

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 91-07695

Priority: March 16, 2012

Maximum Diversion Rate: 0.06 CFS

This is to certify, that DAVID FOXWORTH
352 AHRN LOOP
ST MARIES ID 83861

has applied for a permit to appropriate water from:

Source: UNNAMED STREAM

Tributary: ST JOE RIVER

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

BENEFICIAL USE

IRRIGATION

PERIOD OF USE

04/01 to 10/31

RATE OF DIVERSION

0.06 CFS

LOCATION OF POINT(S) OF DIVERSION:

UNNAMED STREAM SW1/4SE1/4 Sec. 18, Twp 46N, Rge 01E, B.M. BENEWAH County

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
46N 01E 18															2.0		2.0

Total Acres: 2

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **May 01, 2013**.
2. Subject to all prior water rights.
3. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 3.0 afa per acre at the field headgate for irrigation of the place of use.
4. Water shall not be diverted under this right when flows in the St. Joe River are below minimum flow amounts as defined by Right 91-7122.
5. This right does not grant any right-of-way or easement across the land of another.

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 15 day of May, 2012.


GARY SPACKMAN, Interim 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
Interim Director

May 15, 2012

DAVID FOXWORTH
352 AHRS LOOP
ST MARIES ID 83861

RE: Permit No.91-7695

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 Davis", written in a cursive style.

Eric Davis

Sr. Water Resource Agent

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2012 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.

91-7695

**DAVID FOXWORTH
352 AHRN LOOP
ST MARIES ID 83861**



**Carolyn S. Monitz
Technical Records Specialist**

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 issuance 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.

Statement of Available Procedures and Applicable Time Limits

RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES (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.

MEMORANDUM

DATE: May 7, 2012
TO: Dianne Ball
FROM: Sandy Thiel
RE: Application for Permit No. 91-7695

The purpose of this memo is to provide the Planning Section's comments on the Application for Permit No. 91-7695 on the St. Joe River. The application indicates that the applicants intend to divert 0.06 cfs for irrigation of two acres. The applicant should be aware that the Idaho Water Resource Board holds a minimum stream flow water right 91-7122 downstream from the proposed point of diversion. As a junior water right holder the applicant's water may be curtailed when the minimum stream flow is not being met. The Idaho Water Resource Board would like assurance that this water right will be actively administered to protect the Board's minimum stream flow right.

Ball, Dianne

From: Thiel, Sandra
Sent: Monday, May 07, 2012 4:15 PM
To: Ball, Dianne
Cc: Harrington, Helen
Subject: Water Right Applications 91-7693 and 91-7695

Hi Dianne, The attached files are Planning's comments concerning water right applications 91-7693 and 91-7695. Please let me know if you have any questions.

Sandra Beer Thiel
Water Resource Planner
Idaho Department of Water Resources
322 East Front Street
Boise, Idaho 83720-0098
(208)287-4881
sandra.thiel@idwr.idaho.gov



MSFMemo_91_7MSFMemo_91_7
695.docx



693.docx

Affidavit of Publication

RECEIVED
MAY 04 2012
IDWR / NORTH

STATE OF IDAHO

County of Benewah, ss.

Cynthia Ann Hammes, being first duly sworn on oath, deposes and says that she is vice president of The Corporation, owner of the St. Maries Gazette Record, a weekly newspaper printed and published at St. Maries, Benewah County, State of Idaho; the St. Maries Gazette Record is a newspaper having general circulation in Benewah County, State of Idaho, and has been continuously and uninterruptedly published in Benewah County, State of Idaho, during a period of more than seventy-eight consecutive weeks prior to the first publication of notice of advertisement herein.

That the notice, of which the one hereto attached is a true copy, was published in said newspaper for a period of 3 issues, the first publication being on the 18 day of April, 2012 and the last on the 25 day of April, 2012.

That said newspaper was regularly distributed to its subscribers during the time of the same period; that said notice was published in the regular and entire issue of said paper.

Dated this 2 day of May, 2012

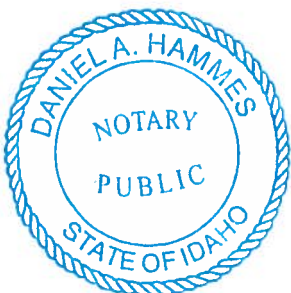
Cynthia Ann Hammes

STATE OF IDAHO)
COUNTY OF BENEWAH)

On this 2 day of May, in the year of 2012 before me, a Notary Public, personally appeared Cynthia Ann Hammes, known or identified to me to be the person whose name subscribed to within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Annal A. Hanna
Notary Public for Idaho
Residing at St. Maries, Idaho
My commission expires:

07-13-2013



APPLICATION NOTICE

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

91-7693

BRIAN SYMS

602 WHELAN RD

PULLMAN, WA 99165

Point of Diversion NESE S20 T46N R01E BENEWAH CO

Source ST JOE RIVER tributary COEUR D ALENE LAKE

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

Use: IRRIGATION 03/15 to 10/31 0.06 CFS

Total Diversion: 0.1 CFS

Date Filed: 3/2/2012

Place of Use: DOMESTIC T46N R01E S20 NESE

Place of Use: IRRIGATION same as DOMESTIC

Total Acres: 2

Domestic use is for 1 home.

91-7695

DAVID FOXWORTH

352 AHRS LOOP

ST MARIES, ID 83861

Point of Diversion SWSE S18 T46N R01E BENEWAH CO

Source UNNAMED STREAM tributary ST JOE RIVER

Use: IRRIGATION 04/01 to 10/31 0.06 CFS

Total Diversion: 0.06 CFS

Date Filed: 3/16/2012

Place Of Use: IRRIGATION T46N R01E S18 SWSE

Total Acres: 2

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 5/7/2012. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Interim Director
8261 April 18-April 25

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

91-7693

BRIAN SYMS

602 WHELAN RD

PULLMAN, WA 99165

Point of Diversion NESE S20 T46N R01E BENEWAH CO

Source ST JOE RIVER tributary COEUR D ALENE LAKE

Use: DOMESTIC	01/01 to 12/31	0.04 CFS
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Use: IRRIGATION	03/15 to 10/31	0.06 CFS
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Total Diversion:	0.1 CFS
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Date Filed: 3/2/2012

Place of Use: DOMESTIC T46N R01E S20 NESE

Place of Use: IRRIGATION same as DOMESTIC

Total Acres: 2

Domestic use is for 1 home.

91-7695

DAVID FOXWORTH

352 AHRS LOOP

ST MARIES, ID 83861

Point of Diversion SWSE S18 T46N R01E BENEWAH CO

Source UNNAMED STREAM tributary ST JOE RIVER

Use: IRRIGATION	04/01 to 10/31	0.06 CFS
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Total Diversion:	0.06 CFS
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Date Filed: 3/16/2012

Place Of Use: IRRIGATION T46N R01E S18 SWSE

Total Acres: 2

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 5/7/2012. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Interim Director

Published on 4/18/2012 and 4/25/2012

From: Ball, Dianne [<mailto:Dianne.Ball@idwr.idaho.gov>]
Sent: Thursday, April 12, 2012 1:10 PM
To: kaisie@smgazette.com
Subject: Application for Permit No. 91-7693, 91-7695

COPY

Hi, Kaisie,

Please publish the enclosed legal notice on the dates indicated, April 18 and 25, 2012, (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

Please send a proof/preview copy for my review before this goes to press.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before 5/7/2012. Your cooperation is appreciated.

Thanks for all your great help. It's always a pleasure to work with you.

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



IDAHO DEPARTMENT OF FISH AND GAME

PANHANDLE REGION

2885 West Kathleen Avenue
Coeur d'Alene, Idaho 83815

Mr. Keith Franklin
Idaho Department of Water Resources
Northern Region
7600 Mineral Drive, Ste 100
Coeur d'Alene, ID 83815

April 16, 2012

C.L. "Butch" Otter/Governor
Virgil Moore/Director

RECEIVED

APR 18 2012

IDWR/NORTHERN

Dear Keith:

REFERENCE: FOXWORTH: 91-7695 (irrigation 0.06 cfs); SYMS: 91-7693 (domestic 0.04 cfs, irrigation 0.06 cfs)

We have reviewed the above-named applications to divert water from the St. Joe River for domestic use and irrigation. The purpose of these comments is to assist the decision-making authority by providing technical information addressing potential effects on wildlife and wildlife habitat and how any adverse effects might be mitigated. It is not the purpose of Idaho Department of Fish and Game to support or oppose this proposal.

The St. Joe River contains populations of resident, river run (fluvial) and lake run (adfluvial) cutthroat trout. Historically the St. Joe River has been regarded as among the finest cutthroat trout streams in America. The river has regained that status and trends have shown marked improvements in recent years. Additionally, the St. Joe River also harbors bull trout (ESA listed as Threatened) that migrate through the lower reaches to spawn in the headwaters of the St. Joe River. Annual counts of 15 to 91 redds were made in three index streams of the St. Joe River between 1992 and 2005 with an increasing trend over those years. IDFG manages the St. Joe River for quality cutthroat trout fishing. Bull trout are managed under "conservation" status, to conserve and restore bull trout numbers.

Although the amounts requested are small, we are concerned that the cumulative effects of property owners applying for diversions may be harmful to this economically and ecologically important fishery. There is a minimum stream flow on the St. Joe River (WR 91-7122) of 470.0 cfs from August 1 to October 31, and 941.0 cfs from November 1 through July 31. The applicants should be made aware that their diversion cannot negatively impact the established minimum flow in the St. Joe River. Because water right diversions allow water users to manipulate streams, we recommend this permit be conditioned to require no disturbance to the stream channel. If pumps are used, they should be adequately screened to prevent entrainment and /or impingement of juvenile trout (we recommend $\leq 0.25"$ mesh, with approach velocity of ≤ 0.5 feet per second).

Sincerely,

Charles E. "Chip" Corsi
Regional Supervisor

CEC:MTB

C: Sharon Kiefer, IDFG Boise; USFWS Spokane



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
Interim Director

April 12, 2012

DAVID FOXWORTH
352 AHRS LOOP
ST MARIES, ID 83861

Application For Permit No. 91-7695

Dear Applicant(s):

The Department of Water Resources has received your water right application. Please refer to the number referenced above in all future correspondence regarding this application.

A legal notice of the application has been prepared and is scheduled for publication in the ST MARIES GAZETTE RECORD on 4/18/2012 and 4/25/2012. Protests to this application may be submitted for a period ending ten (10) days after the second publication.

If the application is protested, you will be sent a copy of each protest. All protests must be resolved before the application can be considered for approval. If the protest(s) cannot be resolved voluntarily, the Department will conduct a conference and/or hearing on the matter.

If the application is not protested, the Department will process your application and notify you of any action taken on the application. If your application is approved, the Department will send you a copy of the permit.

Please contact this office if you have any questions regarding the application.

Sincerely,

A handwritten signature in black ink that reads "Eric J. Davis". The signature is written in a cursive, flowing style.

Eric J Davis
Sr. Water Resource Agent

Ball, Dianne

From: Ball, Dianne
Sent: Thursday, April 12, 2012 12:37 PM
To: mary.terra-berns@idfg.idaho.gov; jbennett@idl.idaho.gov
Subject: Final date for publication Syms St Joe and also on Foxworth - unnamed stream.

Mary and Jim,
Jim, you only received the Syms one for St Joe river diversion.
Mary you received both Syms for St Joe diversion as well as Foxworth – unnamed stream.

On each of the two e-mails I just previously sent to you, I had listed the final date for protests to be received in our office as April 30, 2012 and it correctly should be May 7, 2012. There's one extra week involved here – I simply picked the wrong Monday.

Please accept my apologies for the error. In each case, final date for protest is May 7, 2012.

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

Ball, Dianne

From: Ball, Dianne
Sent: Thursday, April 12, 2012 12:23 PM
To: mary.terra-berns@idfg.idaho.gov
Subject: RE: Application for Permit No. 91-7695 unnamed stream
Attachments: 91-7695_Foxworth.pdf

Dear Mary:

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 enclosed for your reference.

This is being prepared for publication in St Maries Gazette on April 18 and 25, 2012 with final date for protests to be received ~~April 30~~, 2012 (*May 7*)

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 this office if you have any questions regarding the application.

Sincerely,

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

Receipt Details for ID T092319

Status	Adjustment Type	Version
		3

General Information:				
Date Received 1/5/2011 3:34:00 PM	Date Deposited 1/7/2011 10:57:00 AM	Region ELECTRONIC ALLY TRANSMITTE D	Total Amount \$77.00	Payment Type ELECTRONICALLY TRANSMITTED
Payee: FOXWORTH, DAVID				

Comment BALANCE OF \$27 FOR WR PERMIT FEE IS ON RECEIPT # N029062
BALANCE OF \$21 FOR NIA FILING FEE IS ON RECEIPT # N029082

Fee Details

Amount	Description	PCA	Fund	Fund Detail	Subsidiary	Object
\$73.00	PERMITS		0229	21		1155
\$4.00	NORTHERN ID ADJUDICATION FILING FEE	75503	0337	1		1155

Water Rights

Basin	Sequence	Split Suffix
91	7694	

RECEIVED

FEB 17 2012

DEPARTMENT OF
WATER RESOURCES

**REQUEST FOR WITHDRAWAL OF CLAIM
WITH FILING FEES APPLIED TO APPLICATION FOR PERMIT**

RECEIVED

FEB 27 2012

IDWR/NORTHERN

Name of Claimant: David W. Foxworth
Mailing Address: 352 Ahns Loop
Amount: \$25.73 Receipt No.: T092319
Claim No(s): 91-7256

I/We wish to withdraw the Notice(s) of Claim to a Water Right which number(s) appear above and for which I/We previously paid a filing fee to the Idaho Department of Water Resources. I request the filing fee I/We paid on the receipt referenced above be applied to filing an Application for Permit.

For Individuals:

David W. Foxworth
(Signature of Claimant)

13 FEB 12
(Date)

(Signature of Claimant)

(Date)

For Organizations:

(Signature of Authorized Agent)

(Date)

(Title)

(Name of Organization)

Return to: Idaho Department of Water Resources
Adjudication Bureau
P.O. Box 83720
Boise, ID 83720-0098

For IDWR Use

Initials

Date

Approval Region
Approval State Office
Data Entry

6/30/09

SCANNED

FEB 17 2012

Idaho Department of Water Resources Receipt

Receipt ID: N029062

Payment Amount \$27.00 Date Received 3/16/2012 1:57 PM Region NORTHERN

Payment Type Check Check Number 7732

Payer FOXWORTH DAVID W

Comments BALANCE FOR PERMIT APPLICATION

Fee Details

Amount	Description	PCA	Fund	Fund Detail	Subsidiary	Object
\$27.00	PERMITS	65103	0229	21		1155



Signature Line (Department Representative)