



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

August 9, 2002

CLARK KELLY  
TAMARA KELLY  
9685 W HEATHER RD  
POCATELLO ID 83204

RECEIVED  
AUG 23 2002  
Department of Water Resources  
Eastern Region

RECEIVED

SEP 06 2002

WATER RESOURCES  
WESTERN REGION

RE: Water Right License 29-7846

Dear Water Right Holder:

The Department of Water Resources (IDWR) has issued the enclosed order amending the Water Right License for Water Right 29-7846. The order is a **preliminary order** issued by the Department pursuant to §67-5243, *Idaho Code*. The water right license issued in connection with the order supersedes the license issued on July 27, 2001. **The preliminary order can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and/or brief as further described in the enclosed information sheet.**

If you have questions, please contact me at (208) 327-7946.

Sincerely,

Shelley W. Keen  
Water Rights Supervisor

Enclosure

Cc: Little Red Hen, Inc.

Dave Tuthill - IDWR Adjudication Bureau

BEFORE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

RECEIVED  
AUG 29 2002  
Department of Water Resources  
Eastern Region

IN THE MATTER OF PETITION TO )  
CORRECT WATER RIGHT LICENSE )  
NO. 29-7846 )  
\_\_\_\_\_ )

**PRELIMINARY ORDER  
CORRECTING LICENSE**

**RECEIVED**  
**SEP 06 2002**  
WATER RESOURCES  
WESTERN REGION

This matter having come before the Department of Water Resources (Department) as a result of the filing of a petition to correct a water right license, the Department makes the following Findings of Fact, Conclusions of Law, and Order:

**FINDINGS OF FACT**

1. On April 1, 1988, Clark Kelly and/or Tamara L. Kelly (right holders) applied to the Department for a permit to appropriate 0.13 cubic feet per second of ground water for irrigation and domestic purposes within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 18, Township 7 South, Range 35 East, B. M.
2. On August 3, 1988, the Department approved the Kellys' application as Permit No. 29-7846 (permit).
3. On August 23, 1988, the Department received the right holders' Proof of Beneficial Use statement for the permit.
4. On June 30, 1999, a Department field examiner conducted a field inspection to verify the beneficial use of water developed in connection with the permit. The field examiner reported that the right holders had diverted and beneficially used 0.08 cfs for domestic and irrigation purposes at the location authorized by the permit.
5. On July 27, 2001, the Department issued Water Right License No. 29-7846 (license) to the right holders. The licensed point of diversion is Govt. Lot 4 (SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ ), Section 18, Township 7 South, Range 35 East, B. M. The licensed place of use is Govt. Lot 4 (SW $\frac{1}{4}$ SW $\frac{1}{4}$ ), Section 18, Township 7 South, Range 35 East, B. M.
6. The licensed point of diversion and place of use are also known as Lot 8, Block 2, Gibson Jack Acres Subdivision.
7. While investigating other water rights near Gibson Jack Acres Subdivision, Department field agents discovered that Lot 8, Block 2, Gibson Jack Acres Subdivision, is located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 18, Township 7 South, Range 35 East, Boise Meridian.

8. County records indicate that Govt. Lot 4 (SW $\frac{1}{4}$ SW $\frac{1}{4}$ ), Section 18, Township 7 South, Range 35 East, Boise Meridian, is actually owned by Little Red Hen, Inc., c/o Dr. Thomas McDevitt.
9. On July 24, 2002, Department staff sent a letter notifying the right holders that the point of diversion and place of use descriptions on the license are incorrect. The Department sent a copy of the letter to Little Red Hen, Inc.
10. On August 6, 2002, the right holders submitted an application to amend the permit (amendment) to show the place of use and point of diversion on water right no. 29-7846 as being within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ , Section 18, Township 7 South, Range 35 East, B. M.

#### CONCLUSIONS OF LAW

1. Under Section 42-219, *Idaho Code*, the Department has a statutory obligation to issue a water right license that accurately portrays the extent of beneficial use of water developed in accordance with the permit.
2. When issuing Water Right License 29-7846, the Department incorrectly described the point of diversion and place of use descriptions for the water use developed by the right holders.
3. The Department should approve the amendment to correct the point of diversion and place of use descriptions on the permit.
4. The Department should re-issue the license with the correct point of diversion and place of use descriptions.

#### ORDER

IT IS HEREBY ORDERED that the application to amend Permit No. 29-7846 is **APPROVED** subject to the conditions of approval listed on the approval document signed on this date in connection with this order.

IT IS FURTHER HEREBY ORDERED that Water Right License No. 29-7846 issued by the Department on July 27, 2001, is **CORRECTED** as set forth in the Amended Water Right License issued on this date in conjunction with this order.

Dated this 8<sup>TH</sup> day of AUGUST, 2002.

  
NORMAN C. YOUNG  
Administrator, Water Management Division

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WATER RESOURCES  
WESTERN REGION

State of Idaho  
Department of Water Resources  
**APPLICATION FOR AMENDMENT**

(For Licensing Purposes)  
**WATER RIGHT NO. 29-07846**

RECEIVED

AUG - 6 2002

Department of Water Resources

Date of Priority: April 01, 1988

Maximum Diversion Rate: 0.08 CFS  
Maximum Diversion Volume: 8.6 AF

Comes now CLARK KELLY  
9685 W HEATHER RD  
POCATELLO ID 83204

And/Or

TAMARA L KELLY  
9685 W HEATHER RD  
POCATELLO ID 83204

and represents to the Director of the Idaho Department of Water Resources that he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 29-07846, and requests that the permit be changed as follows:

Source: GROUND WATER

| BENEFICIAL USE | PERIOD OF USE  | RATE OF DIVERSION | ANNUAL VOLUME |
|----------------|----------------|-------------------|---------------|
| DOMESTIC       | 01/01 to 12/31 | 0.04 CFS          | 0.6 AF        |
| IRRIGATION     | 04/01 to 10/31 | 0.06 CFS          | 8.0 AF        |

**LOCATION OF POINT(S) OF DIVERSION:**

GROUND WATER SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  Sec. 18, Twp 7S, Rge 35E, B.M BANNOCK County

**PLACE OF USE:** DOMESTIC

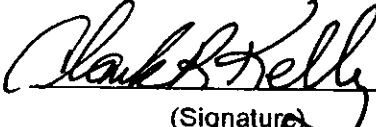
| Twp Rge Sec | NE |    |    |    | NW |    |    |    | SW |    |    |    | SE |    |    |    | Totals |
|-------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--------|
|             | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE |        |
| 07S 35E 18  |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | X      |

**PLACE OF USE:** IRRIGATION

| Twp Rge Sec | NE |    |    |    | NW |    |    |    | SW |    |    |    | SE |    |    |    | Totals |
|-------------|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--------|
|             | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE |        |
| 07S 35E 18  |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    | 2.0    |

Total Acres: 2

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 2 day of August, 2002

  
(Signature)

State of Idaho  
Department of Water Resources  
**APPLICATION FOR AMENDMENT**  
(For Licensing Purposes)  
WATER RIGHT NO. 29-07846

RECEIVED  
AUG 29 2002  
Department of Water Resources  
Eagle Creek

\*\*\*\*\*  
# FOR DEPARTMENT USE ONLY  
Preliminary check by SWK Fee 50.00 Received by JM # 063825 Date AUG - 6 2002

**ACTION OF THE DEPARTMENT OF WATER RESOURCES**

I, Karl J. Dreher, of the Department of Water Resources hereby approve the  
above Application for Amendment for Permit No. 29-07846 with the following:

**CONDITIONS OF APPROVAL**

1. Point of diversion and place of use are located within Lot 8, Blk. 2, Gibson Jack Acres Subdivision.
2. Domestic use is for 1 home and does not include lawn, garden, landscape, or other types of irrigation.
3. Irrigation use under this right is authorized only in connection with a domestic use.
4. 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.

Witness my hand this 8<sup>TH</sup> day of August, 2002.

Acting for

KARL J. DREHER  
Director



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SEP 06 2002

State of Idaho

Department of Water Resources

WATER RESOURCES  
WESTERN REGION

AMENDED

## Water Right License

AMENDED

WATER RIGHT NO. 29-07846

Priority: April 1, 1988

Maximum Diversion Rate: 0.08 CFS  
Maximum Diversion Volume: 8.6 AF

It is hereby certified that CLARK KELLY And/Or TAMARA L KELLY  
9685 W HEATHER RD  
POCATELLO ID 83204 have complied with the terms and  
conditions of the permit, issued pursuant to Application for Permit dated April 1, 1988; and have  
submitted Proof of Beneficial Use on August 23, 1988. An examination indicates that the works have a  
diversion capacity of 0.08 cfs of water from:

SOURCE

GROUND WATER

and a water right has been established as follows:

| <u>BENEFICIAL USE</u> | <u>PERIOD OF USE</u> | <u>DIVERSION RATE</u> | <u>ANNUAL<br/>DIVERSION VOLUME</u> |
|-----------------------|----------------------|-----------------------|------------------------------------|
| DOMESTIC              | 01/01 to 12/31       | 0.04 CFS              | 0.6 AF                             |
| IRRIGATION            | 04/01 to 10/31       | 0.06 CFS              | 8.0 AF                             |

LOCATION OF POINT(S) OF DIVERSION:GROUND WATER SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$  Sec. 18, Twp 07S, Rge 35E, B.M BANNOCK CountyPLACE OF USE: IRRIGATION

| Twp Rge Sec | NE |    |    |    | NW |    |    |    | SW |    |    |     | SE |    |    |    | Totals |
|-------------|----|----|----|----|----|----|----|----|----|----|----|-----|----|----|----|----|--------|
|             | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE  | NE | NW | SW | SE |        |
| 07S 35E 18  |    |    |    |    |    |    |    |    |    |    |    | 2.0 |    |    |    |    | 2.0    |

Total Acres: 2

PLACE OF USE: DOMESTIC --Same as IrrigationCONDITIONS OF APPROVAL

1. Point of diversion and place of use are located within Lot 8, Blk. 2, Gibson Jack Acres Subdivision.
2. Domestic use is for 1 home and does not include lawn, garden, landscape, or other types of irrigation.
3. Irrigation use under this right is authorized only in connection with a domestic use.
4. 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 license is issued pursuant to the provisions of Section 42-219, Idaho Code. 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 and sealed this 8<sup>TH</sup> day of AUGUST, 2002.

Acting for

  
KARL J. DREHER  
Director