



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

December 6, 2012

STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
322 E FRONT ST
PO BOX 83720
BOISE ID 83720-0098

RE: License No. 22-7369

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 December 6, 2012, 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.

22-7369

**STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
322 E FRONT ST
PO BOX 83720
BOISE ID 83720-0098**



**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. 22-07369

Priority: June 19, 1981

Maximum Diversion Rate: 106.00 CFS

It is hereby certified that STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
322 E FRONT ST
PO BOX 83720
BOISE ID 83720-0098

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated June 19, 1981; and has submitted Proof of Beneficial Use on March 03, 2005. A minimum stream flow for:

SOURCE

TETON RIVER

Tributary: HENRYS FORK

and a water right has been established as follows:

BENEFICIAL USE

MINIMUM STREAM FLOW

PERIOD OF USE

01/01 to 12/31

DIVERSION RATE

106.00 CFS

LOCATION OF POINT(S) OF DIVERSION:

Beginning of Reach TETON RIVER SE1/4SW1/4 Sec. 23, Twp 06N, Rge 44E, B.M. TETON County
Ending of Reach TETON RIVER NW1/4NE1/4 Sec. 20, Twp 07N, Rge 44E, B.M. TETON County

CONDITIONS OF APPROVAL

1. Use of water under this right shall be non-consumptive.
2. The minimum stream flow approved 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. 01, Snake River.
3. Use of water under this right shall recognize and allow the continued beneficial diversion of water under any prior existing water right established by diversion and application to beneficial use, by court decree, or by a permit or license issued by the director under the provisions of Chapter 2, Title 42, Idaho Code, with a priority date earlier than the priority date of this right.
4. This right approves a minimum stream flow of 106 cfs except for that portion of the reach where flows are reduced to 20-50 cfs as a result of Fall River's hydroelectric diversions at Felt Dam, in T7N, R44E, Section 29, SWNE, at river mile 1.8.
5. Upon the future finding and order of the Director that gauging stations are required to maintain the approved minimum flow on the Teton River, such measuring devices shall be permanently installed and maintained as specified by the Department.
6. The Idaho Water Resource Board, upon receiving a request, or upon its own initiative, may petition the Director for an amendment to this water right after complying with the notice and consultation procedures of Section 42-1507(4), Idaho Code. The petition must set forth any significant change in circumstances and evidence of the public interest supporting the proposed amendment. The Director will notify the general public and specific persons or notify interested parties of the proposed change, and conduct a hearing for the purpose of determining whether the water right should be amended in the public interest.

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WATER RIGHT NO. 22-07369

7. The purpose of this minimum stream flow is to maintain trout habitat.

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 and sealed this 6th day of December, 2012.



for GARY SPACKMAN
Director

MEMORANDUM

TO: Water Rights File 22-7369
FROM: Sandra Thiel
DATE: November 28, 2012
SUBJECT: Licensing Conditions

One of the conditions in water right permit 22-7369 recognizes the status of water rights, permits and applications with diversions from the Teton River minimum stream flow (MSF). These conditions address the earlier priority dates of irrigation water diverted from the MSF reach, the releasing of downstream storage to replace diverted water, and groundwater exchanges that are designed to compensate for diversions from the Teton River. These conditions specifically mention beneficial uses whose priority dates are earlier than 6/19/1981, the date of the Teton MSF. Condition 090 addresses these concerns by providing umbrella recognition of all earlier priority diversions, including applications, permits and licenses. As of the date of this memo the Idaho Resource Board (Board) holds 293 water rights or permits for minimum stream flows. Of those, 222 water rights have condition 091.

Condition 152, which is included in 207 existing MSF water rights, replaces 090. Condition 090 includes the statement that the Director retains jurisdiction to review and amend all parameters of the right. Since a license is considered the final determination of a water right, keeping a condition allowing amendments after the right becomes a license defeats the purpose of the right. Condition 152 recognizes the Boards authority to petition the Director to amend MSFs and includes a reference to the Idaho code procedures for possible future amendments.

The permit for 22-7369 includes a condition describing the MSF and the portion of the river where the flows are reduced from the 106 cfs to 20-50 cfs. However, the condition does not give a clear location for the changes in the river flow. A description was added to explain where on the river flows are reduced, including the public land survey location and the river mile.

Memorandum

Date: November 26, 2012

To: File 22-7369

From: Craig L. Saxton

RE: Condition #10 Review:

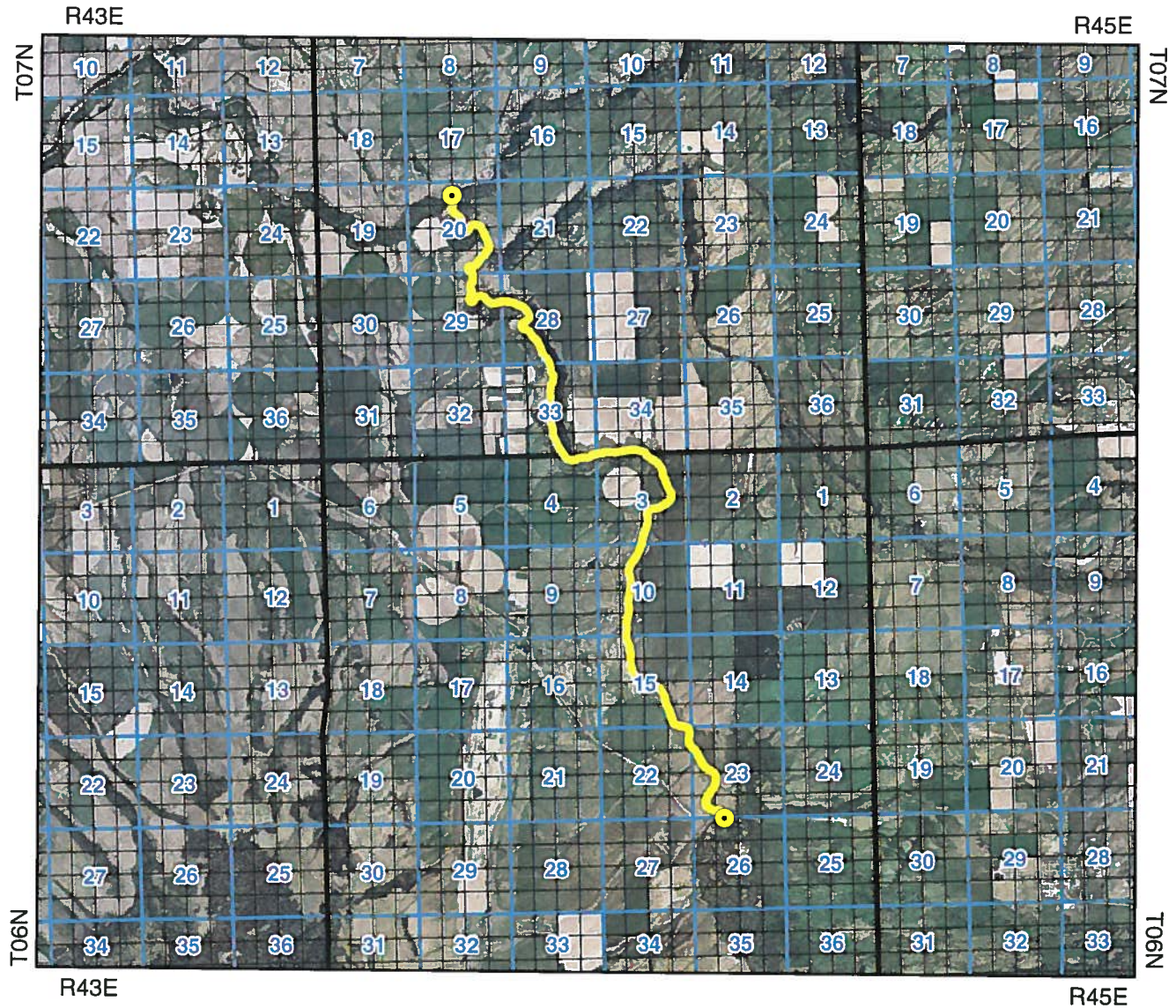
Condition 10 on the December 1, 1989 Final Memorandum Decision and Order tells us that during the permitting process, sufficient proof has been filed with IDWR regarding the beneficial use of fish habitat and recreational values. Sufficiency of flows have also been established. But what is lacking at the time of permitting is information supporting the true minimum flow, specifically in the canyon reaches. The report submitted by Cindy Robertson, Morgan Case and Liz Robbins addresses this requirement by referencing a 1976 report by the B.O.R. which, as part of the scope of the study, addressed flow values within the canyon area. Using the B.O.R. data, they concluded that the proposed minimum stream flow of 106 cfs would be exceeded 90 – 99% of the time. 106 cfs is a minimum flow rather than an optimum flow because a 100 cfs was determined to be 45-50% less than optimum flow.

Permit Conditions	Licensing Conditions
027 - Use of water under this right shall be non-consumptive	027 - Use of water under this right shall be non-consumptive
005 - Use of water under this right is subject to control by the watermaster of State Water District No. DISTRICT.	Use of water under this right is subject to control by the watermaster of Sate Water District No. 01.
090 The Director retains jurisdiction to review and amend any and all parameters of this right. Any person seeking review and amendment of the right shall file a request with the Board, which request shall describe the amendment sought, the reasons for the proposed amendment, and a statement of the change in circumstances since the right was last reviewed that merit a review of the right. A copy of the petition shall be served upon the Director of the Dept. of Water Resources. The Board, upon receiving a request, or upon its own initiative, may petition the Director for an amendment to the right. The petition must set forth any significant change in circumstances and evidence of public interest supporting the proposed amendment. The Director will notify the general public and specific persons or known interested parties of the proposed change, and conduct a hearing for the purpose of determining whether the right should be amended in the public interest. The burden of proof at the hearing shall be upon the person or party seeking the amendment.	152 The Idaho Water Resource Board, upon receiving a request, or upon its own initiative, may petition the Director for an amendment to this water right after complying with the notice and consultation procedures of Section 42-1507(4), Idaho Code. The petition must set forth any significant change in circumstances and evidence of the public interest supporting the proposed amendment. The Director will notify the general public and specific persons or notify interested parties of the proposed change, and conduct a hearing for the purpose of determining whether the water right should be amended in the public interest. Language used in 79-14119, 78-12236, 77-14181
This right approves a minimum stream flow of 106 cfs except for that portion of the reach where flows are reduced to 20-50 cfs as a result of Fall River's hydroelectric diversions.	This right approves a minimum stream flow of 106 cfs except for that portion of the reach where flows are reduced to 20-50 cfs as a result of Fall River's hydroelectric diversions in T7N, R44E, Section 29, SWNE, at river mile 1.8.

Permit Conditions	Licensing Conditions
Pending a general readjudication of the Teton River system, the use of water under this right shall recognize and allow the continued beneficial diversion, both within and upstream from the minimum flow reach, of water for irrigation and other purposes under any prior existing water right established by diversion and application to beneficial use or by an application, permit or license on file issued by the Director under the provisions of Chapter 2, Title 42, Idaho Code with a priority of water right earlier than 6/19/81, the priority date of this right.	091 Use of water under this right shall recognize and allow the continued beneficial diversion of water under any prior existing water right established by diversion and application to beneficial use or by an application, permit, or license on file or issued by the director under the provisions of Chapter 2, Title 42, Idaho Code, with a priority of water right date earlier than the date of priority of this right.
Diversions of water from the Teton River related to exchange well discharges that compensate for diversions from the Teton River, represented by a valid permit, adjudication claim, beneficial use claim, or license, or application for permit that has not yet been acted upon, and having a priority date earlier than 6/19/81, are specifically recognized as senior to this right to the extent that the filing is perfected in the administrative process or decreed by a court. Diversion of water within the minimum streamflow reach may be replaced by released storage downstream and may diminish the minimum streamflow provided the diversion is authorized by a valid water right with a date of priority earlier than 6/19/81. Further storage exchanges or groundwater exchanges related to enlargement of existing delivery systems, transfers of water rights, or any increase in pumping capacity made after 6/19/81, unless development was authorized under a permit with date of priority earlier than 6/19/81, shall not deplete flows in the Teton River below 106 cfs, or the rate ultimately licensed under this right.	Also replace with 091
Upon the future finding and order of the Director that gaging stations are required to maintain the approved minimum flow on the Teton River, such measuring devices shall be permanently installed and maintained as specified by the Department.	Upon the future finding and order of the Director that gaging stations are required to maintain the approved minimum flow on the Teton River, such measuring devices shall be permanently installed and maintained as specified by the Department.

State of Idaho
Department of Water Resources
Water Right License
22-7369

This map depicts the MINIMUM STREAM FLOW place of use boundary for this water right at the time of this approval and its attached to the approval document solely for illustrative purposes.



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



0 1 2 3 4 5 6 Miles