

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 77-14338

Priority: July 06, 2010

Maximum Diversion Rate: 0.04 CFS

This is to certify, that US DEPT OF AGRICULTURE
FOREST SERVICE
SALMON-CHALLIS NATIONAL FOREST
1206 S CHALLIS ST
SALMON ID 83467

has applied for a permit to appropriate water from:

Source: SEAFOAM CREEK **Tributary:** VANITY CREEK

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>
IRRIGATION	05/01 to 10/31	0.04 CFS
FIRE PROTECTION	05/01 to 10/31	0.04 CFS

LOCATION OF POINT(S) OF DIVERSION:

SEAFOAM CREEK NW1/4NE1/4 Sec. 23, Twp 14N, Rge 11E, B.M., CUSTER County

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
14N 11E 24					2.0												2.0

Total Acres: 2

PLACE OF USE: FIRE PROTECTION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
14N 11E 24					X												

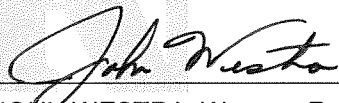
CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **December 01, 2016**.
2. Subject to all prior water rights.
3. 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.

State of Idaho
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Permit to Appropriate Water
NO. 77-14338

4. Prior to the diversion and use of water under this approval, the right holder shall comply with all fish screening and/or fish passage requirements of the Idaho Department of Fish and Game.
5. Prior to diversion of water under this right, the right holder shall install a lockable device, subject to the approval of the Department, in a manner that will provide suitable control of the diversion.
6. The right holder shall install or construct a straight length of conduit or ditch suitable for installation of a device for measuring the entire flow of water being diverted in connection with this right. If the right holder uses conduit, the straight length of conduit shall be at least fifteen times the diameter of the conduit and shall be above ground or otherwise easily accessible.
7. Upon specific notification by the Department, the right holder shall install and maintain acceptable measuring device(s), including data logger(s), at the authorized point(s) of diversion, in accordance with Department specifications.
8. When notified by the Department or by a watermaster with regulatory authority over this right, the right holder shall report the amount of water diverted in connection with this right. The report shall be submitted in the manner and frequency specified by the Department or the watermaster.
9. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the place of use.
10. Water shall not be diverted for fire protection use under this right except to fight or repel an existing fire.
11. Place of use is Seafoam Guard Station.
12. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 7th day of December, 20 11.


JOHN WESTRA, Western Regional Manager



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

December 7, 2011

US DEPT OF AGRICULTURE
FOREST SERVICE
SALMON-CHALLIS NATIONAL FOREST
1206 S CHALLIS ST
SALMON ID 83467

RE: Permit No.77-14338

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 208-334-2190.

Sincerely,


John Westra
Western Regional Manager

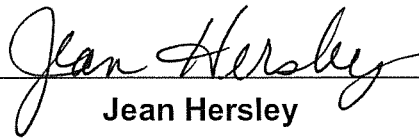
Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2011 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. 77-14338

**US DEPT OF AGRICULTURE
FOREST SERVICE
SALMON-CHALLIS NATIONAL FOREST
1206 S CHALLIS ST
SALMON ID 83467**

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

**Jean Hersley
Office Specialist II**

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.

AFFIDAVIT OF PUBLICATION

State of Idaho, County of Custer, ss:

I, Susan Callahan, representing the Challis Messenger, a weekly newspaper, published at Challis, Idaho, do solemnly swear that the notice hereto attached and made a part hereof, was published in the regular and entire issue of the Challis Messenger for 2 consecutive weeks, commencing with the issue dated 10/6 2011 and ending with the issue dated 10/13 2011

Susan Callahan

STATE OF IDAHO)

COUNTY OF CUSTER)

On this 17th day of OCT. in the year of 2011, before me, a Notary Public,

personally appeared Susan Callahan, 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.

Bina Sue Tappan
Notary Public for Idaho
Residing at Challis, ID
My commission expires: 12-8-14

✓ OK
SB 11/9/2011

IDWR
The following application(s) have been filed to appropriate the public waters of the State of Idaho:
77-14338
US DEPT OF AGRICULTURE
FOREST SERVICE
SALMON-CHALLIS NATIONAL FOREST
1206 S CHALLIS ST
SALMON, ID 83467
Point of Diversion: NWNWNE S23 T14N R11E CUSTER County
Source SEAFOAM CREEK
Tributary VANITY CREEK
Use: IRRIGATION 05/01 to 10/31 0.04 CFS
Use: FIRE PROTECTION 05/01 to 10/31 0.04 CFS
Total Diversion: 0.04 CFS
Date Filed: 7/6/2010
Place of Use: IRRIGATION & FIRE PROTECTION: T14N R11E S24 NENW
Total Acres: 2

This application proposes the diversion and use of water tributary to a federally designated Wild & Scenic River. The decreed minimum stream flow rights for the federal Wild & Scenic Rivers are subordinate to certain categories of water use and to specific amounts of water use established after the minimum stream flow. The water use proposed in this application will benefit from the subordination provision because it is for fire protection and irrigation of 2 acres and the 0.04 cfs diversion rate will be applied to the subordination amounts specified in the decree for the applicable Wild & Scenic River.

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Western Region office at (208) 334-2190; or for a full description of the right(s), please see www.idwr.idaho.gov/apps/ExtSearch/WRFiling.asp. 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, Western Region, 2735 Airport Wy, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before October 24, 2011. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Interim Director
Published: October 6 and 13, 2011



RECEIVED
NOV 07 2011

DEPARTMENT OF
WATER RESOURCES

RECEIVED
NOV 08 2011

WATER RESOURCES
WESTERN REGION

MEMORANDUM

DATE: October 21, 2011
TO: Sherry Borgeman
FROM: Sandra Thiel
RE: Application for Permit No. 77-14338

Thank you for the opportunity to comment on the US Forest Service's application for permit, to divert 0.04 cfs from Seafoam Creek. The application indicates that they intend to divert water through a 1.5 inch pipe to irrigate two acres and for use as fire protection.

The applicant should be aware that the Idaho Water Resource Board holds minimum stream flow water rights Rapid River 77-14207 and *Salmon River 77-14119 downstream of the applicant's point of diversion. As a junior water right holder, when the minimum stream flow is not being met, the applicant's water may be curtailed.

The Idaho Water Resource Board would also like assurance that the applicant's water right will be actively administered to protect the Board's minimum stream flow right.

* 77-14119 - 82 12/2/11