

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION)	
FOR PERMIT NO. 74-16229 IN THE)	PRELIMINARY ORDER
<u>NAME OF BOYD FOSTER</u>)	DENYING APPLICATION

PROCEDURAL HISTORY

On January 9, 2020, Boyd Foster ("Foster") filed Application for Permit 74-16229 with the Idaho Department of Water Resources ("Department"). The Department published notice of the application on February 6 and 13, 2020. High Bar Ditch Association ("HBDA") filed a protest against the application. The Department conducted a pre-hearing conference on June 26, 2020. During the conference, the parties requested that the Department hold an administrative hearing to decide the contested case.

On February 11, 2020, the Department conducted a hearing in Salmon, Idaho. Foster was represented by his sister-in-law, April Hawkes. HBDA was represented by Marianne Little, secretary-treasurer of the association. Exhibits 1 and 2 offered by Foster were admitted into the administrative record. HBDA did not offer any exhibits. Prior to the hearing, the hearing officer took official notice of specific records, reports and data in the Department's files that may be relevant to the contested case. For ease of reference, these documents were assigned exhibit numbers 201-208. Foster testified on his own behalf and called James Whittaker, Laura Warren and Jill Foster as witnesses. Marianne Little testified for HBDA.

After carefully considering the evidence in the record, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. In Application 74-16229, Foster proposes to divert 3.80 cfs from ground water to irrigate 193.4 acres. Ex. 201.
2. The proposed point of diversion is a new ground water well to be constructed in the NESE, Section 33, T16N, R26E near Leadore. Ex. 201. The proposed well would be completed to a depth of approximately 160 feet. *Id.*
3. The proposed point of diversion and place of use are on property owned by Foster. Foster Testimony. Foster's brother, who is a well driller in the Leadore area, would construct the well. *Id.* Foster already has money and materials set aside to complete the proposed project. *Id.*

4. The proposed irrigation place of use, located in Sections 33 and 34, T16N, R26E, is fully overlapped by existing water right 74-51.

5. Water right 74-51 bears a priority date of June 7, 1909 and authorizes the diversion of 6.4 cfs from Big Timber Creek for the irrigation of 216.4 acres.

6. Water right 74-51 is a junior water right on Big Timber Creek. Foster Testimony. The right is filled during the snow melt runoff period, but is often curtailed by late June. *Id.*; Ex. 2 (delivery records from 2020 show water right 74-51 curtailed by July 1st).

7. The proposed place of use is planted in alfalfa hay. Foster Testimony. Because of elevation and colder temperatures, the growing season at the proposed place of use is short. *Id.* Water right 74-51 is sometimes curtailed prior to the principal growing season for alfalfa hay. *Id.* In certain years, Foster is not able to complete a first crop of hay because water right 74-51 is curtailed prior to the significant growth period for hay. *Id.*

8. The proposed permit would allow Foster to continue to irrigate his hay crop during the principal growing season, after water right 74-51 is curtailed. Foster Testimony. The additional irrigation supply would make the ground more profitable. *Id.*

9. Application 74-16229 included the following statement:

This [proposed permit] will be used for supplemental uses when water from Big Timber Creek is insufficient for irrigation of crops. No more than 6.4 cfs will be used at the place of use at any given time. Big Timber Creek water (water right 74-51) will always be used first.

10. The proposed point of diversion is located approximately one-half mile east of Big Timber Creek, approximately one mile south of the Lemhi River and less than one mile from the town of Leadore.

11. "The headwaters of the Lemhi River are near Leadore, where Canyon, Hawley, Eighteenmile, Texas and Big Timber Creeks flow together." Ex. 1 at 6. There are also large springs in the Leadore area which contribute to flows in the Lemhi River. Whittaker Testimony. "Streamflow in the Lemhi River is highest during May through July and usually peaks in early June." Ex. 1 at 6.

12. There are currently over 550 water rights authorizing diversion of water from the Lemhi River for irrigation use. These water rights bear priority dates ranging from 1869 to 2006 and describe more than 500 cfs of diversion.

13. One of the junior water rights in the basin, 74-14993, is held by the Idaho Water Resource Board. Ex. 204. Water right 74-14993 bears a priority date of April 12, 2001 and authorizes the diversion of 35 cfs to create a minimum stream flow between the L-6 diversion on the Lemhi River and the confluence with the Salmon River. *Id.*

14. According to the conditions of water right 74-14993, 15 cfs of the 35 cfs authorized by the right is “subordinated to all diversions, including high water or flood water authorized under the Lemhi River basin decree (Lemhi County Case No. 4948).” Ex. 204.

15. The United States Geological Survey (“USGS”) operates a stream gage on the Lemhi River at the L-5 diversion (“L5 Gage”). Ex. 205. This gage, identified by the USGS as “USGS 13305310 Lemhi River Below L5 Diversion near Salmon, ID” is located in the minimum stream flow reach described in water right 74-14993.

16. Based on stream flow records for the L5 Gage, the streamflow of the Lemhi River falls below the 35 cfs described in water right 74-14993 between late-July and late-September. Ex. 205. In an attempt to maintain streamflow in the lower reaches of the Lemhi River, the Idaho Water Resource Board has entered into agreements with certain water right holders to hold their senior rights unused during the low flow period. Ex. 206. If these agreements were not in place, the flow in the minimum stream flow reach would be very low or the reach would dry up completely in August and September. *Id.*

17. HBDA diverts water from the Lemhi River at Diversions L-41 and L-42, which are located approximately twenty miles downstream of Leadore. According to the Department’s water right records, the following irrigation water rights are delivered at the HBDA headgates (L-41 and L-42):

Right No.	Priority Date	Rate (cfs)	Owner
74-1061	2/12/1875	0.50	Mary Ann & Donald Sabatte; Spiro & Annette Daskalos
74-1077	2/12/1875	1.81	Andrew & Kathleen Knight
74-1845	2/12/1875	0.69	Janet Kibbee
	Total:	3.00	
74-1608B	5/14/1914	3.90	Floyd & Debbie Linger
74-14992	5/14/1914	0.71	William & Charlene Cobb
74-15208	5/14/1914	1.00	Jerry Smith; Marianne Little
74-15209	5/14/1914	0.56	Ray Family Trust
74-15210	5/14/1914	0.68	Franklin & June Yancey
74-15592	5/14/1914	1.53	Jeana Marie Donaldson-Thomas Family Trust
74-15727	5/14/1914	0.40	Rick & Michelle Gerbo
74-15764	5/14/1914	0.50	John & Melanie Hoeck
74-15922	5/14/1914	0.15	Allen & Whitney Teller
74-15923	5/14/1914	0.48	John & Melanie Hoeck
74-16169	5/14/1914	0.48	Rick Gerbo
	Total:	10.39	

18. Most of the irrigation water rights delivered through the HBDA system bear a 1914 priority date. Ex. 202. These rights are fairly junior when compared to other irrigation water rights on the Lemhi River. However, there are over 100 irrigation rights from the Lemhi River, authorizing over 90 cfs of diversion, which are junior to the 1914 rights diverted by HBDA.

19. In an average water year, the available water supply on the Lemhi River declines to a point where junior water rights (including the 1914 rights in HBDA) are curtailed between late July and late August. Little Testimony. In a drought year, junior water rights are curtailed between mid-July and late September because of a shortage of water in the river. *Id.*

20. The water rights on the Lemhi River are regulated by Water District 74. The water rights on the Lemhi River are regulated separately from many of the tributary streams in the basin. Whittaker Testimony.

21. The ground water aquifer in the Lemhi River drainage is composed of unconsolidated alluvial deposits. Ex. 1 at 3. These alluvial deposits are primarily “gravel with intercalated sand and silt.” *Id.*

22. “In several places in the upper part of the basin [which includes the town of Leadore], the alluvium is at least 200 feet thick.” Ex. 1 at 3. “In a zone immediately downstream from Lemhi [approximately 18 miles downstream of Leadore], the alluvium appears to be less than 20 [feet] thick” *Id.* “This constriction of the aquifer between Lemhi and Tendoy, where bedrock rises to shallow depths and the alluvium is thin, forms a natural (but not necessarily complete) hydrologic barrier to ground-water flow.” *Id.*

23. The surface water streams in the Lemhi River basin are directly connected to the underlying ground water aquifer. Ex. 203 at 10. In the spring time, during the snow melt runoff period, tributary streams sink into the coarse alluvial sediments in the valley terraces and enter the Lemhi River through springs and seeps in the summer months. *Id.* at 11.

24. The Lemhi River gains water from the underlying aquifer through most of its length and throughout most of the irrigation season. Ex. 203 at 11; Ex. 1 (confirming that the Lemhi River gains flow in most sections of the river during the irrigation season). “[P]ractically all the water which percolates into the ground moves toward the river and reappears in numerous seeps and springs in the flood plain of the Lemhi River.” Ex. 203 at 11 (quotation marks and citation omitted).

25. “Ground water flow in the Lemhi River basin is generally from the bounding mountains toward the center of the valley and then northward sub-parallel to the Lemhi River.” Ex. 203 at report pg. 10. “A large percentage of the ground water [in the basin] enters the river as subsurface flow and spring discharge.” *Id.*; see also Ex. 1 at 17-19 (the amount of water leaving the Lemhi River basin as underflow (ground water) is less than two percent of the total annual yield of the basin).

26. Ground water levels in the Lemhi River basin are generally highest in August and September. Ex. 203 at 10. Seepage from the creek channels and flood irrigation during the snow melt runoff period causes ground water levels to rise through the early summer. *Id.*

27. Because of increased aquifer levels, the amount of water entering the Lemhi River through springs and seeps reaches a peak in the months of August and September. Ex. 1. In

spite of these contributions from the aquifer, there is not sufficient flow to satisfy all irrigation water rights on the Lemhi River and junior rights are curtailed. Little Testimony.

28. In 1976, water users in the Lemhi River basin conducted dye tracer tests to evaluate the time it takes for water entering the local aquifer to appear as gains to the Lemhi River. Ex. 207. The study found that water recharged into the aquifer near Leadore reappears as gains to the Lemhi River within a couple of days and contributes to river flow up to three months after the water enters the aquifer, with the peak river gains occurring six weeks after the aquifer recharge activity. *Id.*

29. Ground water aquifer levels are reduced by diversions from ground water wells. Ex. 1 at 11. For many years, water users on the Lemhi River have been concerned that ground water diversions in the basin could reduce flow in the Lemhi River during times when junior water rights have been curtailed. *See* Ex. 208 (describing a spreadsheet developed in 1998 to quantify the depletion to the Lemhi River caused by a diversion of ground water).

RELEVANT LEGAL PROVISIONS

Idaho Code § 42-203A(5) states in pertinent part:

In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho . . . the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

The applicant bears the burden of proof for the elements set forth in Idaho Code § 42-203A(5). IDAPA 37.03.08.40.04.

Idaho Code § 42-234(5) states:

The legislature further recognizes that incidental ground water recharge benefits are often obtained from the diversion and use of water for various beneficial purposes. However, such incidental recharge may not be used as the basis for claim of a separate or expanded water right. Incidental recharge of aquifers which occurs as a result of water diversion and use that does not exceed the vested water right of water right holders is in the public interest. The values of such incidental recharge shall be considered in the management of the state's water resources.

ANALYSIS

Reduction to Existing Water Rights

Rule 45.01.a of the Department's Water Appropriation Rules (IDAPA 37.03.08) sets forth the criteria used for determining whether a proposed use of water will reduce the quantity of water under an existing water right:

A proposed use will be determined to reduce the quantity of water under an existing water right (i.e., injure another water right) if:

i. The amount of water available under an existing water right will be reduced below the amount recorded by permit, license, decree or valid claim or the historical amount beneficially used by the water right holder under such recorded rights, whichever is less.

...

iv. An application that would otherwise be denied because of injury to another water right may be approved upon conditions which will mitigate losses of water to the holder of an existing water right, as determined by the Director.

IDAPA 37.03.08.045.01.a.

Foster contends that the proposed permit should be approved because HBDA will not be injured by diversion of ground water under the proposed permit. The Department's injury review under Idaho Code § 42-203A(5), however, is not limited to the water rights held by protestants. The Department's injury analysis extends to all water rights. Therefore, an applicant bears the burden of demonstrating that the proposed project will not reduce water under any existing water rights, even rights held by non-parties.

The technical evidence in the record shows a high probability that water rights will be injured by the proposed project. Stated differently, it is likely that the proposed project will reduce the available water supply for existing water rights. There is a direct connection between the ground water aquifer and the Lemhi River in the Leadore area. Increased aquifer levels result in increased gains to the river through springs and seeps. Conversely, a decrease in aquifer levels will reduce the gains or inflows into the Lemhi River.

Pumping ground water will decrease aquifer levels in the area around the pumped well. This reduction may occur during a time when aquifer levels are rising due to flood irrigation in the Leadore area. If so, the ground water pumping will cause the aquifer levels to not rise as high as they would have without the ground water pumping. The effects from pumping the proposed well will propagate to the Lemhi River soon after pumping, but the peak effects would appear in the river six weeks after pumping begins. If Foster were to begin pumping in late June, when water right 74-51 is curtailed, the peak reduction in Lemhi River flows caused by the pumping,

would occur in mid-August. Junior water rights are curtailed on the Lemhi River in July and August every year. The proposed ground water diversion will reduce the quantity of water available to satisfy existing water rights during this critical time period. Foster has not demonstrated that the proposed water use will not injure other water rights.

Foster contends that any depletion to the Lemhi River caused by pumping ground water for irrigation use under the proposed permit would be offset by the recharge occurring in the early season in the Big Timber Creek drainage. A significant amount of water is recharged in the creek channels throughout the year and when water users divert water for flood irrigation in the spring and early summer.

Idaho Code § 42-234(5) clearly states: “[I]ncidental recharge may not be used as the basis for claim of a separate or expanded water right.” The incidental recharge occurring in the Big Timber Creek drainage cannot be used to mitigate for future ground water irrigation rights. Foster has not identified any other source or means to mitigate for the reduction of water to the Lemhi River caused by the proposed diversion. Foster has not satisfied his burden of showing that the proposed use will not reduce the quantity of water available to fill existing water rights.

Sufficiency of Water Supply

Rule 45.01.b of the Department’s Water Appropriation Rules sets forth the criteria for determining whether the water supply is sufficient for a proposed project: “The water supply will be determined to be insufficient for the proposed use if water is not available for an adequate time interval in quantities sufficient to make the project economically feasible . . .” IDAPA 37.03.08.45.01.b.

The aquifer in the Leadore area is likely 200 feet thick. The water levels in this area rise to 40 feet below land surface during the summer months. The water supply in the local aquifer would be available for an adequate time interval and in sufficient quantities to make the project economically feasible.

Lack of Good Faith / Speculation

Rule 45.01.c of the Department’s Water Appropriation Rules sets forth the criteria for determining whether an application is filed in good faith and not for speculative purposes. An applicant must have “legal access to the property necessary to construct and operate the proposed project.” IDAPA 37.03.08.45.01.c.i. An applicant must also demonstrate that it is “in the process of obtaining other permits needed to construct and operate the project” and that there are no obvious legal impediments to prevent successful completion of the project. IDAPA 37.03.08.45.01.c.ii-iii.

The proposed point of diversion and place of use are located on property owned by Foster. Foster has demonstrated that Application 74-16229 was filed in good faith and not for delay or speculative purposes.

Sufficient Financial Resources

Rule 45.01.d of the Department's Water Appropriation Rules sets forth the criteria for determining whether an applicant has sufficient financial resources to complete a project. "An applicant will be found to have sufficient financial resources upon a showing that it is reasonably probable that funding is or will be available for project construction or upon a financial commitment letter acceptable to the Director." IDAPA 37.03.08.45.01.d.ii. Foster demonstrated that it is reasonably probable that funding will be available to complete the proposed project. Foster testified that he has already set aside money and materials to complete the project.

Local Public Interest

The local public interest analysis under Idaho Code § 42-203A(5)(e) is meant to be separate and distinct from the injury analysis under § 42-203A(5)(a). Local public interest is defined as "the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource." Idaho Code § 42-202B(3).

It is undisputed that the proposed project would benefit not only Foster, but the entire community of Leadore. Foster would be able to grow a viable crop of alfalfa hay on his property every year, even in drought years. The hay could be used to supply cattle ranchers in the local community, reducing the need for local ranchers to import hay from other areas of the state. Diverting ground water for irrigation use is in the local public interest.

It is not in the local public interest, however, to allow a new project to reduce the amount of water available to satisfy existing water rights. In this case, the ground water diverted by Foster would contribute to flow in the Lemhi River later in the year and forms the water supply for existing irrigation water rights on the Lemhi River. Therefore, a gain in production for Foster would result in a loss in production for other water users on the Lemhi River. After weighing the local public interest factors presented in this case, the hearing officer concludes that the proposed project is not in the local public interest.

Conservation of Water Resources

Diverting water from ground water wells for watering crops through sprinkler irrigation is a common practice in Idaho and is consistent with the conservation of water resources within the state of Idaho.

CONCLUSIONS OF LAW

Foster has demonstrated that the water supply is sufficient to accomplish the proposed project, that the application was made in good faith, that he has sufficient financial resources to complete the project, and that the proposed water use is consistent with the conservation of water resources within the state of Idaho. Foster has not demonstrated that the proposed project will not reduce the quantity of water under existing water rights on the Lemhi River or that the proposed project is in the local public interest. Therefore, Application 74-16229 should be denied.

ORDER

IT IS HEREBY ORDERED that Application for Permit 74-16229 in the name of Boyd Foster is DENIED.

Dated this 25th day of February, 2021.



James Cefalo
Hearing Officer

CERTIFICATE OF MAILING

I hereby certify that on the 25th day of February 2021, I mailed a true and correct copy of the foregoing PRELIMINARY ORDER DENYING APPLICATION, with the United States Postal Service, certified mail with return receipt requested, postage prepaid and properly addressed to the person(s) listed below:

US MAIL - CERTIFIED

RE: APPLICATION FOR PERMIT 74-16229

**Boyd Foster
PO Box 118
Leadore, ID 83464**

**High Bar Ditch Association
PO Box 40
Tendoy, ID 83468**



Christina Henman
Administrative Assistant

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.

CERTIFICATE OF SERVICE

All exceptions, briefs, request 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 Rules of Procedure 302 and 303.

FINAL ORDER

The Department 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.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT
To appropriate the public waters of the State of Idaho

Ident. No. 74-16229

RECEIVED

JAN 09 2020

Department of Water Resources
Eastern Region

1. Name of applicant(s) Boyd Foster Phone 208-768-2300
 Name connector (check one): ☐ and ☐ or ☐ and/or
 Mailing address PO Box 118 City Leadore
 State ID ZIP 83464 Email boydnjill@msn.com
2. Name of representative, if any N/A Phone _____
 Mailing address _____ City _____
 State _____ ZIP _____ Email _____
- a. ☐ Send all correspondence for this application to the representative and not to the applicant OR
☐ Send original correspondence to the applicant and copies to the representative.
- b. ☐ The representative may submit information for the applicant but is not authorized to sign for the applicant OR
☐ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation.
3. Source of water supply Groundwater which is a tributary of N/A
4. Location of point(s) of diversion:

Twp	Rge	Sec	Govt Lot	1/4	1/4	1/4	County	Source	Local name or tag #
16N	26E	33			NE	SE	Lemhi	Groundwater	

5. Water will be used for the following purposes:
- Amount 3.8 cfs for Irrigation purposes from 3/15 to 11/15 (both dates inclusive)
 (cfs or acre-feet per year)
- Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
 (cfs or acre-feet per year)
- Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
 (cfs or acre-feet per year)
- Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
 (cfs or acre-feet per year)
6. Total quantity to be appropriated is (a) 3.8 cubic feet per second (cfs) and/or (b) _____ acre-feet per year (af).
7. Proposed diverting works:
- a. Describe type and size of devices used to divert water from the source. Groundwater well with pump to pivots on property
- b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet. If the reservoir will be filled more than once each year, describe the refill plan in item 12. For dams 10 feet or more in height AND having a storage capacity of 50 acre-feet or more, submit a separate [Application for Construction or Enlargement of a New or Existing Dam](#). Application required? ☐ Yes ☐ No
- c. Proposed well diameter is 14 inches; proposed depth of well is 160 feet.
- d. Is ground water with a temperature of greater than 85°F being sought? ☐ Yes ☒ No
- e. If well is already drilled, when? N/A; drilling firm _____; well was drilled for (well owner) _____; Drilling Permit No. _____

For Department Use

Received by _____ Date _____ Time _____ Preliminary check by _____
 Fee \$ 450.00 Received by CH Receipt No. E045554 Date 1/9/2020

#80 refund requested 1/28/20

JAN 29 2020

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

- Hydropower; show total feet of head and proposed capacity in kW. _____
- Stockwatering; list number and kind of livestock. _____
- Municipal; must complete and attach the Municipal Water Right Application Checklist.
- Domestic; show number of households _____
- Other; describe fully. _____

9. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- 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	
16N	26E	33	3.4												38	34		37	112.4
16N	26E	34											41	40					81

Total number of acres to be irrigated: 193.4

10. Describe any other water rights used for the same purposes as described above. Include water delivered by a municipality, canal company, or irrigation district. If this application is for domestic purposes, do you intend to use this water, water from another source, or both, to irrigate your lawn, garden, and/or landscaping? Water Right 74-51 from Big Timber Creek for irrigation purposes. Same POU.

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

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

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

12. Describe your proposal in narrative form, and provide additional explanation for any of the items above. Attach additional pages if necessary. This water will be used for supplemental uses when water from Big Timber Creek is insufficient for irrigation of crops. No more than 6.4 cfs will be used at the place of use at any given time. Big Timber Creek water (water right 74-51) will

always be used first.

13. Time required for completion of works and application of water to proposed beneficial use is 5 years (minimum 1 year).

14. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½" x 11" map or maps clearly identifying the proposed point of diversion, place of use, section #, township & range. The map scale shall not be less than two (2) inches equal to one (1) mile.

The Information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.

Signature of Applicant

Boyd Foster
Print Name (and title, if applicable)

Signature of Applicant

Print Name (and title, if applicable)

JAN 29 2020

SCANNED

