

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 15-7365 IN THE)
NAME OF DANIEL C. EVANS)

**PRELIMINARY ORDER
ISSUING PERMIT**

On January 7, 2013, Daniel C. Evans filed Application for Permit 15-7365 with the Idaho Department of Water Resources ("Department"), seeking a ground water right for irrigation and stockwater. On January 24, 2014, Evans filed an amended application, changing the proposed place of use and point of diversion and increasing the proposed diversion rate and the total number of irrigated acres.

The original application was advertised to the public beginning on February 21, 2013, and was protested by David Reel and Samaria Water & Irrigation Company ("SWIC"). The amended application was advertised beginning on February 20, 2014, and was protested by John Christophersen. Based on the changes made in the amended application, Reel withdrew his personal protest. A pre-hearing conference was held on April 20, 2014. The remaining parties were unable to resolve the protests at that time and requested that a hearing be held to decide the contested case.

An administrative hearing was conducted on July 22, 2014, at the Oneida County Hospital in Malad, Idaho. The parties (Evans, SWIC and Christophersen) offered testimonial and documentary evidence into the record. After carefully considering the evidence in the administrative record for this case, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Amended Application for Permit 15-7365 proposes diverting ground water to irrigate 90 acres in Sections 11 and 12, T15S, R35E. The application also proposes providing year-round stockwater to 150 range cattle. The proposed point of diversion, a new ground water well, would be located in the SESE of Section 11.
2. Approximately 40 acres of the proposed place of use and the proposed point of diversion would be located on property owned by Dale Price. Evans provided a written agreement with Price allowing the permit to be developed and the proposed well to be drilled on the Price property.
3. Approximately 50 acres of the proposed place of use are located on property owned by John Evans, Daniel Evans's father. Evans provided a Lease/Purchase Agreement demonstrating legal access to the John Evans property.

4. Evans hired Tom Wood of Clearwater Geosciences, LLP to evaluate the potential drawdown impact to existing wells and springs within a ½ mile radius of the proposed well. Wood prepared an initial report, dated December 4, 2012, which was based on the elements listed in the original application. Wood prepared a revised report, dated July 7, 2014, which incorporated the changes proposed in the amended application.

5. To determine the aquifer parameters in the area of the proposed well, Wood relied on information obtained from a pump test conducted on April 23, 2011, on a well located approximately one mile south of the proposed well. Based on the pump test data, Wood estimated the transmissivity of the local aquifer to be 62,400 ft²/day. This transmissivity value is consistent with another pump test conducted by Wood in the same area, which suggested a local transmissivity of 51,000 ft²/day.

6. The storativity of the local aquifer could not be determined through the pump tests. Wood estimated a storativity of 0.01, which he asserts is typical for unconsolidated aquifer materials. (See Exhibit A2, page 2)

7. Assuming a transmissivity value of 62,400 ft²/day and a storativity value of 0.01, Wood created a model to predict the drawdown occurring ½ mile from the proposed well. A number of other assumptions were incorporated into the model. Wood assumed that Evans would divert at the full proposed diversion rate (1.80 cfs) for six months (180 days). He also assumed no-flow aquifer boundaries 6,500 feet to the west of the proposed well, 43,500 feet to the east of the proposed well, and 4,800 feet south of the proposed well. Applying this set of assumptions, the model predicted 5.5 feet of drawdown at the proposed well and 2.5 feet of drawdown at a distance of ½ mile from the proposed well.

8. The assumptions incorporated in Wood's model are conservative and over-estimate the potential drawdown effects. It is unlikely that the proposed ground water well would be pumped at 1.80 cfs for 180 days straight, which equates to a diversion volume of 640 acre-feet. New ground water rights in the Malad River drainage (Basin 15) are generally limited to 3.5 acre-feet per acre at the field headgate. Therefore, Permit 15-7365, in combination with other rights on the property, would be limited to an annual diversion volume of no more than 315 acre-feet, less than half of the diversion volume used in the Wood model.

9. Wood ran a second model analysis to see what the drawdown effects would be if the proposed well diverted 650 gpm (1.48 cfs) for a 6-month period. With all other assumptions remaining the same, the second model predicted 4.5 feet of drawdown at the proposed well and 2.0 feet of drawdown at a distance of ½ mile from the well. Pumping 1.48 cfs for 180 days equates to an annual diversion volume of 528 acre-feet.

10. SWIC relies on two separate springs to provide water to its patrons during the irrigation season. Warm Springs is located approximately 2 miles to the northwest of the proposed well. A cold water spring (also known as Big Malad Spring or Elam Spring) is located approximately 6 miles to the northwest of the proposed well. The differences in temperature and

water chemistry between the springs suggest that the Warm Springs and the Big Malad Spring are distinct hydrologic sources.

11. SWIC has two irrigation water rights from the Warm Springs (15-2023 and 15-2024). These rights, in combination, authorize the diversion of 6.5 cfs.

12. SWIC has experienced considerable declines in spring flow in recent years, particularly from the Warm Springs during the summer months. According to company records, half as much water was delivered in 2013 as was delivered in 2008, which is a direct result of a lack of flow from the springs. Representatives of SWIC assert that present day delivery from the two springs is about one-third of historical levels.

13. To address the decline in spring flow, SWIC hired Rocky Mountain Environmental Associates Inc. ("RMEA") to perform an analysis of the springs. Bryce Contor from RMEA prepared a report, dated February 10, 2014, summarizing his findings related to the springs.

14. The RMEA report states that the recent wintertime flow from Warm Springs is approximately 270 inches (5.4 cfs). During the summer months, however, the Warm Springs flow drops to less than 1.0 cfs and in some cases dries up entirely. SWIC argues that the seasonal decline in spring flow is directly related to pumping from nearby ground water wells.

15. Without additional testing, RMEA was unable to establish a conclusive link between ground water diversions and the declines in spring flow. RMEA identified a number of potential causes for the spring flow decline, including uncontrolled flowing artesian wells near Samaria. The RMEA report did note that the wells located west of the Warm Springs are more likely to affect spring flow. The proposed well would be located east of the Warm Springs.

16. Department records show three ground water irrigation wells within ½ mile of the Warm Springs. The point of diversion for ground water right 15-7225 (0.43 cfs, Robert Warren) is located ½ mile to the west of the Warm Springs. The point of diversion for ground water permit 15-7270 (0.32 cfs, Joann Jenkins Trust) is located about 300 feet from the Warm Springs. The point of diversion for ground water permit 15-7264 (1.20 cfs, Seth Seamons) is located ½ mile to the south of the Warm Springs.

17. Protestant John Christophersen diverts irrigation water from Willow Spring which is located approximately 0.8 miles south of the proposed well. Christophersen's water use is recorded in Statutory Claim 15-4187, which was filed in 1983 pursuant to Idaho Code § 42-243. Statutory Claim 13-4187 is still in the name of the original claimant, J. Moroni Ward.

18. Statutory Claim 15-4187 describes a priority date of May 19, 1959, a diversion rate of 1.00 cfs, and the irrigation of 50 acres. Neither the Department nor a court has ever verified the elements listed in the claim.

19. Based on aerial photos in the Departments water right records, the place of use described in Statutory Claim 15-4187 appears to be irrigated. Christophersen testified that the

ground is irrigated with water from Willow Spring and not from any other source. He also testified that the flow from the spring has declined in recent years. No evidence was presented relating to the measured historical or current flow from Willow Spring.

20. Evans and Price testified that surface water from SWIC has been used to irrigate the proposed place of use in the past. Shares in SWIC may be moved around on acres within the company based on demand. Evans and Price testified that they rotate their shares between various properties according to their needs. Therefore, it is difficult to identify the number of SWIC shares that are associated with the proposed place of use.

21. Evans testified that he (or his father) has used 13 SWIC shares on the John Evans portion of the proposed place of use. 1 share in SWIC entitles the shareholder to 2.00 cfs for a 6-hour period. In the past, shareholders have had up to 6 turns per year (with each turn being a 6-hour block of water). However, in recent years, with the decline in spring flow, there has only been enough water to supply SWIC shareholders 3 turns per year.

22. Price testified that he has, at times, used 10 shares to irrigate the Price portion of the proposed place of use. Price also testified that he has only dedicated 2 turns per year to irrigate his portion of the place of use.

23. Ground water levels have been tracked in a monitoring well located 2 miles east of the Warm Springs and about 1.5 miles northeast of the proposed well. (see Exhibit A3) The period of record for the monitoring well (15S 35E 01 DAA1) runs from 1931 to the present day. The water level record shows stable ground water levels between 2008 and 2013.

24. Another monitoring well located ½ mile west of the Warm Springs (15S 35E 03 BAA1) also shows stable ground water levels between 2008 and 2013. However, the period of record for this well is much shorter, only running from 2007 to the present day. (See Exhibit A3)

CONCLUSIONS OF LAW

1. Idaho Code § 42-203A(5) states in pertinent part:

In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho . . . the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may

partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

2. The applicant bears the ultimate burden of proof regarding all factors set forth in Idaho Code § 42-203A(5).

Injury to Other Water Rights

1. Rule 45.01.a of the Department's Water Appropriation Rules (IDAPA 37.03.08) sets forth the evaluation criteria for determining whether a proposed water use will reduce the quantity of water under existing water rights. A reduction will occur if "[t]he amount of water available under an existing water right will be reduced below the amount recorded by permit, license, decree or valid claim or the historical amount beneficially used by the water right holder under such recorded rights, whichever is less." (IDAPA 37.03.08.45.01.a.i)

2. Injury to surrounding ground water wells is governed by Idaho Code § 42-226, which sets forth Idaho's reasonable pumping level standard.

3. Idaho Code § 42-226 states: "Prior appropriators of underground water shall be protected in the maintenance of reasonable ground water pumping levels as may be established by the director of the department of water resources . . ." Reasonable pumping levels have not been established for the Basin 15. Therefore, the reasonableness of drawdown impacts to neighboring wells must be evaluated on a case-by-case basis.

4. The expected drawdown impact to local ground water wells is reasonable. Wood estimates the potential drawdown at a distance of ½ mile from the proposed well to be 2.5 feet. The actual drawdown will be much less than 2.5 feet because of the annual volume limit added to the permit, as described below.

5. In order to minimize the risk of impact to surrounding wells and springs, Permit 15-7365 should be limited to the volume of water needed to accomplish the proposed development. Also, the permit holder should be required to exhaust the surface water that has been historically associated with the property prior to diverting ground water.

6. According to Evans and Price, SWIC shares have been used on the proposed place of use in the past. Evans has used 13 shares on the John Evans property and has recently received 3 turns per year. This equates to 39 acre-feet (1 share = 2.00 cfs for 6 hours = 1 af; 13 shares x 3 turns x 1 af/turn = 39 af). Price has used 10 shares and has dedicated 2 turns per year to the property. This equates to 20 acre-feet (10 shares x 2 turns x 1 af/turn = 20 af).

7. Measurement records in the Department's files show that ground water irrigators in southeast Idaho divert approximately 2.0 acre-feet per acre for sprinkler irrigation systems. It is reasonable to assume that the sprinkler irrigation system proposed by Evans will have a similar usage pattern. The irrigation system proposed by Evans would therefore require 180 acre-feet on an annual basis (90 acres x 2.0 acre-feet per acre).

8. As described above, 59 acre-feet of surface water through SWIC has been used to irrigate the property in the past. Therefore, 59 acre-feet of the 180 acre-foot irrigation demand will be satisfied by surface water. The irrigation element of Permit 15-7365 should be limited to 121 acre-feet per year. This equates to 34 days of pumping at the proposed diversion rate of 1.80 cfs.

9. Wood predicted that there would be 2.5 feet of drawdown at a distance of $\frac{1}{2}$ mile from the proposed well. However, Wood's model was based on an assumption that Evans would divert 1.80 cfs for 180 days (which equates to 640 acre-feet). Permit 15-7365 will be limited to 121 acre-feet for irrigation, approximately one-fifth the volume modeled by Wood. Therefore, assuming Evans complies with the permit volume limit, drawdown will be significantly less than predicted.

10. If Evans were to divert 1.80 cfs over a 34 day period, the expected drawdown at a distance $\frac{1}{2}$ mile from the proposed well would be less than 6 inches. (See Exhibit A1, Figure 2).

11. The protestants raised specific concerns about impact to spring flows. The report prepared by RMEA suggests that SWIC's Warm Springs may not be hydrologically connected to ground water wells east of the springs. Even if the Warm Springs is in direct communication with the proposed well, the drawdown at the springs, located 2 miles from the proposed well, would be negligible.

12. Willow Spring is located closer to the proposed well. Evidence suggests that the expected drawdown at a distance of 0.8 miles would be small, less than 6 inches. There is not enough information in the administrative record to determine whether diversion from the proposed well will reduce the flow from Willow Spring below the amount recorded by permit, license, decree or valid claim. The lack of historical measurement records for Willow Spring makes it difficult to determine injury.

13. The Applicant has shown by a preponderance of the evidence that the proposed ground water diversion will not reduce the quantity of water under existing water rights.

Sufficiency of Water Supply

14. The Applicant met his burden of showing that the water supply is sufficient for the proposed beneficial use. Wood's previous pump tests confirm that the local aquifer has a good water yield.

Speculation / Financial Resources

15. The Applicant met his burden of showing that the application was made in good faith and that he sufficient financial resources to complete the proposed irrigation project. Evans provided a letter from Ireland Bank stating that Evans will not have any issues getting funding to complete the proposed project. (Exhibit A4) The letter from Ireland Bank demonstrates sufficient financial resources to complete the proposed project.

Local Public Interest

16. The local public interest analysis under Idaho Code § 42-203A(5)(e) is meant to be separate and distinct from the injury analysis under § 42-203A(5)(a). Local public interest is defined 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.” (Idaho Code § 42-202B(3)) The evidence presented by the protestants was focused on the question of injury (addressed above). There was no evidence presented by the protestants pertaining to the question of local public interest. Application 15-7365 states that ground water will be used for agricultural purposes, the primary use of ground water in the local community. The Applicant met his burden of proof for this element.

Conservation of Water Resources

17. The Applicant met his burden of showing that the proposed use will be compatible with the conservation of water resources within the state of Idaho. The proposed project will incorporate sprinkler irrigation, a conservative use of water.

ORDER

IT IS HEREBY ORDERED that Application for Permit No. 15-7365 in the name of Daniel C. Evans. is APPROVED with the following elements and conditions:

Priority Date: January 24, 2014

Source: Ground Water

Season of Use: 4/1 – 10/31 (Irrigation)
1/1 – 12/31 (Stockwater)

Diversion Rate: 1.80 cfs (Irrigation)
0.04 cfs (Stockwater)

Total Diversion Rate: 1.80 cfs

Annual Diversion Volume: 121 acre-feet (Irrigation)
2 acre-feet (Stockwater)

Total Diversion Volume: 123 acre-feet

Point of Diversion: SESE, Sec 11, T15S, R35E

Place of Use: Sec 11, T15S, R35E	SWNE	5.2 acres
	SENE	0.5 acres
	NESE	2.0 acres
	NWSE	23.3 acres
	SWSE	10.2 acres
	SESE	11.8 acres
Sec 12, T15S, R35E	SWSW	15.5 acres
	SESW	17.9 acres
	SWSE	3.6 acres
	Total	90.0 acres

Permit Conditions

1. Proof of application of water to beneficial use shall be submitted on or before **September 01, 2019**.
2. Subject to all prior water rights.
3. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.
4. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
5. The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.
6. Stockwater use is for 150 range cattle.
7. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
8. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.

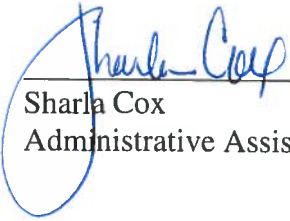
Dated this 29th day of August, 2014.



James Cefalo
Water Resources Program Manager

CERTIFICATE OF MAILING

I hereby certify that on the 29th day of August 2014, I mailed a true and correct copy of the foregoing PRELIMINARY ORDER ISSUING PERMIT, with the United States Postal Service, certified mail with return receipt requested, postage prepaid and properly addressed to the person(s) listed below:



Sharla Cox
Administrative Assistant

US MAIL

RE: PRELIMINARY ORDER ISSUING PERMIT

**Daniel C. Evans
5071 South 4600 West
Samaria, ID 83252**

**Samaria Water & Irrigation Co.
c/o David Reel
5176 South 4400 West
Malad, ID 83252**

**John Christophersen
245 West 400 North
Malad City, ID 83252**

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was held)

The accompanying order is a **Preliminary Order** issued by the Idaho Department of Water Resources (Department) pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and brief as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The hearing officer 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 to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

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, request 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 Rules of Procedure 302 and 303.

FINAL ORDER

The Department 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.