

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 61-12262

Priority: October 20, 2010

Maximum Diversion Rate: 0.02 CFS

This is to certify, that JACK & BETTY POWERS FAMILY TRUST
3154 S CRABAPPLE LN
BOISE ID 83706

has applied for a permit to appropriate water from:

Source: UNNAMED STREAM

Tributary: BENNETT CREEK

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

BENEFICIAL USE

STOCKWATER

PERIOD OF USE

01/01 to 12/31

RATE OF DIVERSION

0.02 CFS

LOCATION OF POINT(S) OF DIVERSION:

UNNAMED STREAM
(Ending of Reach)

SW1/4NW1/4

Sec. 3, Twp 02S, Rge 08E, B.M., ELMORE County

UNNAMED STREAM
(Beginning of Reach)

L4 (NW1/4NW1/4)

Sec. 3, Twp 02S, Rge 08E, B.M., ELMORE County

PLACE OF USE: STOCKWATER

Twp	Rge	Sec	NE				NW				SW				SE				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
02S	08E	3						X	X										
								L4											

CONDITIONS OF APPROVAL

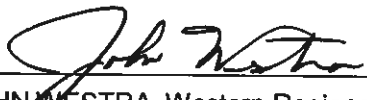
1. Proof of application of water to beneficial use shall be submitted on or before **December 01, 2011**.
2. Subject to all prior water rights.
3. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 61C.
4. Any license issued by IDWR pursuant to the right or portion thereof for the use of trust water is subject to a term review of 5 years after the date of this approval to determine availability of water for the use and to re-evaluate the public interest at the end of the term.

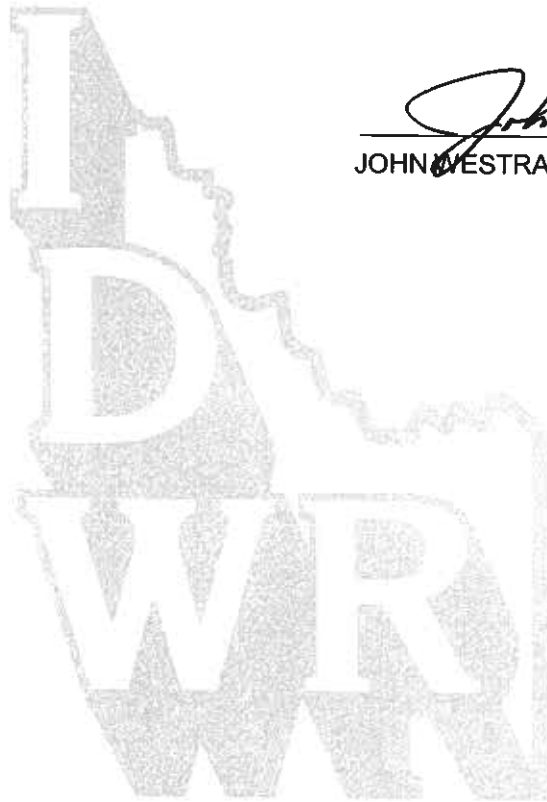
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5. Stockwater use is for up to 50 head of mixed stock.
6. This right authorizes the watering of livestock directly from the stream without a diversion.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 1st day of December, 20 10.


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

December 1, 2010

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

JACK & BETTY POWERS FAMILY TRUST
3154 S CRABAPPLE LN
BOISE ID 83706

RE: Permit No.61-12262

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 208-334-2190.

Sincerely,

A handwritten signature in black ink, appearing to read "John Westra".

for John Westra
Western Regional Manager

Enclosure(s)

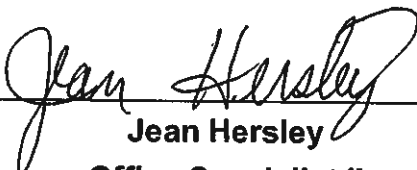
CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2010 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.

61-12262

**JACK & BETTY POWERS FAMILY TRUST
3154 S CRABAPPLE LN
BOISE ID 83706**



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.

NOTICE

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

61-12262

JACK & BETTY POWERS FAMILY TRUST

3154 S CRABAPPLE LN
BOISE, ID 83706

Point of Diversion SWNW S3 T02S R08E
ELMORE County Source UNNAMED
STREAM Tributary BENNETT CREEK

Point of Diversion L4(NWNW) S3 T02S
R08E ELMORE County Source UNNAMED
STREAM Tributary BENNETT CREEK

Use: STOCKWATER 01/01 to 12/31 0.02
CFS

Total Diversion: 0.02 GFS

Date Filed: 10/8/2010

Place Of Use: STOCKWATER

T02S R08E S3 L4(NWNW) SWNW

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 Wy, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 11/22/2010. The protestant must also send a copy of the protest to the applicant.

GARY SPAGKMAN, Interim Director

First Publication: November 3, 2010.

Last Publication: November 10, 2010.

AFFIDAVIT OF PUBLICATION

County of Elmore
State of Idaho } ss

I, **Coleen W. Swenson**, do solemnly swear that I am the Publisher of the:

Mountain Home News

A weekly newspaper of general circulation, published once a week, in Mountain Home, Idaho, that the notice attached hereto which is a part of publication thereof; was published in said newspaper for 2 consecutive weeks, the first publication having been made on the 3rd day of Nov, 2010, and the last publication having been made on the 10th day of Nov, 2010; every Wednesday issue of the paper during the period and time of publication and that the notice was published in the paper proper and not in a supplement thereof.

And I further swear that the said Mountain Home News has been continuously and uninterruptedly published in said Elmore County during the period of 78 consecutive weeks prior to the first publication of the attached notice.



Publisher

Subscribed and sworn to me this 10th day of Nov, 2010.



Notary Public

Residing in Mountain Home, Elmore County, Idaho.

My commission expires **11-17-2011**.

RECEIVED

NOV 15 2010

WATER RESOURCES
WESTERN REGION

✓ OK
DB 11/29/2010

