

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 78-12415

Priority: July 03, 2013

Maximum Diversion Rate: 0.04 CFS

This is to certify, that DAVID S PERKINS And
KRISTIN B PERKINS
3323 SNOWFLAKE WAY
BOISE ID 83706

has applied for a permit to appropriate water from:

Source: ELK CREEK

Tributary: LITTLE SALMON RIVER

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
IRRIGATION	04/01 to 10/31	0.04 CFS

LOCATION OF POINT(S) OF DIVERSION:

ELK CREEK NW1/4NW1/4 Sec. 26, Twp 22N, Rge 01E, B.M. IDAHO County

PLACE OF USE: IRRIGATION

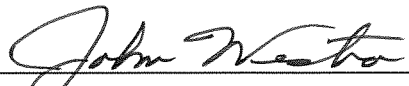
Twp	Rge	Sec	NE				NW				SW				SE				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
22N	01E	26					1.5	2.0											3.5

Total Acres: 3.5

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **May 01, 2015**.
2. Subject to all prior water rights.
3. 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.
4. 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.
5. 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.
6. 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 at the field headgate for irrigation of the place of use.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 4th day of April, 2014.


JOHN WESTRA, Western Regional Manager



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

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

April 4, 2014

DAVID S PERKINS
KRISTIN B PERKINS
3323 SNOWFLAKE WAY
BOISE ID 83706

RE: Permit No.78-12415

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,



for:

John Westra
Western Regional Manager

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2014 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.

78-12415

**DAVID S PERKINS
3323 SNOWFLAKE WAY
BOISE ID 83706**

**KRISTIN B PERKINS
3323 SNOWFLAKE WAY
BOISE ID 83706**

A handwritten signature in cursive script, reading "Rachel Sommer", is written over a horizontal line.

**Rachel Sommer
Administrative Assistant I**

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.

RECEIVED

FEB 28 2014

WATER RESOURCES
WESTERN REGION

AFFIDAVIT OF PUBLICATION

The following applications have been filed to appropriate the public waters of the State of Idaho:

78-12415

DAVID S PERKINS
KRISTIN B PERKINS
3323 SNOWFLAKE WAY
BOISE, ID 83706
Point of Diversion NWNW S26
T22N R01E IDAHO County
Source ELK CREEK Tributary
LITTLE SALMON RIVER
Use: IRRIGATION 04/01 to
10/31 0.04 CFS
Total Diversion: 0.04 CFS
Date Filed: 7/3/2013
Place of Use: IRRIGATION
T22N R01E S26 NENW NWNW
Total Acres: 3.5

78-12416

DAVID S PERKINS
KRISTIN B PERKINS
3323 SNOWFLAKE WAY
BOISE, ID 83706
Point of Diversion NENW S26
T22N R01E IDAHO County
Source GROUND WATER
Use: DOMESTIC
01/01 to 12/31 0.02 CFS
Use: IRRIGATION 04/01 to
10/31 0.04 CFS
Total Diversion: 0.04 CFS
Date Filed: 7/3/2013
Place of Use: DOMESTIC, IRRIGATION
T22N R01E S26 NENW NWNW
Total Acres: 3.5
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/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, Western Region, 2735 Airport Way, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 3/10/2014. The protestant must also send a copy of the protest to the applicant.
GARY SPACKMAN, Director
Published on 2/19/2014 and 2/26/2014

F19-26

STATE OF IDAHO
County of Idaho - ss.

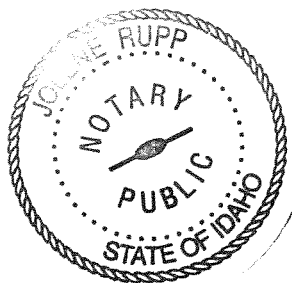
Andrew J. McNab, being first duly sworn, says he is the Publisher of the IDAHO COUNTY FREE PRESS, a weekly newspaper published and issued weekly at Grangeville, Idaho County, State of Idaho, and is of general circulation in said county and state, that the said legal notice, of which the one hereto attached is a true copy, was published in said paper for two weeks, being published two times, the first publication being on the 19th of February, 2014; and the last publication on the 26th day of February, 2014; 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.

Andrew J. McNab for
Andrew J. McNab

STATE OF IDAHO)

COUNTY OF IDAHO)

On this 26th day of February in the year of 2014, before me a Notary Public personally appeared Andrew J. McNab, 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 he executed the same.



Jolene Rupp
Notary Public for Idaho
Residing at Grangeville, ID
My commission expires: 1-29-19

MEMORANDUM

TO: Application No. 78-12415 & 78-12416

FROM: Angie Grimm

DATE: February 11, 2014 Updated March 25, 2014

RE: Salmon-Clearwater Processing, Basins 77-79 Western Region

Application 78-12415 proposes irrigation of up to 3.5 acres (up to 0.04 cfs) with water from Elk Creek tributary to Little Salmon River downstream of the confluence of the Little Salmon River and Round Valley Creek. Application 78-12416 proposes domestic and supplemental irrigation use up to 0.04 cfs from ground water on the same property as 78-12415.

The site is located at 265 N. Elk Lake Rd, approximately one mile east of Hwy 95, three miles south/southeast of Pinehurst and 19 miles north of New Meadows.

Wild & Scenic River (WSR) Processing

General Information - WSR processing applies to portions of Bs 77 and 78 but not to Bs 79. It is rarely expected in Bs 78 since WSR right 78-11961 covers federal land upstream from the Rapid River Fish Hatchery slightly southwest of Riggins.¹

Typically WSR issues would be in Bs 77 upstream from Long Tom Bar on the Salmon River, WSR right 77-11941.² This also incorporates the entire Middle Fork Salmon River drainage, MSR right 77-13844.³

WSR processing is required for any source/diversion upstream from any WSR right. This applies to all sources and uses unless the applicant shows the source is not hydraulically connected to any WSR rights.

Specific Information for these Applications - WSR processing is not required because the proposed source/diversion is downstream from any WSR rights.

Minimum Streamflow Rights (MSF)

General Information - MSF analysis applies to all surface water upstream⁴ from any MSF rights. Basins 77-79 have various MSF rights that might affect applications. By agreement with SO regarding these basins, specific MSF conditions of approval are not necessary provided the reviewer checks MSF issues and documents the file with the results (7/8/09 telephone conference).

¹ POD = T23N-R1W-S12.

² POD = T25N-R5E-S31.

³ POD = T23N-R16E-S33.

⁴ Shallow ground water tributary to surface water might involve MSF issues under conjunctive management thinking. Discuss with your supervisor if this comes up.

Downstream MSF right 3-8 on the Snake River⁵ is not subordinate to “future dcmi” uses or “future non-dcmi (with cfs limits)” uses. Downstream Salmon River MSF right 79-14119⁶ is subordinated to future dcmi uses but not to future non-dcmi uses.

All Basin 77-79 MSF rights upstream from the ending point of 79-14119 (mouth of Salmon River) include subordination to future dcmi uses. Most of those upstream MSF rights are also subordinate to various amounts of future non-dcmi uses. None of the future non-dcmi cfs rates have been exceeded yet by new approvals. Further MSF analysis is generally not needed until a specific future non-dcmi cfs rate is exceeded.

Because the review memo extensively covers WSR and MSF issues, SO Planning Bureau comments are not needed yet (prior agreement with SO). Planning will be contacted for comments during the legal notice process as a precaution.

Specific Information for Application 78-12415 –MSF analysis is required for the proposed source and use upstream from MSF rights 3-8 and 79-14119.

Application 78-12415 also involves MSF rights 78-12233 and 78-12362. 78-12233 is a MSF on Elk Creek, which is not subordinate to future non-dcmi uses. 78-12362 is a MSF on the Little Salmon River below the confluence with Round Valley Creek, which is subordinate to future non-dcmi uses up to a limit of 52.7 cfs.

This leads to the following MSF conclusions for application 78-12415:

- Senior MSF right 3-8 will not be subordinated to the proposed use.
- Senior MSF right 79-14119 will not be subordinated to the proposed non-dcmi use.
- Senior MSF right 78-12233 will not be subordinated to the proposed non-dcmi use.
- Senior MSF right 78-12362 will be subordinated to the proposed non-dcmi use.

The attached MSF spreadsheet shows the application meets the criteria for MSF rights in the same basin.

Discussion

Effect on Existing Water Rights and/or Sufficiency of Water Supply: Application 78-12415 proposes diversion from Elk Creek, into which Little Elk Creek flows. Little Elk Creek has been a source with historical water use complaints. Originally, application 78-12415 proposed diversion of the maximum rate allowable for irrigation of 3.5 acres. The applicant was sent a request for additional information confirming water was available and injury to downstream users would not occur should the application be approved. The applicant submitted limited data regarding supply and indicated the intended use for irrigation is minimal, only propose irrigation use for watering various fruit trees and berries. Consequently, I recommended the applicant reduce the proposed diversion quantity (for both applications) to the minimal acceptable rate per acre for an irrigation right (0.01 cfs/ac), totaling 0.04 cfs for irrigation of 3.5 acres (and/or domestic use for the ground water application). The applicant agreed, and submitted amended applications accordingly. Consequently, I did not ask the applicant to provide further evidence of sufficiency of supply and/or effect on existing water rights considering the proposed diversion is de minimis. Considering the proposed diversion is downstream of diversions related to

⁵ POD = T31N-R5W-S10.

⁶ From mouth of river T29N-R4W-S14 upstream thru about Shepp Ranch T24N-R6E-S12.

historic water use complaints, comment letters will not be sent to complaint/protesting parties as they should not be affected by the proposed downstream use.

Local Public Interest: Comment letters from IDFG & IDEQ were requested by the applicant and received by IDWR prior to the last application amendments. IDEQ had no concerns with the project as originally proposed. IDFG expressed concern regarding the sufficiency of supply to fill the original proposed quantity (0.11 cfs) in their initial comment letter for both applications. I spoke with IDFG regarding my suggestion to the applicant to reduce the quantity requested, which IDFG indicated would be desirable. Additionally, IDFG recommended the proposed diversion from Elk Creek have a 3/32" screen. IDFG and IDEQ will be sent comment letters during advertising to make sure they are aware of the proposed project constraints now and ask if they have further concerns. No additional comments were received from IDFG, IDEQ, or IDWR Planning Bureau during advertising.

Conditions of Approval

In addition to typical standard conditions (004, 121 etc.), use the following standard, modified &/or unique conditions for Basins 77-79.

Per IDFG comments, use the following for application 78-12415:

- **029 standard** - 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.

BS 78 MINIMUM STREAMFLOW RIGHTS -- QUERY 12/31/2013

Basin	Sequence	Priority	Source	Subordinate to Future DCMI	Subordinate to Future Non DCMI (CFS Limit)	Non DCMICFS Approved Since 4/1/2005
78	12235	4/1/2005	BOULDER CREEK - entire creek	YES	NO	N/A
78	12233	4/1/2005	ELK CREEK - entire creek	YES	NO	N/A
78	12234	4/1/2005		YES	NO	N/A
78	12236	4/1/2005	HAZARD CREEK - entire creek between both rights	YES	NO	N/A
78	12237	4/1/2005	LITTLE SALMON RIVER - thru 21N 1E S35, confluence w/ Round Valley Cr.	YES	7	0
78	12362	4/1/2005	LITTLE SALMON RIVER - river below confluence w/ Round Valley Cr.	YES	52.7	0.8
DCMI APPL OK, NON-DCMI CONSUMPTIVE APPL OK UNTIL NEW APPROVALS EXCEED 7.0 CFS FOR BS 78. SEE "PROCEDURE" BELOW.						

PROCEDURE: DCMI APPL ok for all msf rights in Bs 78 as noted in review memo. NON-DCMI CONSUMPTIVE USE APPL: Non-dcmi consumptive use approvals for Bs 78 since 4/1/2005 total less than 1.0 cfs, allowing at least 6.0 cfs for additional approvals before need more analysis. Senior Little Salmon River msf rights are subordinate to this junior application for non-dcmi consumptive use. **CAUTION** - Creek msf rights do not include future non-dcmi cfs. Creek msf rights are tributary to river below Round Valley Cr. so involve river msf 78-12362 with 52.7 future non-dcmi cfs. Possible to have new appl that involves creek msf & river msf factors to be addressed in review memo. If non-dcmi consumptive use application falls within creek msf right, note in review memo that senior creek msf right will not be subordinate to this junior application, even though river msf right(s) will be subordinate to this junior application.

EXAMPLE: Appl 78-12363 for 0.13 cfs irrigation & stock, future non-dcmi consumptive use. Creek msf rights n/a but tributary to river above Round Valley Creek. River msf rights allow at least 7.0 cfs for new non-dcmi approvals regarding subordination clause. Have not reached 7.0 cfs for new approvals yet. Process appl and note review memo that senior msf river rights will be subordinated to this new use. Updates to this spreadsheet will eventually show 0.13 cfs future non-dcmi has been approved.

AMOUNT APPROVED PER ABOVE FACTORS 0.54 cfs before 2013 + 0.26 cfs in 2013 = 0.80 cfs total