

## Nelson, Dan

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**From:** Christopher H Meyer <ChrisMeyer@givenspursley.com>  
**Sent:** Friday, August 16, 2019 2:44 PM  
**To:** Grimm, Angie; Nelson, Dan; Keen, Shelley  
**Cc:** John Bunn; Chris DeGroot (chrisd@nkwsd.com); Ashley Williams; Necia Maiani (nmaiani@welchcomer.com)  
**Subject:** CHM Ltr to Dan Nelson re response to 6-27-2019 inquiry.PDF [IWOV-GPDMS.FID525891]  
**Attachments:** 14776626\_1\_CHM Ltr to Dan Nelson re response to 6-27-2019 inquiry.PDF

Dan, Shelley and Angie,

I am forwarding my letter on behalf of NKWSD in response to Dan Nelson's letter of 6/27/2019.

Thanks to each of you. Knock on wood, we are ready to put this one to bed.

NKWSD deeply appreciates all the good work you have done in helping us sort through these issues.

-Chris

CHRISTOPHER H. MEYER

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Thank you.

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Daniel A. Nelson  
Water Right Analyst 3  
Idaho Department of Water Resources  
322 E Front St, Ste 648  
Boise, ID 83702

Re: North Kootenai Water and Sewer District –  
Licensing of Permit Nos. 95-9129, 95-9244, and 95-10019

Dear Dan:

Thank you for your letter of 6/27/2019 and for your patience in allowing this response within 60 days. I am encouraged by the good progress we have made. It appears that we are set to move to licensing of these rights. I offer the following notes, which track the presentation of issues in your letter.

As noted below, we need to discuss the process for amending the permits to add system-wide APODs.

**Summary of ground water licenses**

You included in your letter a table summarizing NKWSD's 13 ground water licenses:<sup>1</sup>  
We are in agreement. Your summary above matches my spreadsheet notes.

**IDL condition**

You noted that the Idaho Department of Lands ("IDL") objected to our CSRBA claims for these water rights. We have now entered into SF5s for each of these claims.

The SF5s call for the following provision to be added to the place of use:

**PLACE OF USE:**

State endowment land within the municipal service area shall not be considered part of the place of use for this water right absent an express agreement between the Idaho Department of Lands and the municipal provider recorded with the Idaho Department of Water Resources.

Place of use is within North Kootenai Water District's municipal service area as provided for under Idaho law.

For your background information, and to make a record of our thinking on this, I am attaching a copy of my closing memo on this subject dated 8/13/2019.

<sup>1</sup> Your table and note are reproduced below:

Basin	Sequence	Suffix	Priority Date	Diversion Rate	Volume	Source List	Water Use List
95	2144		10/22/1962	0.650	30.0	GROUND WATER	MUNICIPAL
95	2205		2/21/1967	0.290	30.0	GROUND WATER	MUNICIPAL
95	7138		3/25/1971	0.140	60.6	GROUND WATER	MUNICIPAL
95	7185		4/3/1972	1.390	624.0	GROUND WATER	MUNICIPAL
95	7231		2/23/1973	0.080	16.8	GROUND WATER	MUNICIPAL
95	7271		4/3/1973	0.830	66.0	GROUND WATER	MUNICIPAL
95	7713		3/30/1977	0.040	29.0	GROUND WATER	MUNICIPAL
95	7763		8/29/1977	3.000	1,148.4	GROUND WATER	MUNICIPAL
95	7827		3/29/1978	0.200	55.2	GROUND WATER	MUNICIPAL
95	8522		8/20/1986	0.610	441.6	GROUND WATER	MUNICIPAL
95	8639		1/5/1990	1.000	376.0	GROUND WATER	MUNICIPAL
95	9199		3/3/2003	8.830	6,393.0	GROUND WATER	MUNICIPAL
95	9217		1/22/2004	2.510	1,820.0	GROUND WATER	MUNICIPAL
<b>Totals</b>				<b>19.570</b>	<b>11,090.6</b>		

**Please note:** Water right permit 95-9129 was claimed in the CSRBA, but I did not include it in this table, since it will be subject to the license issued.

You are correct that IDL's objection has nothing to do with the quantification of NKWSD's rights and, thus, is not relevant to the subject of your letter.

As noted in footnote 1 to the 8/13/2019 memo (see Attachment A), IDL did not file an objection to No. 95-9129, because it has a limited place of use that does not touch IDL lands. Your letter of 6/27/2019 says that No. 95-9129 will be licensed with a system-wide place of use (which would overlap IDL lands). Accordingly, I have asked that we add the same endowment land condition to No. 95-9129.

**Combined use conditions**

We have been in agreement for some time that Nos. 95-9129, 95-9244, and 95-10019 should be licensed to allow additional diversion rate authority, but with a combined use condition that provides no increment of system-wide diversion volume.<sup>2</sup> The condition you propose is to limit combined diversion volume authority to 11,100 AFA. This condition would be added to Nos. 95-9129, 95-9244, and 95-10019, and would apply to combined diversions under all of NKWSD's 16 ground water licenses and permits (except No. 95-12599<sup>3</sup>).

NKWSD agrees to this combined use condition on volume. NKWSD also concurs that there is no need for the combined use condition on diversion rate, which would be equal to the sum of individual diversion rates.

**Place of use**

NKWSD is pleased to hear that IDWR is prepared to license Nos. 95-9129, 95-9244, and 95-10019 with a POU corresponding to the District's service area. This is a change only for No. 95-9129, which currently has a POU limited to the area served by the prior owner (Stilte Development LLC).

**Amendment of permits to add APODs**

NKWSD is also pleased to hear that IDWR will allow amendment of Nos. 95-9129, 95-9244, and 95-10019 to add APODs for all wells serving NKWSD. We need to discuss with you the procedure for accomplishing this.

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<sup>2</sup> A spreadsheet dated 3/22/2016 prepared by you and Shelley Keen sets out the reasoning for this combined use limitation.

<sup>3</sup> On 8/14/2019, you confirmed to me via voicemail that IDWR is not including permit No. 95-12599 in the combined use condition because it is not up for licensing until 2021 and the extent of use and related matters have not yet been determined.

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### Accounting method

Your letter touches on prior discussions between IDWR and NKWSD regarding the accounting method to be employed in times of administration. The Department's position, as I understand it, is that adding additional APODs to an existing water right permit requires an appropriate accounting method to ensure against enlargement. Specifically, IDWR proposes a plan that would allocate total system-wide daily production to all NKWSD water rights then in priority on a pro-rata basis (based on the relative size of each authorized diversion rate). This is described in Shelley Keen's memo to the file dated 9/6/2016.

As you know, NKWSD believes that the owner of multiple water rights with the same place of use is entitled to select which water right to use. Naturally, NKWSD would prefer to use its most junior water rights first, preserving as much as possible of the diversion volume authorized by its more senior rights. This is discussed in my letters to you and Shelley Keen dated 3/25/2016 and 8/30/2016.

Evidently, we do not see eye-to-eye on this. I have made my best pitch. If IDWR does not find this persuasive, NKWSD will live with IDWR's pro-rata accounting method. In the larger scheme of things, the District's good working relationship with the Department is more valuable than a tussle over this accounting issue.

I have these questions:

1. Is it necessary to resolve the accounting issue now? Perhaps that is an issue that could be taken up if and when administration of water rights is undertaken.
2. Do I understand correctly that the enlargement concern is based on the addition of APODs to an existing water right permit, which has operated for some time without APODs? If so, may I assume that this accounting method would not apply to future water rights that are acquired with APODs from the outset?

In any event, NKWSD wishes to get on with the licensing and will not hold things up over the accounting issue.

### Individual rates and volumes

Your letter of 6/27/2019 proposed the following rates and volumes:

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Water Right Permit	Recommended Diversion Rate in cfs	Recommended Diversion Volume in af.
95-9129	0.53	51.6
95-9244	2.00	
95-10019	0.04	18

NKWSD concurs with these quantities, which are consistent with prior discussions.

As we have noted previously, NKWSD prefers that all of its water rights be identified with an annual volume. (This simplifies spreadsheets and resolves any uncertainties.) Where there is no previously stated annual volume cap (such as for No. 95-9244), we prefer that the right list a volume corresponding to the volume produced on a 24/7 basis throughout the season of use (which is year-round for all of NKWSD's rights). Thus, we would prefer to see an annual volume cap of 1,450 AFA for No. 95-9244. Annual volume caps already have been added to IDWR's recommendations (and SF5s) for each of its CSRBA claims.

By the way, as a practical matter, it seems to me that the individual volume limits for Nos. 95-9129, 95-9244, and 95-10019 are largely academic. Given the combined use volume limit, which eliminates any system-wide increment of volume, the only purpose of a stated volume is to determine the duration of time that incremental diversion rate authority is in effect. However, the volume associated with any temporary increase in diversion rate reduces the volume available on a system-wide annual basis, yielding no net gain.

Thanks again to you and others at the Department for your assistance in completing the licensing of these permits. NKWSD looks forward to continued cooperation with the Department in the District's efforts to provide a reliable long-term water supply to its growing customer base.

Sincerely,



Christopher H. Meyer

Enclosure: Copy of memo of 8/13/2019 (with Exhibit A—two maps)

cc: Shelley W. Keen, Angela M. Grimm, and Manuel Rauhut, IDWR  
Christopher L. de Groot, District Manager, NKWSD  
Necia Maiani and Ashley Williams, Welch Comer Engineers

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**Enclosure A**      **COPY OF MEMO OF 8/13/2019 (INCLUDING EXHIBIT A MAPS)**

**GIVENS PURSLEY** LLP  
Attorneys and Counselors at Law

**MEMORANDUM**

TO:        The File

FROM:     Christopher H. Meyer *CHM*

RE:        Closing Memo: Stipulations to resolve IDL's objections to NKWSD's CSRBA claims

DATE:     August 13, 2019

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This is a closing memo on the resolution of the objections filed by IDL to NKWSD's CSRBA claims. This supplements my memo to the file of 6/3/2019.

On 4/29/2019, IDL filed a "Standard Form 1 Objection" to 19 of NKWSD's 20 water right claims in the CSRBA.<sup>1</sup> IDL objected that NKWSD's POU includes state endowment lands.

Upon investigation, we were able to determine the referenced endowment land is a single section of "school lands": Section 16, T52N, R4W, which is now undeveloped forest land. It is located immediately to the east of a developed residential area in Sturgeon, Idaho. (Sturgeon is a small town northeast of Rathdrum.) Section 16 is also adjacent (catty-cornered) to a much more substantial golf and residential development to the northwest. These developments are currently served by NKWSD.

An email from Ashley Williams (of Welch Comer) dated 5/1/2019 (4:00 pm) reports that the overlap is not actually the entire section 16, but just a sliver on the western side of section 16. The overlap area is displayed in Exhibit A (two maps).

Although NKWSD has no intention of providing municipal water to this or any other undeveloped forest land, these conditions could change. First, the land status of the endowment lands could be changed (swapped out) to enable expansion of the adjacent developments.

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<sup>1</sup> IDL did not file an objection to late claim No. 95-9129, because it has a limited place of use (Sylte Development), which does not overlap IDL lands. In email communications of 8/13/2019 with the AG's office and IDWR, it was determined that IDWR will issue an NAP (Notice of Administrative Proceeding) pending licensing of No. 95-9129, which will stop the CSRBA Court from pushing the claim to decree. It is anticipated that the license will include a system-wide POU. Accordingly, the license will add an "IDL condition" identical to that set out in the SF5s.

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Second, the area could remain endowment land but be converted to park or other purposes requiring municipal water.

Accordingly, we thought it unwise to agree to permanently exclude current endowment lands from NKWSD's POU. Likewise, it would be unwise to agree to a condition that prohibited municipal service to endowment lands. Any such action would affect not just this sliver of land, but any other current endowment lands that might someday come within NKWSD's evolving and expanding service area.

I explored the matter with Shantel Chappel Knowlton in the AG's office. I suggested that it should not be a concern that a municipal right's POU overlaps endowment lands. That overlap does not give a water right holder the right to deliver water or to force anyone to accept municipal service. This would be true for any water right, but seems particularly obvious in the case of a municipal water right, given that municipal providers always serve lands they do not own.

Shantel said that in the SRBA, POUs overlapping IDL lands led to confusion among water right holders, who mistakenly believed that their water rights gave them the right to use IDL lands for irrigation. Accordingly, the State has adopted a more stringent opposition to such overlaps in the CSRBA.

To resolve this concern, NKWSD agreed to the following condition language:

"State endowment land within the municipal service area shall not be considered part of the place of use for this water right absent an express agreement between the Idaho Department of Lands and the municipal provider recorded with the Idaho Department of Water Resources."

This language addresses the concerns I mentioned above. NKWSD retains the ability to serve these areas in the future if (1) the State asks to be served (*e.g.*, for park or culinary purposes) and (2) if the lands are swapped out and are no longer endowment lands. This language addressed not just section 16, but any other endowment lands.

Shantel agreed to draft the SF5 stipulations. We agreed to wait until after the 7/1/2019 response deadline for objections. No responses were filed. Yesterday, I executed SF5s for each of the claims except No. 95-9129 (see footnote 1 on page 1).

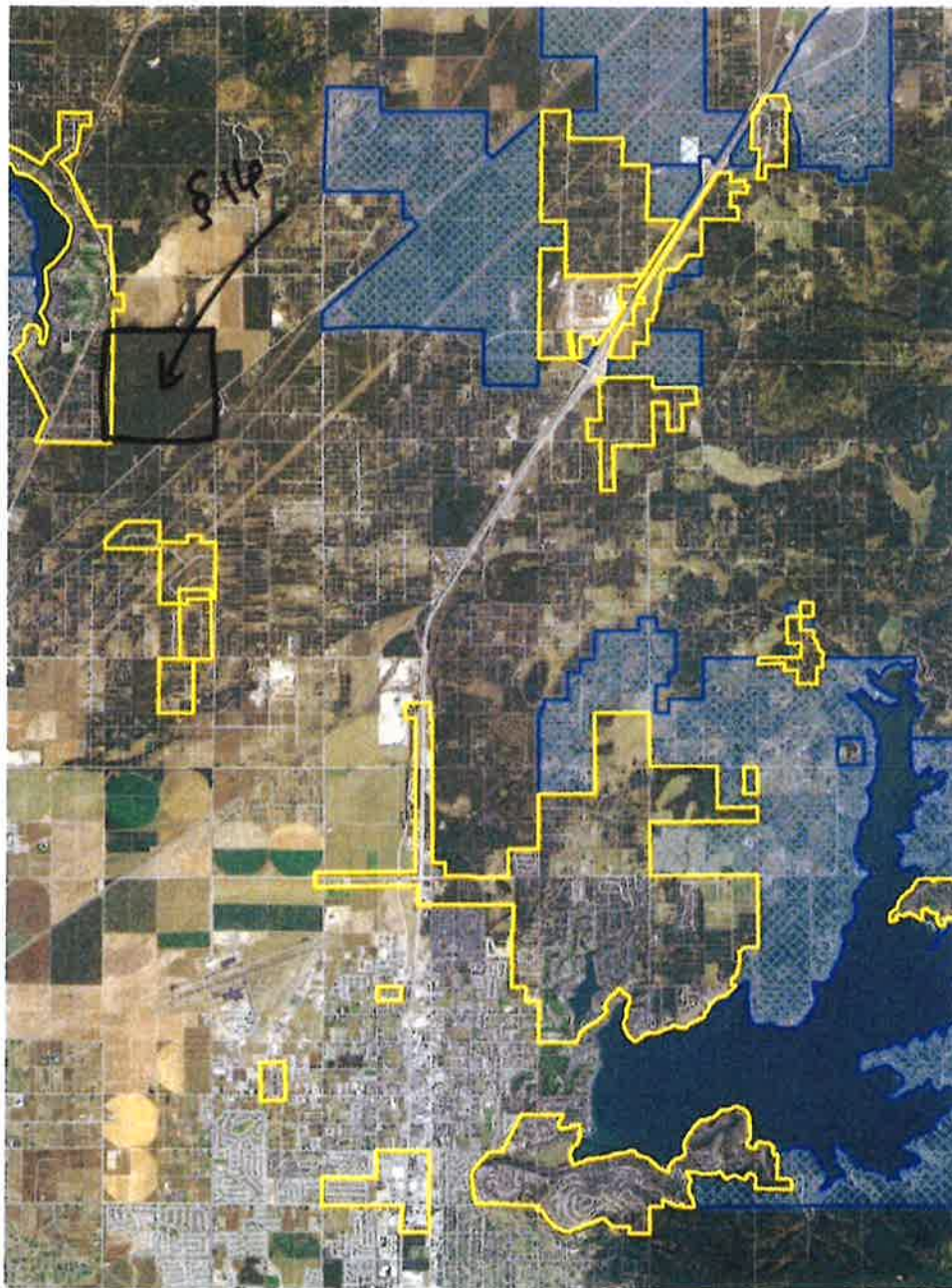
cc: Christopher L. de Groot, NKWSD  
Necia Maiani, Welch Comer Engineers  
Ashley Williams, Welch Comer Engineers



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**Exhibit A**      **MAPS SHOWING IDL'S SECTION 16 AND OVERLAP OF NKWSD SERVICE AREA**

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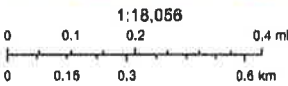
ArcGIS Web Map



5/1/2019, 2:57:29 PM

POU - Water Rights

- All Other POU (non-provider)
- Irrigation Providers and Municipal Service Areas
- POD - Water Rights



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Web AppBuilder for ArcGIS  
USDA FSA, DigitalGlobe, GeoEye, CNES/Airbus DS | Esri, HERE, IBC | USGS TNM - National Hydrography Dataset, Data Refreshed April, 2018. | Idaho Department of Water Resources | Esri