

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

A. GENERAL INFORMATION

Permit No: 96-8879
Exam Date: 07/07/2008

1. Current Owner:
L J DONNERBERG 962 CYPRESS POINT LP ASHLAND OR 97520
2. Accompanied by: Robert Kuchenski, Integrity Water Management, Inc.
Phone No: 208-683-0500
Address: PO Box 468
Relationship to permit Holder: Permit Holder representative; water system operator

3. **SOURCE:**
GROUND WATER

Method of Determination: Arcmap and DRG.

B. OVERLAP REVIEW

1. Other water rights with the same place of use: YES Overlap

Water Right No.	Source	Purpose of Use	Basis
96-7495	SPRING	Domestic, Stockwater, Irrigation	LICENSE
96-8462	GROUNDWATER	DOMESTIC	LICENSE

Comments: 96-7495 is a spring source water right licensed with a POU that encompasses two 40 acre tracts that overlap this permit's POU. Spring water is used for Domestic, Irrigation (2 acres), and stockwater beneficial use. At time of licensing review, no parcels located within either 40 acre tract have ownership that matches the current owner shown for 96-7495. It is unclear whether the home associated with domestic use for 96-7495 is associated with the water system for permit 96-8879, and condition X35 is not recommended to include overlap between 96-7495 and 96-8879; both rights and how they interact will be determined during the adjudication of Basin 96.

96-8462 is a groundwater source licensed right for the Little Black Tail Ranch Subdivision, and overlaps this permit's POU. 50 homes are associated with 96-8462. Rights 96-8462 and 96-8879 when combined service 65 homes for domestic beneficial use within Little Black Tail Ranch Subdivision, and condition X35 has been added to this permit to describe combined use limitation in order to mitigate any overlap concern for licensing purposes.

2. Other water rights with the same point-of-diversion: NO Overlap

Water Right No.	Source	Purpose of Use	Basis

Comments: _____

C. DIVERSION AND DELIVERY SYSTEM1. **LOCATION OF POINT(S) OF DIVERSION:**

GROUND WATER SW¼ NE¼, Sec. 34, Twp 55N, Rge 02W, B.M. BONNER County
GROUND WATER SW¼ NE¼, Sec. 34, Twp 55N, Rge 02W, B.M. BONNER County

Method of Determination: GPS. POD(s) are well(s) D0003345 located at -116°33.349, 48°04.323 and D0010026 located at -116°33.354, 48°04.346.

PLACE OF USE: DOMESTIC

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
54N	02W	2						X L2											
54N	02W	3	X L1	X L2	X	X	X L3	X L4											
55N	02W	34									X	X	X	X	X	X	X	X	
55N	02W	35											X						

Method of Determination: Field exam and Arcmap aerial imagery.

3.

Delivery System Diagram Attached (required). Indicate all major components and distances between components.

X Indicate weir size/pipe as applicable.

Map Attached Showing Location(s) of point(s) of diversion and place(s) of use (required). Scale must be 1:24,000 or greater.

X

X Aerial Photo Attached (required for irrigation of 10+ acres).

X Photo of Diversion and System Attached

4.

Well or Diversion ID No.*	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size
D0003345		2			
D0010026		2			

D. FLOW MEASUREMENTS

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date
FLOWMETER		SENSUS TECHNOLOGIES, INC.				
FLOWMETER		KENT				

2. Measurements: A flowmeter capable of measuring instantaneous flow was installed on the main line pipe from each well, resulting in the following measurement: 16 gpm (D0003345) + 28 gpm (D0010026) = 44 gpm or **0.10 cfs** considering department rounding standards.

E. FLOW CALCULATIONS

Measured Method: Flow meters used to calculate diversion rate equal to 16 gpm (D0003345) + 28 gpm (D0010026) = 44 gpm or 0.10 cfs considering department rounding standards.

F. VOLUME CALCULATIONS

1. Volume Calculations for irrigation: N/A

$$V_{I.R.} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) =$$

$$V_{D.R.} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation season}) \times 1.9835 =$$

$$V = \text{Smaller of } V_{I.R.} \text{ and } V_{D.R.} =$$

2. Volume Calculations for Other Uses:

Domestic Annual Volume & Maximum Diversion Volume = 15 homes x 1.2 af per home = **18.0 af**

G. NARRATIVE/REMARKS/COMMENTS

Permit 96-8879 is being licensed in the name of L J Donnerberg versus the current Little Blacktail Ranch Subdivision HOA for two reasons. 1) The original permit holder did not do an assignment of permit in a timely manner, and 2) in order to facilitate an assignment of permit to the Little Blacktail Ranch Subdivision HOA at this time, quick-warranty deeds would be required for every property owner in the service area. Department management identified it would be simpler to license to the original permit holder, and correct the water right ownership during the upcoming adjudication of Basin 96.

Permit 96-8879 was approved on 8/24/1995, and the applicant submitted the Statement of Completion form on 8/18/1999 (received in office 8/20/1999). Following the submission of statement of completion, an initial field exam was performed on 9/26/2007 by Wayne Baldwin. Review of the B.U. field report shows that the examiner recommended a diversion rate of 0.09 cfs. The examiner was recommending licensing the permit with an amendment changing the domestic beneficial use to municipal beneficial use, of which a volume component was not recommended. For reasons unknown, the permit was not finalized for licensing by the department at that time.

A follow-up drive by was conducted by department staff on 7/7/2008, likely to determine how right(s) 96-7495, 96-8462, and this permit's system infrastructure interacted prior to recommending the permit for licensing. Following the drive by in 2008, department staff printed proof report of 96-8462 on 3/12/2009, which references the ground water source in 96-8462 as "springs". This refers to the 8 foot well POD associated with 96-8462 which serves as the primary source of water for Little Blacktail Ranch Subdivision. The POD for 96-8462 is separate from the two wells associated with this permit. In addition to the print off of 96-8462, a single page containing theoretic pump equations for the two wells linked to this permit and some hand written notes regarding diversion rate and diversion volume. It is believed the follow-up drive by was performed by Kieth Franklin, but there are no signature pages that reflect this premise. From the drive by, department staff had written down a diversion rate of 0.15 cfs and volume rate equation consisting of "61 homes x .6 = 36.6 AF". It is unclear if this was intended to be the department's recommendation for licensing, as no finalizing action toward licensing was taken by department staff at that time.

A more current field exam was performed on 8/8/2017. Adam Frederick conducted the drive by with the water system operator, Mr. Robert Kuchenski – Integrity Water Management, Inc. During the exam two groundwater wells were identified diverting water for domestic purposes at Little Blacktail Ranch Subdivision (Subdivision). At the POD(s), 2 wells each having a 2hp pumps= diverted water directly to water treatment plant prior to use by the subdivision. Wells D0003345 & D0010026 piped direct to a pump house where the two waterlines joined into a common water main line. A flowmeter capable of measuring instantaneous flow was installed on the main line pipe from each well, resulting in the following flow

measurement: 16 gpm (D0003345) + 28 gpm (D0010026) = 44 gpm or 0.10 cfs considering department rounding standards.

The diversion rate of 0.10 cfs found during the field exam on 8/8/2017 is compatible with the diversion rate recommended on the beneficial report from 9/26/2007; **0.10 cfs** is recommended as the annual diversion rate and maximum diversion rate for licensing purposes. This value is lower than the department standard for the 15 homes identified for licensing of this permit (65 total parcels – 50 parcels covered by 96-8462 = 15 parcels), but the applicant is limited by pumping performance found during the exam(s).

The service area POU for the Subdivision is large, and includes several 40 acre tracts of mixed forest acreage. The permit was approved with a condition identifying domestic use for 61 homes. Of these, water right 96-8462 covers domestic use for 50 homes, without volume assigned for up to ½ acre irrigation. The applicant's statement of completion asserts domestic use for 14 households, but during field exam 15 parcels/household/stub-ins were identified. During the exam photographs were taken of some homes and service stub-ins throughout the POU, of which minor to non-irrigated landscaping around homes was observed. Due to the rural locality, several long gated driveways and forested parcels precluded view of homes and landscaping for the majority of parcels in the Subdivision. Due to 96-8462 not including volume metrics for the irrigation of up to ½ acre covered under domestic use, this volume was considered when developing volume metrics for this permit. Some of the homes had irrigated small grass lawns and landscaping observed during the exam. Based on this, irrigation up to ½ acre was assigned when calculating volume toward licensing this permit's 15 homes for domestic use. Arcmap aerial imagery was used to trace out the POU, which included reducing service area boundary located in the NESWSW ¼ ¼, Section 35, Township 55 North, Range 02 West due to permitted POU shape being owned by Idaho Panhandle National Forest.

Review of right 96-8462's POU and this permit's POU results in difficulty assigning homes to each respective water right with regard to linking parcel-to-volume for licensing purposes. Existing right 96-8462 was licensed with a POU that covers all 4 phases of the Subdivision's built out plan. Additionally, permit 96-8879 was approved with a POU that encompassed all 4 phases of the Subdivision's built out plan. Neither backfile information from 96-8462 nor field exams from 96-8879 identify which homes/parcels are associated with the respective rights portion of the built-out. Backfile data microfilmed on 9/18/1995 reference the following Subdivision build-out plan:

- Phase 1 – 24 homes
- Phase 2 – 29 homes
- Phase 3 – 8 homes
- Phase 4 – 4 homes
- Total parcels = 65

Due to there being no accuracy in designating parcels for domestic use, this permit is being recommended for licensing with a domestic permissible place of use that encompasses the entirety of the Subdivision.

I inquired about historical volume data availability with Dan Messier, President of the Subdivision's HOA. I was directed to Mr. Robert Kuchenski, who provided years 2019 and 2020 annual volume reports for both the 2 wells diversion associated with this permit. There was no historic capture of volume data that dates back to the development period of the permit (1995-1999), as records from previous water operators or Subdivision members were not kept. 2019 volume equals 6.5 af, considering department rounding standards. Year 2020 volume equals 4.1 af, considering department rounding standards. These two years were used for reference only, and the domestic annual volume was derived using the formula: 15 homes x 1.2 af per home = **18.0 af**, which is recommended for licensing purposes. Mr. Messier disclosed via email correspondence the water system had 37 active connections, with the remaining lots being service connected by stub-ins. Stub-ins were observed throughout the Subdivision for vacant parcels during the field exam.

Comparing volume data for two consecutive years versus the 15 home volume calculation results in a generous recommendation for annual volume, considering several homes did not use water for up to ½ acre of irrigation. Licensing for 1.2 af per home/parcel provides some buffer volume when combining volume allowances from this permit with existing right 96-8462, of which the maximum diversion volume equaled 50 homes x 0.6 af per home = 30 af. During licensing review, condition X35 was incorporated limiting the Subdivisions combined annual and maximum volumes to 30.0 af (96-8462) + 18.0 af (96-8879) = 48.0 af. Discussion between department staff and Mr. Messier & Mr. Kuchenski by email correspondence served to notify the Subdivision they are diverting near their 48.0 af combined use volume with the 37 service connections in use. It was identified that either water infrastructure leaks needed to repair to reduce the loss of volume pumped back to the ground, or a new application for permit would be necessitated as the Subdivision connects stub-ins for future use. It was also recommended the applicant's actively engage in the upcoming adjudication of basin 96, to include requesting a transfer of use from domestic to municipal beneficial use for the Subdivision.

Due to the extended time from permit approval, statement of completion, and subsequent licensing view several section ¼ ¼ locations have been assigned government lot designators. These have been incorporated to the POU legal description during licensing review. Conditions 26A, 046, and two text conditions referencing the number of homes and location of PODs were removed from the permit during licensing review. Condition X04 was added describing that domestic use is for 14 homes in the Subdivision. Condition X35 was added in order to mitigate overlap concern between 96-8462 and 96-8879. All other conditions on the permit will remain on the license.

Overlap concerns: 96-7495 is a spring source water right licensed with a POU that encompasses two 40 acre tracts that overlap this permit's POU. Spring water is used for Domestic, Irrigation (2 acres), and stockwater beneficial use. At time of licensing review, no parcels located within either 40 acre tract have ownership that matches the current owner shown for 96-7495. It is unclear whether the home associated with domestic use for 96-7495 is service connected to the water system for permit 96-8879, and condition X35 is not recommended to include overlap between 96-7495 and 96-8879; it is recommended that both rights listed above and how they interact be determined during the adjudication of Basin 96. 96-8462 is a groundwater source licensed right for the Little Black Tail Ranch Subdivision, and overlaps this permit's POU. 50 homes are associated with 96-8462. Rights 96-8462 and 96-8879 when combined service the total built-out of 65 homes for domestic beneficial use within Little Black Tail Ranch Subdivision, and condition X35 has been added to this permit to describe combined use limitation in order to mitigate any overlap concern for licensing purposes. There are no other overlap concerns for this water right.

Have conditions of permit approval been met? X Yes No

H. RECOMMENDATIONS

1. Recommended Amounts

<u>Beneficial Use</u>	<u>Period of Use</u>	<u>Rate of Diversion</u>	<u>Annual Volume</u>
DOMESTIC	01/01 to 12/31	0.10 CFS	18.0 AF

Totals: 0.10 CFS 18.0 AF

2. Recommended Amendments

☐ Change P.D. as reflected above ☐ Add P.D. as reflected above ☒ None

☐ Change P.U. as reflected above ☐ Add P.U. as reflected above ☒ None

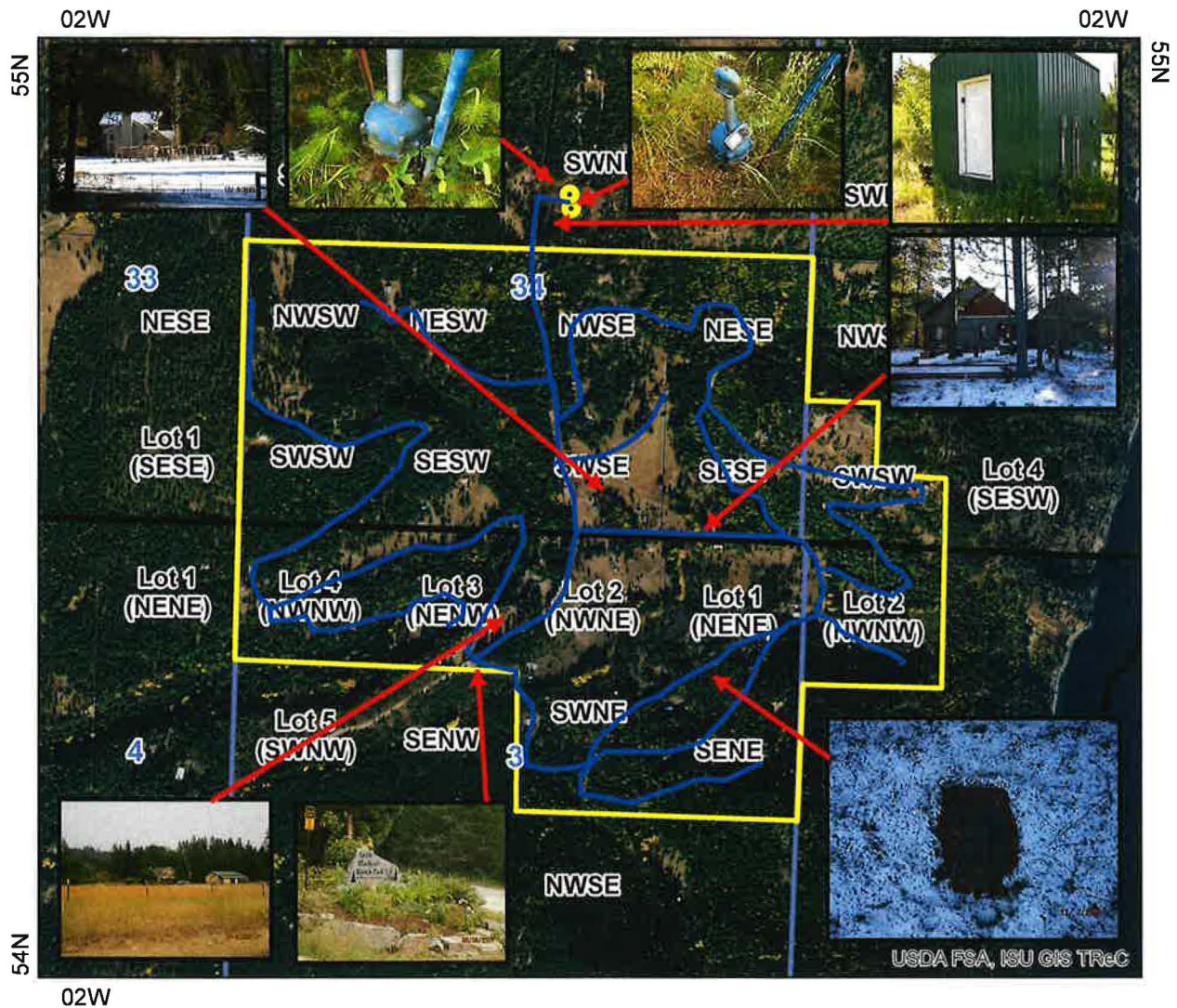
I. AUTHENTICATION Luke Bates - Water Resource Agent

Field Examiner's Name *Luke Bates* Date 2/3/2021

Reviewer *Adi Fink* Date 2/3/2021

State of Idaho
Department of Water Resources
Attachment to Field Exam
96-8879

DOMESTIC system diagram.



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

0 0.2 0.4 0.8 Miles



Drinking Water Branch

Water System Details

Water System No. :	ID1090182	Federal Type :	C
Water System Name :	LITTLE BLACKTAIL RANCH WATER DISTRICT	State Type :	C
Principal County Served :	BONNER	Primary Source :	SW
Status :	A	Activity Date :	04-30-1991

Points of Contact

Name	Job Title	Type	Phone	Address	Email
KUCHENSKI, ROBERT		DO			
KUCHENSKI, ROBERT		OP			
KUCHENSKI, ROBERT		AC			
KUCHENSKI, ROBERT		SA			
KUCHENSKI, ROBERT		EC			

Annual Operating Periods & Population Served

Start Month	Start Day	End Month	End Day	Population Type	Population Served
1	1	12	31	R	90

Service Connections

Type	Count	Meter Type	Meter Size Measure
RS	35	ME	0

Sources of Water

Name	Type Code	Status
SPRING #1	IN	A
WELL 15	WL	A
WELL 6	WL	A
LITTLE BLACKTAIL SPRINGS	SP	I
WELL 1	WL	I
WELL 2	WL	I

Service Areas

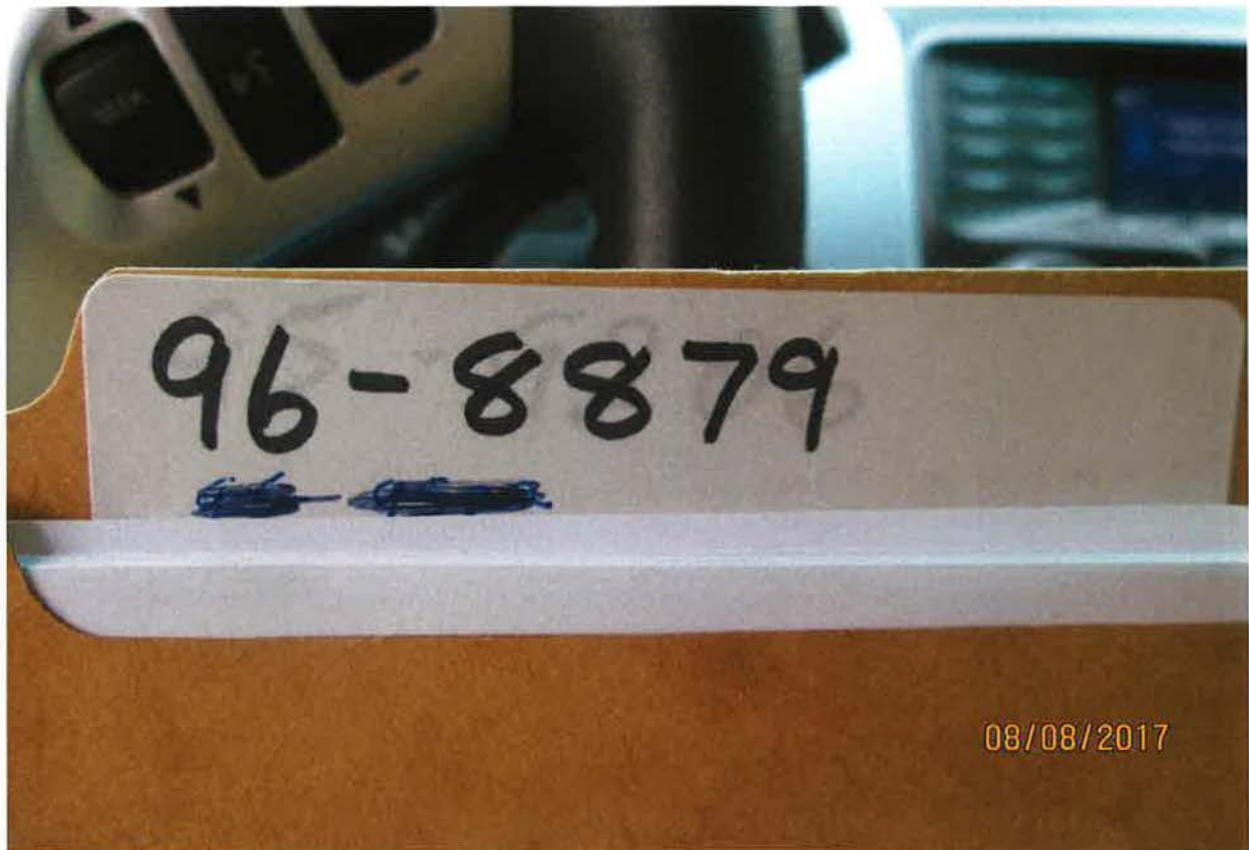
Code	Name
R	RESIDENTIAL AREA

96-8879 ANNUAL VOLUME

Volume associated with diversion of water from two wells: D0003345 and D0010026

2ea Groundwater well annual Volume		with 96-8462 annual volume from separate POD and source	
Year 2019	Daily Gal	Year 2019	Daily Gal
January	67860	January	1090860
February	22587	February	1006987
March	88090	March	1173090
April	327820	April	1099920
May	59910	May	1261010
June	16990	June	1286390
July	178140	July	1354440
August	533270	August	1222470
September	270390	September	916490
October	253180	October	837880
November	154490	November	674890
December	143080	December	678280
Annual Total (gal)	2115807	Annual Total (gal)	12602707
acre-feet	6.493193187	combined total (af)	38.67640632

2ea Groundwater well annual Volume		with 96-8462 annual volume from separate POD and source	
Year 2020	Daily Gal	Year 2020	Daily Gal
January	59,490	January	961990
February	0	February	938700
March	40912	March	1038252
April	28413	April	1018605
May	0	May	1069963
June	0	June	969894
July	26250	July	1125708
August	78641	August	1106976
September	231814	September	868501
October	286338	October	961359
November	321960	November	985673
December	251659	December	970711
Annual Total (gal)	1325477	Annual Total (gal)	12016332
acre-feet	4.067752033	combined total (af)	36.876882



POD - WELL D0003345



POD – WELL D0003345



POD – WELL D0010026



POD – WELL D0010026



WATER SYSTEM PUMP HOUSE



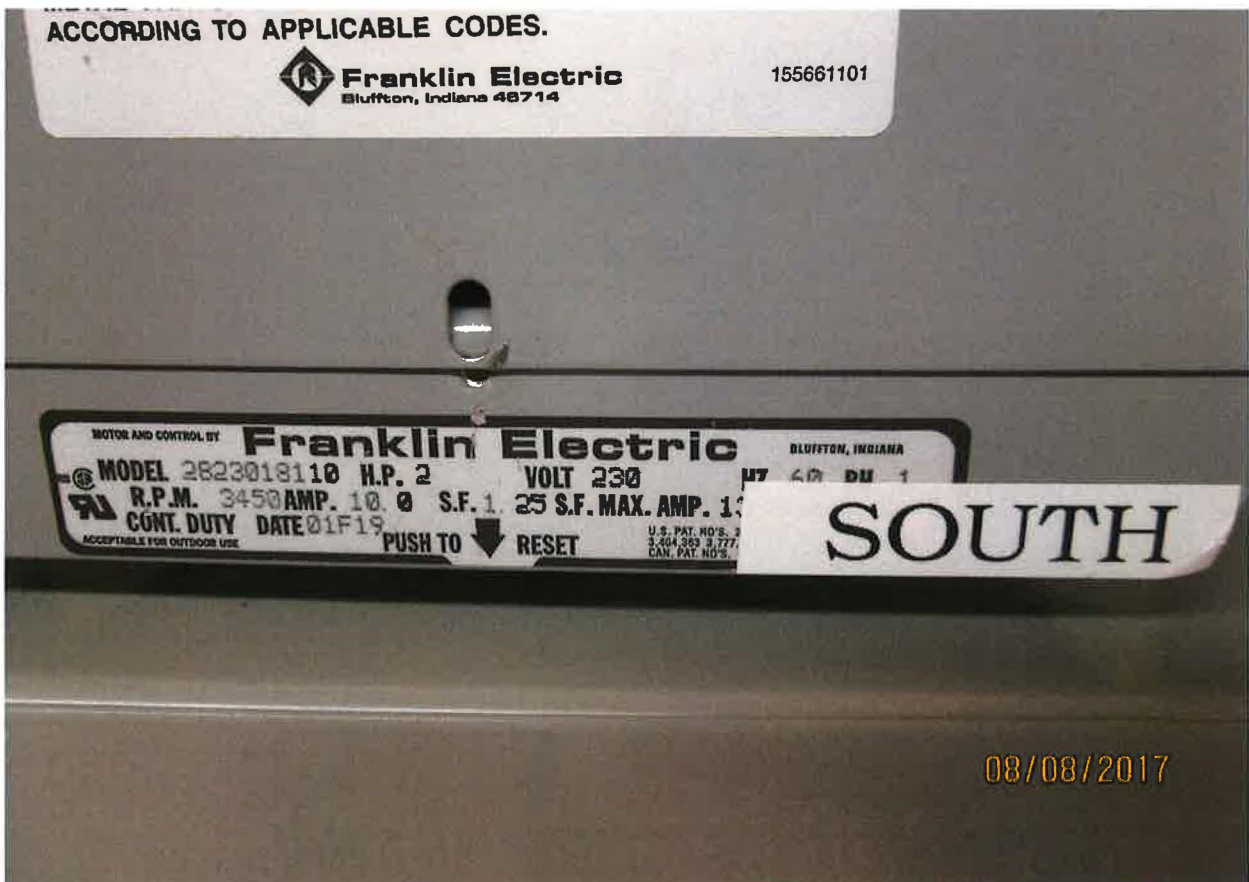
FLOW METERS INSTALLED ON EACH WELL PRIOR TO DISTRIBUTION TO STORAGE TANK



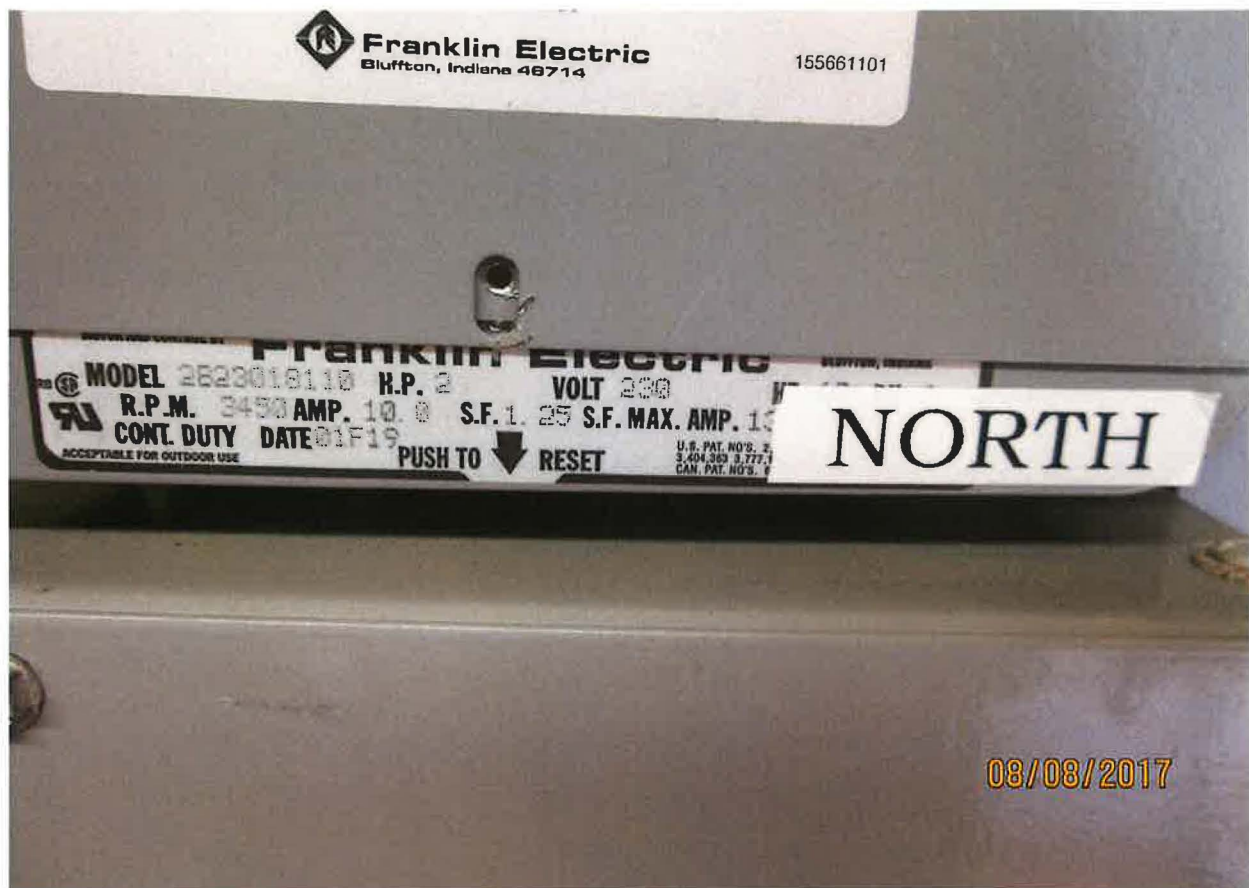
1 OF 2 FLOW METERS



2 OF 2 FLOWMETERS



2 HP WELL PUMP – DESIGNATED AS THE SOUTH WELL



2 HP WELL PUMP – DESIGNATED AS THE SOUTH WELL



DOMESTIC POU – LITTLE BLACKTAIL RANCH PARK SUBDIVISION



DOMESTIC POU





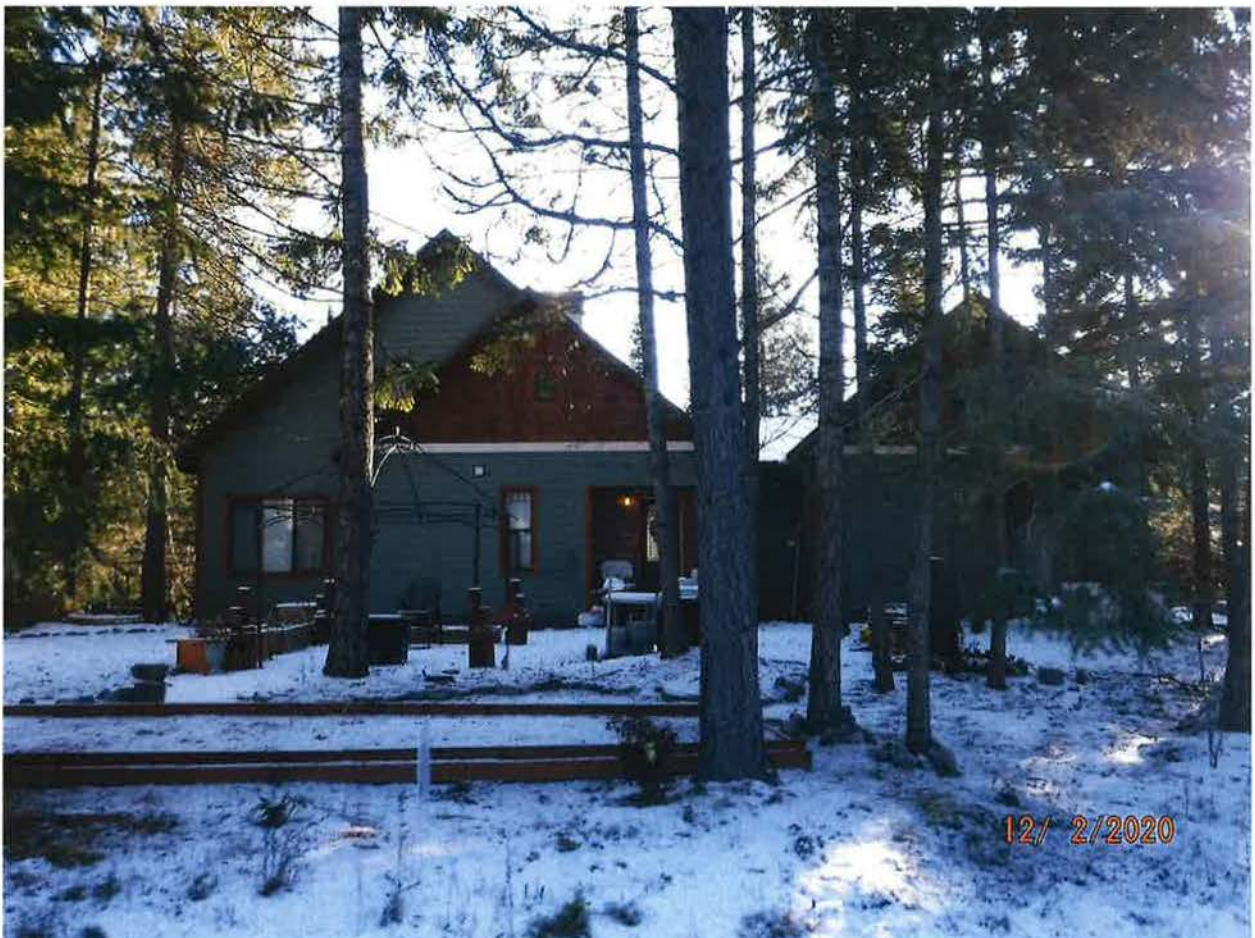
DOMESTIC POU



DOMESTIC POU – STUB-IN EXAMPLE



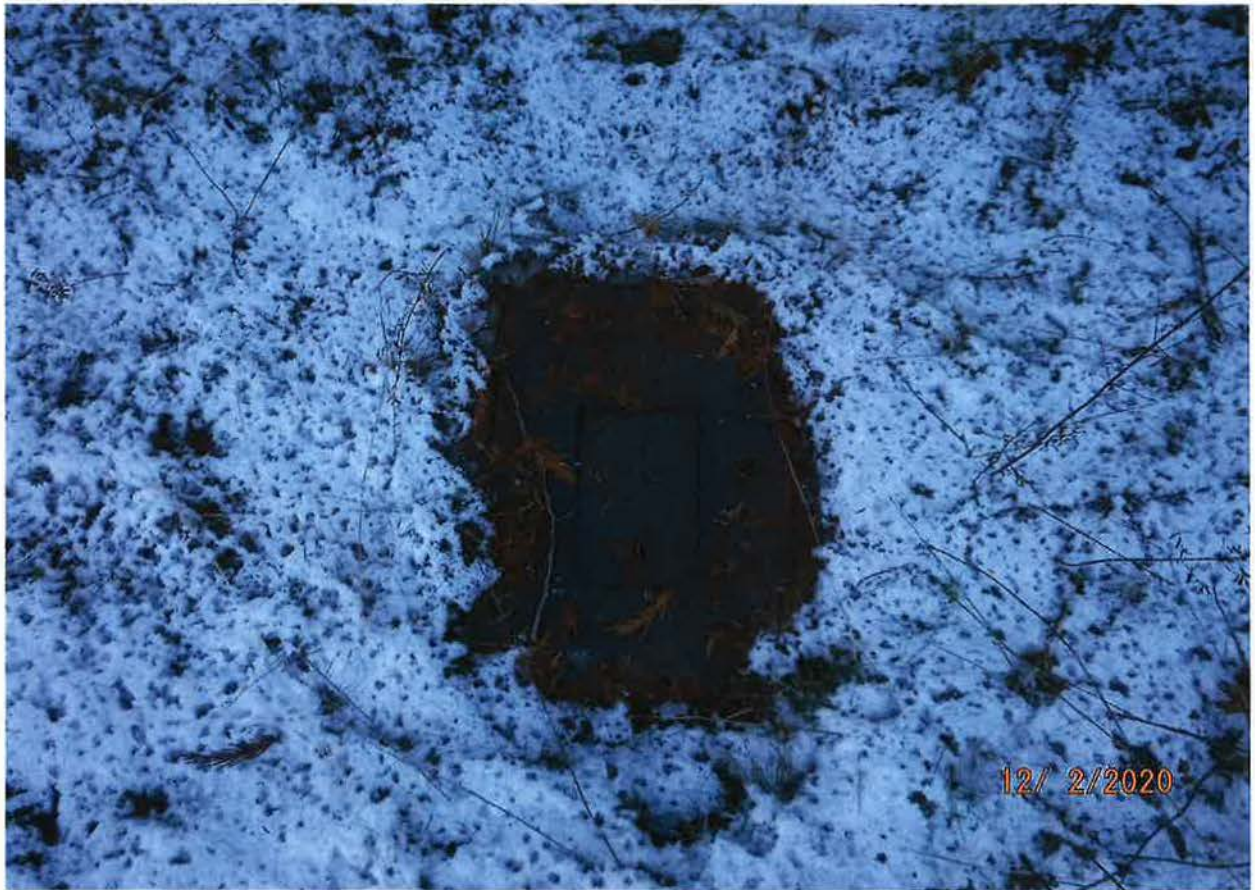
DOMESTIC POU





DOMESTIC POU





DOMESTIC POU – STUB-IN EXAMPLES



From: Bates, Luke
Sent: Friday, January 15, 2021 9:29 AM
To: 'Daniel messier'
Cc: 'Bob Kuchenski'
Subject: RE: Meeting
Attachments: 2. 96-8462_ProofReport.rtf; 3. 96-8879 annual volume stats.xlsx; 4. Adjudication considerations.docx; 1. 96-8879_Proof of Beneficial Use form & Permit.pdf

Good morning Dan,

I've elected to move this discussion further via email. I've attached products 1.,2.,3.,4.; please reference these when responding.

1. This is the Proof of Beneficial use form submitted by the applicant, L.J. Donnerberg, back in 1999. Also attached is the permit for 96-8879. Please note the permit authorizes up to 0.25 cfs diversion rate from up to three wells, and domestic use was for up to 61 homes. Proof of Beneficial Use form STATES: Domestic use for 14 households / Irrigation NONE.

Question: Understanding there is not an irrigation beneficial use component on the permit (NONE), do home owners in the subdivision water small lawns and gardens around their homes? Domestic beneficial use includes up to ½ acre of irrigation, but is not coded as 'irrigation'.

2. This is the proof report for existing water right license 96-8462. It uses a 'Groundwater' source, one point of diversion, and uses water for domestic beneficial use for 50 homes. The license has a diversion rate of 0.25 cfs and an annual volume equal to 30.0 AF.

Question: Is this groundwater source and point of diversion what you are referencing/identifying as the spring source & spring treatment plant?

3. This is a breakdown of year(s) 2019-2020 annual volume, and illustrates the 2 groundwater (GW) wells associated with 96-8879, as well as the spring treatment plant I assume is for 96-8462. Please note that as I am licensing 96-8879 for Domestic versus recommending Municipal, the volumes derived in the licensing process will be higher than what the 2 GW wells produced each of the two years.

Informational: please note that the annual volume without the 2 GW wells is still in excess of what is authorized under existing right 96-8462. Once I add volume for the permit when licensing 96-8879, you will have a small amount of room to grow, but you stated 37 service connections out of 65 parcels.... At the rate you are using water, you will definitely surpass the licensed amounts once built out and will need to apply for a new permit for water rights in order to stay above board for your diversion of water.

I've seen systems similar to yours that have been around for a long time. Due to age and or technology when developed, the water system is likely losing a notable volume of water annually to leaks that go back to ground. I've observed water systems cut their annual diversion volume in half once they identified and corrected all the leaks in the system. Bottom line up front, you are likely expending funds to pay for diverting water that does not meet the end user. At some point it may be worth the subdivision determining cost efficiency of upgrading/repairing system components versus paying to pump water right back into the ground.

4. This is a quick reference sheet for items the subdivision needs to pursue in the upcoming adjudication of basin 96, tentatively scheduled to initiate late this year. Permit 96-8879 is owned by Mr. Donnerberg. The department attempted to use warranty deeds to correct the issue in the past, but ran into complications with the process and was unable to do so. Luckily, the adjudication process has different rules than the allocation side of water rights. This enables them to correct the ownership issue during the adjudication process. This is when I recommend transferring water rights from domestic to municipal, as it is cheaper for the applicant to do so versus amendment of permit costs.

Please review the information outlined in this email, and please do respond to email questions. Once I again confirm the questions I will have the information needed to license permit 96-8879. If the spring source you identified is actually the existing licensed 96-8462, you may not need to develop a new permit at this time. If it is not, then we need to have another conversation regarding developing a new application for permit to conform to Idaho Statute 42-351.

Feel free to reach out with questions/concerns.

Thank you,
Luke Bates
Water Resource Agent - IDWR
P: (208) 762-2800
Luke.bates@idwr.idaho.gov

From: Daniel messier <docsludge@hotmail.com>
Sent: Tuesday, December 8, 2020 11:48 AM
To: Bob Kuchenski; Bates, Luke
Cc: Fred Meyer
Subject: Re: IDWR water permit 96-8879 Little Blacktail Ranch

Bob and Luke,
Sorry it has taken me this long to get back to you. We do track usage and track the number of connections for the system. **Currently we have 37 connections to the system.** Bob has the production reports for the monthly usage. Luke if you have specific info you need I will try and help in whatever way I can.
Thanks
Dan Messier

From: Bates, Luke <Luke.Bates@idwr.idaho.gov>
Sent: Tuesday, November 3, 2020 11:20:38 AM
To: Bob Kuchenski <bob@integritywater.net>; Dan Messier <docsludge@hotmail.com>
Subject: RE: IDWR water permit 96-8879 Little Blacktail Ranch

Thank you Mr. Kuchenski,

Yes, I was unaware and have just taken over this file.

Good Morning Mr. Messier,

Please feel free to contact me at the number below at your convenience to discuss this water permit, as I look to finalizing it for licensing purposes.

v/r,

Luke Bates
Water Resource Agent
Idaho Dept. of Water Resources
Northern Regional Office
P: (208) 762-2800
F: (208) 762-2819
Luke.bates@idwr.idaho.gov

From: Bob Kuchenski [mailto:bob@integritywater.net]
Sent: Tuesday, November 3, 2020 11:18 AM
To: Dan Messier <docsludge@hotmail.com>
Cc: Bates, Luke <Luke.Bates@idwr.idaho.gov>
Subject: Fwd: IDWR water permit 96-8879 Little Blacktail Ranch

Dan,

Luke Bates is unaware that Chris Hall moved out of the area a couple of years ago. As you can see below, I believe his intentions are to address you as the Board President.

Let me know if you have any questions.

Integrity Water Management, Inc.
PO Box 468
Athol, ID 83801
(208) 683-0500
(208) 728-4333 fax
bob@integritywater.net

Begin forwarded message:

From: "Bates, Luke" <Luke.Bates@idwr.idaho.gov>
Subject: IDWR water permit 96-8879 Little Blacktail Ranch
Date: November 2, 2020 at 3:49:29 PM PST
To: "bob@integritywater.net" <bob@integritywater.net>, "lbtchris@gmail.com" <lbtchris@gmail.com>

Good afternoon Mr. Kuchenski and/or Mr. Hall,

This email is being sent as a request for information (RFI), as I work to finalize water permit No. 96-8879. I understand there has been multiple disconnects between IDWR and several folks in the process for getting this older water right out the door, and it is my hope I am the last stop before licensing.

With regard to the Little Blacktail Ranch Water District, I was hoping you could provide me with some accurate details regarding the service area. The following are RFIs I am interested in:

1. Does the system servicing the Place of Use (POU) for Little Blacktail Ranch track annual volume consumption? i.e. annual reports?
2. Do you have a current built out report that shows # of homes constructed versus # of homes with service stub-in water lines?
3. Does the HOA have an annual water service connection / fee tracking document? Often this will show the # of built out versus stub-ins.

At your convenience, please give me a call to discuss these questions. I understand you are likely the system operator and not the applicant of the water right, but I have found the water operator has much of the knowledge and/or knows who to contact to get that knowledge.

Thank you in advance for your consideration of this request,

Luke Bates
Water Resource Agent
Idaho Dept. of Water Resources
Northern Regional Office
P: (208) 762-2800
F: (208) 762-2819
Luke.bates@idwr.idaho.gov

Frederick, Adam

From: Case, Morgan
Sent: Tuesday, June 13, 2017 4:21 PM
To: Frederick, Adam
Subject: FW: A couple of questions

Adam,

See Shelley's answers below. I think we'll have to license 96-8879 in the name of Donnerberg and wait for adjudication to clean up ownership. But...Shelley said that we can accept an amendment and fee from Little Blacktail Ranch Water District, so at least we can clean up the PODs and beneficial use.

As for 84-12232 – leave on the Clearwater MSF condition, but don't add one for Lolo Creek. I'll get those MSF tracking spreadsheets prepared someday soon – I hope.

Thanks,

Morgan

From: Keen, Shelley
Sent: Tuesday, June 13, 2017 1:41 PM
To: Case, Morgan <Morgan.Case@idwr.idaho.gov>
Subject: RE: A couple of questions

Morgan,

See below for some thoughts and suggestions. Call or email if you think I've missed something.

Shelley

From: Case, Morgan
Sent: Tuesday, June 13, 2017 12:47 PM
To: Keen, Shelley <Shelley.Keen@idwr.idaho.gov>
Subject: A couple of questions

Shelley,

I've got a couple of questions that I was hoping you could help me with...

- 1) Application for Permit No. 94-9480 proposed domestic use including irrigation of 0.1 acres (associated with a recreational pool). The application was protested by IDFG who is now working on a settlement. It is clear now that there is no domestic use proposed, but only irrigation of some grass next to the pond. If the settlement agreement includes amending the domestic use to irrigation, is that something that we could address through permitting, or would we need to get a formal amendment (with fee) and re-advertise? I know that you and I discussed making the call to data enter an applicant's "domestic" application as "irrigation" when the application is clear that the intended beneficial use is for irrigation only. But since we didn't do that with this application, did we preclude that option on the permit?

First of all, if the irrigation is "in connection" with a home, I think it qualifies as the outdoor component of a domestic use, and IDWR would probably limit it to 0.6 AF annually. To evaluate whether an amendment is needed to change it to irrigation, we should start with the Water Appropriation Rules, which state:

Applications for permit shall be amended whenever significant changes to the place, period or nature of the intended use, method or location of diversion or proposed use or uses of the water or other substantial changes from that shown on the pending application are intended. An application shall be amended if the proposed change will result in a greater rate of diversion or depletion (see Subsection 035.04.c.), if the point of diversion, place of use, or point of discharge of the return flow are to be altered, if the period of the year that water will be used is to be changed, or if the nature of the use is to be changed.

Reading through the criteria, the first applicable test is whether the change to the nature of use is "significant." I think you could argue that renaming the use is not really a change to the use and, therefore, it is not significant. However, I would counter with the idea that domestic use requires the presence of a home, whereas irrigation does not. Using that logic, I'd say that if the use is characterized as irrigation, you limit it to being in connection with a home. The second applicable test is whether the rate of diversion or depletion will increase. In most cases, a change from domestic to irrigation fails this test because IDWR usually sets the diversion volume for half an acre of irrigation at a figure greater than 0.6 AF. In this case, if you limit the permit to 0.1 acres x 3.0 AF = 0.3 AF, it won't fail the test. The third applicable test is whether the nature of use will change. Again, I think you could argue that the use is the same, we're just proposing to call it something different.

- 2) Adam is working on a license for 96-8879, which is in the name of LJ Donnerberg, who has passed away. The Little Blacktail Ranch Water District is the PWS currently operating the system. In the backfile associated with the other water right for the system (96-8462), there are 2 quit claim deeds (attached) granting ownership to "all right, title, and interest of the Grantor, whether as fee owner, easement holder, or otherwise, in and to the water system" from ATM Co to The Little Blacktail Ranch HOA and subsequently from the HOA to the Little Blacktail Ranch Water District. We are wondering whether or not those documents would be sufficient proof to approve a change of ownership at time of licensing for 96-8879. At issue – the permit is in the name of Donnerberg, not ATM CO. Would you mind taking a look at the backfile for 96-8462 and seeing what you think?

Morgan, I don't think the quitclaim deeds suffice to change ownership of the water right because they refer to "the water system" as opposed to the water right. Unfortunately, we see similar problems with HOAs all the time; the CCRs address ownership of the water system (i.e. the pumps and pipelines) but not the water right. Once the license is issued, it may be difficult to get the right in one name without getting quitclaim deeds from all the homeowners. Might have to just issue the license and address ownership when Basin 96 is adjudicated.

- 3) Adam is working on the license for the IDFG onstream recreation storage reservoir for 84-12232. The permit for that right had a condition restricting diversion when flows were below those established MSF Clearwater River rights (no WR listed, but I assume WR 85-7583 and 86-7345). There was no mention of the MSF right on Lolo Creek, which has a priority date of 4/1/2005 (senior to this right), but for which a partial decree was issued in 2007. Adam and I were wondering 1) should the condition regarding the Clearwater MSF remain, since the reservoir is onstream? and 2) how to deal with the subordination condition on 84-12219 for onstream storage.

Filling an onstream reservoir is still diverting water because it is preventing the water from proceeding downstream naturally. I think the Clearwater reference applies. However, leaving it off would not be a fatal flaw because priority date would still determine whether IDFG could fill the reservoir. Same with the Lolo Creek MSF, unless it can fit within the non-DCMI subordination amount. However, because that amount is expressed in CFS rather than volume, I'm not sure we can automatically say the MSF is subordinate to the IDFG permit. If you can't find anything in the Nez Perce agreement addressing storage rights, I suggest adding it to your spreadsheet for Lolo Creek but not counting it against the 5.2 cfs subordination amount, at least for now.