

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

**IN THE MATTER OF APPLICATION)
TO ALTER A STREAM CHANNEL)
NO. S79-20016 IN THE NAME OF) **FINAL ORDER**
DEER CREEK, LLC)
_____)**

The Director of the Idaho Department of Water Resources (“IDWR”) reviewed the above referenced application for a permit to alter the channel of the Salmon River, reviewed the extensive comments received, held a public hearing August 14, 2008 to solicit public comment, and has prepared a decision as provided for in Idaho Code § 42-3805. The public hearing conducted on August 14, 2008 was not a contested case hearing as described by Idaho Code § 42-3805 and Idaho Code § 42-1701A.

After considering the information described above, the Director finds, concludes, and orders as follows:

FINDINGS OF FACT

1. The proposed floating dock is secured by cable anchors located both above and below the ordinary high water marks.
2. Installation and removal of the proposed dock will not result in significant disturbance of the streambed if: (1) The dock is installed or removed when the Salmon River is free of debris, and (2) Motorized, mechanical equipment used for installation and removal is driven by wheels or tracks, and the wheels or tracks do not spin or dig into the streambed below the water surface.
3. The proposed portable dock will not impede boating traffic on the Salmon River.
4. The proposed portable boat dock will not harm or impede passage of fish in the Salmon River.
5. Although the floating dock will be located over and on state property, the dock will not restrict use of nearby public beaches.

6. Comments were received from recreational users of the Salmon River, some objecting to the floating dock as aesthetic distractions and some advocating for installation of the floating dock as inconsequential to the aesthetic values of the area. The Director finds that any actual alteration of the stream channel will not significantly change or affect the aesthetic values of the area.

CONCLUSIONS OF LAW

1. Idaho Code § 42-3804 states that “the director” of IDWR shall “determine the likely effect of the **proposed stream channel alteration** upon the fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality values of the stream.” (Emphasis added).

2. Idaho Code § 42-3802(b) defines the word “alter.”

“Alter” means to obstruct, diminish, destroy, alter, modify, relocate, or change the natural existing shape or direction of water flow of any stream channel within or below the mean high watermark thereof.

3. In this case, the disturbance to the bed and banks is only caused by the installation and removal of the boat dock, the placement of the portable anchors on the bed of the river, and any obstruction to the flow of the Salmon River caused by the proposed portable boat dock.

4. The presence of a floating object on top of the water is not an “alteration” of the stream channel unless it obstructs, diminishes, destroys, alters, modifies, relocates, or changes the “natural existing shape or direction of water flow” of the Salmon River channel “within or below the mean high watermark . . .” The presence of the proposed floating dock will not alter the stream channel as described above.

5. The small stream channel alterations caused by the proposed boat dock will have no significant effect upon fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality values of the stream.

ORDER

IT IS HEREBY ORDERED that application to alter a stream channel no. S79-20016 is **Approved**, subject to the following conditions:

This is a permit to anchor two 29’ by 6’6” floating components that form a “tee” shaped dock with portable precast concrete anchors below the ordinary high water mark of the Salmon River, within Section 27, Township 31 North, Range 03 West, Lewis County, Idaho for a period of five (5) years.

This permit strictly prohibits any alteration or modification to the approved design.

Failure to adhere to the conditions as set forth herein can result in legal action as provided for in section 42-3809, Idaho Code. The project is subject to the following Minimum Standards, Special, and General Conditions.

MINIMUM STANDARDS:

(These standards are established in the Administrative Rules of the Idaho Water Resources Board, Stream Channel Alteration Rules, IDAPA 37 Title 03 Chapter 07 dated July 1, 1993, and are enclosed with this permit.)

Rule 56 - Construction Procedures

SPECIAL CONDITIONS:

[1] All construction shall be completed in accordance with the descriptions & methods on the application.

[2] This permit does not constitute a concurrent permit from Idaho Department of Lands. If required, the permit holder must seek and obtain independent approval from the Idaho Department of Lands.

[3] Structures shall be removed from the stream channel during winter and spring seasons (December 21 through June 21). Structures shall also be removed from the stream channel during high flows or during debris flow events (ice, wood, etc.) within designated season of use. If structure is damaged or breaks free during a high flow or debris flow event, this permit shall immediately be voided and structure may not be reinstalled.

[4] Permitted floating dock is for the use of the residents of property owner and guests and shall not be used to support any commercial enterprise.

[5] Permittee is responsible for all work done by any contractor and shall ensure any contractor who performs the work is informed of and follows all the terms and conditions of this authorization.

[6] Applicant must use care to minimize disturbance of bank when installing and removing dock.

[7] Motorized, mechanical equipment used for installation and removal must be driven by wheels or tracks, and the wheels or track shall not spin or dig into the streambed below the water surface.

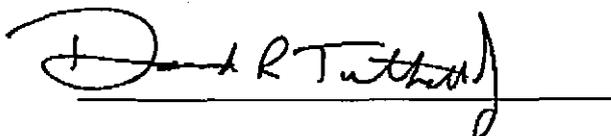
[8] This permit shall expire December 31, 2014.

GENERAL CONDITIONS:

1. This permit does not constitute any of the following:
 - a. An easement or right-of-way to trespass or work upon property belonging to others.
 - b. Other approval that may be required by State or Federal Government, unless specifically stated in the special conditions above.
 - c. Responsibility of the Department of Water Resources for damage to adjacent properties due to work done.
 - d. Compliance with the Federal Flood Insurance Program, FEMA regulations or approval of the local Planning and Zoning authority.
2. The permit holder or operator must have a copy of this permit at the alteration site, available for inspection at all times.
3. The Department of Water Resources may cancel this permit at any time that it determines such action is necessary to minimize adverse impact on the stream channel.

Conditions and construction procedures approved under this permit may not coincide with the proposal as submitted. Failure to adhere to conditions as set forth herein can result in legal action as provided for in Section 42-3809, Idaho Code.

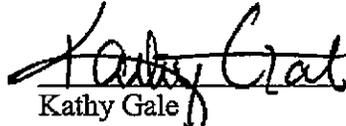
Dated this 22nd day of September, 2008.



David R. Tuthill, Jr.
Director

MAILING CERTIFICATE

I hereby certify that on this 24th day of September, 2008 I mailed a true and correct copy, postage prepaid, of the foregoing **FINAL ORDER** to the person(s) listed below:


Kathy Gale
Office Specialist II

Final Order

Dennis Moyer
Deer Creek LLC
501 Baybrook Court
Boise ID 83706

Stephanie Connolly
Bureau of Land Management
Cottonwood Field Office
1 Butte Drive
Cottonwood ID 83522-5200

Kevin Lewis
Idaho Rivers United
PO Box 633
Boise ID 83701

**EXPLANATORY INFORMATION
TO ACCOMPANY A
FINAL ORDER**

(To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **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 67-5246(4), Idaho Code.

REQUEST FOR HEARING

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. See section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter 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: a) the service date of the final order, b) an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.