

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 75-14490

Priority: June 19, 2015

Maximum Diversion Rate: 0.03 CFS

It is hereby certified that KATHY SUE SMITH
And/Or
JAMES A SMITH
12 ETHELS WAY
PO BOX 33
CARMEN ID 83462

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated October 16, 2007; and has submitted Proof of Beneficial Use on June 19, 2015. An examination confirms water is diverted from:

SOURCE

FREEMAN CREEK

Tributary: CARMEN CREEK

and a water right has been established as follows:

BENEFICIAL USE

IRRIGATION

PERIOD OF USE

04/01 to 10/31

DIVERSION RATE

0.03 CFS

LOCATION OF POINT(S) OF DIVERSION:

FREEMAN CREEK NW1/4SW1/4 Sec. 36, Twp 23N, Rge 22E, B.M. LEMHI County

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	
22N	22E	2																	1.0

Total Acres: 1

CONDITIONS OF APPROVAL

1. 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 ten times the diameter of the conduit and shall be above ground or otherwise easily accessible.
2. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.
3. Use of water under this right will 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. 75D.
4. 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.

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 75-14490

5. 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.
6. Water for this right is diverted through the Bills Ditch diversion on Freeman Creek.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed this 14th day of August, 2015.

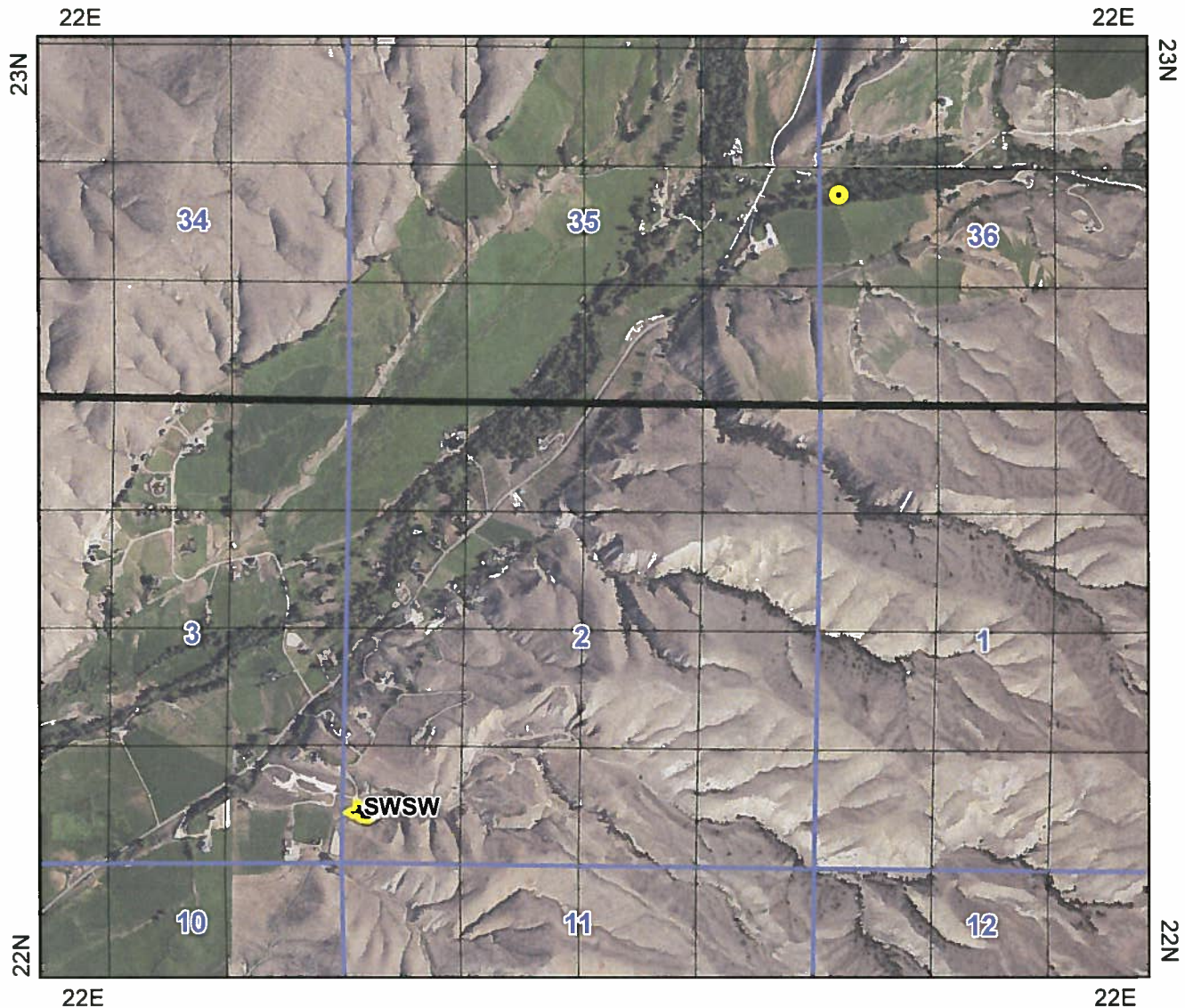

Shelley W. Keen
for GARY SPACKMAN
Director

State of Idaho
Department of Water Resources

Attachment To Water Right License

75-14490

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
-  Quarter Quarters

0 0.225 0.45 0.9 Miles





State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

August 18, 2015

KATHY SUE SMITH
JAMES A SMITH
12 ETHELS WAY
PO BOX 33
CARMEN ID 83462

RE: License No. 75-14490

Issuance of License

Dear Water Right Holder(s):

The Department of Water Resources has issued the enclosed Water Right License confirming that a water right has been established in accordance with your permit. Please be sure to thoroughly review the conditions of approval and remarks listed on your license. Also enclosed is a copy of the approved application for amendment.

Enclosed is an order that reinstated this permit, since proof and the license examination fee were submitted after the proof deadline. Please note that the priority date for this permit has been advanced to June 19, 2015, as provided in section 42-218a(2), Idaho Code.

The license 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.

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 208-287-4951.
Sincerely,

Pamela Skaggs
Water Rights Supervisor

Enclosure(s)

c: WATER DISTRICT #75D

CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2015, I mailed true and correct copies, postage prepaid, of the foregoing PRELIMINARY ORDERS (Preliminary Order Reinstating A Permit) & (Approved License) to the person(s) listed below:

RE: WATER RIGHT NO. 75-14490

**JAMES A SMITH
12 ETHELS WAY
PO BOX 33
CARMEN ID 83462**

**KATHY SUE SMITH
12 ETHELS WAY
PO BOX 33
CARMEN ID 83462**

**WATER DISTRICT #75D
CHAD NETTLETON
23202 DUST DEVIL LN
MURPHY ID 83650**



**Darla Block
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.

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF PERMIT	)	
NO. 75-14490 IN THE NAME OF	)	PRELIMINARY ORDER
KATHY SUE SMITH	)	REINSTATING A PERMIT
AND/OR RANDY A. SMITH	)	
_____	)	

This matter having come before the Idaho Department of Water Resources ("Department"), the Department finds, concludes and orders:

FINDINGS OF FACT

1. On November 27, 2009, the Department issued Permit 75-14490 to Geary Spath and/or Billie Spath ("Spaths") with the condition that proof of construction of works and application of water to beneficial use ("proof of beneficial use") be submitted to the Department on or before December 1, 2014. The permit bore the priority date of October 16, 2007.

2. On September 30, 2014, the Department notified the Spaths that proof of beneficial use was due and instructed the permit holder of the steps to be taken to submit the proof or a Request for Extension of Time ("extension request"). The letter was subsequently returned with a forwarding address. The Department sent the notice again on October 10, 2014, by certified mail. Deane Spath signed for the letter on October 31, 2014.

3. On December 1, 2014, the permit lapsed since the Department had not received an acceptable proof of beneficial use statement or request for extension of time.

4. On December 8, 2014, the Department sent a lapse notice to the Spaths to the same address as the October 10, 2014, mailing.

5. On January 29, 2015, the Department received an assignment of permit from the Spaths to Kathy Sue Smith and Randy A. Smith ("Smiths").

6. On February 9, 2015, the Smiths filed a Statement of Completion for submitting proof of beneficial use.

7. On March 9, 2015, the Department sent the Smiths a letter stating the proof of beneficial use was deficient because it was received more than 60 days after the lapse notice was sent. The letter also informed the Smiths that in order to reinstate the permit and submit proof of beneficial use, they would need to resubmit proof of beneficial use, a field exam by a certified examiner, a statement of reasonable cause for filing late proof of beneficial use, and a \$250 late fee, in accordance with Idaho Code § 42-218a(2).

8. On June 19, 2015, the Smiths filed a Statement of Completion for submitting proof of beneficial use, a statement of reasonable cause for filing a late proof of beneficial use, a field report by a certified examiner, and a \$250 late fee.

CONCLUSIONS OF LAW

1. Idaho Code § 42-218a(2) provides as follows:

In connection with a proof of beneficial use statement submitted more than sixty (60) days after such notice of lapsing, the director shall require all of the following items to be submitted to the department:

(a) A report prepared by a certified water right examiner as a result of an examination to clearly confirm and establish the extent of the beneficial use of water established in connection with the permit during the time authorized by the permit and any extensions of time previously approved. The report shall be on a form or forms specified by the director and shall provide the information specified in section 42-217, Idaho Code, for confirming beneficial use and such other information as may be required by the director.

(b) A statement of reasonable cause for filing a late proof of beneficial use.

(c) A reinstatement fee of two hundred fifty dollars (\$250).

2. The Smiths provided a reasonable showing why this permit should be reinstated, by submitting an acceptable proof of beneficial use, a certified field examiner field report showing beneficial use of water, and the \$250 fee. The permit should be reinstated based upon the June 19, 2015, filing date.

ORDER

IT IS HEREBY ORDERED that Permit No. 75-14490 is **REINSTATED** and the permit's priority date is advanced to June 19, 2015.

DATED this 14th day of August, 2015.


for Jeff Peppersack, Chief
Water Allocation Bureau

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT

(For Licensing Purposes)

WATER RIGHT NO. 75-14490

RECEIVED

JUL 27 2015

DEPARTMENT OF
WATER RESOURCES

Date of Priority: June 19, 2015

Maximum Diversion Rate: 0.03 CFS

Comes now KATHY SUE SMITH

And/Or

JAMES A SMITH

12 ETHELS WAY

PO BOX 33

CARMEN ID 83462

and represents to the Director of the Idaho Department of Water Resources that he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 75-14490, and requests that the permit be changed as follows:

Source: FREEMAN CREEK**Tributary:** CARMEN CREEK**BENEFICIAL USE**

IRRIGATION

PERIOD OF USE

04/01 to 10/31

RATE OF DIVERSION

0.03 CFS

LOCATION OF POINT(S) OF DIVERSION:

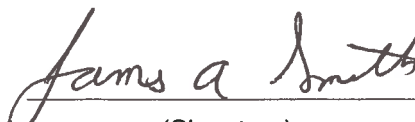
FREEMAN CREEK NW1/4SW1/4 Sec. 36, Twp 23N, Rge 22E, B.M. LEMHI County

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	
22N	22E	2											1.0						1.0

Total Acres: 1

Permit holder asserts that no one will be injured by such change and that such change will be made at permit holder's own risk. Signed this 22 day of July, 2015.


(Signature)

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT

(For Licensing Purposes)
WATER RIGHT NO. 75-14490

FOR DEPARTMENT USE ONLY

Preliminary check by _____ Fee = \$100.00 Received by dj # C100812 Date 7-27-15

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, GARY SPACKMAN, of the Department of Water Resources hereby approve the
above Application for Amendment for Permit No. 75-14490 with the following:

CONDITIONS OF APPROVAL

1. 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 ten times the diameter of the conduit and shall be above ground or otherwise easily accessible.
2. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.
3. Use of water under this right will 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. 75D.
4. 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.
5. 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.
6. Water for this right is diverted through the Bills Ditch diversion on Freeman Creek.

Witness my hand this 14th day of August, 2015.

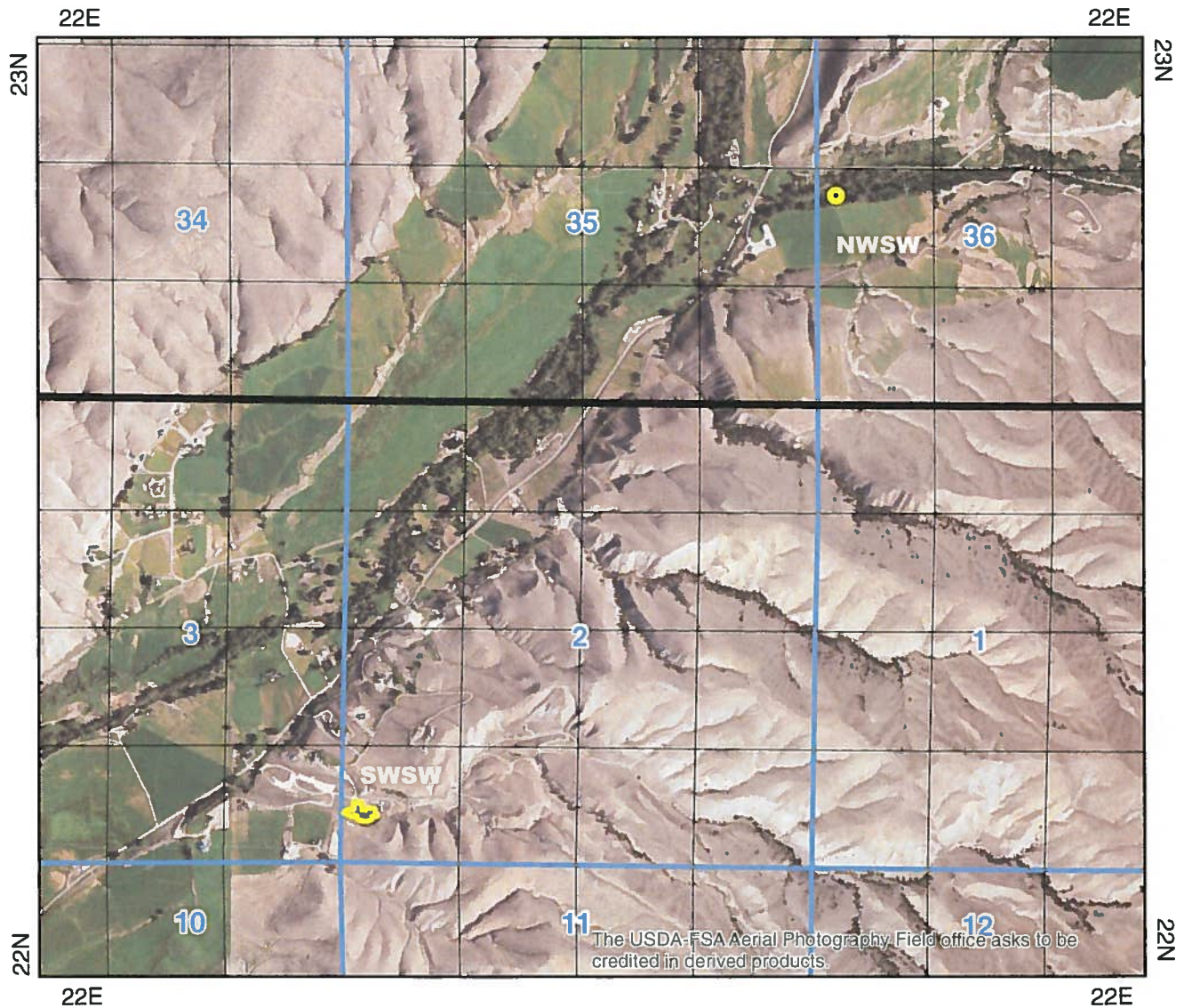
Shelley W. Keen
for GARY SPACKMAN
Director

State of Idaho
Department of Water Resources

Attachment for Amendment of Permit

75-14490

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
- Quarter Quarters

0 0.225 0.45 0.9 Miles

