

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE COEUR D' ALENE-SPOKANE RIVER
BASIN WATER SYSTEM

CIVIL CASE NUMBER: 49576

Ident. Number 95-8976

Date Received: 11-2-09

Receipt No: NO 22685

Received By: W

RECEIVED

NOV 02 2009

NOTICE OF CLAIM
TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s) Nebel's Addition Water & Sewer ASSN. Phone 208) 686-0649

Mailing Address P.O. Box 304 Worley Id. ZIP 83876
Street or Box City State

2. Date of Priority (Only one (1) per claim) 10-14-1997
Month Day Year (YYYY)

3. Source of water supply (Check one) Ground Water (X) or Other () (a) _____
which is tributary to (b) _____

4. a. Location of Point of Diversion is: Township 47N, Range 03W, Section 19,
NE, 1/4 of SE, 1/4 Govt. Lot 3, BM., County of Kootenai

Parcel (PIN) no. Lot 13, Block 1, Nebel's Addition To Conklin Park
Subdivision

Additional points of diversion if any: _____

If available, GPS Coordinates _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____, Range _____, Section _____, _____, 1/4 of _____, 1/4

Govt. Lot _____, BM., County of _____

ending point is: Township _____, Range _____, Section _____, _____, 1/4 of _____, 1/4

Govt. Lot _____, BM., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed
and as enlarged and the depth of each well.

1 Well w/ pump (5hp) : 9000 gal of storage
6" pipe - 400 ft. deep. - (No changes made)
(pipeline To storage.)

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6. Water is claimed for the following purposes:

(both dates are inclusive MM-DD)

(cfs)

(acre feet)

For Municipal purposes from 01/01 to 12/31 amount 0.09 or 49.2

For IRRIGATION purposes from 3/15 to 11/15 amount included in above or

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 0.09 (cfs) and/or (b) 49.2 (acre feet)

8. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock, Etc.) 41 Lots Met - Currently - 9 Houses

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 use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

Twn	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
47N	3W	19								P ₁₀	P ₁₀								20

Parcel (PIN) no(s). Nebel's Addition To Conklin Park Total number of acres irrigated 20
Subdivision

10. In which county (ies) are lands listed above as place of use located? Kootenai

11. Do you own the property listed above as place of use? Yes (X) No ()

If your answer is No, describe in Remarks below the authority you have to claim this water right.

12. Describe any other water rights used at the same place and for the same purposes as described above.

NA

or None ()

13. Remarks: _____

Last Name Nebel's Addition Identification No. 45-0976

Water & Sewer
Assoc.

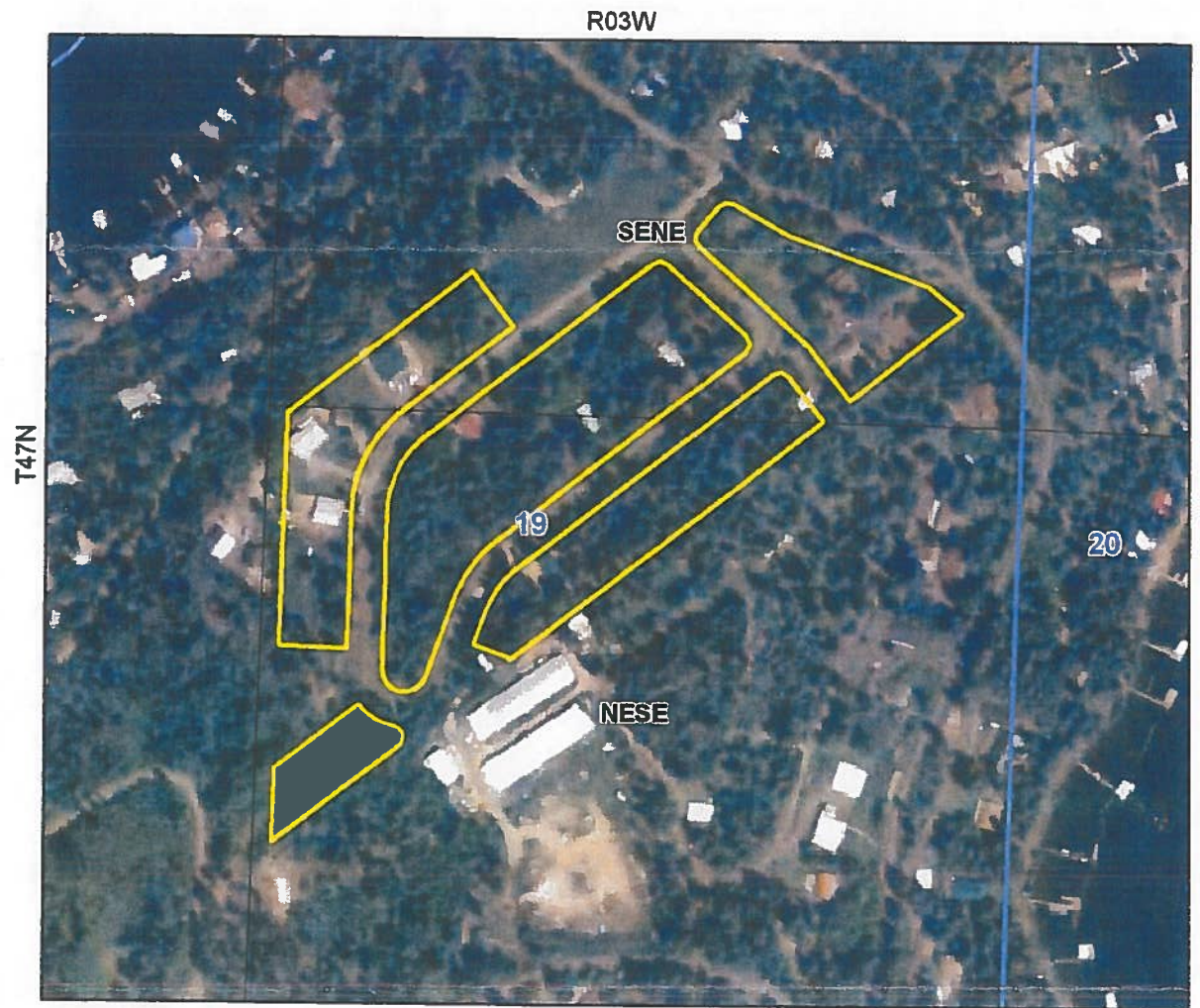
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State of Idaho
Department of Water Resources
Water Right License

95-8976

Water Service Area Boundary for Nebels Addition Water & Sewer Assn
July 21, 2009



Legend

-  Water Service Area Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters

0 0.04 0.08 0.16 Miles



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14. Basis of Claim (Check One) Beneficial Use () Posted Notice () License (X) Permit () Decree ()

Court _____ Decree Date _____ Plaintiff v. Defendant _____

If applicable provide IDWR Water Right Number 95-08976

15. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notices in the Coeur d'Alene-Spokane River Basin Adjudication." (b.) I/We do () do not (X) wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 2

For Individuals: I/We do solemnly swear or affirm under penalty of perjury that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) _____ Date: _____

_____ Date: _____

For Organizations: I do solemnly swear or affirm under penalty of perjury that I am

President of The Nebel Addition Water & Sewer Assn.
Title Organization

that I have signed the foregoing document in the space below as

President of The Nebel Addition Water & Sewer Assn.
Title Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent [Signature] Date 10-29-09

Title and Organization President Nebel's Addition Water & Sewer Assoc.

16. Notice of Appearance:

Notice is hereby given that I, _____, will be acting as attorney at law of behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature _____

Address _____

Date _____

Last Name Nebel's Addition Identification No. 95-08976
Water & Sewer Assn.

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State of Idaho
Department of Water Resources

Amended

Water Right License

Amended

WATER RIGHT NO. 95-08976

Priority: October 14, 1997

Maximum Diversion Rate: 0.09 CFS
Maximum Diversion Volume: 49.2 AF

It is hereby certified that NEBELS ADDITION WATER & SEWER ASSN
C/O DUANE HEINTZ
PO BOX 304
WORLEY ID 83876

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated October 14, 1997; and has submitted Proof of Beneficial Use on February 20, 2009. An examination indicates that the works have a diversion capacity of 0.09 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 DIVERSION VOLUME</u>
MUNICIPAL	01/01 to 12/31	0.09 CFS	49.2 AF

LOCATION OF POINT(S) OF DIVERSION:

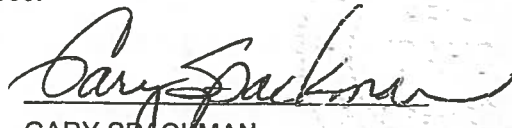
GROUND WATER NE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 19, Twp 47N, Rge 03W, B.M. KOOTENAI County

CONDITIONS OF APPROVAL

1. Place of use is within the service area of Nebels Addition Water and Sewer Association as provided for under Idaho law. The place of use is located within Block1: Lots 5-12, and Lot 14 of Block 1, Lots 1-18 of Block 2, Lots 1-8 of Block 3, and Lots 1-5 of Block 4; Nebels Addition to Conkling Park Subdivision, Section 19, Township 47N, Range 3W.
2. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.
3. 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 determine the amount of water diverted from power records and shall annually report the information to the department.
4. The issuance of this right does not grant any right-of-way or easement across the land of another.
5. Point of diversion is located within Lot 13, Blk. 1; Nebels Addition to Conkling Park Subdivision.

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 26th day of August, 2009.


GARY SHACKMAN
Interim Director

SCANNED

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CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2009 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Amended License) to the person(s) listed below:

RE: WATER RIGHT NO.

95-8976

**NEBELS ADDITION WATER & SEWER ASSN.
C/O DUANE HEINTZ
PO BOX 304
WORLEY ID 83876**

A handwritten signature in cursive script, reading "Danni M. Smith", is written over a horizontal line.

**Danni M. Smith
Office Services Supervisor**

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DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

August 28, 2009

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

NEBELS ADDITION WATER & SEWER ASSN.
C/O DUANE HEINTZ
PO BOX 304
WORLEY ID 83876

RE: Amended License No. 95-8976
Issuance of Amended License & Final Order Reinstating a
Permit and Modifying a License

Dear Water Right Holder(s):

The Department of Water Resources has issued the enclosed Final Order Reinstating a Permit and Modifying a License for Water Right 95-8976. A revised water right license is also enclosed. The result of the final order and revised license is to set the priority date for Water Right 95-8976 back to October 14, 1997.

The final order was issued pursuant to Rule 760 of the Department's Rules of Procedure. Any party may contest a final order as described in the enclosed information sheet.

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. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at 208-287-4947.

Sincerely,

Shelley W. Keen, Manager
Water Right Permits Section

Enclosure(s)

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF LICENSE NO. 95-8976)
IN THE NAME OF NEBELS ADDITION) **FINAL ORDER REINSTATING A**
WATER & SEWER ASSN) **PERMIT AND MODIFYING A**
_____) **LICENSE**

This matter having come before the Department of Water Resources (Department) as a modification of an order on presiding officer's own motion, the Department finds, concludes, and orders:

FINDINGS OF FACT

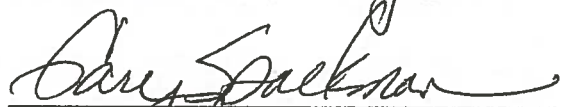
1. On August 21, 1998, the Department issued permit No. 95-8976 in the name of Nebels Addition Water & Sewer Assn.
2. IDWR was notified of the permit holders new address on October 18, 2001, by letter from the permit holder.
3. On May 31, 2003, the Department notified the permit holder that proof of beneficial use for the permit was due on or before August 1, 2003, and instructed the permit holder of the steps to be taken to submit either proof of beneficial use or request an extension of time to submit proof. The Department mailed the notice to the permit holder at the previous address on record, 1136 Bryden, Lewiston, Idaho 83501
4. The Department issued the permit holder a lapse notice on August 12, 2003, because it had not received an acceptable proof statement or extension request.
5. On February 20, 2009, the Department received the permit holder's proof of beneficial use statement with a request for reinstatement of the permit. The permit holder subsequently provided evidence of the diversion and beneficial use of water during the authorized development period of the permit.
6. On June 16, 2009, the Department issued a reinstatement order for the permit, but the record does not contain a certificate of mailing or information explaining how that permit holder could have appealed or otherwise responded to the order.
7. The Department's reinstatement order advanced the priority date for the permit from October 14, 1997, to February 20, 2009.

ORDER

IT IS HEREBY ORDERED that permit 95-8976, in the name of Nebels Addition Water & Sewer Assn. is **REINSTATED** with the original permitted priority date of October 14, 1997.

IT IS FURTHER HEREBY ORDERED that license 95-8976 is **ISSUED** with the permitted priority of October 14, 1997, as set forth in the Amended Water Right License issued on this date in conjunction with this order. .

Dated this 26th day of August, 2009.



Gary Spackman,
Interim Director

8. On July 21, 1997, the Department issued a water right license for the beneficial use of water established in accordance with the permit.

9. On August 17, 2009, the Department received a letter for the right holder seeking reissuance of the license with the original priority date of the permit. The right holder asserts in the letter that the department was in error by not updating its address records and by not sending the "proof due" notice to the new address.

10. Idaho Code § 42-218A, section 3 states:

The original priority date of a lapsed permit shall not be reinstated except upon a showing of error or mistake of the department.

11. The Departments Rules of Procedure (IDAPA 37.01.01.760) states:

A hearing officer issuing a recommended or preliminary order may modify the recommended or preliminary order on the hearing officer's own motion within fourteen (14) days after issuance of the recommended or preliminary order by withdrawing the recommended or preliminary order and issuing a substitute recommended or preliminary order. The agency head may modify or amend a final order of the agency (be it a preliminary order that became final because no party challenged it or a final order issued by the agency head itself) at any time before notice of appeal to District Court has been filed or the expiration of the time for appeal to District Court, whichever is earlier, by withdrawing the earlier final order and substituting a new final order for it.

CONCLUSIONS OF LAW

1. The Department erred by not updating the permit holder's address timely.
2. The Department erred by not informing the permit holder of how to contest the reinstatement order.
3. Department's Rules of Procedure (IDAPA 37.01.01.760) allow the director to modify or amend a final order before the end of the appeal period by withdrawing the earlier final order and substituting a new final order for it.
4. Because the Department erred on the reinstatement order, its subject matter should be re-addressed.
5. The Department should reinstate the permit with the original priority date of October 14, 1997.
6. The Department should reissue the license with the corrected priority date.