

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 77-07334

Priority: February 23, 1994

Maximum Diversion Rate: 0.75 CFS
Maximum Diversion Volume: 271.0 AF

It is hereby certified that US DEPT OF AGRICULTURE FOREST SERVICE
PAYETTE NATIONAL FOREST
800 W LAKESIDE AVE
MC CALL ID 83638-1026 has complied with the terms and conditions of
the permit, issued pursuant to Application for Permit dated February 23, 1994; and has submitted Proof of
Beneficial Use on May 28, 1996. An examination confirms water is diverted from:

SOURCE

UNNAMED STREAM

Tributary: BIG CREEK

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
POWER	01/01 to 12/31	0.75 CFS	271.0 AF

LOCATION OF POINT(S) OF DIVERSION:

UNNAMED STREAM NW1/4SW1/4 Sec. 26, Twp 21N, Rge 09E, B.M.

VALLEY 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
21N 09E 26									X								

CONDITIONS OF APPROVAL

1. The term of this water right shall run concurrently with the Big Creek Project license 10721 issued by the Federal Energy Regulatory Commission (FERC), which expires on February 28, 2022. The term shall automatically extend to run concurrently with any annual renewals of the project's FERC license. Prior to the issuance of a subsequent or new FERC license for the project, the Director may review the water right license and may issue an order canceling all or any part of the use, establishing a new term, or revising, adding or deleting conditions under which the water right may be exercised. The order shall take effect on the date the current term, as may be extended through annual renewals, expires. If the Director does not issue such an order, the term shall automatically extend to a length equal to the project's subsequent or new FERC license and any prior conditions on the subsequent water right license shall remain in effect.

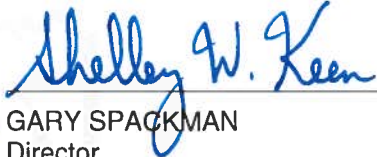
State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 77-07334

2. The rights for the use of water confirmed in this license shall be junior and subordinate to all 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 right or 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 right.
3. Use of water under this right shall be non-consumptive.
4. The source is known locally as McCorkle Creek.
5. The single point of diversion exists on or near the line between SWNW and NWSW, Section 26, Township 21 N, Range 09 E.

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 29th day of September, 2014.


for GARY SPACKMAN
Director



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

September 30, 2014

US DEPT OF AGRICULTURE
FOREST SERVICE
PAYETTE NATIONAL FOREST
500 N MISSION ST
MC CALL ID 83638-3805

RE: License No. 77-7334

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.

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,

A handwritten signature in blue ink that reads "Pamela Skaggs".

Pamela Skaggs

Water Rights Supervisor

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2014, I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Approved License) to the person(s) listed below:

RE: WATER RIGHT NO.

77-7334

**US DEPT OF AGRICULTURE
FOREST SERVICE
PAYETTE NATIONAL FOREST
500 N MISSION ST
MC CALL ID 83638-3805**

A handwritten signature in blue ink, reading "Darla Block", is written over a horizontal line.

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.

MEMORANDUM

Date: September 29, 2014
To: Water Right File 77-7334
From: medl
Re: volume

In my licensing review memo I recommended that the water right license be issued without a volume element. That choice is not justified by the design configuration. Although this is a run-of-river project, (no storage), it is an unusual 50% of on-stream, run-of-river project. My recommendation was based on operation constraints which were imposed on the project by the FERC license.

Discussion

The Big Creek Project is unusual in that the water right permit holder was instrumental in setting the conditions for the authorized use. The Forest Service is active on both sides of this permit, as both the regulator and as the regulated.

The FERC license for this project predates the IDWR water right permit for power use. A private Idaho corporation, Big Creek Lodge & Outfitters, Inc., holds the FERC license which was issued in 1992, to a pre-existing project. The USDA, Forest Service, Payette National Forest holds the water right permit which was issued in 1994.

The project is located within the Payette National Forest near the boundary to the Frank Church River of No Return Wilderness area. In its role as an advisor to FERC, the Forest Service was able to recommend conditions for the FERC license. The FERC licensee operated the project in compliance with the articles of the FERC license for years before the Forest Service applied for a water right permit for power use at the same project.

As a consequence, IDWR was in a position to take advantage of the completed environmental impact and resource management review, when processing the water right permit. Because the FERC license was not made a part of the file until my review, it is not clear that the department considered the FERC licensing articles when conditioning the permit. However, some of those articles would have been based on recommendations from US Fish & Wildlife, US Forest Service and IDF&G and are relevant to my licensing recommendations.

The FERC license does not set a specific bypass flow requirement. However, Article 105 of the license restricts the quantity of water diverted for power to no more than 50% of the instantaneous flow in McCorkle Creek. The flow in the bypass reach and the flow in the power operation reach would be equal. The project would therefore be restricted to a sort of on-50%-of-stream, run-of-river operation.

Other articles of the FERC license require evidence of responsible environmental stewardship. Article 104 of the FERC license requires the licensee to annually, "consult with the Forest Service with regard to measures needed to ensure protection and development of the natural resource values of the project area." And to file with the Commission, (FERC), within 60 days following the consultation, evidence of the consultation which includes recommendations made by the Forest Service.

Querying the FERC website provided evidence of compliance with both Articles 104 and 105. (See attached filing 9508040245, dated July 28, 1995). That filing indicates that the consultation occurred and that the project was not operated during the 1994 drought year.

Although IDWR is not privy to the agreement between the Forest Service and the operator of the power house, I believe that the Big Creek Project is being monitored regularly and that it is being operated as a

run-of-river project in compliance with the FERC requirements.

Conclusion and Volume Calculation

I recommended no volume and considered this is an on-stream, run-of-river project by the FERC license articles. The Big Creek Projects operates on one of two equal branches of McKorkle Creek. It's an on-stream project but on-stream of only 50% of McKorkle Creek. However, a license issued by IDWR should be based on our water rights administration requirements. And I estimated a volume for the IDWR water right license which is based loosely on the beneficial use in a typical year but I needed to refer to information provided by the FERC application process.

The application to FERC, Big Creek Lodge and Outfitters personnel state that the season-of-use is year-round but use during the off- season (December-May) would be intermittent. The project operates when the lodge is occupied (5-6 months/year) and shut down when it is not. The FERC application also states that the primary season-of-use is July to November and the power use occurs in the Lodge, 2 cabins (existing) 4 proposed cabins and 4 outbuildings. There are 152 days for the 5 months from July 1 to Nov 30. An additional 30 days of operation during the off-season is reasonable. Therefore 182 days are used in the volume calculation.

The FERC inspector reported that the Big Creek Project replaces a 6-kW gasoline-powered generator. . Therefore, at least 6 kW was expected for power generation from this project. To produce 6 kW continuously, I calculated that 0.75 cfs would be required. (See the attached power calculation spreadsheet.)

I recommend 271 AF as the volume for this water right license. The calculation is $182 \text{ days} \times 0.75 \text{ cfs} \times 1.9835 = 270.7 \text{ AF}$ which rounded to 3 significant figures is 271 AF.