

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 63-33298

Priority: November 16, 2009

Maximum Diversion Rate: 2.44 CFS

This is to certify, that DANIEL A SCHWALBE
11422 E 44TH AVE
SPOKANE WA 99206

has applied for a permit to appropriate water from:

Source: GROUNDWATER

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

BENEFICIAL USE

IRRIGATION

PERIOD OF USE

03/01 to 11/15

RATE OF DIVERSION

2.44 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUNDWATER

SW1/4SW1/4

Sec. 17, Twp 06N, Rge 03W, B.M., PAYETTE 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	
06N	03W	17									40.0	15.0	25.0	40.0					120.0
06N	03W	18																2.0	2.0

Total Acres: 122

CONDITIONS OF APPROVAL

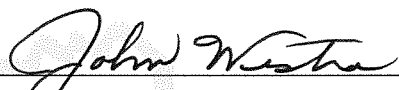
1. Proof of application of water to beneficial use shall be submitted on or before **July 01, 2016**.
2. Subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
5. This right does not grant any right-of-way or easement across the land of another.
6. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the place of use.
7. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.

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8. The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.
9. If the surface water right(s) appurtenant to the place of use is abandoned, forfeited, sold, transferred, leased or used on any other place of use, this right to divert ground water shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
10. 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 29th day of June, 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

June 30, 2011

DANIEL A SCHWALBE
11422 E 44TH AVE
SPOKANE WA 99206

RE: Permit No.63-33298

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,


for John Westra
Western Regional Manager

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 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.

63-33298

**DANIEL A SCHWALBE
11422 E 44TH AVE
SPOKANE WA 99206**

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 PAYETTE

ss.

Water Rights
TITLE OF PUBLICATION

Water Resources
SPONSOR OF PLAINTIFF
PLAINTIFF OR LEGAL AGENT

[Signature], being
duly sworn, deposes and says:
That he is the clerk of

THE INDEPENDENT-ENTERPRISE, a weekly newspaper published at Payette, in the County of Payette and State of Idaho; that said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Payette; that the advertisement, a copy of which is attached hereto, was published in said newspaper once a week for two (2) consecutive weeks in the regular and entire issue of said paper during the period and time of publication, and was published in the newspaper proper and not a supplement; that said paper has been established and regularly published for more than seventy-eight consecutive weeks prior to the date of first publication of said advertisement.

Such notice was published in the issue beginning with May 18, 2011, and ending with the issue of May 25, 2011.

STATE OF IDAHO
COUNTY OF Payette

On this 26th day of May in the year of 2011 before me, a Notary Public, personally appeared [Signature] 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.

[Signature]
Notary Public for Idaho

Residing at Payette

My commission expires: 7-1-14

STATEMENT

Independent-Enterprise

PAYETTE, IDAHO

Number of Lines 36

Number of Insertions two (2)

36 Lines @ 1.14 . . . \$ 41.04

36 Lines @ 1.00 . . . \$ 36.00

TOTAL COST

WILL BE \$ 77.04

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

63-33298
DANIEL A SCHWALBE
11422 E 44TH AVE
SPOKANE, WA. 99206
Point of Diversion SWSW S17 T06N R03W
PAYETTE County Source GROUNDWATER
Tributary

Use: IRRIGATION 03/01 to 11/15
2.44 CFS

Total Diversion: 2.44 CFS

Date Filed: 11/16/2009

Place Of Use: IRRIGATION

T06N R03W S17 SW (ALL)

T06N R03W S18 SESE

Total Acres: 122

Water bearing zone to be appropriated is from 250 to 450 feet.

For a full description of the right(s), please see HYPERLINK

"http://www.idwr.idaho.gov/apps/ExtSearch/WRFiling.asp" www.idwr.idaho.gov/apps/ExtSearch/WRFiling.asp. Permits will be subject to all prior water rights. 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 Way, Boise, ID 83705, together with a protest fee of \$25 for each application on or before June 6, 2011. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Interim Director
No. 3107

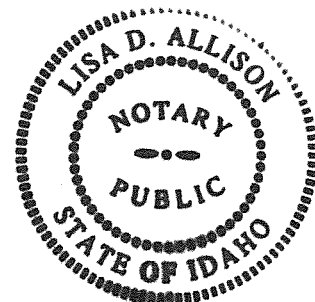
May 18, 25

RECEIVED

MAY 27 2011

WATER RESOURCES
WESTERN REGION

✓ OK DB 6/13/2011



No 3107