

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 45-14194

Priority: March 10, 2009

Maximum Diversion Rate: 0.20 CFS
Maximum Diversion Volume: 61.0 AF

It is hereby certified that EARL LAVELL WARTHEN
1047 SO HWY 77
ALBION ID 83311 has complied with the terms and conditions of the
permit, issued pursuant to Application for Permit dated March 10, 2009; and has submitted Proof of
Beneficial Use on April 05, 2010. An examination confirms water is diverted from:

SOURCE

HOWELL CREEK

Tributary: MARSH 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>
GROUND WATER RECHARGE	11/01 to 03/31	0.20 CFS	60.0 AF
GROUND WATER RECHARGE STORAGE	01/01 to 12/31		1.0 AF
GROUND WATER RECHARGE FROM STORAGE	01/01 to 12/31		1.0 AF
DIVERSION TO STORAGE	11/01 to 03/31	0.20 CFS	

LOCATION OF POINT(S) OF DIVERSION:

HOWELL CREEK SE¼SW¼ Sec. 16, Twp 12S, Rge 25E, B.M. CASSIA County

PLACE OF USE: GROUND WATER RECHARGE, GROUND WATER RECHARGE STORAGE and
GROUND WATER RECHARGE FROM STORAGE

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
12S	25E	16									X								

CONDITIONS OF APPROVAL

1. Pursuant to Section 42-4201A(3), Idaho Code, the Director may reduce the amount of water diverted for recharge purposes under this right even though there is sufficient water to supply the entire amount authorized for appropriation under this right.
2. Use of water under this right shall be non-consumptive.
3. The pond established by the storage of water under this right shall not exceed a total capacity of 1.0 acre-feet or a total surface area of 0.4 acre.
4. The following rights are diverted through point(s) of diversion described above: 45-327E, 45-7642 and 45-14194.
5. 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. 45F.

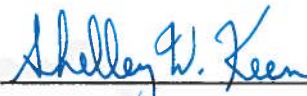
State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 45-14194

6. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
7. To insure that other water rights are not injured by the operations of the recharge project authorized by this right, the director retains jurisdiction to approve, disapprove, or require alterations in the methods employed to achieve ground water recharge.
8. Water diverted under this right may not be considered as recharge which qualifies for mitigation or compensation to other groundwater users, surface water users, or other entities, unless approved by the Director of the Idaho Department of Water Resources pursuant to applicable Idaho law.

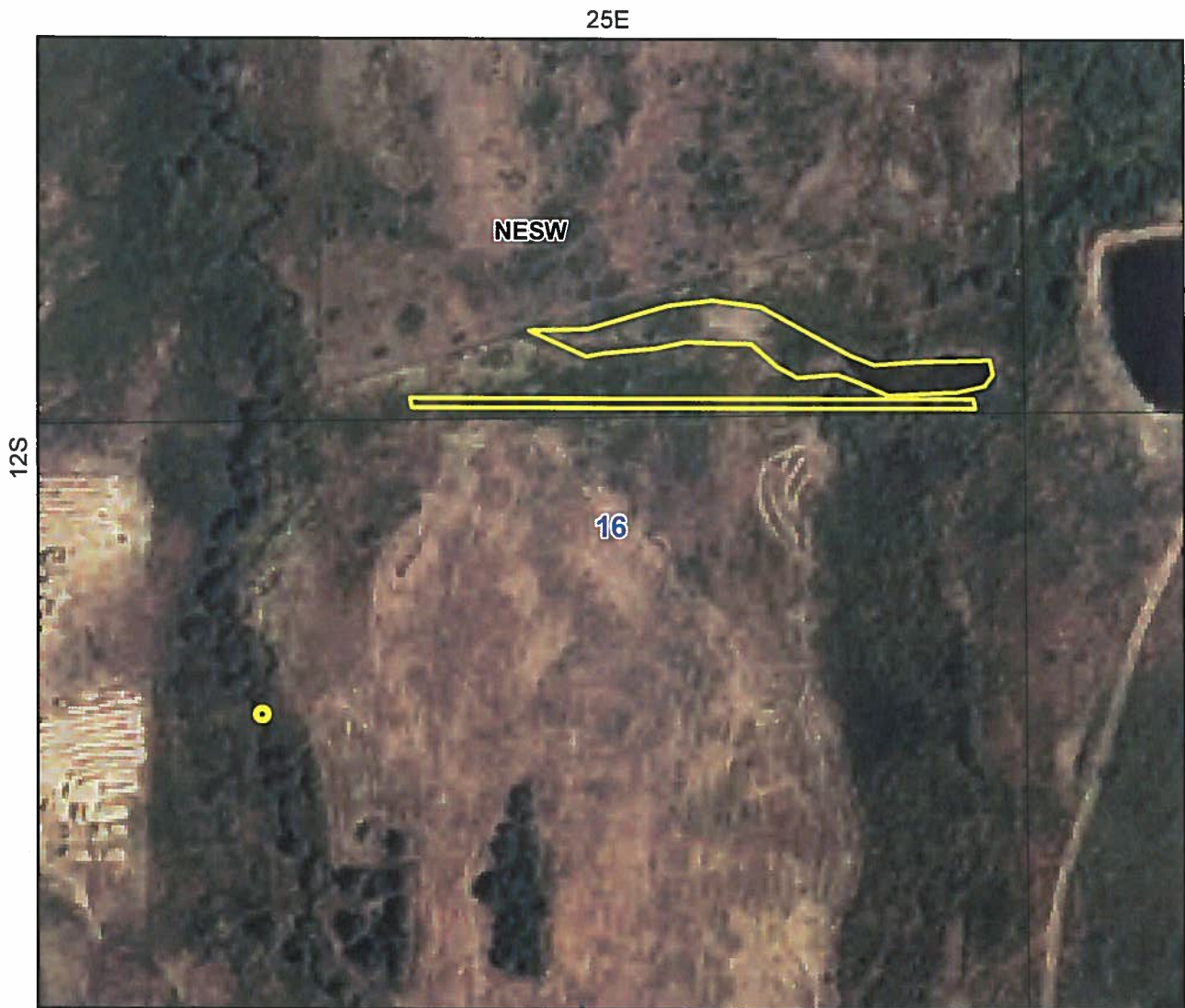
This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed this 15th day of January, 2014.


for GARY SPACKMAN
Director

State of Idaho
Department of Water Resources
Attachment To Water Right License
45-14194

This map depicts the GROUND WATER RECHARGE 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 0.02 0.04 0.08 Miles



A horizontal scale bar with tick marks at 0, 0.02, 0.04, and 0.08 miles.



State of Idaho
Department of Water Resources
Attachment To Water Right License
45-14194

This map depicts the GROUND WATER RECHARGE STORAGE and GROUND WATER RECHARGE FROM STORAGE 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.

25E



-  Point of Diversion
-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters

0 0.0225 0.045 0.09 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

January 16, 2014

EARL LAVELL WARTHEN
1047 SO HWY 77
ALBION ID 83311

RE: License No. 45-14194

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 208-287-4916.

Sincerely,

Craig L. Saxton
Water Rights Supervisor

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on January 17, 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.

45-14194

**EARL LAVELL WARTHEN
1047 SO HWY 77
ALBION ID 83311**



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.

Comment Report

45-14194

13. csaxton 1/15/2014 Diversion Volume

Comment: I am interpreting the "Maximum Storage Volume: 1 AF" to limit only the storage volume to 1 AF and not the volume of water diverted under the Ground Water Recharge purpose of use (live flow). This interpretation is made because 1) we do not historically put a diversion volume on a permit for a non-storage use but will add one at licensing, and 2), because whoever generated the permit specifically changed the standard language of "Maximum DIVERSION Volume" to "Maximum STORAGE Volume". I interpret this as a way to make clear that the diversion volume under the Ground Water Recharge use would be determined at licensing. I recommend the diversion volume for Ground Water Recharge as: $(151 \text{ days})(1.9935)(0.2 \text{ cfs}) = 60.0 \text{ AF}$

14. csaxton 1/15/2014 No Mitigation Credit

Comment: Because this right was not developed to provide recharge for mitigation or compensation to other consumptive uses, and because this right is identified as non-consumptive, I recommend adding the following condition to the right to prevent enlargement of the right in the future it is proposed to use this right to mitigate for another use or accumulate credits:

Water diverted under this right may not be considered as recharge which qualifies for mitigation or compensation to other groundwater users, surface water users, or other entities, unless approved by the Director of the Idaho Department of Water Resources pursuant to applicable Idaho law.