

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 65-23376

Priority: December 17, 2009

Maximum Diversion Rate: 0.78 CFS

This is to certify, that STATE OF IDAHO
DEPARTMENT OF LANDS
555 DEINHARD LN
MC CALL ID 83638

has applied for a permit to appropriate water from:

Source: WAGON BAY CREEK **Tributary:** PAYETTE LAKE

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>
COMMERCIAL	05/15 to 12/15	0.78 CFS

LOCATION OF POINT(S) OF DIVERSION:

WAGON BAY CREEK SE1/4SE1/4NE1/4 Sec. 29, Twp 19N, Rge 03E, B.M., VALLEY County

PLACE OF USE: COMMERCIAL

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
18N 03E 2	X																
	L1																
18N 03E 3		X	X	X										X			
		L1		L4													
18N 03E 6					X	X	X	X		X							
					L3	L4	L5			L6							
18N 04E 6					X	X	X	X									
					L3	L4	L5										
19N 03E 1									X				X				
19N 03E 2	X	X	X			X	X			X				X	X		
	L1	L2				L4											
19N 03E 3		X	X						X				X				
		L2															
19N 03E 4		X			X			X	X			X		X	X	X	
		L2			L3												
19N 03E 9	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
19N 03E 10					X		X	X	X	X							
19N 03E 11		X	X						X				X				
19N 03E 12					X			X	X	X	X	X					
19N 03E 14	X	X	X	X	X				X				X		X		
									L3				L4				
19N 03E 15							X		X	X	X	X					
												L4					
19N 03E 16	X	X	X	X	X	X		X	X	X	X	X		X		X	

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Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
19N	03E	17	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
19N	03E	20	X	X	X	X					X		X	X		X	X		
19N	03E	21	X			X	X	X	X		X					X	X		
19N	03E	22				L1	X	X									L3		
19N	03E	23	X	X	X	X	L1	X		X	X		X	X	X	X		X	
19N	03E	25			L2		L1			L2	X		L5	L4		L3	X		
19N	03E	26		X	X										X	X	X	X	
19N	03E	28		L1	L2		X	X	X										
19N	03E	29	X	X	X	X	X	X	X	X	X	X	X		X		X	X	
19N	03E	30									X			X	X		X	X	
19N	03E	31		X	X		X			X	X			X					
19N	03E	32	X	X	X	X	L1	X	X	X	X	X	X	X					
19N	03E	34													X	X	X		
19N	03E	35													L5		L8		
19N	03E	36		X	X			X	X	X	X	X	X	X		X	X	X	
20N	03E	13									X	X	X	X			X		
20N	03E	14															X		
20N	03E	23	X	X	X	X									X	X	X	X	
20N	03E	24	X	X			X			X									
20N	03E	26	X	X	X	X					X	X	X	X	X	X		X	
20N	03E	27																X	
20N	03E	34	X			X									X	X	X	X	
20N	03E	35	X			X		X	X		X	X			X			X	

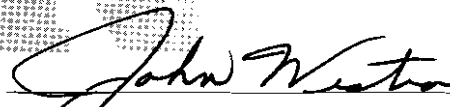
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NO. 65-23376

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **March 01, 2015**.
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. Use of water under this right will be regulated by a water master 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. 65.
5. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the water master suitable control of the diversion(s).
6. The right holder shall contact the water master by June 15 each year for authorization to continue diverting and using water. The right holder shall not divert water after June 15 each year unless the water master authorizes continued diversion and use of water under this water right. When the water master informs the right holder that water is not available to fill this right, the right holder shall cease diversion, shall rent water from the Payette River Rental Pool, or shall otherwise mitigate for the depletion of water caused by this water use. The department may amend the contact date listed in this administrative provision to more closely coincide with the date when water is not available to fill this water right.
7. 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 10th day of March, 2010.


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

March 10, 2010

STATE OF IDAHO
DEPARTMENT OF LANDS
555 DEINHARD LN
MC CALL ID 83638

RE: Permit No.65-23375 & 65-23376

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)

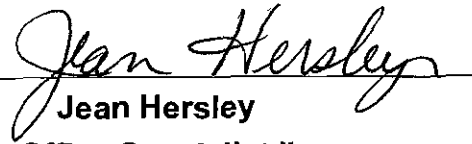
CERTIFICATE OF SERVICE

I hereby certify that on March 11, 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.

65-23375 & 65-23376

**STATE OF IDAHO
DEPARTMENT OF LANDS
555 DEINHARD LN
MC CALL ID 83638**



**Jean Hersley
Office Specialist II**

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.

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.

RECEIVED

FEB 18 2010

WATER RESOURCES
WESTERN REGION

Via E-mail

Publisher's Affidavit of Publication

STATE OF IDAHO

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County of Valley

I, Carol J. Wright, being duly sworn and say, I am the receptionist of The Star-News, a weekly newspaper published at McCall, in the County of Valley, State of Idaho; that said newspaper is in general circulation in the county of afore said and is a legal newspaper; that the PUBLIC NOTICE, a copy of which is enclosed hereto and is a part hereof, was published in said newspaper once a week for a period of two weeks in the regular and entire issue of every number there of during the period of time of publication, and was published in the newspaper proper and not in a supplement; and that publication of such notice began February 4, 2010 and ended February 11, 2010.

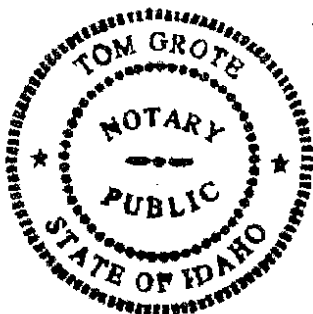
Carol J. Wright

Subscribed and sworn before me this the 11th day of February, 2010.
STATE OF IDAHO

COUNTY OF VALLEY

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On this 11th day of February, in the year of 2010, before me, a Notary Public, personally appeared Carol J. Wright, 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 she executed the same.



Tom Grote

Tom Grote
Notary Public for Idaho
Residing at McCall, Idaho
Commission Expires 2/8/12

✓ THE FOLLOWING APPLICATION(S) HAVE BEEN FILED TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO:

65-23375
STATE OF IDAHO
DEPARTMENT OF LANDS
555 DEINHARD LN
MC CALL, ID 83638
Point of Diversion SWNE S28 T17N R04E
VALLEY County Source PADDY CREEK Tributary
RAPID CREEK
Use: COMMERCIAL 05/15 to 12/15 0.78 CFS

Total Diversion: 0.78 CFS
Date Filed: 4/14/2008
Place Of Use: COMMERCIAL
INCLUDES PORTIONS OF:
T17N R04E

Use is for dust control on Forest Roads.

✓ 65-23376
STATE OF IDAHO
DEPARTMENT OF LANDS
555 DEINHARD LN
MC CALL, ID 83638
Point of Diversion SESENE S29 T19N R03E
VALLEY County Source WAGON BAY CREEK
Tributary PAYETTE LAKE
Use: COMMERCIAL 05/15 to 12/15 0.78 CFS

Total Diversion: 0.78 CFS
Date Filed: 4/14/2008
Place Of Use: COMMERCIAL
INCLUDES PORTIONS OF:
T18N R03E, T18N R04E, T19N R03E, T20N R03E

Use is for dust control on Forest Roads.

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 2/22/2010. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Interim Director. 2tc2/11

✓ OK DB 2/25/2010