

State of Idaho
Department of Water Resources
Water Right License
Water Right No. 34-14339

Priority: June 29, 2011

Maximum Diversion Rate: 6.50 CFS

Maximum Diversion Volume: 1,810 AF

It is hereby certified that:

GORDON FULTON 5907 N US HIGHWAY 93 MACKAY ID 83251-4404

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated June 29, 2011, and has submitted Proof of Beneficial Use on March 04, 2020. An examination confirms water is diverted from:

Source : ROCK CREEK

Tributary: SINKS

Beneficial Use
POWER

Period of Use
01/01 to 12/31

Rate of Diversion
6.50 CFS

Annual Volume
1,810 AF

Location of Point(s) of Diversion

ROCK CREEK SW¼ SE¼, Sec. 34, Twp 10N, Rge 22E, B.M. CUSTER County

Place of Use: POWER

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
09N	22E	5								X									

Conditions of Approval

1. Rights 34-57, 34-58, 34-836, 34-4039, 34-10585 and 34-14339 when combined shall not exceed a total diversion rate of 15.2 cfs.
2. Use of water under this right may 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. 34.
3. Rights diverted from Rock Creek have historically been administered independently from the Big Lost River and its other tributaries.
4. Upon specific notification by the Department, the right holder shall install a lockable device of a type acceptable to the Department in a manner that will provide the watermaster suitable control of the diversion.
5. 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.
6. When diverting water for power purposes under this right, the right holder shall maintain an instantaneous bypass flow of at least 0.20 cfs past the point of diversion on Rock Creek, located in the SESWSE of Section 34, T10N, R22E. The right holder shall cease diverting water under this right if the bypass flow in Rock Creek is less than 0.20 cfs.

State of Idaho
Department of Water Resources
Water Right License
Water Right No. 34-14339

7. The right holder shall maintain a permanent measuring device, with staff gage, in Rock Creek capable of measuring the required bypass flow of 0.20 cfs. The measuring device shall be approved by IDWR after consultation with the Idaho Department of Fish & Game. At least once per year, the right holder shall confirm that the bypass flow measuring device is in good condition and providing accurate measurements prior to diverting water for power purposes.
8. The measuring device for the bypass flow shall be located no more than 100 feet downstream of the authorized point of diversion for this right, located in the SESWSE of Section 34, T10N, R22E.
9. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
10. The term of this water right license shall extend to December 31, 2035. Prior to the expiration of the term, the Director may issue an order canceling all or any part of the use authorized herein, may establish a new term, or may revise, delete, or add conditions under which the water right license may be exercised. The order shall take effect on the date the current term expires. If the Director does not issue such an order, the term shall automatically extend to a length equal to the project's prior term and any prior conditions on the water right license shall remain in effect.
11. The rights for the use of water confirmed in this license shall be junior and subordinate to all rights for the use of water other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any right or claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this right.
12. Use of water under this right shall be non-consumptive.
13. This right does not grant any right-of-way or easement across the land of another.
14. The following rights are diverted through point(s) of diversion described above: Rights 34-57, 34-58, 34-836, 34-4039, 34-10585, 34-14339, and 34-14339.

This license is issued pursuant to the provisions of Idaho Code § 42-219. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

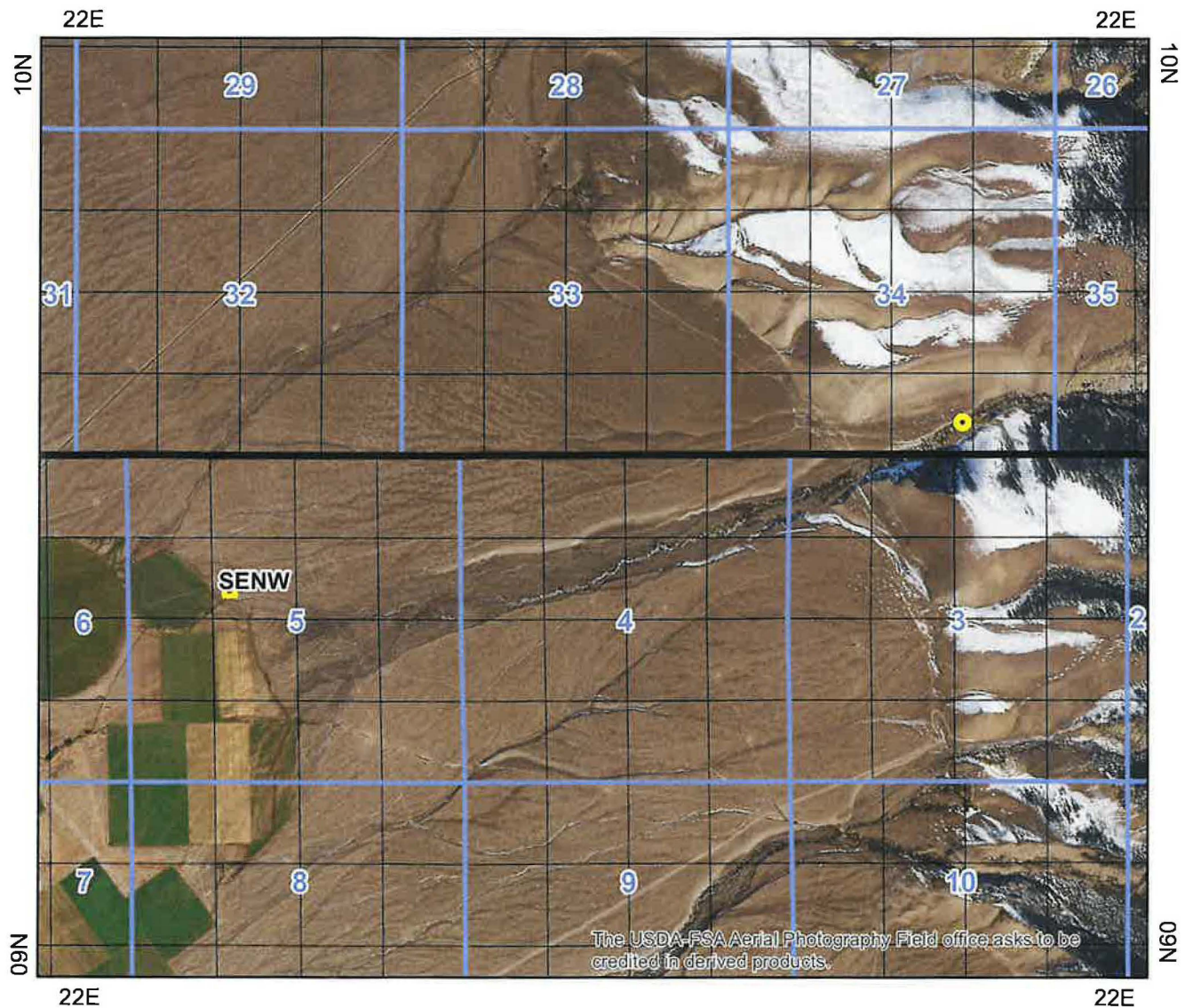
Signed this 11th day of February, 2025.



PHILL HUMMER
Water Rights Section Manager

State of Idaho
Department of Water Resources
Attachment to Water Right License
34-14339

This map depicts the POWER place of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.



-  Point of Diversion
-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters

0 0.35 0.7 1.4 Miles



State of Idaho
Department of Water Resources
Application for Amendment
(For Licensing Purposes)
Water Right No. 34-14339

RECEIVED

NOV 03 2021

DEPARTMENT OF
WATER RESOURCES

Priority: June 29, 2011

Maximum Diversion Rate: 6.50 CFS
Maximum Diversion Volume: 1,810.0 AF

The owner and holder of Permit to appropriate the Public Waters of the State of Idaho No. 34-14339

GORDON FULTON 5907 N US HIGHWAY 93 MACKAY ID 83251-4404

requests the permit be changed as follows:

Source: ROCK CREEK

Tributary: SINKS

<u>Beneficial Use</u>	<u>Period of Use</u>	<u>Rate of Diversion</u>	<u>Annual Volume</u>
POWER	01/01 to 12/31	6.50 CFS	1,810.0 AF

Location of Point(s) of Diversion

ROCK CREEK SW¼ SE¼, Sec. 34, Twp 10N, Rge 22E, B.M. CUSTER County

Place of Use: POWER

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
09N	22E	5								X									

Permit holder asserts that no one will be injured by such change and that such change will be made at permit holder's own risk.

Signed this 26 day of October, 2021.



(Signature)

State of Idaho
Department of Water Resources
Application for Amendment
(For Licensing Purposes)
Water Right No. 34-14339

FOR DEPARTMENT USE ONLY

Preliminary check by km Fee = \$100 Receipted by km # C111248 Date 11-3-21

ACTION OF THE DEPARTMENT OF WATER RESOURCES

The Idaho Department of Water Resources hereby approves the above Application for Amendment for Permit No. 34-14339 with the following:

Conditions of Approval

1. Rights 34-57, 34-58, 34-836, 34-4039, 34-10585 and 34-14339 when combined shall not exceed a total diversion rate of 15.2 cfs.
2. Use of water under this right may 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. 34.
3. Rights diverted from Rock Creek have historically been administered independently from the Big Lost River and its other tributaries.
4. Upon specific notification by the Department, the right holder shall install a lockable device of a type acceptable to the Department in a manner that will provide the watermaster suitable control of the diversion.
5. 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.
6. When diverting water for power purposes under this right, the right holder shall maintain an instantaneous bypass flow of at least 0.2 cfs past the point of diversion on Rock Creek, located in the SESWSE of Section 34, T10N, R22E. The right holder shall cease diverting water under this right if the bypass flow in Rock Creek is less than 0.2 cfs.
7. The right holder shall maintain a permanent measuring device, with staff gage, in Rock Creek capable of measuring the required bypass flow of 0.2 cfs. The measuring device shall be approved by IDWR after consultation with the Idaho Department of Fish & Game. At least once per year, the right holder shall confirm that the bypass flow measuring device is in good condition and providing accurate measurements prior to diverting water for power purposes.
8. The measuring device for the bypass flow shall be located no more than 100 feet downstream of the authorized point of diversion for this right, located in the SESWSE of Section 34, T10N, R22E.
9. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
10. The term of this water right license shall extend to December 31, 2035. Prior to the expiration of the term, the Director may issue an order canceling all or any part of the use authorized herein, may establish a new term, or may revise, delete, or add conditions under which the water right license may be exercised. The order shall take effect on the date the current term expires. If the Director does not issue such an order, the term shall automatically extend to a length equal to the project's prior term and any prior conditions on the water right license shall remain in effect.

State of Idaho
Department of Water Resources
Application for Amendment
(For Licensing Purposes)
Water Right No. 34-14339

11. The rights for the use of water confirmed in this license shall be junior and subordinate to all rights for the use of water other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any right or claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this right.
12. Use of water under this right shall be non-consumptive.
13. This right does not grant any right-of-way or easement across the land of another.
14. The following rights are diverted through point(s) of diversion described above: Rights 34-57, 34-58, 34-836, 34-4039, 34-10585, 34-14339, and 34-14339.

This amendment is issued pursuant to the provisions of Idaho Code § 42-211.

Signed this 11th day of February, 2025.



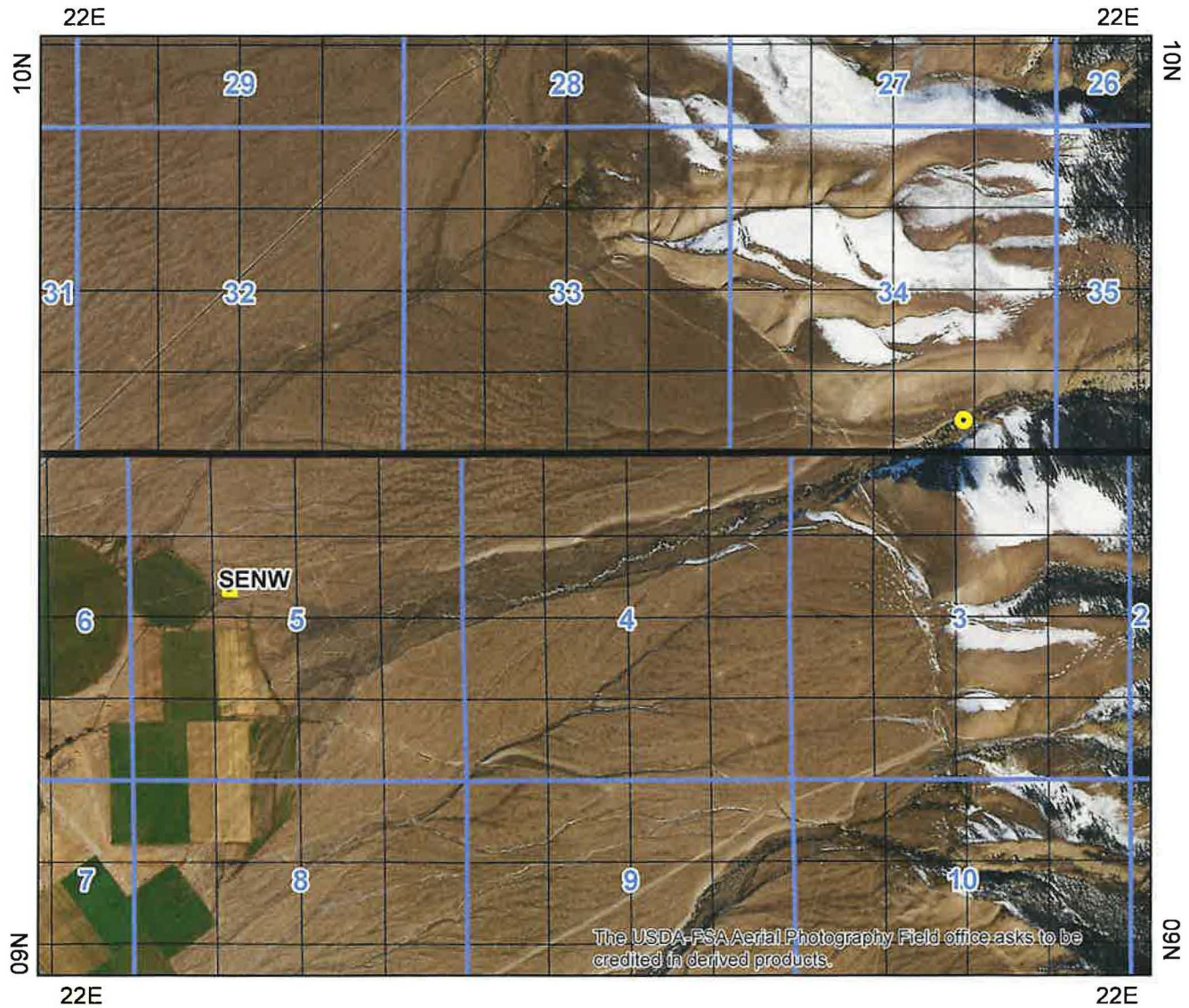
PHILL HUMMER
Water Rights Section Manager

State of Idaho
Department of Water Resources

Attachment for Application to Amend a Permit

34-14339

This map depicts the POWER place of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.



- Point of Diversion
- Place Of Use Boundary
- Townships
- PLS Sections
- Quarter Quarters

0 0.35 0.7 1.4 Miles





IDAHO DEPARTMENT OF
WATER RESOURCES

322 E Front Street, Suite 648, Boise ID 83702 • PO Box 83720, Boise ID 83720-0098
Phone: 208-287-4800 • Fax: 208-287-6700 • Email: idwrinfo@idwr.idaho.gov • Website: idwr.idaho.gov

Governor Brad Little

Director Mathew Weaver

February 14, 2025

GORDON FULTON
5907 N US HIGHWAY 93
MACKAY ID 83251-4404

RE: License No. 34-14339

ISSUANCE OF LICENSE

Dear Water Right Holder(s):

The Department of Water Resources ("Department") has issued the enclosed Water Right License confirming that a water right has been established in accordance with your permit. Please be sure to thoroughly review all the conditions of approval listed on your license. The conditions may include ongoing requirements, such as maintenance of a measuring device or implementation of mitigation, as well as information about how your water use may be administered, such as regulation by a watermaster in a water district.

The license is a PRELIMINARY ORDER issued by the Department pursuant to Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730). It can and will become a final order without further action by the Department unless a party petitions for reconsideration, files exceptions, or requests a hearing as described in the enclosed information sheet.

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. Water right forms are available from any office of the Department or on the Department's website at idwr.idaho.gov

If you have any questions concerning the enclosed information, please contact me at (208) 287-4925.

Sincerely,

Phill Hummer

Phill Hummer
Water Rights Section Manager

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2025, I served a true and correct copy of Water Right License No. 34-14339 by U.S. Mail, postage prepaid, to the following:

GORDON FULTON (Current Owner)
5907 N US HIGHWAY 93
MACKAY ID 83251-4404

WATER DISTRICT #34
PRESTON MARCROFT (Watermaster – via email)
WATERMANAGER@WD37.ORG


Debra Mansfield
Technical Records Specialist 1

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was held)

The accompanying order is a **Preliminary Order** issued by the Idaho Department of Water Resources (Department) pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and brief as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The hearing officer 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 to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

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.

Mansfield, Debra

From: Mansfield, Debra
Sent: Friday, February 14, 2025 9:59 AM
To: water34master@gmail.com
Subject: Issued Water Right License 34-14339
Attachments: Issued License 34-14339.pdf

Hello,

Please see the attached copy of issued Water Right License 34-14339 for your records.

Thank you,

Debra Mansfield | Technical Records Specialist 1
IDWR – State Office
322 E Front St, Boise ID 83702-7371
(208) 287-4921 | Debra.Mansfield@idwr.idaho.gov

Nelson, Dan

From: Nelson, Dan
Sent: Monday, July 26, 2021 11:35 AM
To: 'gordon fulton'
Subject: RE: Amendment of Permit Letter

Dear Mr. Fulton,

I completely understand the situation with you being out of state. I will hold the file until November 30, 2021.

Thank you for contacting me, and good luck on your endeavors in Alaska.

Daniel Nelson
Water Right Analyst 3
Idaho Department of Water Resources
Telephone (208) 287-4856
Fax (208) 287-6700 (attn: Dan Nelson)

From: gordon fulton [mailto:tailingart@yahoo.com]
Sent: Monday, July 26, 2021 11:13 AM
To: Nelson, Dan <Dan.Nelson@idwr.idaho.gov>
Subject: Re: Amendment of Permit Letter

Dan;

As per our phone conversation this AM, due to situations beyond my control I was unable to secure copies of the amendment agreement, to sign, in a timely manner. This necessitates my current plea for a further extension. I should be able to provide it within a week or two, but as a worst case, I would rather be safe and extend it until I return too Idaho from our mining operation in Alaska, where I do not have ready access to internet, printer, scanner etc. Typically I am back by Late October or early November, so I can certainly provide it by the end of November 2021.

Thanks for your concern.
Gordon

On Tuesday, June 22, 2021, 07:11:46 AM MDT, Nelson, Dan <dan.nelson@idwr.idaho.gov> wrote:

Gordon,

That will be fine. I totally understand, and I will hold the file until July 30th. On July 30th, I will send you another reminder.

Thank you for your patience with the process, and I wish you luck on your Alaskan endeavors.

Respectfully,

Daniel Nelson

Water Right Analyst 3

Idaho Department of Water Resources

Telephone (208) 287-4856

Fax (208) 287-6700 (attn: Dan Nelson)

From: gordon fulton [<mailto:tailingart@yahoo.com>]

Sent: Tuesday, June 22, 2021 12:02 AM

To: Nelson, Dan <Dan.Nelson@idwr.idaho.gov>

Subject: Re: Amendment of Permit Letter

Daniel;

I don't have a printer here, but next time I go to Fairbanks I can get a copy printed, to sign. I can then forward it to you along with a check for \$100.

Im not sure how long that will be, but a month should be adequate for something here to break down, requiring a town trip.

Sure appreciate your patience.

Thanks!

Gordon

On Wednesday, June 16, 2021, 11:09:51 AM MDT, Nelson, Dan <dan.nelson@idwr.idaho.gov> wrote:

Hello Gordon,

As promised, I have enclosed a copy of the amendment of permit for your hydropower facility. The amendment is to authorize the move of the power plant from your neighbor's property onto the BLM ground above the headgates.

I know you are in Alaska, so I can extend the 14 day requirement to return the amendment if you need. You will just need to give an approximate date that you can get home, review the amendment, sign the amendment

and submit the \$100.00 fee, and return it to our office. You can print this amendment from the attachment, sign, and return the signed amendment and the fee from Alaska if you wish.

As required by Idaho Law, I have mailed a hard copy of this amendment to your address in Mackay.

Thank you very much for all of your help on bring this permit to licensing. You were very pleasant to work with, and I greatly appreciate your efforts.

Respectfully,

Daniel Nelson

Water Right Analyst 3

Idaho Department of Water Resources

Telephone (208) 287-4856

Fax (208) 287-6700 (attn: Dan Nelson)



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 E Front Street, Suite 648 • PO Box 83720 • Boise ID 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700

Website: idwr.idaho.gov • Email: idwrinfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

June 16, 2021

GORDON FULTON
5907 N US HIGHWAY 93
MACKAY ID 83251-4404

RE: Water Right Permit No. 34-14339

Dear Permit Holder:

The Idaho Department of Water Resources (Department) is reviewing the permit referenced above prior to issuing a water right license. By issuing a license, the Department confirms the extent of development that has been established in compliance with the terms of the permit.

I first want to begin by thanking you for the photos you supplied of the upgrades you made of the bypass at the point of diversion. This complies with the conditions of the permit of providing in excess of 0.20 cfs in the creek below the point of diversion.

On April 29, 2021, Department staff and I visited your property to perform a field examination of your hydropower facility. During that field examination, we discovered that you actually built the power house on Bureau of Land Management (BLM) lands in SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 5 in Township 9 North, Range 22 East instead of the on the private lands that your permit authorized in NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 5 in Township 9 North, Range 22 East.

You have graciously provided the BLM Right of Way Renewal Grant to us that clearly shows you have the legal authority to have your power house on BLM property. However, the permit still show the incorrect place of use, so that will need to be addressed by amending the permit at the time of licensing to correct the place of use on the permit. I have prepared an amendment form for your review that is attached to this letter.

The enclosed Application for Amendment form depicts the elements of the water right as they will appear on the license when issued. Please review the amendment form carefully. If you concur with the information presented, please sign and return the form with the \$100.00 filing fee within 14 days.

I know that you are working in Alaska at this time, so I am sending a copy of this document to you by email. We can hold the deadline for signing of this amendment and sending the \$100.00 amendment fee until you get back home, and have an opportunity to review the documents in more detail if you prefer. If you prefer to do this, please give me a specific date that you can return the amendment to me. For example, you may want to give yourself a couple of weeks after you return to Idaho. This will also delay the licensing of this permit, since we cannot license the permit until the amendment is returned.

Thank you again for your cooperation in the licensing of this permit. You have been very helpful in moving the permit forward in the licensing process. If you have any questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Daniel A. Nelson', with a long horizontal line extending to the right.

Daniel A. Nelson
Analyst 3
Water Right Section
Idaho Department of Water Resources
Telephone # (208) 287-4856
Email – dan.nelson@idwr.idaho.gov

Enclosure(s): Application for Amendment with maps

Nelson, Dan

From: Nelson, Dan
Sent: Wednesday, June 16, 2021 11:10 AM
To: 'gordon fulton'
Subject: Amendment of Permit Letter
Attachments: 34-14339 amendment.pdf

Hello Gordon,

As promised, I have enclosed a copy of the amendment of permit for your hydropower facility. The amendment is to authorize the move of the power plant from your neighbor's property onto the BLM ground above the headgates.

I know you are in Alaska, so I can extend the 14 day requirement to return the amendment if you need. You will just need to give an approximate date that you can get home, review the amendment, sign the amendment and submit the \$100.00 fee, and return it to our office. You can print this amendment from the attachment, sign, and return the signed amendment and the fee from Alaska if you wish.

As required by Idaho Law, I have mailed a hard copy of this amendment to your address in Mackay.

Thank you very much for all of your help on bring this permit to licensing. You were very pleasant to work with, and I greatly appreciate your efforts.

Respectfully,

Daniel Nelson
Water Right Analyst 3
Idaho Department of Water Resources
Telephone (208) 287-4856
Fax (208) 287-6700 (attn: Dan Nelson)

MEMORANDUM

TO: File 34-14339

FROM: Daniel A. Nelson

DATE: June 4, 2021

SUBJECT: Additional information on bypass flow at point of diversion.

During my initial examination of this permit, I found that the approximately 0.10 feet of head was going over the one foot weir installed in the creek to measure the water bypassing the point of diversion. I calculated the flow at the time of the field exam at approximately 0.07 cfs. The conditions on the permit required a minimum of 0.20 cfs of water needed to remain in the creek past the point of diversion.

On May 25, 2021, I sent a Notice of Intent to Void (Notice) to the permit holder that required him to show that he could maintain a flow past the point of diversion of 0.20 cfs. I also stated that he would need to provide proof by sending photos of upgrades or a report from a certified water right examiner or watermaster.

On June 2, 2021, I received photos of the dam from the permit holder that clearly shows that a pipe had been added to the dam, and that it was running fully open. The permit holder also provided a photo showing a measurement on the 1 foot weir with water flowing over the weir at a height of slightly more than 2 inches. Using the University of Idaho Water Measurement Manual, I determined that the flow currently going over the weir was approximately 0.229 cfs.

Mr. Fulton has complied with the conditions of the permit, and the amendment of the permit can move forward with processing.

Nelson, Dan

From: Nelson, Dan
Sent: Wednesday, June 02, 2021 1:25 PM
To: 'gordon fulton'
Cc: Smith, Tyler
Subject: RE: Photos

Hello Gordon;

Thank you for the photos. I looked at the measurement, and I agree that there is slightly more than 2 inches of water flowing over the weir. According to my measurement manuals, I would estimate the flow of water at approximately 0.17 feet of head over the one foot rectangular weir or 0.229 cfs. This meets the condition set forth in your permit.

I will need to have my supervisor review the draft amendment I prepared and these photos to show you complied with the conditions of the permit. Once they have reviewed everything, they will give me permission to send you the amendment of permit to correct the location of the powerhouse. Originally, you had the power house located on your neighbor's property. Once we receive the amendment back, then we can issue the license.

I can't give you timeline due to the backlog of work in my supervisor's office, but I will do my best to get it moving along as quickly as possible.

Respectfully,

Daniel Nelson
Water Right Analyst 3
Idaho Department of Water Resources
Telephone (208) 287-4856
Fax (208) 287-6700 (attn: Dan Nelson)

-----Original Message-----

From: gordon fulton [mailto:tailingart@yahoo.com]
Sent: Wednesday, June 02, 2021 11:13 AM
To: Nelson, Dan <Dan.Nelson@idwr.idaho.gov>
Subject: Photos

Dan;

I delayed heading north for long enough to go up and install a pipe and valve to allow more water to exit the diversion structure. I took lots of pictures, but unfortunately I had my hand in front of the camera lense on most of them.

I did end up with a couple that do show the basics. One is the device, and the other, does show approximately two inches of flow over the weir, after the device installation.

If you need more information, or pictures, please let me know, and I can get someone to supply whatever we need to assure compliance.

Thanks!

Gordon

Photos sent for Bypass upgrade by Gordon Fulton for permit 34-14339. These photos were sent my email, and have been placed in this document to make them available to the water right file.

