State of Idaho
Department of Water Resources

Permit to Appropriate Water

No. 96-9830

Priority: November 18, 2020

Maximum Diversion Volume: 7.1 AF

This is to certify that

MARC BRINKMEYER PO BOX 220 LACLEDE ID 83841-0220

has applied for a permit to appropriate water from:

Source :	HORNBY CREEK	**Tributary:**	PEND OREILLE RIVER
Source :	GROUND WATER	**Tributary:**	HORNBY CREEK

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

Beneficial Use	Period of Use	Annual Volume
WILDLIFE STORAGE	01/01 to 12/31	7.1 AF
FIRE PROTECTION STORAGE	01/01 to 12/31	7.1 AF
AESTHETIC STORAGE	01/01 to 12/31	7.1 AF

Location of Point(s) of Diversion

HORNBY CREEK SW¼ NE¼, Sec. 24, Twp 57N, Rge 03W, B.M. BONNER County
GROUND WATER SE¼ NW¼, Sec. 24, Twp 57N, Rge 03W, B.M. BONNER County

Place of Use: WILDLIFE STORAGE, FIRE PROTECTION STORAGE, 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	03W	24			X					X									

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **January 01, 2022.**
2. Subject to all prior water rights.
3. 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.
4. Water shall not be diverted from fire protection storage except to fight or repel an existing fire.
5. Right 96-9830 authorizes total annual storage volume of 7.1 acre-feet, 5.6 acre-feet to be used for the initial filling or carryover storage of the pond and 1.5 acre-feet for the replacement of losses caused by seepage and evaporation.
6. The pond established by the storage of water under this right shall not exceed a total capacity of 5.6 acre-feet or a total surface area of 0.7 acres.
7. Pond storage is for wildlife and aesthetic use.
8. 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 24th day of December, 2020.

ADAM FREDERICK
Water Rights Supervisor

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

96-9830

This map depicts the WILDLIFE STORAGE, FIRE PROTECTION STORAGE, 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.

03W

57N

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

0 0.035 0.07 0.14 Miles

N

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

December 24, 2020

MARC BRINKMEYER
PO BOX 220
LACLEDE ID 83841-0220

RE: Permit No. 96-9830

Permit Approval Notice

Dear Permit Holder:

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

Adam Frederick
Water Rights Supervisor

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on December 24, 2020, I served a true and correct copy of Permit to Appropriate Water No. 96-9830 by U.S. Mail, postage prepaid, to the following:

MARC BRINKMEYER (Current Owner)
PO BOX 220
LACLEDE ID 83841-0220

FORESITE ENGINEERING (Representative)
C/O RYAN FOBES
418 E LAKESIDE AVE STE 1
COEUR D ALENE ID 83814-2805

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.

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO)
) ss.
County of Bonner)

Danielle Rukmshottel, 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 2 day of December, 2020, and ending on the 4 day of December, 2020.

Danielle Rukmshottel

State of Idaho, county of Bonner ss.
On this 9 day of December, in the year of 2020, before me, Katrina George, Notary Public, personally appeared Danielle Rukmshottel 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

KATRINA GEORGE NOTARY PUBLIC COMM. NO. 58374 STATE OF IDAHO

PUBLIC NOTICE

The following applications have been filed to appropriate the public waters of the State of Idaho:

96-9829
SCOTT SALESKY
PO BOX 352
LACLEDE, ID 83841-0352
Point of Diversion SWSE
S30 T56N R03W
BONNER County
Source PEND OREILLE RIVER
Tributary COLUMBIA RIVER
Use: IRRIGATION
04/01 to 10/31
Total Diversion: 0.08 CFS
Date Filed: 11-12-2020
Place Of Use: IRRIGATION
T56N R03W S30 SWSE
Place Of Use: IRRIGATION
T56N R03W S31
L1(NWNE)
Total Acres: 2.7

96-9830
MARC BRINKMEYER
PO BOX 220
LACLEDE, ID 83841-0220
Point of Diversion SWNE
S24 T57N R03W
BONNER County
Source HORNBY CREEK
Tributary PEND OREILLE RIVER
Point of Diversion SENW
S24 T57N R03W
BONNER County
Source GROUND WATER
Tributary HORNBY CREEK
Use: WILDLIFE STORAGE
01/01 to 12/31 7.1 AF
Use: AESTHETIC STORAGE
01/01 to 12/31 7.1 AF
Use: FIRE PROTECTION STORAGE
01/01 to 12/31 7.1 AF
Total Diversion: 7.1 AF
Date Filed: 11-18-2020
Place Of Use: AESTHETIC STORAGE, FIRE PROTECTION STORAGE, WILDLIFE STORAGE
T57N R03W S24
SWNE,SENW

RECEIVED
DEC 18 2020
IDWR / NORTH

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/WRApplicationResults/. 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 12/21/2020. The protestant must also send a copy of the protest to the applicant.
GARY SPACKMAN, Director
SNP LEGAL 8236
AD#422097
DECEMBER 2, 9, 2020

RECEIVED
DEC 18 2020
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

December 15, 2020

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

REFERENCE: WR#96-9830 – Brinkmeyer Pond

Dear Tammy:

We have reviewed the above-named water right application for an existing pond totaling 7.1 acre-feet per year for wildlife storage, aesthetic storage, and fire protection storage. The source of the water is listed as ground water and Hornby Creek. The purpose of these comments is to assist the decision-making authority by providing technical information addressing potential effects on wildlife and wildlife habitat and how any adverse effects might be mitigated.

The application lists this as an existing pond that appears to be in-channel and has flow through at the dam, although that is not clear from either the application or satellite photos. In general, Idaho Department of Fish and Game has significant concerns with ponds being constructed in-channel due to their negative effects on habitat to include the potential for washing out and/or increasing downstream water temperatures. In this case the tributary in question appears to be more of an intermittent swale and the dam would be collecting runoff. Additionally, the dam would allow flow-through and be augmented by the nearby spring, which may ameliorate temperature issues. The tributary in question is a very small one, with a mean annual flow approximately 0.1 cfs and with a drainage area of less than one square mile, according to the USGS StreamStats website. Upon reviewing satellite photos of the site, there does appear to be some channel that circumvents around the pond. This will help ameliorate negative effects from the pond and allow fish passage.

A 2018 inventory of Hornby Creek found it contains westslope cutthroat at average densities of 0.4 fish/100m^2 and brook trout at 8.3 fish/100m^2. Small tributaries such as Hornby Creek were historically used by migratory cutthroat trout in the spring and early summer before flows drop in the summer months. It is unknown if these migrations are currently occurring in Hornby Creek.

Wildlife storage is listed as a beneficial use for these private water storage developments. We request that the applicants define specifically what wildlife will be benefitted and identify how surface water developments will provide resources to wildlife. In much of the Idaho Panhandle, water sources for wildlife are not limiting to populations. Ideally, wildlife storage projects mimic natural seasonal wetlands, with average depths of 3' or less, have seasonal drawdowns, and provides ample herbaceous aquatic and shoreline vegetation. Characteristics such as these can help differentiate between water appropriated for wildlife versus incidental wildlife use of a water storage development for other purposes.

It is not clear whether there is a desire to place fish in one or more of the ponds. Private fish ponds have the potential to harm aquatic wildlife populations through the introduction of disease and/or invasive species. If the applicants intend to stock fish, a private pond permit must be obtained prior to stocking. The application is available on our website (fishandgame.idaho.gov under Fishing → Private Ponds). The applicant may contact our Regional Fisheries Manager, Andy Dux, with questions or to review a private pond application: 208-769-1414.

Thank you for the opportunity to comment.

Sincerely,

Charles E. Corsi
Regional Supervisor

CEC:MH:lat
C: Paul Kline, IDFG Director's Office