

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 77-14353

Priority: March 22, 2013

Maximum Diversion Rate: 0.33 CFS

This is to certify, that LOON CREEK LAND CO LLC
C/O JOHN SHORT
4799 BALSAM DR
PARK CITY UT 84098

JOHN SHORT
4799 BALSAM DR
PARK CITY UT 87098

has applied for a permit to appropriate water from:

Source: DEER CREEK

Tributary: LOON CREEK

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

BENEFICIAL USE

POWER

PERIOD OF USE

01/01 to 12/31

RATE OF DIVERSION

0.33 CFS

LOCATION OF POINT OF DIVERSION:

DEER CREEK NW1/4NE1/4 Sec. 15, Twp 14N, Rge 13E, B.M., CUSTER 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
14N	13E	15				X													

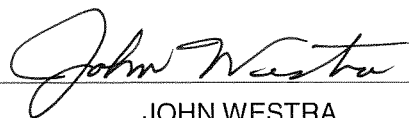
CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **February 01, 2015**.
2. Subject to all prior water rights.
3. Use of water under this right shall be non-consumptive.
4. 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.
5. Prior to diversion of water under this right, the right holder shall install a lockable device, subject to the approval of the Department, in a manner that will provide suitable control of the diversion.
6. 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 fifteen times the diameter of the conduit and shall be above ground or otherwise easily accessible.

State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 77-14353

7. 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.
8. 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.
9. This right does not grant any right-of-way or easement across the land of another.
10. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
11. The right holder shall install a measuring device that can be used to determine the instantaneous rate of flow of water through the system, or the right holder shall provide to the department a flow rate measurement or computation made by a certified water right examiner in accordance with actual system design and operation.
12. This right is subject to the provisions of Sections 42-205 through 42-210, Idaho Code, restricting the sale, transfer, assignment, or mortgage of this right. Failure to comply with these provisions is cause for immediate cancellation of this right.
13. The appropriator shall exercise this right in a manner that recognizes the historic practice that the use of water for power generation is incidental to the rights of others to the use of water for other purposes. The appropriator shall not make a delivery call for hydropower generation except as against junior hydropower rights.
14. The rights for the use of water acquired under this right shall be junior and subordinate to all other 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 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 permit.
15. The Director retains jurisdiction of this right in order to limit the use of water for hydropower generation purposes to a specific term of years as required by Section 42-203B(7), Idaho Code.
16. The amount of water diverted under this water right may not exceed 25% of the stream flow of Deer Creek at the point of diversion described below at any given time.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 5th day of February, 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

February 5, 2014

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

LOON CREEK LAND CO LLC
C/O JOHN SHORT
4799 BALSAM DR
PARK CITY UT 87098

RE: Permit No.77-14353

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.

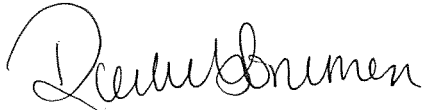
Enclosed is a form entitled 'Instructions for Proof of Beneficial Use.' Please read the instructions carefully since you must take further action to develop this permit into a licensed water right. Also enclosed is a form entitled 'Proof of Beneficial Use.' If your project is already completed, you should 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

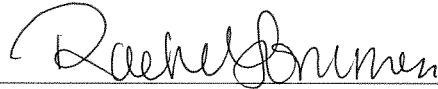
I hereby certify that on February 5, 2014 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the persons listed below:

RE: WATER RIGHT NO.

77-14353

**JOHN SHORT
4799 BALSAM DR
PARK CITY UT 87098**

**LOON CREEK LAND CO LLC
C/O JOHN SHORT
4799 BALSAM DR
PARK CITY UT 84098**

A handwritten signature in cursive script, reading "Rachel Sommer", is positioned above 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.

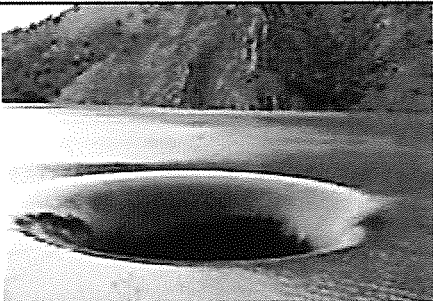
Westra, John

From: Spencer, Steven M -FS [sspencer@fs.fed.us]
Sent: Thursday, January 30, 2014 12:30 PM
To: Westra, John
Subject: Loon Creek and the Diamond D

John,

Wow, I'm glad you remembered. Yes, the deed is recorded. Thanks for working with me on this – the light is **GREEN**.

Steve

	Steven M. Spencer Water Use Specialist USDA Forest Service 1805 Hwy 16 Rm 5 Emmett, ID 83617 sspencer@fs.fed.us (208) 365-7055	
<i>The only source of knowledge is experience. - Albert Einstein</i>		

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Walker, Kay

77-14353

From: John Short [js@short-consulting.com]
Sent: Tuesday, January 28, 2014 3:50 PM
To: Walker, Kay
Subject: USFS Land Sale Completed
Attachments: Loon Creek Deed 1.tiff; Loon Creek Deed.tiff

I have attached the Quitclaim Deed for the USFS land purchase. As I understood from our last phone discussion the Forest Service had requested you put a hold my non consumptive water right application pending completion of the land sale. With that now completed can we proceed? I appreciate your help with this. John

248355

WHEN RECORDED MAIL TO
AND MAIL TAX STATEMENTS TO:

Mr. John Short
President
Diamond D Ranch, Inc.
4799 Balsam Drive
Park City, UT 84098

Diamond D Land Transfer

deposited 1-1-13

Deputy

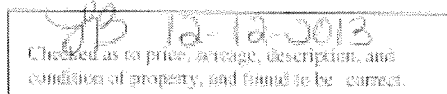
QUITCLAIM DEED

THIS QUITCLAIM DEED is made this 12th day of December, 2013, between the UNITED STATES OF AMERICA, acting by and through the FOREST SERVICE, DEPARTMENT OF AGRICULTURE, hereinafter called GRANTOR, and JOHN H. SHORT and MARY WILKES SHORT, husband and wife, of the County of Summit, State of Utah, hereinafter called GRANTEE.

WITNESSETH: The Grantor is authorized to convey certain National Forest System land by the Omnibus Public Land Management Act of March 30, 2009 (Sec. 3308, P.L. 111-11), the provisions of which have been met.

NOW THEREFORE, the Grantor, for and in consideration of the payment of EIGHTY-FIVE THOUSAND and NO/ONE HUNDRED DOLLARS (\$85,000.00), the receipt of which is hereby duly acknowledged, does hereby remise, release, and quitclaim unto the Grantee, its successors and assigns, all its right, title, interest, and claim, in and to the real property situated in the County of Custer, State of Idaho, more particularly described as follows:

Boise Meridian



T. 14 N., R. 13 E.,

A portion of unsurveyed Sec. 15, more particularly described as follows:

Beginning at Corner No. 8, Homestead Entry Survey (HES) No. 135, the True Point of Beginning; thence N. 52°56'40" W., 178.44 feet along the boundary between Corner No. 8 and Corner No. 1 of HES No. 135; thence S. 6°53'51" W., 131.16 feet; thence S. 4°09'24" E., 138.95 feet; thence S. 0°03'13" E., 202.99 feet; thence S. 5°38'32" E., 153.91 feet; thence S. 15°28'45" E., 95.72 feet; thence S. 81°26'21" E., 35.94 feet; thence S. 23°49'38" E., 86.60 feet; thence S. 35°08'23" E., 52.45 feet; thence S. 8°41'34" E., 21.86 feet; thence S. 18°34'33" W., 12.00 feet; thence S. 71°56'16" W., 56.51 feet; thence S. 28°19'36" E., 37.47 feet; thence S. 65°55'30" E., 131.36 feet; thence S. 57°22'05" E., 42.77 feet; thence S. 23°38'58" E., 109.15 feet; S. 17°58'32" W., 115.49 feet; thence S. 31°54'18" W., 62.81 feet to a point of intersection with the boundary between Corner Nos. 3 and 4 of HES 74;

248355

thence N. 51°50'32" E., 649.98 feet along said boundary to Corner No. 4, HES No. 74; thence N. 47°04'00" E., 285.00 feet along the boundary between Corner Nos. 4 and 5, HES No. 74; thence N. 0°00'00" E., 684.43 feet to the point of intersection with the boundary between Corner Nos. 7 and 8, HES No. 135; thence along said boundary S. 81°34'06" W., 816.50 feet to Corner No. 8, HES No. 135, the **True Point of Beginning**.

Containing 19.41 acres, more or less.

IN WITNESS WHEREOF, the Grantor, by its duly authorized representative, has executed this Quitclaim Deed pursuant to the delegation of authority promulgated in Title 7 CFR 2.60 and 49 FR 34283, August 29, 1984, on the day and year first above written.

UNITED STATES OF AMERICA

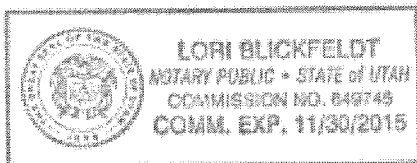
BY: 

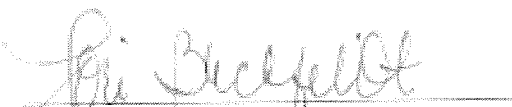
KATHRYN J. CONANT
Director of Lands & Minerals
Intermountain Region
USDA Forest Service

ACKNOWLEDGMENT

STATE OF UTAH }
COUNTY OF WEBER } ss

On this 12th day of December, 2013, before me, Lori Blickfeldt, a Notary Public in and for Weber County, State of Utah, personally appeared **KATHRYN J. CONANT, Director of Lands, Intermountain Region, Forest Service, U.S. Department of Agriculture**, the signer of the within instrument, who acknowledged to me that she executed the foregoing instrument, by duly delegated authority.




Notary Public for the State of Utah
Residing in Layton, UT
My Commission Expires 11/30/2015

Westra, John

From: Spencer, Steven M -FS [sspencer@fs.fed.us]
Sent: Friday, August 02, 2013 4:24 PM
To: Westra, John
Subject: Application 77-14353 - Hydropower at Loon Creek
Attachments: Sale Parcel_Encroachment Map 041212.pdf; Peppersack ortho_050912.pdf

John,

I have reviewed this application and have a concern that I discussed briefly with you on the phone this afternoon. The POD for this project appears to be on HES 135 – which is private land. The POU appears to be on HES 74 – which is also private land. The land between these two homesteads is National Forest System (NFS) land. The Forest Service is just finishing a sale of NFS land to the applicant that would resolve various long-term encroachments. This land sale has taken quite some time because it required congressional action to adjust the boundary of the Frank Church River of No Return Wilderness. The transaction is in its final stages and we estimate it will be complete in 60 days.

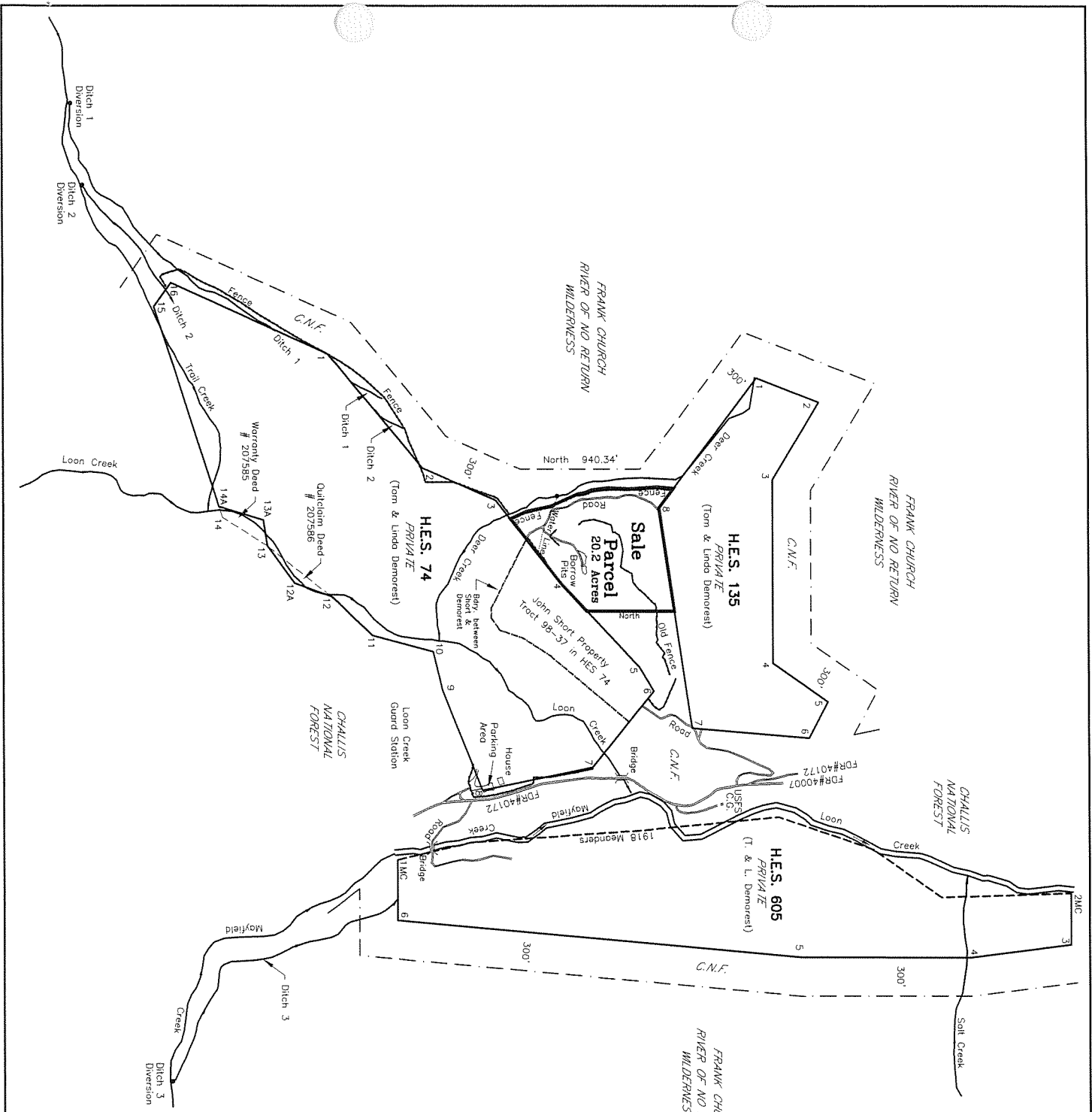
The problem is that at this moment the conduit for this hydropower project must necessarily cross NFS land to get from HES 135 to HES 74. The applicant is not authorized to occupy and use NFS land for this purpose. This is complicated by the fact that any hydropower project must have an appropriate authorization from the Federal Energy Regulatory Commission. This could be a license or an exemption from licensing. It seems like Idaho Administrative Code IDAPA 37 Rule 45 requires that an applicant have legal access to the property necessary to construct and operate a proposed project as well as filing all applications needed to divert from or convey water across land not owned by the applicant. We feel this would be an appropriate situation to delay processing of this application until the FS land transaction is complete. At that time the entire project would be on private land and authorization from the Forest Service would not be needed.

Please let me know if this delay pursuant to Rule 45 is possible. I will let you know as soon as I hear that the land transaction is complete or provide an update and status report to you about the transaction by October 11.

Thank you.

Steve

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U.S. DEPARTMENT OF AGRICULTURE FOREST SERVICE CHALLIS NATIONAL FOREST			
REGION 4			
SALE PARCEL AND ENCROACHMENT MAP			
DIAMOND D RANCH			
(H.E.S. Nos. 74, 135 & 605)			
SECTIONS 10, 11, 14 & 15 (UNSURVEYED)			
TOWNSHIP 14 NORTH, RANGE 13 EAST, B.M.			
CUSTER COUNTY, IDAHO			
SUBMITTED BY: <u>Hedman, Feldman, Schroeder</u> DATE: _____		DRAWN: <u>RAS</u>	
FOREST APPROVAL: _____ DATE: _____		CHECKED: _____	
APPROVED: _____ DATE: _____		SHEET 1 of 1	
ENCROACHMENTS		DWG. NAME	

Westra, John

From: Spencer, Steven M -FS [sspencer@fs.fed.us]
Sent: Monday, October 21, 2013 10:25 AM
To: Westra, John
Subject: RE: Application 77-14353 - Hydropower at Loon Creek

Hi John,

It's good to be back. I got a lot done at home. But it got me thinking about retirement – still 5 years out on my master plan. The fed gov has approval to do some partial retirements were you can work half time. It's not implemented yet, but in 5 years it might be up and running and something I may look very closely at. My backup plan would be to come and work for you.

This land transaction has suffered a little delay from the furlough. We're waiting for a reply or OK from SHPO (the State Historic Preservation Officer). Our guy in Boise, actually just down the street from you with office space at the warehouse, is hoping to have it done the first part of December. A thought – if this will work for you and you are ready to approve the application - might it be possible to have a condition on the permit similar to what we're doing with the minerals operations, that the permit is "subject to consummation of the pending land exchange with the federal government and/or the appropriate authorization from the Federal Energy Regulatory Commission".

This way when the land exchange is consummated the FS or federal concerns would be off the table. If for some reason the land exchange fizzles the controlling authorizing agency would be FERC. And like the mining situations – possible lengthy federal delays in either scenario are accommodated.

The last time our guy was on the ground there was evidence that most of the infrastructure for this use is already in place, including some on the federal land. It was not complete and water was not being diverted. But it was pretty far along.

Let me know what you think and if something like I suggested might work for you.

Thank you,

Steve

	Steven M. Spencer Water Use Specialist USDA Forest Service 1805 Hwy 16 Rm 5 Emmett, ID 83617 sspencer@fs.fed.us (208) 365-7055	
<i>Anyone who has never made a mistake has never tried anything new. – Albert Einstein</i>		

From: Westra, John [mailto:John.Westra@idwr.idaho.gov]
Sent: Monday, October 21, 2013 7:59 AM

To: Spencer, Steven M -FS
Subject: RE: Application 77-14353 - Hydropower at Loon Creek

Steve:

Welcome Back!

Just wanted to check in on the status of this transaction.

When you give the go ahead, we will move forward with the approval.

Thank you
John Westra

From: Spencer, Steven M -FS [<mailto:sspencer@fs.fed.us>]
Sent: Friday, August 02, 2013 4:24 PM
To: Westra, John
Subject: Application 77-14353 - Hydropower at Loon Creek

John,

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The problem is that at this moment the conduit for this hydropower project must necessarily cross NFS land to get from HES 135 to HES 74. The applicant is not authorized to occupy and use NFS land for this purpose. This is complicated by the fact that any hydropower project must have an appropriate authorization from the Federal Energy Regulatory Commission. This could be a license or an exemption from licensing. It seems like Idaho Administrative Code IDAPA 37 Rule 45 requires that an applicant have legal access to the property necessary to construct and operate a proposed project as well as filing all applications needed to divert from or convey water across land not owned by the applicant. We feel this would be an appropriate situation to delay processing of this application until the FS land transaction is complete. At that time the entire project would be on private land and authorization from the Forest Service would not be needed.

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Thank you.

Steve

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AFFIDAVIT OF PUBLICATION

State of Idaho, County of Custer, ss:

I, Susan Callahan, representing the Challis Messenger, a weekly newspaper, published at Challis, Idaho, do solemnly swear that the notice hereto attached and made a part hereof, was published in the regular and entire issue of the Challis Messenger for 2 consecutive weeks, commencing with the issue dated Aug 1 2013 and ending with the issue dated Aug 8 2013

Susan Callahan

STATE OF IDAHO

COUNTY OF CUSTER

On this 13th day of Aug in the year of 2013, before me, a Notary Public, personally appeared Susan Callahan, 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.

Dina Sue Tappan
Notary Public for Idaho
Residing at Challis, ID
My commission expires: 12-8-14

PARK CITY, UT 87098

Point of Diversion NWNE S15 T14N R13E CUSTER County Source DEER CREEK Tributary LOON CREEK

Use: POWER 01/01 to 12/31 0.33 CFS

Total Diversion: 0.33 CFS

Date Filed: 3/22/2013

Place of Use: POWER

T14N R13E S15 SENE

This application proposes the diversion and use of water tribu-

IDWR

The following application has been filed to appropriate the public waters of the State of Idaho:

77-14353

LOON CREEK LAND CO LLC

JOHN SHORT

4799 BALSAM DR

tary to a federally designated Wild & Scenic River. The decreed minimum stream flow rights for the federal Wild & Scenic Rivers are subordinate to certain categories of water use and to specified amounts of water use established after the minimum stream flow. The water use proposed in this application will benefit from the subordination provision because it is for power purposes. Permits will be subject to all

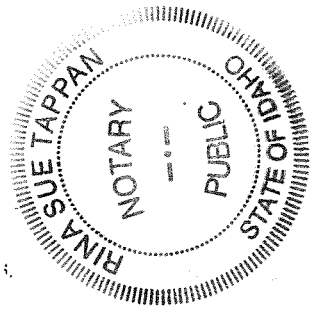
prior water rights. For additional information concerning the property location, contact Western Region office at (208) 334-2190; or for a full description of the right(s), please see www.idwr.idaho.gov/apps/ExtSearch/WRFile.asp. Protests may be submitted based on the criteria of Idaho Code § 42-203A. 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 8/19/2013. The protestant must also send a copy of the protest to the applicant.
GARY SPACKMAN, Director
Published: August 1 and 8, 2013

RECEIVED

AUG 28 2013

WATER RESOURCES
WESTERN REGION



Sommer, Rachel

From: amean@challismessenger.com on behalf of Anna Means [info@challismessenger.com]
Sent: Thursday, August 22, 2013 9:01 AM
To: Sommer, Rachel
Subject: Re: FW: Custer Legal Ads

We're sending it to the Boise address today.

On Thu, Aug 22, 2013 at 7:46 AM, Sommer, Rachel <Rachel.Sommer@idwr.idaho.gov> wrote:

Good Morning Anna,

I have yet to receive an invoice or an affidavit for this legal notice. Will you please let me know when I should be receiving one.

Thank you,

Rachel Sommer

From: Sommer, Rachel
Sent: Wednesday, July 24, 2013 2:02 PM
To: 'INFO@CHALLISMESSSENGER.COM'
Subject: Custer Legal Ads

Good Afternoon Anna Means,

I am now the contact person for the Department of Water Resources Western Region. Please send all future Correspondence to my attention.

Also, please see the attached ad for publication on 8/1/2013 & 8/8/2013.

Please confirm these are okay to publish as shown.



Thank you very much,

Rachel Sommer

Administrative Assistant

IDWR, Western Region

Office: 208-334-2190

Fax: 208-334-2348

rachel.sommer@idwr.idaho.gov