R01E BENEWAH CO

Source GROUND WATER

Point of Diversion NWNW S20 T46N R01E BENEWAH CO

Source UNNAMED STREAM tributary ST JOE RIVER

Use: WILDLIFE Storage 01/01 to 12/31 4 AF

Use: FIRE Protection Storage 01/01 to 12/31 4 AF

Total Diversion: 4 AF

Date Filed: 1/25/2016

Place of Use: WILDLIFE Storage T46N R01E S20 NWNW

Place of Use: FIRE PROTECTION Storage same as Wildlife Storage

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Northern Region office at (208) 762-2800; or for a full description of the right(s), please see:

www.idwr.idaho.gov/apps/ExtSearch/WRFiling.asp.

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, Northern Region, 7600 Mineral Drive, Suite 100, Coeur D'Alene ID 83815 together with a protest fee of \$25.00 for each application on or before 3/7/2016 8:36:09 AM. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

Published on 2/17/2016 and 2/24/2016

9341 Feb. 17 - 24