



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](http://www.idwr.idaho.gov)

C.L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

November 13, 2013

EAGLE VALLEY RANCH LLC  
446 BOHANNON CREEK RD  
SALMON ID 83467

RE: License No. 74-7388

### 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 November 14, 2013, 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.**

**74-7388**

**EAGLE VALLEY RANCH LLC  
446 BOHANNON CREEK RD  
SALMON ID 83467**



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.

State of Idaho  
Department of Water Resources  
**Water Right License**

WATER RIGHT NO. 74-07388

**Priority:** February 19, 1999

Maximum Diversion Rate: 0.20 CFS  
Maximum Diversion Volume: 0.6 AF

It is hereby certified that EAGLE VALLEY RANCH LLC  
446 BOHANNON CREEK RD  
SALMON ID 83467 has complied with the terms and conditions of the  
permit, issued pursuant to Application for Permit dated February 19, 1999; and has submitted Proof of  
Beneficial Use on July 26, 1999. An examination confirms water is diverted from:

**SOURCE**

BOHANNON CREEK

**Tributary:** LEMHI RIVER

and a water right has been established as follows:

| <b><u>BENEFICIAL USE</u></b> | <b><u>PERIOD OF USE</u></b> | <b><u>DIVERSION RATE</u></b> | <b><u>ANNUAL<br/>DIVERSION VOLUME</u></b> |
|------------------------------|-----------------------------|------------------------------|-------------------------------------------|
| RECREATION STORAGE           | 01/01 to 12/31              |                              | 0.6 AF                                    |
| DIVERSION TO STORAGE         | 01/01 to 12/31              | 0.20 CFS                     |                                           |

**LOCATION OF POINT(S) OF DIVERSION:**

BOHANNON CREEK NE1/4SW1/4 Sec. 28, Twp 21N, Rge 23E, B.M. LEMHI County

**PLACE OF USE:** RECREATION 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 |        |  |
| 21N | 23E | 28  |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | X      |  |

**CONDITIONS OF APPROVAL**

1. Recreation storage use is for a pond.
2. Use of water under this water right will be regulated by the watermaster of State Water District No. 74C.

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 13<sup>th</sup> day of November, 2013.

  
for GARY SPACKMAN  
Director

State of Idaho  
Department of Water Resources  
**Water Right License**  
74-7388

This map depicts the RECREATION 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



RECEIVED

SEP 27 2013

DEPARTMENT OF  
WATER RESOURCES

September 23, 2013

Department of Water Resources  
322 East Front Street  
PO Box 83720  
Boise, ID 83720

Attention: Sandra Thiel  
Re: Permit # 74-7388

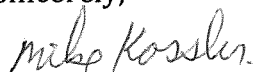
This letter is in regard to the pond located on Eagle Valley Ranch.

We are requesting that we be exempt from having a lockable controlling works or measuring device on the pond.

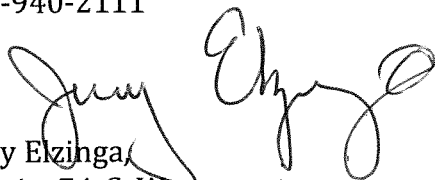
This is to verify that the pond is for recreation use only and is not used for irrigation purposes. The only time water from Bohannon Creek enters this pond is during high water. During medium or low flows water does not enter the pond. Water exits only as overflow during high water seasons. It is not used for any irrigation purposes. There are no diversion points below the exit of the water for irrigation use.

We have consulted with our water master, Jerry Elzinga, and he is in agreement that that he would release us from this requirement.

Sincerely,



Mike Kossler, Manager  
Eagle Valley Ranch  
445 Bohannon Cr Rd  
Salmon, ID  
208-940-2111



Jerry Elzinga  
District 74-C Watermaster  
700 Monroe Street  
Salmon, Idaho 83467  
208-993-0998



State of Idaho

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GARY SPACKMAN  
Director

C.L. "BUTCH" OTTER  
Governor

August 27, 2013

EAGLE VALLEY RANCH LLC  
446 BOHANNON CREEK RD  
SALMON ID 83467

RE: Permit No. 74-7388

Dear Water Right Holder(s):

The Department of Water Resources (IDWR) is reviewing permit 74-7388 so that we can issue a license for the uses developed. In a review of the file, we notice that you have not complied with the following condition of approval of the permit:

Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.

The Department's field examiner found no lockable device on your diversion. You must resolve this issue before a license can be issued. Pursuant to Idaho Code § 42-219(8), if the conditions of approval on a permit are not complied with, IDWR may issue an order voiding the permit or issue a license for only that portion of the authorized use developed in accordance with the permit. The enclosed license is for recreation storage and diversion to storage. You need to apply for another water right for the water that flows through the pond. I have enclosed an application.

You have some options to resolve this problem. You can submit documentation that you have complied with this condition and our examiner was not informed of the compliance at the time of the exam, you can install the required lockable device and submit documentation of the installation, or you can request removal of this requirement from your permit. If you request removal of the requirement, you should also submit documentation that this request would be acceptable to the watermaster of Water District No. 74 C. Jerry Elzinga is the water master for Water District No. 74 C. You can contact him at 700 Monroe St, Salmon, ID, 83467 or (208)993-0998. If you request a waiver of the requirement, IDWR will consider your request and notify you of the decision in writing.

IDWR will withhold further action on your permit for 30 days from the date of this letter in order to allow you time to respond. If IDWR does not receive a response from you within this time period, it will be assumed that you are not interested in pursuing a water right license, and action will be taken to void your permit. If you need additional time to respond, please contact me to discuss your options.

If you have any questions in regard to this matter, please do not hesitate to contact me at (208)287-4879 or [sandra.thiel@idwr.idaho.gov](mailto:sandra.thiel@idwr.idaho.gov).

Sincerely,

Sandra Thiel  
Water Resource Planner

## MEMORANDUM

TO: Water Rights File 74-7388  
FROM: Sandra Thiel  
DATE: June 5, 2013  
SUBJECT: Phone conversation

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Mike Kottler called to check the status of permit 74-7388. He received the letter I sent. The owner of Eagle Valley Ranch is back east and he is addressing this for him. Last fall I met with Lothar Eichner for the field exam. I didn't find a measuring device; however, I did find diversion works that could conceivably be locked. Mike plans to talk to Jerry Elzinga, the water master for Bohannon Creek, to see if he will waive the requirement for the measuring device.



State of Idaho

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GARY SPACKMAN  
Director

C.L. "BUTCH" OTTER  
Governor

May 31, 2013

EAGLE VALLEY RANCH LLC  
446 BOHANNON CREEK RD  
SALMON ID 83467

RE: Permit No. 74-7388

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If you have any questions in regard to this matter, please do not hesitate to contact me at (208)287-4879 or [sandra.thiel@idwr.idaho.gov](mailto:sandra.thiel@idwr.idaho.gov).

Sincerely,

Sandra Thiel  
Water Resource Planner