

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 84-12227

Priority: May 12, 2005

Maximum Diversion Rate: 0.04 CFS

This is to certify, that DON R BERRY
551 HUCKLEBERRY BUTTE RD
OROFINO ID 83544
And
STATE OF IDAHO DEPT OF LANDS
300 N 6TH. STE. 103
BOISE ID 83720-0050

has applied for a permit to appropriate water from:

Source: SPRING

Tributary: SINKS

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>
DOMESTIC	01/01 to 12/31	0.04 CFS

LOCATION OF POINT(S) OF DIVERSION:

SPRING, NW1/4NW1/4NW1/4, Sec. 19, Twp 37N, Rge 03E, B.M., CLEARWATER County

PLACE OF USE: DOMESTIC

Twp	Rge	Sec	NE				NW				SW				SE				Totals	
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
37N	02E	13																	X	

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **November 01, 2014**.
2. Subject to all prior water rights.
3. This right does not grant any right-of-way or easement across the land of another.
4. Domestic use is for external use for 1 home.
5. The irrigation occurring under this domestic use shall not exceed 1/2 acre.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Coeur d'Alene, this 24 day of October, 2013.


For, GARY SPACKMAN, Director



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region, 7600 N. Mineral Drive, Suite 100 • Coeur d'Alene, Idaho 83815

Phone: (208) 762-2800 • Fax: (208) 762-2819 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

October 28, 2013

DON R BERRY
551 HUCKLEBERRY BUTTE RD
OROFINO ID 83544

STATE OF IDAHO DEPT OF LANDS
300 N 6TH. STE. 103
BOISE ID 83720-0050

RE: Permit No.84-12227

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) 762-2800.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric J. Davis". The signature is written in a cursive, flowing style.

Eric J. Davis
Sr. Water Resource Agent

Enclosure(s)

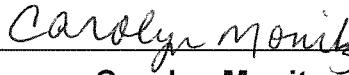
CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2013 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. 84-12227

**DON R BERRY
551 HUCKLEBERRY BUTTE RD
OROFINO ID 83544**

**STATE OF IDAHO DEPT OF LANDS
300 N 6TH. STE. 103
BOISE ID 83720-0050**

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

**Carolyn Monitz
Technical Records Clerk**

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.

Franklin, Keith

From: Hennekey,Ray [ray.hennekey@idfg.idaho.gov]
Sent: Monday, September 30, 2013 9:05 AM
To: Franklin, Keith
Cc: John.Cardwell@deq.idaho.gov; Cadwallader,Dave; Kiefer,Sharon
Subject: FW: Application for Permit No. 84-12227 Don Berry & Idaho Dept. of Lands
Attachments: 84-12227_App_and_msps.pdf

Keith –

IDFG has reviewed application #84-12227 from Don Berry to appropriated 0.04 cfs from a spring. IDFG does not anticipate that the requested appropriation will have adverse effects on fish, wildlife or habitat.

Thank you for the opportunity to comment.



Ray Hennekey

Environmental Staff Biologist
Idaho Department of Fish and Game
Clearwater Region
3316 16th Street
Lewiston, Idaho 83501

(208) 799-5010

From: Ball, Dianne [mailto:Dianne.Ball@idwr.idaho.gov]
Sent: Tuesday, September 24, 2013 3:54 PM
To: Hennekey,Ray; john.cardwell@deq.idaho.gov
Cc: Franklin, Keith
Subject: RE: Application for Permit No. 84-12227 Don Berry & Idaho Dept. of Lands

Dear Ray and John:

The Department of Water Resources is seeking written comment and/or recommendations from your agency regarding the above referenced water right application. A copy of the application is attached for your reference.

This is being prepared for publication in the Clearwater Tribune on October 3 and 10, 2013, with October 21, 2013 as the final date for protests to be received in our office.

Your prompt response to this request is appreciated. If your agency desires to formally protest the approval of this application, you may do so after the notice is published by filing a written protest along with a \$25.00 filing fee within 10 days after final publication.

Please contact Keith Franklin at this office if you have any questions regarding this application.

Sincerely,

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO)
) ss.
County of Clearwater)

CLOANN MCNALL

being first duly sworn in, on oath, deposes and says:

That I am and at all times herein mentioned have been a citizen of the United States and of the State of Idaho, over 21 years of age, and that I am not a party to nor interested in the above entitled proceeding; that I am and at all times herein mentioned have been the Editor, Foreman, of THE CLEARWATER TRIBUNE; that said Clearwater Tribune is a newspaper of general circulation, printed and published weekly at Orofino, in the County of Clearwater and State of Idaho; that the Clearwater Tribune has been continuously and uninterruptedly published in Clearwater County, Idaho, during the period of seventy-eight consecutive weeks prior to the first publication of attached copy of:

Idaho Department of Water Resources BERRY APPLICATION

of which the annexed is a full, true and correct printed copy, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for a period of two consecutive weeks, commencing on the 3rd day of October 2013 and ending on the 10th day of October 2013.

STATE OF IDAHO)
)
COUNTY OF CLEARWATER)

On this 10th day of October in the year of 2013, before me, a Notary Public, personally appeared

Clo Ann McNall

known or identified to me to be the person whose name subscribed to the within instrument, and being by me duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Marcie Stanton

Notary Public for Idaho
Resident at Orofino, Idaho
My commission expires: 5-16-14

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

84-12227

DON R BERRY

551 HUCKLEBERRY BUTTE RD

OROFINO, ID 83544

STATE OF IDAHO DEPT OF LANDS

300 N 6TH. STE. 103

BOISE, ID 83720-0050

Point of Diversion NWNWNW S19 T37N R03E

CLEARWATER County

Source SPRING tributary SINKS

Use: DOMESTIC 01/01 to 12/31 0.04 CFS

Total Diversion: 0.04 CFS

Date Filed: 5/12/2005

Place of Use: DOMESTIC T37N R02E S13 SESE

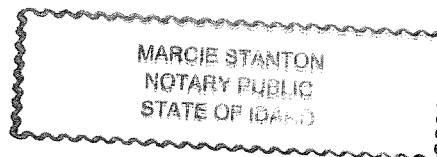
Domestic use is for 1 home.

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Northern Region office at (208) 762-2800. 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, Northern Region, 7600 Mineral Drive, Suite 100, Coeur D' Alene ID 83815 together with a protest fee of \$25.00 for each application on or before 10/21/2013. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

Published on 10/3/2013 and 10/10/2013

10-3, 10-10-13c



196924

Clearwater Tribune
161 Main Street
P.O. Box 71
Orofino, ID 83544
Telephone:

RECEIVED IDAHOWATER

OCT 11 2013

IDWR / NORTH

Idaho Department of Water Resources
Northern Region
7600 Mineral Drive, Suite 100
Coeur d' Alene, Idaho 83815

Idaho Department of Water Resources
Northern Region
7600 Mineral Drive, Suite 100
Coeur d' Alene, Idaho 83815

Warehouse : MAIN

10/03/2013

Net 0

BERRY APPLICATION 10/03/2013

1.00	1.00	NOTICE	93.52	93.52
		Berry Application		

COPY

93.52	0.00	0.00	93.52
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Amount due is based on 'Terms' above.	0.00	93.52
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STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1118 F Street • Lewiston, Idaho 83501 • (208) 799-4370
www.deq.idaho.gov

C.L. "Butch" Otter, Governor
Curt Fransen, Director

September 27, 2013

Mr. Don R. Berry
P.O. Box 424
Lewiston, Idaho 83501

Subject: Application for Permit to Appropriate Waters of the State, Identification No. 84-12227

Dear Mr. Berry:

We received your request for comment along with a copy of the application for a water appropriation permit for 0.04 cubic feet per second from a spring located on Idaho Department of Lands property in Clearwater County. The appropriated water will be diverted from the spring to a concrete reservoir, and the water will be for domestic use from January 1 to December 31. Assuming all federal, state and local permits and/or easements have been obtained, regulations met, and reviews completed, we offer the following comments.

The source of the requested water in this application is a spring, and a water of the State which occurs beneath the surface of the earth in a saturated geological formation of rock or soil is considered groundwater (Idaho Code 58.01.02.010.38). It is the policy of the State of Idaho Ground Water Management Plan that existing and projected beneficial uses of ground water and interconnected surface water be maintained and protected. Appropriation of the requested water cannot result in the degradation of surface and ground water beneficial uses.

Thank you for the opportunity to comment on your application. If you have any questions regarding the Idaho Water Quality Standards, please call us at (208) 799-4370.

Sincerely,

A handwritten signature in black ink, appearing to read "John Cardwell".

John Cardwell
Regional Administrator

cc: Keith Franklin, IDWR
Ray Hennekey, IDFG

**IDAHO DEPARTMENT OF WATER RESOURCES
APPROPRIATION APPLICATION ANALYSIS SHEET**

P-9-25-13

W.R. # 84-12227

APPLICATION ID # 71967

ENT. _____

BCA 5/18/05 OK to Publish 9/24/13

APPLICANT: State of Idaho Dept. of Lands
And Don R. Berry

INITIAL REVIEW

BY: KD

DATE: 9/19/2013

ITEM REQUIRED INFORMATION

1. (☒) Name and Address
2. (☒) Source
3. (☒) Point of Diversion & County
4. (☒) Quantity
5. (☒) Nature of Proposed Use
6. (☒) Period of Use
7. (☒) Total Quantity
8. (☒) Description of diverting works
9. (☒) Time required for b/u
10. (☒) Proposed use
11. (☒) Place of use or acres irrigated
12. (☒) Other water Rights
13. (☒) Ownership
14. (☒) Map
15. (☒) Signature
16. (☒) Fee (Amt, receipt, acknowledgement)

*** Send info sheet Y () N ()

ADDITIONAL INFORMATION

(Yes)(No)

- ☒ **Shape File Created** Date 9/19/13 By: KD
- ☐ Field check: by _____
- ☐ Field report attached
- ☐ Analysis Supp. Attached (>5cfs/500af)
- ☐ Water delivered by water master? Water District # _____

PROCESSING

(Yes)(No)

PRIORITY DATE: 5/12/2005

☐ ☒

(Include Moratorium Remark)

Statewide Advertising: (Diversion rate greater than 10 cfs or 1,000 af).

ADVERTISE IN:

Newspaper: Clearwater County

Dates scheduled for publication 10/3 & 10/13

Affidavit of Publication received: 10/11/2013

Dates actually published: 10/3 & 10/10, 2013

Application published correctly. Yes ☒ No ☐

If not, action taken: _____

Final Date for Protest: 10/21/13

Protests Received: Yes ☐ No ☒

LETTERS SENT REQUESTING:

() Dam Information () Fish Information

() Power Information () Other: _____

INFORMATION RECEIVED:

() Dam Information () Fish Information

() Power Information () Other: _____

GROUNDWATER SECTION

WD Permit No.'s:	Tag #	Type:	Fees	Receipt No.	Upgrade Needed?
_____	_____	Dom.____ Non-Dom.____	Paid \$ _____	_____	Y () N ()
_____	_____	Dom.____ Non-Dom.____	Paid \$ _____	_____	Y () N ()
_____	_____	Dom.____ Non-Dom.____	Paid \$ _____	_____	Y () N ()

- ☐ Groundwater management area
- ☐ Critical ground water area
- ☐ Well Drilling Permit required
- ☐ Well Drilling Application and Fees received
- ☐ Well Drilling Application approved?

Remarks: _____

FINAL REGIONAL PROCESSING/REVIEW

(Yes)(No)

☐ Notice of pending void order issued.

☐ Further information required from applicant _____

Final order response date: ____/____/____

☐ Measuring device required

☐ Measuring port required

☐ Special conditions: _____

☐ Special conditions of approval supplement and/or cover letter attached: _____

Approval Recommended by: Kathleen J. Jamblin

Date: 10/24/2013 Sr. Agent initial KD

Ball, Dianne

From: Keen, Shelley
Sent: Monday, September 16, 2013 11:28 AM
To: Ball, Dianne
Subject: RE: Assignment of APPLICATION 84-12227

Dianne,

Hope you had a good weekend.

We do not charge a fee for an assignment of application. Just add the new owner as the current owner and change the original applicant to original owner. Keith and Eric have been handling that application. One of them likely has the file.

Shelley

From: Ball, Dianne
Sent: Monday, September 16, 2013 11:03 AM
To: Keen, Shelley; Hersley, Jean
Subject: Assignment of APPLICATION 84-12227

Is there a fee involved with an assignment of APPLICATION?

One sent up (received today) from State Office involving IDL and Don Berry – application 84-12227.
(File not on my desk at the moment.)

Looking at the blank form on the computer I don't see any mention of a fee involved.

Do we simply change the name and address in the computer for the owners name?

This initial file has not yet come to me – it was a part of a moratorium that has been lifted as of sometime in 2005.

Dianne Ball

Administrative Assistant
Idaho Department of Water Resources
7600 N Mineral Dr., Ste. 100
Coeur d'Alene, ID 83815
208-762-2800 Fax 208-762-2819