

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 57-11714

Priority: January 25, 2008

Maximum Diversion Rate: 0.07 CFS

This is to certify, that PHILLIP M WARNER
And/Or
SUSAN H WARNER
7548 RIVERFRONT DR
MARSING ID 83639

has applied for a permit to appropriate water from:

Source: GROUND WATER

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	03/01 to 11/15	0.05 CFS
DOMESTIC	01/01 to 12/31	0.02 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER L3 (NE1/4SW1/4) Sec. 23, Twp 02N, Rge 04W, B.M., OWYHEE 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
02N 04W 23									1.5								1.5
									L 3								

Total Acres: 1.5

PLACE OF USE: DOMESTIC

Twp Rge Sec	NE				NW				SW				SE				
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
02N 04W 23									X								
									L 3								

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **April 30, 2010**.
2. Subject to all prior water rights.

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3. To mitigate for the depletion of water resulting from the use of water under this right and to prevent injury to senior water right holders, the right holder shall cease diverting and using water as authorized by the following water rights for the purposes and amounts specified below. Moreover, the official record for the following water right will be changed to show that diversion and use of water is not authorized because the rights, or portion thereof, are being dedicated to mitigation purposes.

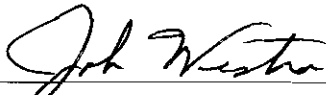
Right No.	Use Changed to Mitigation	Mitigation Rate (cfs)	Mitigation Volume (AF)	Mitigation Acres
2-10348	Irrigation	0.02	4.89	1.5

The land that will no longer be irrigated under this right is located within the SESW, Section 23, Township 2N, Range 4W, B.M.

If the specified mitigation right, or portion thereof, is sold, transferred, leased, used on any place of use, or is not deliverable due to a shortage of water or a priority call, then the amount of water authorized for diversion under this permit approval shall be reduced by the same proportion as the reduction to the mitigation rights.

4. 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.
5. This right does not grant any right-of-way or easement across the land of another.
6. 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.
7. Place of use is located within Lot 3, Blk 1, Hidden Valley Estates.
8. Domestic use is for 1 homes. Irrigation of lawn, garden and landscaping associated with the home is authorized under the irrigation component of this right.
9. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 13th day of April, 2009.


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

DAVID R. TUTHILL, JR.
Director

April 14, 2009

PHILLIP M WARNER
And/Or
SUSAN H WARNER
7548 RIVERFRONT DR
MARSING ID 83639

RE: Permit No. 57-11714

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.

The right to drill a well is not a part of this permit to appropriate water. Beginning in July of 1987, a statute was enacted which requires a drilling permit for new well construction and deepening of existing wells. If the well(s) proposed for use under this water right permit were drilled or deepened after July 1, 1987, a separate drilling permit must be obtained from this Department. Please contact the Ground Water Protection Section located here at this office or our regional office nearest you.

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 cursive script that reads "Jean Hershey".A handwritten signature in cursive script that reads "John Westra".

John Westra

Western Regional Manager

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2009 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.

57-11714

**PHILLIP M WARNER
7548 RIVERFRONT DR
MARSING ID 83639**

**SUSAN H WARNER
7548 RIVERFRONT DR
MARSING ID 83639**



**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.

20 February 2009

RECEIVED

FEB 24 2009

Ms. Vicky Music
Senior Water Resource Agent
State of Idaho
Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

WATER RESOURCES
WESTERN REGION

Re: Mitigation Request re Permit No. 75-11714 in conjunction with Snake River Right No. 2-10348

Dear Ms. Music:

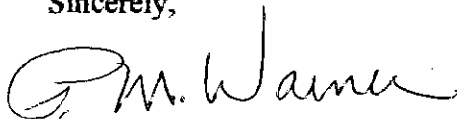
With regard to the ground water use application for our residence at 7548 Riverfront Drive, Marsing, Idaho (1.89 acres / location: 2N, 4W, 23, in NE ¼ SW ¼ Lot 3, Bl. 1, Hidden Valley Estates, Owyhee County), we request that our Snake River right no. 2-10348 mitigate for the use of additional ground water under right no. 57-11714.

The purpose of this request is to substitute the use of Snake River water (under right no. 2-10348 – 0.0398 cfs) with the use ground water, for the purpose of irrigation (per application no. 75-11714). (Should you require further description of our well / its excess capacity, or support for the use of additional ground water for irrigation vs. pumping from the Snake River, please see our January 23, 2008 letter to Steve Lester w/permit applications, etc.) As noted in the application for ground water permit / license to use the existing well for irrigation, it is for fairly minor use (+½ acre). Further, it is not viable, feasible, or ecologically/economically reasonable to pump water from the river for only +½ acre (due to the ready availability of ground water from excess well capacity & in consideration of the environmental disturbance, the waste of electrical energy, and the unsightliness of another pump in the river).

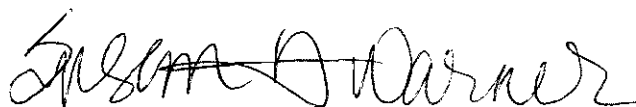
We want to ensure that the Snake River water right has been transferred to us and put in our names (change of ownership from the previous owner, Vance Van Hall, to Phillip AND Susan Warner). In terms of its use, we intend to leave this Snake River water (right no. 2-10348) in the river and, in its place, use the added ground water right (permit no. 75-11714 w/future license) for the irrigation of our residence at 7548 Riverfront Drive (along with the standard Idaho residential ground water use permit for household, personal, and 1 acre of irrigation). Also, we request the right to stay this mitigation and 'activate' Snake River right no. 2-10348 should the need arise (i.e., changing requirements, technology advancements, the sale or transfer of the property to another party), with the understanding that the use of right no. 57-11714 (for ground water irrigation in excess of one acre) shall cease, accordingly.

Should you require additional information or have any questions/comments, please contact either of us at 208-896-4340 or 303-478-2774 (cell) or via email at shwarner11@msn.com. Vicky, you have been exceedingly helpful – we appreciate your guidance and wherewithal – your attitude is exemplary...many, many thanks (please pass this along to Steve Lester and your senior manager, to share our appreciation for your support).

Sincerely,



Phillip M. Warner
Co-Owner
7548 Riverfront Drive
Marsing, ID 83639



Susan H. Warner
Co-Owner
7548 Riverfront Drive
Marsing, ID 83639

cc: S. Lester

Music, Vicky

From: Lester, Steve
Sent: Tuesday, March 03, 2009 2:40 PM
To: Curtis, Sharla; Grimm, Angie; Music, Vicky
Subject: FW: 3/4 teleconference with Western - agenda items

Please plan to attend for at least the ones you are involved in -

Vicky for #1

Angie for #3

Sharla for all.

But you are most welcome to stay for any/all of the rest, too.

From: Lester, Steve
Sent: Tuesday, March 03, 2009 2:33 PM
To: Keen, Shelley; Skaggs, Pam
Subject: 3/4 teleconference with Western - agenda items

Hi Shelley & Pam:

Here are items we hope to cover in tomorrow's telephone meeting.

- 1) Using condition 170 in new approvals - when does old right get changed to show mitigation as b.u.?
- 2) Resolve - are separate wells treated as separate sources or not? This is leftover from our 1st tel. meeting when we talked about it.
- 3) SO comments, 12/08 email from Sharla, parallel processing Ballentyne Ditch Co. transfer 75023 with related ID Parks & Rec. application 63-31415 for Eagle Island State Park pond.
- 4) Reverse parallel processing of transfers, 4 appls: Ulrich 73924 (Sandy), Siegersma 74114 (Sandy), Thornton 73899 (Cherie), De Groot 73783 (Michele).

Steve

"Western" changes as soon as permit has been granted. Be sure to put something in file - print memo from database comments. Lower takes position that prelim order or permit is the notice/ order changes the mitigating rt. with cc of permit to rt. being changed to mitigation.

The Owyhee Avalanche

P.O. Box 97 • HOMEDALE, ID 83628 • 208/337-4681

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO)
) ss
COUNTY OF OWYHEE)

RECEIVED

OCT 30 2008

WATER RESOURCES
WESTERN REGION

I, Joe E. Aman, being first duly sworn, depose and say:

1. That I am a citizen of the United States of America, and at all times hereinafter mentioned was and now over the age of twenty-one years, not a party to nor interested in the proceedings hereinafter mentioned.

2. That during the time of publication of the notice hereinafter mentioned, I was and now am the publisher of The Owyhee Avalanche, a newspaper of general circulation printed and published weekly, on Wednesday of each and every week, in the City of Homedale, County of Owyhee and State of Idaho.

3. That the said The Owyhee Avalanche has been printed and published continuously and uninterruptedly in said County during a period of more than seventy-eight weeks prior to the first publication of the attached notice.

4. That said notice of which a printed copy, taken from said newspaper, is hereto affixed, was published in the regular issue thereof, and not a supplement thereto, in said newspaper, in TWO (2)
(consecutive) calendar weekly issue(s) of said newspaper, in the following date(s):

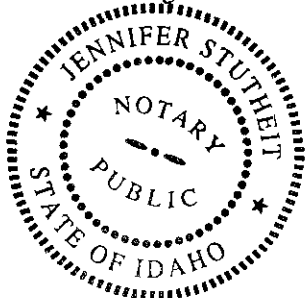
OCTOBER 15, 22, 2008

SIGNED: _____

STATE OF IDAHO }
COUNTY OF OWYHEE }

On this 29 day of OCT in the year of 2008 before me, a

Notary Public, personally appeared JOE E. AMAN
known or identified to me to be the person whose name subscribed to the within instrument, and being by me duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.



Jennifer Stutheit
Notary Public of Idaho
Residing at HOMEDALE, IDAHO

My commission expires: JANUARY 3, 2009

The following application(s) have been filed to appropriate the public waters of the State of Idaho: 57-11714

PHILLIP M WARNER,
SUSAN H WARNER, 7548
RIVERFRONT DR., MARSING
ID 83639

Point(s) of Diversion L3
(NESW) S23 T02N R04W
OWYHEE County Source
GROUND WATER

Use: IRRIGATION 03/01 To
11/15 0.05 CFS

Use: DOMESTIC 01/01 To
12/31 0.02 CFS

Total Diversion: 0.07 CFS

Date Filed: 01/25/2008

Place Of Use: IRRIGATION

T02N R04W S23 NESW Lot

3

Number of Acres 1.5

Place Of Use: DOMESTIC
SAME AS IRRIGATION

Remark: Place of use is Lot
3, Block , Hidden Valley Estates
Subdivision

Permits will be subject to all
prior water rights. Protests may
be submitted based on the criteria
of Sec 42-203A, Idaho Code.
Any protest against the approval
of this application must be filed
with the Director, Dept. of Water
Resource, Western Region, 2735
Airport Wy, Boise ID 83705
together with a protest fee of
\$25.00 for each application on or
before 11/03/2008. The protestant
must also send a copy of the
protest to the applicant.

DAVID R. TUTHILL, JR.,
Director
10/15/22/08

✓ OK DB

11-6-08

Block # left
out by mistake.
No need to
re-run ad.