

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 63-34848

Priority: January 10, 2020

Maximum Diversion Volume: 14.8 AF

This is to certify that

NEWBERRY DEVELOPMENT LLC 2482 E CYANITE DR MERIDIAN ID 83642-9071

has applied for a permit to appropriate water from:

Source : GROUND WATER

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

Beneficial Use

AESTHETIC STORAGE

Period of Use

01/01 to 12/31

Annual Volume

14.8 AF

Location of Point(s) of Diversion

GROUND WATER SE¼ SE¼, Sec. 3, Twp 04N, Rge 02W, B.M. CANYON County

GROUND WATER SW¼ SE¼, Sec. 3, Twp 04N, Rge 02W, B.M. CANYON County

Place of Use: 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 | |
| 04N | 02W | 3 | | | | | | | | | | | | | | | X | X | |

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **March 01, 2025**.
2. Subject to all prior water rights.
3. The two (2) ponds established by the storage of water under this right shall not exceed a total capacity of 11.5 acre-feet or a total surface area of 1.3 acres.
4. This right authorizes the storage of an annual total of 14.8 acre-feet, comprised of 11.5 acre-feet to be used for the initial filling or carryover storage of the ponds and 3.3 acre-feet for the replacement of losses due to evaporation.
5. Water stored under this right is subject to fluctuations of the water table caused by changes in the flow of local streams and by diversions under prior ground water rights. This right does not guarantee the maintenance of any particular ground water level.
6. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.
7. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 63-34848

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

Signed this 28th day of February, 2020.



NICK MILLER

Western Regional Manager








State of Idaho
Department of Water Resources
Attachment to Permit to Appropriate Water
63-34848

This map depicts the 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

04N



-  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

Western Region • 2735 W AIRPORT WAY • BOISE, ID 83705-5082

Phone: (208)334-2190 • Fax: (208)334-2348 • Website: www.idwr.idaho.gov

Brad Little
Governor

Gary Spackman
Director

February 28, 2020

NEWBERRY DEVELOPMENT LLC
2482 E CYANITE DR
MERIDIAN ID 83642-9071

RE: Permit No. 63-34848

Permit Approval Notice

Dear Permit Holders:

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 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 me at (208) 334-2190.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kensi Thorneycroft", written over a horizontal line.

Kensi Thorneycroft

For: Nick Miller
Western Regional Manager

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2020, I served a true and correct copy of Permit to Appropriate Water No. 63-34848 by U.S. Mail, postage prepaid, to the following:

NEWBERRY DEVELOPMENT LLC
2482 E CYANITE DR
MERIDIAN ID 83642-9071

SPF WATER ENGINEERING LLC
C/O LORI GRAVES
300 E MALLARD DR STE 350
BOISE ID 83706-6660



Kensie Thorneycroft
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.

FEB 18 2020

WATER RESOURCES
WESTERN REGION

29512 1990417

1 IDWR - WESTERN REGION


2735 AIRPORT WAY
BOISE ID 83705AFFIDAVIT OF PUBLICATION
STATE OF IDAHO

County of Canyon and Ada

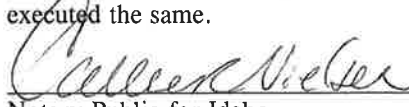
) SS.

Sharon Jessen
of the State of Idaho, being of first
duly sworn, deposes and says:

1. That I am a citizen of the United States, and at all times hereinafter mentioned was over the age of eighteen years, and not a party to the above entitled action.
2. That I am the Principle Clerk of the Idaho Press-Tribune, a daily newspaper published in the Counties of Canyon and Ada, State of Idaho; that the said newspaper is in general circulation in the said Counties of Canyon and Ada, and in the vicinity of Nampa, Caldwell, and Boise, and has been uninterruptedly published in said Counties during a period of seventy-eight consecutive weeks prior to the first publication of this notice, a copy of which is hereto attached.
3. That the notice, of which the annexed is a printed copy, was published in said newspaper 2 time(s) in the regular and entire issue of said paper, and was printed in the newspaper proper, and not in a supplement.

That said notice was published the following:
02/06/2020 02/13/2020

 Sharon Jessen
 STATE OF IDAHO
 County of Canyon and Ada

On this 13th day of February in the year of 2020 before me a Notary Public, personally appeared. Sharon Jessen, known or identified to me to be the person whose name is subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledge to me that he/she executed the same.


 Notary Public for Idaho
 My Commission expires 06/28/2023


IDAHO PRESS

LEGAL NOTICE

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

63-34848

NEWBERRY DEVELOPMENT LLC
 2482 E CYANITE DR
 MERIDIAN, ID 83642-9071
 Point of Diversion SESE S3 T04N R02W CANYON County
 Source GROUND WATER
 Point of Diversion SWSE S3 T04N R02W CANYON County
 Source GROUND WATER
 Use: AESTHETIC STORAGE 01/01 to 12/31 15 AF
 Total Diversion: 15 AF
 Date Filed: 1/10/2020
 Place Of Use: AESTHETIC STORAGE
 T04N R02W S3 SWSE SESE
 Water bearing zone to be appropriated is from 5 to 30 feet.

63-34851

IDAHO MATERIALS AND CONSTRUCTION
 924 N SUGAR ST
 NAMPA, ID 83687-6816
 Point of Diversion SWNW S23 T04N R04W CANYON
 County Source GROUND WATER
 Use: COMMERCIAL 01/01 to 12/31 0.67 CFS
 Total Diversion: 0.67 CFS
 Date Filed: 1/16/2020
 Place Of Use: COMMERCIAL
 T04N R04W S23 SWNW
 Water bearing zone to be appropriated is from 38 to 300 feet.

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Western Region office at (208) 334-2190; or for a full description of the right(s), please see www.idwr.idaho.gov. Protests may be submitted based on the criteria of Idaho Code § 42-203A. Any protest against the approval of the application(s) must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 02/24/2020. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

February 6, 13, 2020

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