

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT
To appropriate the public waters of the State of Idaho

Ident. No. 29-14309

RECEIVED

OCT 04 2019

Department of Water Resources
Eastern Region

1. Name of applicant(s) Bradley R. Hoggan and Cathy P. Hoggan Phone 435-760-0885
 Name connector (check one): ☒ and ☐ or ☐ and/or
 Mailing address P.O. Box 174 City Fielding
 State Utah ZIP 84311-0174 Email bhloft@gmail.com
2. Name of representative, if any Randall C. Budge, Attorney Phone 208-232-6101
 Mailing address P.O. Box 1391 City Pocatello
 State Idaho ZIP 83204-1391 Email randy@racineolson.com
- a. ☐ Send all correspondence for this application to the representative and not to the applicant OR
☒ Send original correspondence to the applicant and copies to the representative.
- b. ☐ The representative may submit information for the applicant but is not authorized to sign for the applicant OR
☐ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation.
3. Source of water supply wastewater which is a tributary of _____
4. Location of point(s) of diversion:

Twp	Rge	Sec	Govt Lot	¼	¼	¼	County	Source	Local name or tag #
11S	37E	23		NE	SE		Bannock		

5. Water will be used for the following purposes:
- Amount 1.5 for Irrigation purposes from 4/01 to 10/31 (both dates inclusive)
 (cfs or acre-feet per year)
- Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
 (cfs or acre-feet per year)
- Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
 (cfs or acre-feet per year)
- Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
 (cfs or acre-feet per year)
6. Total quantity to be appropriated is (a) 1.5 cubic feet per second (cfs) and/or (b) _____ acre-feet per year (af).
7. Proposed diverting works:
- a. Describe type and size of devices used to divert water from the source. Head box capturing overflow from Downey City water tank into 12" pipe
- b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet. If the reservoir will be filled more than once each year, describe the refill plan in item 12. For dams 10 feet or more in height AND having a storage capacity of 50 acre-feet or more, submit a separate Application for Construction or Enlargement of a New or Existing Dam. Application required? ☐ Yes ☐ No
- c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
- d. Is ground water with a temperature of greater than 85°F being sought? ☐ Yes ☐ No
- e. If well is already drilled, when? _____; drilling firm _____;
 well was drilled for (well owner) _____; Drilling Permit No. _____.

For Department Use

Received by _____ Date _____ Time _____ Preliminary check by _____
 Fee \$ 296.00 Receipted by CH Receipt No. E045371 Date 10/4/19

29-14309

8. Description of proposed uses (if irrigation only, go to item 9):

- Hydropower; show total feet of head and proposed capacity in kW. _____
- Stockwatering; list number and kind of livestock. _____
- Municipal; must complete and attach the Municipal Water Right Application Checklist.
- Domestic; show number of households _____
- Other; describe fully. _____

9. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11S	37E	23									40	40	40	40					160

Total number of acres to be irrigated: 160

10. Describe any other water rights used for the same purposes as described above. Include water delivered by a municipality, canal company, or irrigation district. If this application is for domestic purposes, do you intend to use this water, water from another source, or both, to irrigate your lawn, garden, and/or landscaping? 29-2328 and 29-12566

11. a. Who owns the property at the point of diversion? Barnes Family Farmland, LLC

b. Who owns the land to be irrigated or place of use? Applicant

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: See attached Buried Pipeline Agreement

12. Describe your proposal in narrative form, and provide additional explanation for any of the items above. Attach additional pages if necessary. During periods of high runoff and during rain events additional wastewater is available to supplement other rights.

13. Time required for completion of works and application of water to proposed beneficial use is 2 years (minimum 1 year).

14. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½" x 11" map or maps clearly identifying the proposed point of diversion, place of use, section #, township & range. The map scale shall not be less than two (2) inches equal to one (1) mile.

The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.

Randall C. Budge
 Signature of Applicant
 Randall C. Budge, Attorney
 Print Name (and title, if applicable)

 Signature of Applicant

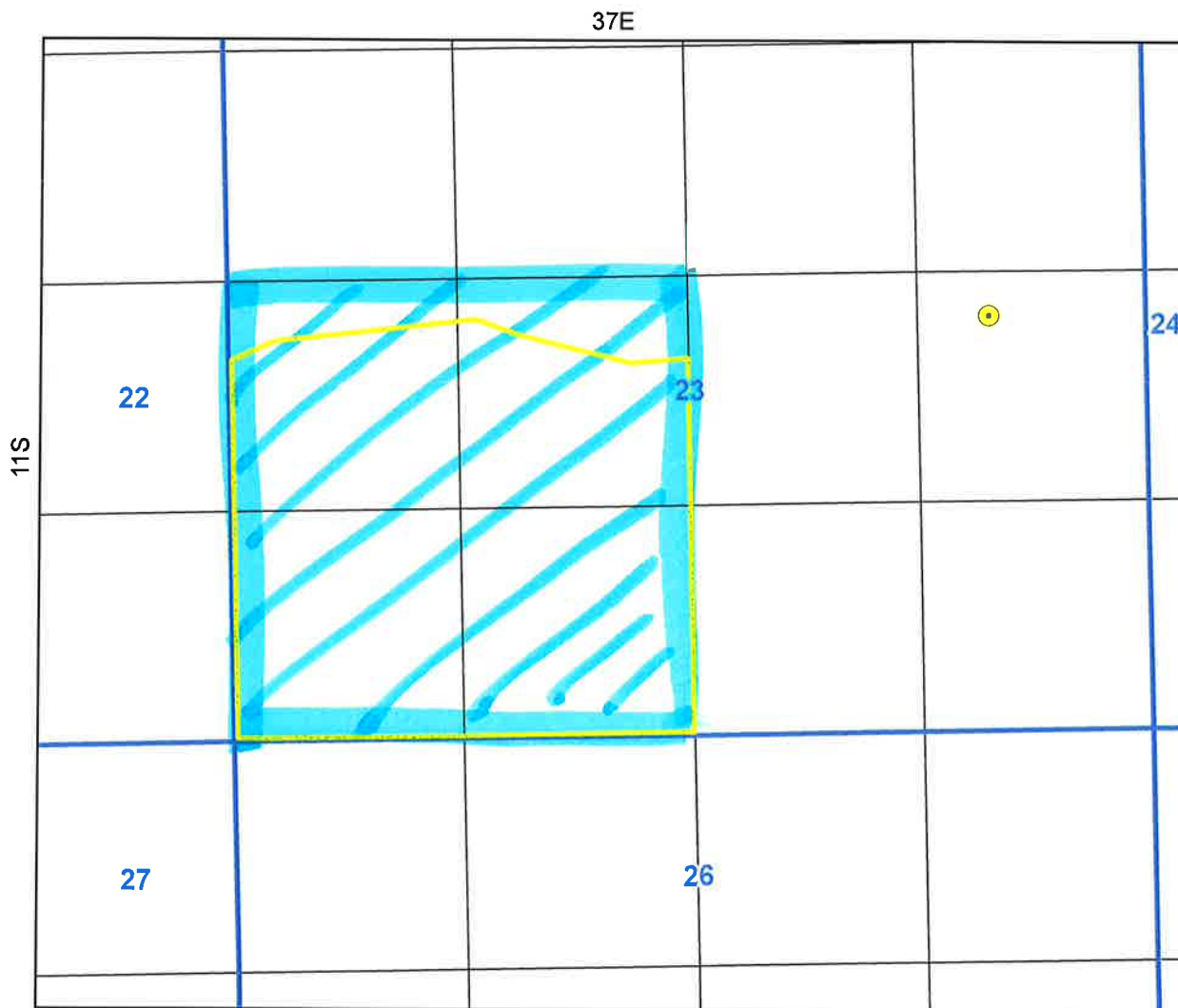
 Print Name (and title, if applicable)

State of Idaho
Department of Water Resources

Water Right

IRRIGATION

The map depicts the place of use for the water use listed above and point(s) of diversion of this right as currently derived from interpretations of the paper records and is used solely for illustrative purposes. Discrepancies between the computer representation and the permanent document file will be resolved in favor of the actual water right documents in the water right file.



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

0 0.125 0.25 0.5 Miles



SPECIAL POWER OF ATTORNEY FOR WATER RIGHTS

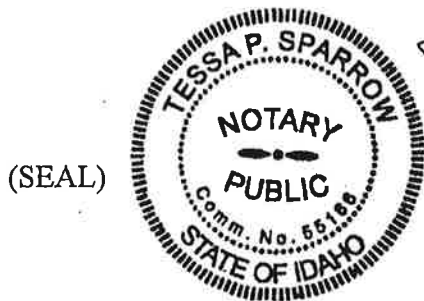
The undersigned hereby appoints RANDALL C. BUDGE and THOMAS J. BUDGE, of the law firm of RACINE OLSON, PLLP, 201 E. Center Street, Post Office Box 1391, Pocatello, Idaho 83204 (the "Firm"), my true and lawful attorney for the purpose of dealing with the Idaho Department of Water Resources relative to the management and transaction of water rights, and to allow the Firm to receive all information, opinions, and records regarding water rights, and to sign and submit applications and other filings on my behalf.

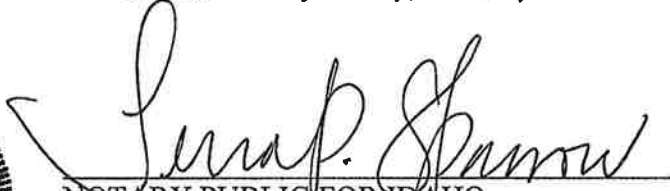
DATED this 11th day of July, 2019.


BRADLEY R. HOGGAN
PO Box 174
Fielding, Utah 84311
435-760-0885

STATE OF IDAHO)
 : ss.
County of Bannock)

This record was acknowledged before me on this 11th day of July, 2019, by BRADLEY R. HOGGAN.




NOTARY PUBLIC FOR IDAHO
My Commission Expires: 10/05/2021

BURIED PIPELINE AGREEMENT

**Barnes Family Farmland, LLC
Bradley R. and Cathy P. Hoggan**

AGREEMENT effective this 9 day of September, 2019, between Barnes Family Farmland, L.L.C., an Iowa limited liability company (hereinafter "Barnes"), and Bradley R Hoggan and Cathy P. Hoggan, husband and wife, (hereinafter "Hoggan"), collectively referred to as the "parties."

RECITALS

A. WHEREAS, Barnes owns certain real property Idaho located in the NE1/4SE1/4 of Section 23, Township 11 South, Range 37 East, B.M., Bannock County Idaho ("Barnes Property") and; and

B. WHEREAS, Hoggan desires to acquire from Barnes an easement for the purpose of constructing, owning and operating an underground pipeline through the Barnes Property to convey water from the Nine Mile Creek and the Downey City Water tank to the Hoggan property for irrigation purposes in the SW1/4 of said Section 23 ("Hoggan Property"); and

C. WHEREAS, Barnes is willing to provide Hoggan the requested easement for the underground pipeline pursuant to this Agreement in consideration for Hoggan abandoning his right to use the existing open ditch south of the pipeline easement.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Purpose of Easement/Installation of Pipeline.** Barnes agrees that Hoggan may install, at his own expense, a buried pipeline for the conveyance of water from Nine Mile Creek and the Downey City Water tank within the easement described in Exhibit "A" attached ("easement"). Hoggan shall install said pipeline within the easement and in accordance with standard specifications for pipe, materials, installation, and backfill, as set forth in the Idaho standards for public works construction standards recognized by Bannock County or otherwise acceptable to Barnes. Hoggan shall follow the "double ditch" construction method, segregating top soil removed, and replacing top soil above sub-soils when excavating in cropland. Hoggan shall implement measures to avoid re-deposited topsoil being compacted greater than existed prior to construction. The scope and purpose of this easement shall be limited to that which is set forth in this section 1 and for no other purpose. In all cases, the pipeline shall be buried and covered at a depth that does not interfere with farming practices upon the Barnes Property.

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2. **Pipeline Ownership and Maintenance.** Hoggan shall own the pipeline and be responsible (at the sole expense of Hoggan) for its installation, including rehabilitation, maintenance and replacement of the pipeline. Upon the completion of the pipeline Hoggan abandons his right to use the open ditch adjacent on the south.

3. **Easement and Access.** Barnes hereby grants to Hoggan an easement on, over, under and through the Barnes Property following a path as described in Exhibit "A" attached (hereinafter "easement") to construct, operate, maintain and replace as necessary an underground pipeline to insure the proper delivery of water from Nine Mile Creek and the Downey City Water tank to the Hoggan Property. Barnes retains, reserves and shall continue to enjoy use of the surface of the area the easement for any and all purposes that do not interfere with and prevent the use by Grantee of the Easement, including the right to use the surface of the granted area of the easement for drainage ditches, private roads, grazing, plantings, crops and other like uses. No person or entity shall have access to the pipeline easement other than Hoggan, its contractors or permittees, and then only for purposes of construction, inspection, maintenance, and repair and replacement of the pipeline. Barnes makes no representation or warranty as to Barne's title to the land described in Exhibit A hereto. It shall be Hoggan's burden and obligation to assure itself of the quality of title to Barnes's property for the purposes and to the extent deemed necessary by Hoggan in order to enter this Easement.

4. **Indemnification, Liens & Damage to Barnes Property.** Hoggan agrees to indemnify and hold Barnes harmless from any and all claims arising out of the installation, maintenance and conveyance of water through said pipeline. Hoggan shall timely pay all sums due for labor, materials and utilities arising out of Hoggan's use and occupancy of the easement and prevent the attachment of any liens against the Barnes Property. Hoggan shall (1) repair any damage to the Barnes Property resulting from Hoggan's exercise of the rights granted in this easement, (2) compensate Barnes for any damage to growing crops (at current market value) or summer fallow caused by Hoggan, and (3) indemnify and defend Barnes against all liens, costs and expenses, including attorneys and experts fees, arising out of or relating to Hoggan's exercise of the rights granted by this easement.

6. **Additional Documents.** The parties will execute such additional releases and other documents and instruments as may be required to carry out the purpose and intent of the foregoing agreement.

7. **Cooperation.** The parties will cooperate, communicate and act in good faith with each other as may be reasonable and necessary in exercising their rights and performing their responsibilities pursuant to this Agreement.

8. **Default.** In the event any party fails to perform any of the terms, conditions or provisions of this Agreement, and fails to cure such default within thirty (30) days of receipt of written notice of default, the non-defaulting party may elect any one of the following remedies, which are the sole and exclusive remedies available:

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- (a) to terminate this Agreement; or
- (b) to obtain specific performance of this Agreement.

9. **Legal Fees.** In the event legal action is undertaken to enforce this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and costs. Legal Action shall not include mediation or arbitration.

10. **Binding Effect.** All of the terms, conditions and covenants of this Agreement shall be binding upon the parties and shall run with the land and inure to the benefits of all successors and assigns of the parties hereto.

12. **Modification or Revocation.** This Agreement may be modified or revoked only in writing upon the mutual consent of all of the parties hereto, or their successors in interest.

13. **Dispute Resolution.** Any substantial dispute between the parties shall be resolved in accordance with the following provisions:

- (a) **Mediation.** The parties shall designate a mediator and appear before the mediator and attempt to mediate a settlement of the dispute.
- (b) **Arbitration.** In the event the dispute between the parties cannot be settled as a result of mediation as above described, the dispute shall be arbitrated in accordance with the Uniform Arbitration Act, Title 7, Chapter 9, Idaho Code. The parties shall elect a mutually agreeable arbitrator and the dispute shall be submitted to that arbitrator for decision. The arbitrator shall be authorized to enter a decision to resolve the dispute that is binding on the parties. The arbitrator's decision shall be non-appealable.
- (c) **Litigation.** Litigation is allowed between the parties only for the purpose of enforcing a settlement agreement entered into between the parties as a result of mediation, or an arbitrator's decision resulting from arbitration.
- (d) **Injunctive Relief.** Either party may request a Court to issue such temporary or interim relief (including temporary restraining orders and preliminary injunctions) as may be appropriate, either before or after mediation or arbitration is commenced. The temporary or interim relief shall remain in effect pending the outcome of the mediation or arbitration. No such request shall be a waiver of the right to submit any dispute to mediation or arbitration.

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- (e) **Arbitration and Mediation Costs.** The parties shall share equally in all expenses and costs and fees of the mediator and arbitrator. Each party shall be responsible for its own costs, attorney fees and witness fees, if any. However, the arbitrator may award reasonable attorney fees to the prevailing party.
- (f) **Choice of Law.** This Agreement and the validity, interpretation and performance thereof shall be governed by and construed in accordance with the laws of the State of Idaho.

14. **Notices.** All notices required to be given pursuant to this Agreement shall be served upon the parties by certified mail, return receipt requested, at the following addresses:

Barnes Family Farmland, LLC
c/o Jay Girotto
18 Crescent Key
Bellevue, WA 98006

Bradley R. and Cathy P. Hoggan
PO Box 174
Fielding, Utah 84311-0174

15. **Subordination:** This easement is and shall be subject and subordinate at all times to any mortgage executed by Barnes and to all renewals, replacements, modifications and extensions of any mortgage executed by Barnes to the full extent of the principal sum secured by the mortgage and interest thereon. In return, any mortgagee agrees that, in the event of foreclosure or other right asserted under mortgage by the holder thereof, this easement and the rights of Hoggan under this easement shall continue in full force and effect and shall not be terminated or disturbed.

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IN WITNESS WHEREOF, the parties have executed this Agreement effective on the date recited above.

BRADLEY H. AND CATHY P. HOGGAN

By Bradley H. Hoggan

By Cathy P. Hoggan

Barnes Family Farmland, LLC

By: SW

Name: Steven W. Barnes,

Trustee of the Steven W. Barnes 2004 Irrevocable Family Trust Manager and Single Member

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IN WITNESS WHEREOF, the parties have executed this Agreement effective on the date recited above.

BRADLEY H. AND CATHY P. HOGGAN

By _____

By _____

Barnes Family Farmland, LLC

By:  _____

Name: Steven W. Barnes,
Trustee of the Steven W. Barnes 2004 Irrevocable Family Trust Manager and Single
Member

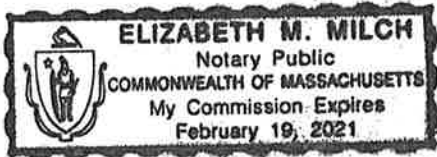
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STATE OF Massachusetts)
County of Middlesex : ss. NATICK)

On this 9th Day of September, 2019 before me, a Notary Public for the State of Massachusetts, personally appeared, known or identified to me to be Steven W. Barnes, Trustee of the Steven W. Barnes 2004 Irrevocable Family Trust Manager and Single Member of Barnes Family Farmland, LLC, the person whose name subscribed to the within instrument, and acknowledged to me that he executed the same.

(SEAL)



Elizabeth M. Milch
NOTARY PUBLIC FOR
Residing at: 28 FOREST AVE., NATICK, MA 01760
My Commission Expires: 2/19/2021

STATE OF IDAHO)
County of _____ : ss.)

On this ____ Day _____, before me, a Notary Public for the State of Idaho, personally appeared Bradley R. Hoggan and Cathey P. Hoggan, husband and wife, known or identified to me to be the person whose name subscribed to the within instrument, and acknowledged to me that he executed the same.

(SEAL)

NOTARY PUBLIC FOR IDAHO
Residing at:
My Commission Expires:

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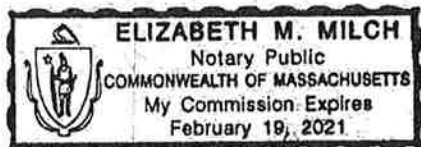
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STATE OF Massachusetts)

County of Middlesex) : ss. NATICK

On this 9th Day of September 2019 before me, a Notary Public for the State of Massachusetts, personally appeared, known or identified to me to be Steven W. Barnes, Trustee of the Steven W. Barnes 2004 Irrevocable Family Trust Manager and Single Member of Barnes Family Farmland, LLC, the person whose name subscribed to the within instrument, and acknowledged to me that he executed the same.

(SEAL)



Elizabeth M. Milch
NOTARY PUBLIC FOR

Residing at: 28 FOREST AVE., NATICK, MA 01760
My Commission Expires: 2/19/2021

STATE OF IDAHO)

County of Bannock) : ss.

On this 12th Day of September, before me, a Notary Public for the State of Idaho, personally appeared Bradley R. Hoggan and Cathey P. Hoggan, husband and wife, known or identified to me to be the person whose name subscribed to the within instrument, and acknowledged to me that he executed the same.



Randall C. Budge

NOTARY PUBLIC FOR IDAHO

Residing at: Pocatello, ID.

My Commission Expires: 10/11/2024

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Exhibit A

**LEGAL DESCRIPTION
FOR
BRAD HOGGAN
PIPELINE EASEMENT
ACROSS LANDS OWNED BY
TEAUNA NEWTON AND BARNES FAMILY FARMLAND**

A 24.00 feet wide, 12.00 feet on each side of centerline, easement for construction, inspection, operation, and maintenance of an irrigation pipeline located in Section 23, Township 11 South, Range 37 East, Boise Meridian, Bannock County, Idaho and whose centerline is more particularly described as follows:

Beginning at the East quarter corner of said Section 23, from which the West quarter corner of Section 23 bears North 89° 41' 48" West 5291.48 feet;
Thence South 74° 16' 22" West 1051.14 feet to the end of the over flow pipeline from the Downey City Water Tank, the True Point of Beginning;
Thence South 81° 42' 37" West 1652.64 feet to a point on the latitudinal centerline of said Section 23.

Sidelines of the above described easement are to lengthen or shorten as necessary to begin perpendicular to the end of the said overflow pipeline and end on the said latitudinal centerline of Section 23.

OFFICIAL RECORD BK# /
BANNOCK COUNTY IDAHO

RECORDED AT REQUEST OF
FEE 34/ DEPUTY

Racine Law

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2019 OCT -1 A 9:06



RANDALL C. BUDGE
randy@racineolson.com

October 2, 2019

RECEIVED
OCT 04 2019
Department of Water Resources
Eastern Region

Idaho Department of Water Resources
900 North Skyline Drive, Suite A
Idaho Falls, Idaho 83402-1718

Re: Application for Permit

To whom it may concern:

Enclosed please find the original and two extra copies of an Application for Permit for filing, together with a check in the amount of \$290. Please file the original and conform stamp and return the copies, one to me and one to the Applicant, in the stamped and addressed return envelopes.

Thank you for your assistance. If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Randy Budge', is written over the typed name.

RANDALL C. BUDGE

RCB:ts

Enclosures

c: Bradley and Cathy Hoggan