

State of Idaho  
Department of Water Resources  
**Permit to Appropriate Water**

NO. 94-9641

Priority: May 22, 2020

Maximum Diversion Rate: 0.03 CFS

This is to certify that

BROOKSIDE DEVELOPMENT LLC  
876 BURKE RD  
WALLACE, ID 83873-2486

has applied for a permit to appropriate water from:

**Source :** CANYON CREEK

**Tributary:** SOUTH FORK COEUR D  
ALENE RIVER

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

**Beneficial Use**

IRRIGATION

**Period of Use**

04/01 to 10/31

**Rate of Diversion**

0.03 CFS

**Location of Point(s) of Diversion**

CANYON CREEK

NW¼, SE¼, Sec. 26, Twp 48N, Rge 04E, B.M., SHOSHONE County

**Place of Use:** IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				No QQ	Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
48N	04E	26														0.8				0.8

Total Acres: 0.8

**Conditions of Approval**

1. Proof of application of water to beneficial use shall be submitted on or before **August 01, 2022**.
2. Subject to all prior water rights.
3. This right does not grant any right-of-way or easement across the land of another.
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. This right when combined with all other rights shall provide no more than 0.03 Cubic Feet per Second (CFS) per acre nor more than 3.0 Acre Feet per Acre (AFA) at the field headgate for irrigation of the place of use.
6. Water shall not be diverted under this right when flows in the Coeur d'Alene River are below minimum flow amounts as defined by Right 94-7341. The right holder shall be responsible for monitoring the daily flow of the Coeur d'Alene River using real-time data and shall cease diverting water when flows in the Coeur d'Alene River are below established minimum flow amounts. Unless otherwise specified by the Director of the Department of Water Resources, data from the U.S. Geological Survey Cataldo gauging station, No. 12413500, may be used for purposes of determining the daily flow amounts.
7. Place of use is located within Lot 23, and Lot 24, Canyon Addition subdivision.

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

Signed this 23<sup>rd</sup> day of July, 2020.



ADAM FREDERICK  
Water Rights Supervisor

State of Idaho  
Department of Water Resources






# Attachment to Permit to Appropriate Water

94-9641

This map depicts the IRRIGATION 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.

04E



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

0 0.035 0.07 0.14 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](http://www.idwr.idaho.gov)

Brad Little  
Governor

Gary Spackman  
Director

July 23, 2020

BROOKSIDE DEVELOPMENT LLC  
876 BURKE RD  
WALLACE ID 83873-2486

RE: Permit No. 94-9641

### 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 first commence the excavation or construction of your diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is complete. In addition, 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](http://idwr.idaho.gov) for more information about these programs.

Also, please note that permit holders are required to report any change of 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. Forms to assign ownership or update your address are available from any office of the Department or on the Department's website.

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

Sincerely,



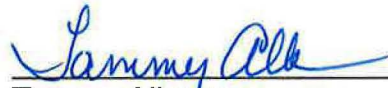
Adam Frederick  
Water Rights Supervisor

Enclosure(s)

## CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2020, I served a true and correct copy of Permit to Appropriate Water No. 94-9641 by U.S. Mail, postage prepaid, to the following:

BROOKSIDE DEVELOPMENT LLC (Current Owner)  
876 BURKE RD  
WALLACE ID 83873-2486



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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.

# MEMORANDUM

July 22, 2020

Water Permit: 94-9641

Author: smaxey

Subject: OWNERSHIP AND OVERLAPS

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CURRENT OWNERSHIP OF SHOSHONE COUNTY TAX PARCEL RPO09500230000A (POINT OF DIVERSION AND PLACE OF USE) CHECKED ON 07/22/2020. PARCEL OWNERSHIP AND ADDRESS SHOWN ON SHOSHONE COUNTY INTERNET PARCEL SEARCH SITE MATCHES APPLICATION LINE 1.

WATER RIGHT (STATUTORY CLAIM) 94-4011 WAS NOT CLAIMED IN THE COEUR D'ALENE SPOKANE RIVER BASIN ADJUDICATION (CSRBA) AND IS NO LONGER IN EFFECT. THE POINT OF DIVERSION FOR WATER RIGHT 94-8754 IS UPSTREAM ON CANYON CREEK AND THE CSRBA DECREED PLACE OF USE DOES NOT OVERLAP 94-9641.

# AFFIDAVIT OF PUBLICATION

STATE OF IDAHO )  
 ) ss.  
County of Shoshone )

MARY MOORE, being first duly sworn upon oath, deposes and states:

1. I am now and at all times hereinafter mentioned was a citizen of the United States, resident of the State of Idaho, over the age of twenty-one years and not a party of the above entitled action.

2. I am now and at all times hereinafter mentioned was the printer (principal clerk) of the "Shoshone News Press", a newspaper printed and published Wednesday and Saturday, in Shoshone County, Idaho, and having a general circulation in said county.

3. The Legal notice of which the annexed is a printed copy, was published in the regular Friday issue of said newspaper for 2 consecutive week commencing on the 5 day of June, 2020, and ending on the 12 day of June, 2020, and such publication was made as often during said period as said Bi-weekly newspaper was regularly issued.

4. That said newspaper has been continuously and uninterruptedly published in said Shoshone County, during a period of more than seventy-eight consecutive weeks immediately prior to the first publication of said notice

MARY MOORE.

On this 12 day of June in the year of 2020 before me, a Notary Public, personally appeared MARY MOORE, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.



Katrina George  
Notary Public for the State of Idaho  
Residing in Coeur d'Alene, Idaho

**My Commission Expires 8/29/23**

RECEIVED

JUN 29 2020

IDWR / NORTH

PUBLIC NOTICE The following application(s) have been filed to appropriate the public waters of the State of Idaho: 92-11102 BARRY C GREENWALT KATIE JO GREENWALT 1250 BOND RD DESMET, ID 83824-9746 Point of Diversion SESW S5 T42N R02E SHOSHONE County Source ST MARIES RIVER Tributary ST MARIES RIVER Use: DOMESTIC 01/01 to 12/31 Total Diversion: 0.04 CFS Date Filed: 05-21-2020 Place Of Use: DOMESTIC T42N R02E S5 SESW 94-9641 BROOKSIDE DEVELOPMENT LLC 876 BURKE RD WALLACE, ID 83873-2486 Point of Diversion NWSE S26 T48N R04E SHOSHONE County Source CANYON CREEK Tributary COEUR D ALENE RIVER Use: IRRIGATION 04/01 to 10/31 Total Diversion: 0.03 CFS Date Filed: 05-22-2020 Place Of Use: IRRIGATION T48N R04E S26 NWSE Total Acres: 0.8 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 6/22/2020. The protestant must also send a copy of the protest to the applicant. GARY SPACKMAN, Director SHO LEGAL 3505 AD#386676 JUNE 5, 12, 2020