

State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 87-10074

Priority: June 13, 2013

Maximum Diversion Volume: 19.6 AF

This is to certify, that DOROTHY MAE LIBEY TRUST
1130 E COVE RD
VIOLA ID 83872

has applied for a permit to appropriate water from:

Source: UNNAMED STREAM

Tributary: GNAT CREEK

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>ANNUAL VOLUME</u>
RECREATION STORAGE	01/01 to 12/31	19.6 AF
FIRE PROTECTION STORAGE	01/01 to 12/31	19.6 AF
WILDLIFE STORAGE	01/01 to 12/31	19.6 AF

LOCATION OF POINT(S) OF DIVERSION:

UNNAMED STREAM, NE1/4SW1/4, Sec. 15, Twp 41N, Rge 05W, B.M., LATAH County

PLACE OF USE: RECREATION STORAGE, WILDLIFE STORAGE, FIRE PROTECTION 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	
41N 05W 15									X								

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **November 01, 2018**.
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. Water shall not be diverted from fire protection storage except to fight or repel an existing fire.
5. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable county zoning and use ordinances.
6. Recreation is for fishing swimming and boating.
7. The pond established by the storage of water under this right shall not exceed a total capacity of 15.0 acre-feet.
8. This right authorizes the annual storage of 19.6 acre-feet to be used for the initial filling of the pond, for the replacement of losses caused by evaporation and for the storage of water for Fire Protection, Wildlife and Recreation purposes.
9. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.

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 18 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 83815-7763

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

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

October 23, 2013

DOROTHY MAE LIBEY TRUST
1130 E COVE RD
VIOLA ID 83872

RE: Permit No.87-10074

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.

As a permit owner you must commence the excavation or construction of the diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed. The date shown under condition no. 1 is the date when the project must be completed.

The Department will send you a 'Proof Due Notice' approximately 60 days prior to the above referenced date requesting you to file either a Proof of Beneficial Use form or a Request for Extension of Time form.

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 fluid and cursive, with the first name "Eric" being the most prominent.

Eric J. Davis

Sr. Water Resource Agent

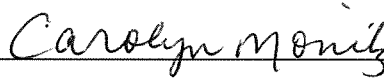
Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on October 24, 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. 87-10074

**DOROTHY MAE LIBEY TRUST
1130 E COVE RD
VIOLA ID 83872**

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.

IDAHO DEPARTMENT OF WATER RESOURCES
APPROPRIATION APPLICATION ANALYSIS SHEET

P-9/10/13

W.R.# 87-10074

APPLICATION ID # 78644

ENT. 6/13

BCA 8/28/13

OK to Publish 8/28/13

APPLICANT: Dorothy Mae Libbey Trust

INITIAL REVIEW

BY: KJ

DATE: 6/13/2013

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 6/13/13 By: KJ
- ☐ Field check: by _____
- ☐ Field report attached
- ☐ Analysis Supp. Attached (>5cfs/500af)
- ☐ Water delivered by water master? Water District # _____

PROCESSING

(Yes)(No)

PRIORITY DATE: 6/13/2013

☐ ☒

(Include Moratorium Remark)

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

ADVERTISE IN:

Newspaper: m p Latah County

Dates scheduled for publication 9/5 + 12/13

Affidavit of Publication received: 9/16/13

Dates actually published: _____

Application published correctly. Yes ☒ No ☐

If not, action taken: _____

Final Date for Protest: 9/23/13

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 \$ _____
_____	_____	Dom. _____ Non-Dom. _____	Paid \$ _____
_____	_____	Dom. _____ Non-Dom. _____	Paid \$ _____

Y () N ()

Y () N ()

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: Heather Smith

Date: 10/18/2013

Sr. Agent initial KJ

MEMORANDUM

Date: October 18, 2013
To: Water Right File 87-10074
From: kfranklin
Re: Fish & Game Comments

Fish and Game suggests by email dated September 30 2013 the pond be constructed off stream and only store water during high flows. Fish and Game also does not believe the pond will have significant beneficial or adverse effects on fish or wildlife as long as existing base flows are maintained. The pond is located within the Palouse wheat country of Latah County. The drainage area upstream of the proposed pond is relative small and is within one quarter mile of the very top of the head waters. The pond will be constructed with a bypass system to allow for flows to continue down stream once the pond is filled. Therefore it is the departments opinion to proceed with the issuance of a permit.

Franklin, Keith

From: Hennekey, Ray [ray.hennekey@idfg.idaho.gov]
Sent: Monday, September 30, 2013 9:22 AM
To: Franklin, Keith
Subject: RE: Water Right Application 87-10074

Keith –

I have reviewed the above-mentioned application to store 19.6 AF for wildlife, recreation and fire protection in an unnamed stream, tributary to Gnat Creek in Latah County. The benefits of the pond to wildlife will be marginal, at best. Water is not limiting to wildlife in the project area. Also, construction of the pond in the channel of even a small stream is likely to have adverse impacts that may counter wildlife benefits. Restoration of the riparian area and restoring stream form and function would have far greater benefits to wildlife in the project area. That said, in balance, I do not believe the pond will have significant beneficial or adverse effects on fish or wildlife as long as existing base flows are maintained in both the tributary and Gnat Creek. We recommend building the pond off-channel and storing water only during periods of high flow.

Please give me a call if you have any questions.

ray

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

(208) 799-5010

From: Franklin, Keith [<mailto:Keith.Franklin@idwr.idaho.gov>]
Sent: Thursday, September 26, 2013 3:22 PM
To: Hennekey, Ray
Subject: Water Right Application 87-10074

Ray,
The department missed giving you a heads up when this application (attachment) went out for advertising. Before we process a permit I would like to give you the opportunity to comment. The pond is in a cultivated field supplied by an unnamed stream tributary to Gnat Creek located in Latah County. Tom Allen of the NRCS is designing the pond for the owner.
Please submit your comments at your earliest opportunity.
Thanks.
Keith.

Franklin, Keith

From: Franklin, Keith
Sent: Thursday, September 26, 2013 3:22 PM
To: 'Hennekey, Ray'
Subject: Water Right Application 87-10074
Attachments: DOC.pdf

Ray,

The department missed giving you a heads up when this application (attachment) went out for advertising. Before we process a permit I would like to give you the opportunity to comment. The pond is in a cultivated field supplied by an unnamed stream tributary to Gnat Creek located in Latah County. Tom Allen of the NRCS is designing the pond for the owner.

Please submit your comments at your earliest opportunity.

Thanks.

Keith.

NEWS REVIEW PUBLISHING COMPANY

The Moscow-Pullman Daily News

P.O.Box 374

Lewiston, Idaho 83501

(208) 743-9411

Date:

09/12/2013

INVOICE NO.

84776

Account No.

30010311

Description

84776 The follo

Times

2

Lines

41

Tab. lines

RECEIVED

SEP 16 2013

\$ 119.93

Sold To: IDAHO DEPT/ WATER RESOURCES

7600 N. MINERAL DR STE 100

COEUR D ALENE ID 83814

PO#

86-12015

IDWR / NORTH

NOTICE: This is a invoice of Purchase made by you. Statement will be rendered the first of the month

Please Retain This Invoice as Your Statement Will Refer to Invoice by No. Only.

AFFIDAVIT OF PUBLICATION

Karen J. Lewis, Legal Clerk
being first duly sworn, on oath deposes
and says: I am the printer of
Moscow-Pullman Daily News, a newspaper
of general circulation, published daily
except Sunday at Mosocw, Latah County,
Idaho, in compliance with Sections 60-106,
60-107, and 60-108 of the Idaho Code and the
amendments thereto; and an official newspaper
for Whitman County, Washington as required
by R.C.W. 36.72.071 and other provisions of
the Revised Code of Washington and the
amendments thereto: that the notice of which the
annexed is a full, true and correct printed
copy was published in the regular and entire
issues of said newspaper and not in a
supplement thereto, upon the following dates:

Sept. 5, 12, 2013

the same being the date designated for
the publication of said notice.

Karen J. Lewis

On this 13th day of September
in the year of 2013, before me, a Notary Public,
personally appeared Karen J. Lewis
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.

Carol L. Peterson

Notary Public for Idaho,

Residing at Lewiston, Idaho

My Commission Expires

9-1-2017

The following application(s) have been filed to appropriate
the public waters of the State of Idaho: 84776

86-12015

ABRAHAM B ADAMS

PO BOX 101

DEARY, ID 83823

Point of Diversion NENENW S32 T41N R02W LATAH CO

Source SPRING tributary SINKS

Use: DOMESTIC

01/01 to 12/31

0.04 CFS

Total Diversion:

0.04 CFS

Date Filed: 7/23/2013

Place of Use: DOMESTIC T41N R02W S32 SESW

Domestic use is for 1 home.

87-10074

DOROTHY MAE LIBEY TRUST

1130 E COVE RD

VIOLA, ID 83872

Point of Diversion NESW S15 T41N R05W LATAH CO

Source UNNAMED STREAM tributary GNAT CREEK

Use: FIRE PROTECTION STORAGE

01/01 to 12/31

19.6 AF

Use: RECREATION STORAGE

01/01 to 12/31

19.6 AF

Use: WILDLIFE STORAGE

01/01 to 12/31

19.6 AF

Total Diversion:

19.6 AF

Date Filed: 6/13/2013

Place of Use: WILDLIFE STORAGE, RECREATION STOR-

AGE and FIRE PROTECTION STORAGE - T41N R05W S15

NESW

Recreation storage for fishing, swimming and boating.

Permits will be subject to all prior water rights. For additional

information concerning the property location, contact North-

ern Region office at (208) 762-2800. Protests may be submit-

ted 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

9/23/2013. The protestant must also send a copy of the protest

to the applicant.

GARY SPACKMAN, Director

Published on 9/5/2013 and 9/12/2013

