

Department of Water Resources
Permit to Appropriate Water
No. 96-9838

Priority: January 04, 2021

Maximum Diversion Rate: 0.55 CFS

This is to certify that

WESTWOOD VILLAGE HOMEOWNERS ASSN PO BOX 1941 SANDPOINT ID 83864-0905

has applied for a permit to appropriate water from:

Source : PEND OREILLE RIVER

Tributary: COLUMBIA RIVER

and a permit is APPROVED for development of water as follows:

<u>Beneficial Use</u>	<u>Period of Use</u>	<u>Rate of Diversion</u>	<u>Annual Volume</u>
AESTHETIC	01/01 to 12/31	0.55 CFS	
AESTHETIC STORAGE	01/01 to 12/31		11.7 AF
DIVERSION TO STORAGE	01/01 to 12/31	0.55 CFS	

Location of Point(s) of Diversion

PEND OREILLE RIVER NW¼ SE¼, Sec. 28, Twp 57N, Rge 02W, B.M. BONNER County

Place of Use: AESTHETIC and AESTHETIC STORAGE

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
57N	02W	28			X L2														

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **February 01, 2022**.
2. Subject to all prior water rights.
3. The following rights are diverted through point of diversion described above: 96-9691 and 96-9838.
4. Prior to the diversion and use of water under this approval, the right holder shall comply with all fish screening and/or fish passage requirements of the Idaho Department of Fish and Game.
5. Right 96-9838 authorizes a total annual storage volume of 11.7 acre-feet for aesthetic storage, 2.2 acre-feet to be used for the initial filling or carryover storage of the pond(s) and 9.5 acre-feet for the replacement of losses caused by seepage and evaporation.
6. The pond(s) established by the storage of water under this right shall not exceed a total capacity of 2.2 acre-feet or a total surface area of 1.1 acres.
7. Rights 96-9691 and 96-9838 when combined shall not exceed a total diversion rate of 0.89 cfs, a total pond(s) capacity of 2.2 acre-feet, or a total pond(s) surface area of 1.1 acres.
8. Aesthetic use is for pond recirculation flow through water use.
9. This right does not grant any right-of-way or easement across the land of another.

This permit is issued pursuant to the provisions of Idaho Code § 42-204.

Signed this 9th day of February, 2021.



ADAM FREDERICK
Water Rights Supervisor

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water 96-9838

This map depicts the AESTHETIC and AESTHETIC STORAGE 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.

02W

57N



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

0 0.04 0.08 0.16 Miles





State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region • 7600 N MINERAL DR STE 100 • COEUR D ALENE, ID 83815-7763
Phone: (208)762-2800 • Fax: (208)769-2819 • Website: www.idwr.idaho.gov

Brad Little
Governor

Gary Spackman
Director

February 09, 2021

WESTWOOD VILLAGE HOMEOWNERS ASSN
PO BOX 1941
SANDPOINT ID 83864-0905

RE: Permit No. 96-9838

Permit Approval Notice

Dear Permit Holder(s):

The Department of Water Resources ("Department") has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review all the conditions of approval listed on your permit. The conditions include requirements that you must accomplish, such as timely submittal of proof of beneficial use or installation of a measuring device, as well as information about how your water use may be administered, such as regulation by a watermaster in a water district. Failure to comply with the conditions of approval may result in your permit lapsing or being canceled.

The permit is a PRELIMINARY ORDER issued 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.

The final step in the water right process is issuance of a water right license. To receive a water right license, you must divert and use water to the full extent intended and submit a *Statement of Completion for Submitting Proof of Beneficial Use* by the date shown in condition no. 1 of your permit. The Department will send you a *Proof Due Notice* approximately 60 days prior to the date listed in condition no. 1 of your permit.

You may also require approvals from other Department programs, such as Ground Water Protection, Safety of Dams, or Stream Channel Protection, to accomplish your proposed development. Please call or visit any Department office or see the Department's website at idwr.idaho.gov for more information about these programs.

Please be advised that Idaho Code § 42-248, requires you or the owner of this water permit to maintain current ownership and address records on file with the Department. Forms to file an assignment of permit and/or a change in the address of the permit owner are available from any Department office or at the Department's website at www.idwr.idaho.gov.

If you have any questions concerning the enclosed information, please contact the Northern Region Office at (208) 762-2800.

Sincerely,



Adam Frederick
Water Rights Supervisor

Enclosure(s)

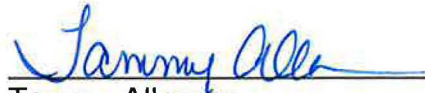
CERTIFICATE OF SERVICE

I hereby certify that on February 09, 2021, I served a true and correct copy of Permit to Appropriate Water No. 96-9838 by U.S. Mail, postage prepaid, to the following:

WESTWOOD VILLAGE HOMEOWNERS ASSN (Current Owner)
PO BOX 1941
SANDPOINT ID 83864-0905

JERRY BINDER (Representative)
1001 N GARRY DR
LIBERTY LAKE WA 99019-7590

TODD ORSI (Representative)
PO BOX 1941
SANDPOINT ID 83864-0905



Tammy Alleman
Administrative Assistant 1

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

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

(Required by Rule of Procedure 730.02)

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

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **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 67-5243(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 with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

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, requests 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 IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director 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.



RECEIVED

FEB 05 2021

IDWR / NORTH

IDAHO DEPARTMENT OF FISH AND GAME

PANHANDLE REGION
2885 West Kathleen Avenue
Coeur d'Alene, Idaho 83815

Brad Little / Governor
Ed Schriever / Director

February 2, 2021

Ms. Tammy Alleman
Idaho Department of Water Resources
7600 North Mineral Drive, Suite 100
Coeur d'Alene, ID 83815

REFERENCE: 96-9838 – Westwood Village HOA Pond

Dear Tammy:

We have reviewed the above-named water right application for an existing off channel pond totaling 11.7 acre-feet (AF) per year for aesthetic storage at a rate of 0.55cfs. The source of the water is listed as the Pend Oreille River. The purpose of these comments is to assist the decision-making authority and applicant by providing technical information addressing potential effects on wildlife and wildlife habitat and how any adverse effects might be mitigated.

This application is to permit additional water flow to an existing pond, which already has a water right (96-9691) for 0.12cfs of direct flow and 9.0 AF of storage for the irrigation of 6 acres, and additional water for wildlife and recreational storage for a total diversion rate of 0.34 cfs and 11.7 AF. This water right has a priority date of January 26, 2018.

During a beneficial use field report performed on 08/06/2020 the 15 HP pump was estimated to be pumping approximately 400 gallons per minute or 0.89 cfs. This is 262% of the maximum diversion rate that water right 96-9691 was licensed for. The applicant is now applying for an additional 0.55 cfs of water to cover the amount of water in excess of their original water right. It seems that the plan shown in water right application 96-9838 was already occurring, and is only now going to be properly licensed. We are concerned that doing so sends a message to water users, who may be inclined to take water in excess of what they are legally eligible. In the future, rather than granting additional water rights, we recommend working with water users to remain in compliance with their current water rights by adjusting flows or diversion rates.

Keeping Idaho's Wildlife Heritage

Equal Opportunity Employer • 208-769-1414 • Fax: 208-769-1418 • Idaho Relay (TDD) Service: 1-800-377-3529 • <https://idfg.idaho.gov>

Ms. Tammy Alleman – Page 2
February 2, 2021

The beneficial use field report did not discuss any benefits occurring from the wildlife storage or recreational storage, and only discussed the irrigation system. Due to the location and arrangement it is unlikely that there is much wildlife benefit from this diversion.

The pond surface area is 1.1 acres, with a maximum depth of 5 feet and an average depth of 2 feet. It has a capacity of approximately 2.2 AF. The pond is surrounded by manicured lawns, landscaping and buildings. There is a flow through system back to the Pend Oreille River via a discharge pipe. This system has the potential to release sediment and nutrient loads into waters that have been designated critical habitat for threatened bull trout by the United States Fish and Wildlife Service. Additionally, it has the potential to release warm water into a system that has been 303(d) listed in an Idaho DEQ TMDL for temperature. While the discharge is likely a minute amount compared to the size of the Pend Oreille River, a TMDL listing denotes an already impaired waterway that deserves consideration. We recommend that flow amounts be adjusted so that there is as little flow through as possible to protect the Pend Oreille River from increased nutrient loads and temperature increase. Aesthetic flow through is listed as a non-consumptive use, but we recommend non-consumptive water use not be permitted if there is the potential for negative effects on the quality of Idaho's waterways and fisheries.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Charles E. Corsi', with a stylized flourish at the end.

Charles E. Corsi
Regional Supervisor

CEC:MH:lat

C: Paul Kline, IDFG Director's Office

Alleman, Tammy

From: Chantilly.Higbee@deq.idaho.gov
Sent: Friday, February 5, 2021 9:01 AM
To: Alleman, Tammy
Subject: RE: Request for Comments on WR#96-9838

Hello Tammy,

Please consider this email as comment from the Idaho Department of Environmental Quality (DEQ, Surface Water) regarding Water Right #96-9838 (Westwood Village Homeowners Assn).

DEQ understands that the proposed water right application is intended to address a discrepancy between water right 96-9691 at this location and the actual volume of water that is used by the applicant, as the use is described in the 96-9691 Beneficial Use Field Report dated 08/06/2020. After reviewing this document, and all related documents for this water right and for the proposed 96-9838, DEQ has the following recommends for the applicant:

The Water Right Report for 96-9838 states, "Applicant plans to divert water from the river to a pond for aesthetic storage purposes, and has developed flow through system back to the river for aesthetic (flow through) purposes." The pond is described as having a surface area of 1.1 acres, with an average depth of 2 feet. Shallow, slow-moving water can lead to increases in surface water temperature. DEQ is concerned that the flow through system that currently diverts water back to the river is likely contributing warmer water, as well as nutrients from fertilizer, and pesticides to the Pend Oreille River.

The river is listed on DEQ's 2018/2020 Integrated Report as not supporting its cold water aquatic life beneficial use, with temperature listed as one cause for impairment. DEQ recommends the applicant consider management alternatives that eliminate or reduce return flow to the Pend Oreille River from the pond.

Photos and aerial imagery show that there are currently some shade trees available around the pond, particularly on the east side, that may aid in mitigating temperature impacts. DEQ recommends the applicant consider adding additional shade trees, as well as a vegetative buffer using shrubs and other native riparian plant species around the pond to further mitigate water temperature increase and the contribution of fertilizers and pesticides from the adjacent lawns to the pond and river.

Finally, DEQ notes that the return flow from the pond through a pipe may constitute a point source discharge as defined by Section 502 of the Clean Water Act and 40 CFR Section 122.2, and NPDES permit coverage may be needed. If not already done so, DEQ recommends the applicant contact EPA to discuss whether permit coverage is required.

DEQ appreciates the opportunity to review this application and provide comments. Please contact Chantilly Higbee at (208) 666-4605 or via email at Chantilly.Higbee@deq.idaho.gov if you have questions.

Thank you,



Chantilly Higbee | Water Quality Compliance Officer
Idaho Department of Environmental Quality
2110 Ironwood Parkway
Coeur d'Alene, Idaho 83814
Office: (208) 666-4605
<http://www.deq.idaho.gov/>

Our mission is to protect human health and the quality of Idaho's air, land, and water.

From: Alleman, Tammy [mailto:Tammy.Alleman@idwr.idaho.gov]
Sent: Thursday, January 14, 2021 10:14 AM
To: Mike Ahmer; Horsmon, Merritt; Chantilly Higbee; Anna Moody
Subject: Request for Comments on WR#96-9838

Dear Interested Agencies:

The Department of Water Resources is seeking written comment and/or recommendations from your agency regarding the above referenced Water Right Permit application. You can find copies of the application at: <http://www.idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx>.

This office can publish notice of the application as soon as the initial review is completed; therefore, your prompt response to this request is appreciated. If your agency desires to formally protest the approval of the application(s), you may do so after the notice is published by filing a written protest along with a \$25.00 filing fee within 10 days after final publication. The deadline for comments on the applications is February 8, 2021.

Please contact the Northern Region Office at (208) 762-2800 if you have any questions regarding the Permit application.

Thank you,

Tammy

*Tammy Alleman
Administrative Assistant
Idaho Department of Water Resources
7600 N Mineral Drive, Suite 100
Coeur d'Alene, ID 83815-7763
Phone: (208) 762-2800
Fax (208) 762-2819*

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO)
) ss.
County of Bonner)

Danielle Ruhmshottel, being first duly sworn on oath, deposes and states:

1. I am a citizen of the United States of America, over the age of 18 years, a resident of Bonner County, Idaho, and am not a party to the proceedings referred to in the attached

Public Notice
My business address is P.O. Box 159, Sandpoint, Idaho.

2. I am the bookkeeper of the Bonner County Daily Bee, a newspaper of general publication in Bonner County, Idaho;

3. Said newspaper has been continuously and uninterruptedly published in Bonner County, Idaho during a period of 12 months prior to the first publication of said Notice, and thereafter.

4. The attached Notice was published in the regular and entire issue of the Bonner County Daily Bee for a period of 2 consecutive weeks, commencing on the 21 day of January, 2021, and ending on the 28 day of January, 2021.

Danielle Ruhmshottel

State of Idaho, county of Bonner ss.

On this 28 day of January, in the year of 2021, before me, Katrina George, Notary Public, personally appeared Danielle Ruhmshottel known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (or they) executed the same.

Katrina George
Notary Public
Residing at: Kootenai County

My Commission Expires 8/29/23

RECEIVED

FEB 01 2021

IDWR / NORTH



PUBLIC NOTICE

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

96-9836
STEVEN P KLATT
SUSIE LEWIS
285 PRIVATE DR
SAGLE, ID 83860-8827
Point of Diversion NWSW
S15 T56N R01W
BONNER County
Source UNNAMED POND
Tributary LAKE PEND
OREILLE
Use: IRRIGATION
04/01 to 10/31
Total Diversion: 0.2 CFS
Date Filed: 12-28-2020
Place Of Use: IRRIGATION
T56N R01W S15
NWSW,SWNW
Total Acres: 10

96-9837
DENNIS N SKANDUNAS
PO BOX 20
COLBURN, ID 83865-0020
Point of Diversion NWNE
S12 T58N R02W
BONNER County
Source COLBURN CREEK
Tributary PACK RIVER
Point of Diversion NWNE
S12 T58N R02W
BONNER County
Source COLBURN CREEK
Tributary PACK RIVER
Use: IRRIGATION
04/01 to 10/31

Total Diversion: 0.09 CFS
Date Filed: 12-23-2020
Place Of Use: IRRIGATION
T58N R02W S12 NWNE
Total Acres: 3

96-9838
WESTWOOD VILLAGE HOA
PO BOX 1941
SANDPOINT, ID 83864-0905
Point of Diversion NWSE
S28 T57N R02W
BONNER County
Source PEND OREILLE
RIVER
Tributary COLUMBIA RIVER
Use: DIVERSION TO
STORAGE
01/01 to 12/31 0.55 CFS
Use: AESTHETIC
01/01 to 12/31 0.55 CFS
Use: AESTHETIC STORAGE
01/01 to 12/31 11.7 AF
Total Diversion: 0.55 CFS
Date Filed: 01-04-2021
Place Of Use:
AESTHETIC, AESTHETIC
STORAGE
T57N R02W S28 L2(SWNE)

Permits will be subject to all prior water rights. For additional information concerning the property location, contact the Northern office at (208)762-2800; or for a full description of the right(s), please see <https://idwr.idaho.gov/apps/ExtSearch/WRAApplicationResults/>. Protests may be submitted based on the criteria of

Idaho Code § 42-203A. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resources, Northern Region, 7600 N MINERAL DR STE 100, COEUR D'ALENE ID 83815-7763 together with a protest fee of \$25.00 for each application on or before 2/8/2021. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

SNP LEGAL 8316

AD#431330

JANUARY 21, 28, 2021