

WR# 71-10911

Ident. No. 74592

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

RECEIVED
DEC 2 2007
DEPT. OF WATER RESOURCES
SOUTHERN REGION

1. Name of Applicant Idaho Department of Fish and Game Phone 208-334-3700
Mailing address P.O. Box 25, Boise, Idaho, 83707-0025

2. Source of water supply Fourth of July Creek which is a tributary of Salmon River

3. Location of point of diversion is Township 08N Range 14E Sec. 10, in the SE 1/4,
SW 1/4, SE 1/4, Govt. Lot _____, B.M., Custer County;

additional points of diversion if any:

4. Water will be used for the following purposes:

Amount .80 cfs for Fish Propagation purposes from 04/01 to 11/01 (both dates inclusive)
(Cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(Cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(Cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(Cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(Cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(Cfs or acre-feet per annum)

5. Total quantity to be appropriated is (a) .80 and/or _____
cubic feet per second acre feet per annum

6. Proposed diverting works:

a. Describe type and size of devices used to divert water from the source Water is diverted at an existing irrigation diversion, then
re-diverted from the ditch, at the fish screen, and piped back to the stream.

b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet;
total reservoir capacity _____ acre-feet

c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet

d. Is ground water with a temperature of greater than 85°F being sought?

e. If well is already drilled, when? _____; Drilling firm _____
Well was drilled for (well owner) _____; Drilling Permit No. _____

7. Time required for completion of works and application of water to proposed beneficial use is _____ years (minimum 1 year)
Completed

8. Description of proposed uses (if irrigation only, go to item 9):

a. Hydropower; show total feet of head and proposed capacity in kW.

b. Stockwatering; list number and kind of livestock.

c. Municipal; show name of municipality.

d. Domestic; show number of households.

e. Other; describe fully. The water returns fingerling fish to the stream from the irrigation ditch through a 10" bypass pipe that has a
control plate at the inlet with a 4" orifice.

9. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
08N	14E	10																	

Total number of acres to be irrigated NA

10. Describe any other water rights used for the same purposes as described above. 74-07341 and 74-01678

11. a. Who owns the property at the point of diversion? Mary Kemmerer

b. Who owns the land to be irrigated or place of use? Mary Kemmerer

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing:

See attached – Easement

12. Remarks:

We would like this water right to be assigned to the Idaho Department of Fish and Game name for this diversion, S4JC-02.

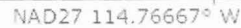
13. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8Yz"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

BE IT KNOWN that the undersigned hereby makes this application for permit to appropriate the public waters of the State of Idaho as herein set forth.

James R. Tuberos
Regional Supervisor

Signature of Applicant (and title, if applicable)

Received by Sutton Date 4/20/07 Time _____ Preliminary check by SW
 Fee \$ 250.00 Received by _____ # BELLO384 1/24/08 Date _____
 Publication prepared by _____ Date _____ Published in _____
 Publication approved _____ Date _____



T 08N R14E S10

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

**James P. Speck, Esq.
SPECK & AANESTAD
A Professional Corporation
Post Office Box 987
Ketchum, Idaho 83340**

(Space above line for recorder's use)

EASEMENT AGREEMENT

THIS AGREEMENT is made and entered into as of the date of the last signature hereto by and between MARY ELIZABETH KEMMERER., a married woman dealing in her sole and separate property ("Grantor"), and THE STATE OF IDAHO for the use and benefit of the Department of Fish and Game (the "Department").

RECITALS

A. Grantor is the owner of certain real property situated in Custer County, Idaho, a portion of which is located in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 15, Township 8 North, Range 14 East, B.M., Custer County, Idaho (the "Grantor Property").

B. A canal or ditch know as Salmon 4th of July Creek (S4JC) 02 (the "Canal") runs through a portion of the Grantor Property and conveys water pursuant to William H. and Ann S. Vanderbilt (collectively "Vanderbilt") pursuant to State of Idaho recognized water rights 71-02014 and 71-10762 diverted from Fourth of July Creek (the "Creek").

C. The Department desires (1) to construct and install a new headgate for the diversion of the Vanderbilt water rights pursuant to a separate agreement with Vanderbilt, and (2) to construct, install, operate and maintain in the Canal a self-cleaning fish screen and a fish bypass to prevent fish from swimming out of the Creek and down the Canal beyond the screen and to convey the fish from the screen location in the Canal back to the Creek.

D. Grantor is willing to grant the Department an easement for these purposes on the terms and conditions hereinafter set forth.

TERMS AND CONDITIONS

NOW THEREFORE the parties covenant and agree as follows:

1. INCORPORATION OF RECITALS. The Recitals set forth above are an integral part of this Agreement and are fully incorporated herein by this reference.

2. GRANT OF EASEMENT. Grantor hereby grants to the Department a perpetual easement for the purposes described in paragraph 3, below, over, across and through that portion of the Grantor Property depicted on the sketch attached hereto as Exhibit A as the "Easement Premises", and generally described as follows: all that portion of the Grantor Property lying East of an existing fence which extends from Fourth of July Road to the northern property boundary of the Grantor Property, which fence is not a property boundary line fence (the "Easement Premises").

3. PURPOSES OF EASEMENT. The Department shall have the right to use the Easement Premises for (a) the construction and installation of a new headgate for the diversion of the Vanderbilt water rights from the Creek into the Canal, and (b) the construction, operation, maintenance, repair, alteration, renewal and removal of a self-cleaning fish screen and a fish bypass in the Canal. The fish bypass shall consist of a buried pipeline to convey fish which enter the Canal back to the Creek. The fish screen and fish bypass pipeline shall remain the property of the Department and may be removed by the Department at any time. The proposed location of the fish screen and fish bypass within the Easement Premises are depicted on Exhibit A. The Department shall also have the right to access the banks of the Canal to remove debris, logs, log jams, mud or gravel bars that may accumulate or build up in the Canal immediately above or below the fish screen as a result of its installation in the Canal.

4. RESTORATION; INDEMNIFICATION. Upon completion of any construction, maintenance, repair or other work which damages or disturbs the ground, trees, shrubs or other vegetation within the Easement Premises, the Department shall, at its expense, restore the Easement Premises as closely as possible to the condition they were in prior to the commencement of such work, and shall replace to the satisfaction of Grantor any damaged trees, shrubs or other vegetation. To the extent allowed under Idaho law, the Department hereby agrees to fully indemnify and hold Grantor harmless from any and all injuries, claims and expenses, whether known, or unknown, including but not limited to, death, personal injury, or damage to property, arising out of or relating to the exercise by the Department, its personnel, employees and contractors, of any of the rights granted herein.

5. GOVERNING LAW. This Agreement and any instruments executed in connection herewith shall be construed and governed by and in accordance with the laws of the State of Idaho.

6. ATTORNEYS FEES. In the event either party hereto retains an attorney for the purpose of enforcing any right or duty arising out of this Agreement, the non-prevailing party in such dispute shall pay to the prevailing party the latter's reasonable attorneys fees if litigation is actually instituted.

7. NOTICE. All notices and communications under this Agreement shall be in writing and shall be (i) delivered in person or (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or by overnight express carrier, addressed in each case to the party's address set forth below, or (iii) sent by facsimile with the original to follow by mail in the manner described above. It is provided, however, that any party may change its respective address for purposes of receipt of any such communication by giving ten (10) days prior written notice of

such change to the other party hereto in the manner provided above. All notices sent pursuant to the terms of this paragraph shall be deemed received (i) if sent by overnight, express carrier, on the next business day immediately following the day sent, (ii) if sent by registered or certified mail, on the third business day following the day sent or (iii) if sent by facsimile on the date so sent. The parties addresses for the purposes of this paragraph are as follows:

Grantor: _____

The Department: Screen Shop
P.O. Box 1336
Salmon, ID 83467
Fax: 208-756-6274.

8. COUNTERPART EXECUTION. This Agreement may be executed in one or more counterparts, any one of which, if originally executed, shall be deemed to be an original and shall be binding upon each of the parties signing any such counterpart, and all of which taken together shall be one and the same instrument. One or more photostatic copies of this Agreement may be originally executed by one or more of the parties hereto, and such photostatic copies shall be deemed originals and shall be valid, binding and enforceable in accordance with their terms.

IN WITNESS WHEREOF the parties hereto have executed the foregoing Agreement on the dates set forth below.

"GRANTOR"

DATE: 9/28/01.


MARY ELIZABETH KEMMERER

"DEPARTMENT"

THE STATE OF IDAHO
DEPARTMENT OF FISH AND GAME

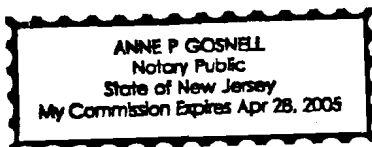
DATE: _____

By: _____

STATE OF NJ)
) ss.
County of _____)

On this 29th day of September, 2001, before me, the undersigned notary public in and for said state, personally appeared MARY ELIZABETH KEMMERER, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Anne P. Gosnell
Notary Public for New Jersey
Residing at: _____
Comm. Expires April 28, 2005

A circular notary seal stamp for Anne P. Gosnell, Notary Public, State of New Jersey. The text around the circle reads: "ANNE P. GOSNELL", "NOTARY PUBLIC", and "STATE OF NEW JERSEY".

STATE OF IDAHO)
) ss.
County of _____)

On this ____ day of _____, 2001, before me, the undersigned notary public in and for said state, personally appeared _____, known or identified to me to be the _____ of the State of Idaho, Department of Fish and Game and the person who executed the foregoing instrument on behalf of said Department and acknowledged to me that said Department executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.

Notary Public for Idaho
Residing at: _____
Commission expires _____