

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 77-14369

Priority: August 24, 2018

Maximum Diversion Rate: 0.07 CFS

This is to certify that

MILLICENT DAINES And
EUGENE DAINES
803 12TH ST
KAMIAH ID 83536

has applied for a permit to appropriate water from:

Source : SPRING

Tributary: CROOKED CREEK

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

Beneficial Use**Period of Use****Rate of Diversion**

DOMESTIC

01/01 to 12/31

0.04 CFS

IRRIGATION

05/01 to 10/31

0.03 CFS

Location of Point(s) of DiversionSPRING SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 27, Twp 26N, Rge 08E, B.M. IDAHO County**Place of Use: DOMESTIC**

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
26N	08E	27									X								

Place of Use: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
26N	08E	27									1.0								1.0

Total Acres: 1.0

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **March 01, 2020**.
2. Subject to all prior water rights.
3. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 3.0 afa per acre at the field headgate for irrigation of the place of use.
4. Prior to diversion and use of water under this approval, the right holder shall obtain Forest Service authorization necessary to access the point of diversion or place of use or to convey water across federal land.

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 77-14369

5. Prior to diversion of water under this right, the right holder shall install a lockable device, subject to the approval of the Department, in a manner that will provide suitable control of the diversion.
6. The right holder shall install or construct a straight length of conduit or ditch suitable for installation of a device for measuring the entire flow of water being diverted in connection with this right. If the right holder uses conduit, the straight length of conduit shall be at least fifteen times the diameter of the conduit and shall be above ground or otherwise easily accessible.
7. Upon specific notification by the Department, the right holder shall install and maintain an acceptable measuring device, including data loggers, at the authorized point of diversion, in accordance with Department specifications.
8. When notified by the Department or by a watermaster with regulatory authority over this right, the right holder shall report the amount of water diverted in connection with this right. The report shall be submitted in the manner and frequency specified by the Department or the watermaster.
9. Place of use is located in Mineral Survey No. 1416. The quarter-quarter description has been protracted from the adjacent public land survey.
10. Place of use is located within Lot 1, Blk. B; Crooked Creek Addition Subdivision.
11. Domestic use is for 1 home and does not include lawn, garden, landscape, or other types of irrigation.
12. This right does not grant any right-of-way or easement across the land of another.
13. 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.

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

Signed this 21st day of February, 2019.



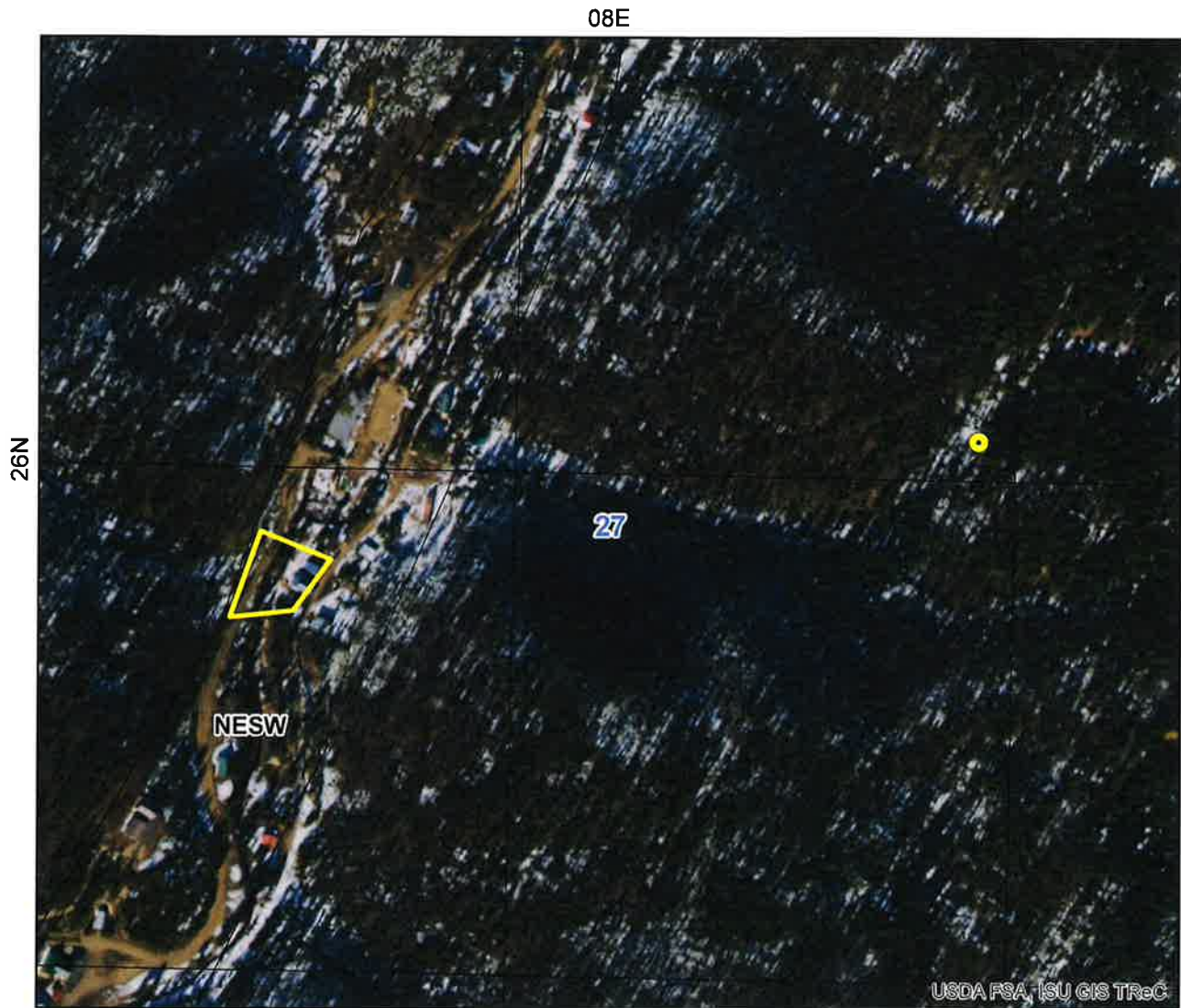
NICK MILLER
Manager, IDWR Western Region

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

77-14369

This map depicts the DOMESTIC and IRRIGATION places of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.



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

0 0.05 0.1 0.2 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 21, 2019

EUGENE DAINES
MILLICENT DAINES
803 12TH ST
KAMIAH ID 83536

RE: Permit No. 77-14369

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 divert and use water to the full extent intended and submit a *Statement of Completion for Submitting Proof of Beneficial Use* ("Proof") 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. If you have already diverted and used water to the full extent intended, you may complete and submit the enclosed Proof form immediately.

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,

Anna Kaiser

Anna Kaiser

For

Nick Miller

Engineer, Manager 2

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on February 21, 2019, I served a true and correct copy of Permit to Appropriate Water No. 77-14369 by U.S. Mail, postage prepaid, to the following:

EUGENE DAINES (Current Owner)
MILLICENT DAINES (Current Owner)
803 12TH ST
KAMIAH ID 83536



Anna Kaiser
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

TO: Application No. 77-14369

FROM: Justin Shearer

DATE: 2/8/2019

RE: Salmon-Clearwater Processing, Basins 77-79 Western Region

The application proposes to divert water from a spring for domestic purposes to one home and irrigation of one acre.

The site is in Dixie, ID on the east side of Main St and approximately 0.25 miles northwest of the landing strip.

Wild & Scenic River (WSR) Processing

General Information - WSR processing applies to portions of Bs 77 and 78 but not to Bs 79. It is rarely expected in Bs 78 since WSR right 78-11961 covers federal land upstream from the Rapid River Fish Hatchery slightly southwest of Riggins.¹

Typically WSR issues would be in Bs 77 upstream from Long Tom Bar on the Salmon River, WSR right 77-11941.² This also incorporates the entire Middle Fork Salmon River drainage, MSR right 77-13844.³

WSR processing is required for any source/diversion upstream from any WSR right. This applies to all sources and uses unless the applicant shows the source is not hydraulically connected to any WSR rights.

Specific Information for this Application - WSR processing is required because the proposed source/diversion are upstream from and hydraulically connected to WSR right 77-11941 &/or 77-13844. The WSR spreadsheet was updated, and the WSR legal notice remark was added to the database.

Minimum Streamflow Rights (MSF)

General Information - MSF analysis applies to all surface water upstream⁴ from any MSF rights. Basins 77-79 have various MSF rights that might affect applications. By agreement with SO regarding these basins, specific MSF conditions of approval are not necessary provided the reviewer checks MSF issues and documents the file with the results (7/8/09 telephone conference).

¹ POD = T23N-R1W-S12.

² POD = T25N-R5E-S31.

³ POD = T23N-R16E-S33.

⁴ Shallow ground water tributary to surface water might involve MSF issues under conjunctive management thinking. Discuss with your supervisor if this comes up.

Downstream MSF right 3-8 on the Snake River⁵ is not subordinate to “future dcmi” uses or “future non-dcmi (with cfs limits)” uses. Downstream Salmon River MSF right 79-14119⁶ is subordinated to future dcmi uses but not to future non-dcmi uses.

All Basin 77-79 MSF rights upstream from the ending point of 79-14119 (mouth of Salmon River) include subordination to future dcmi uses. Most of those upstream MSF rights are also subordinate to various amounts of future non-dcmi uses. None of the future non-dcmi cfs rates have been exceeded yet by new approvals. Further MSF analysis is generally not needed until a specific future non-dcmi cfs rate is exceeded.

Because the review memo extensively covers WSR and MSF issues, SO Planning Bureau comments are not needed yet (prior agreement with SO). Planning will be contacted for comments during the legal notice process as a precaution.

Specific Information for this Application –MSF analysis is required for the proposed source and use upstream from MSF rights 3-8 and 79-14119.

This leads to the following MSF conclusions for this application:

- Senior MSF right 3-8 will not be subordinated to the proposed uses.
- Senior MSF right 79-14119 will be subordinated to the proposed dcmi use.
- Senior MSF right 79-14119 will not be subordinated to the proposed non-dcmi use.

Discussion

Effect on Existing Water Rights: Because the application is proposing minimal domestic and irrigation use from a spring it is not anticipated that the approval of this application will have a negative effect on existing water rights.

Sufficiency of Water Supply: There is no concern in sufficiency of water supply for this proposal, so no rule 40 info was requested in regards to this matter.

Good Faith, Delay or Speculative Purposes: There is no concern of good faith, delay, or speculative purposes for this proposal, thus no rule 40 info was requested in regards to this matter.

Financial Resources:

Additional information is unnecessary because the applicant estimated the project will cost less than \$5000.

Local Public Interest:

IDEQ, USFS, IDFG, and IDWR Planning Bureau were sought for comment at advertising. IDEQ, IDFG, IDWR Planning Bureau had no concerns, or did not provide comment. USFS requested that the permit be conditioned to state the following: the water right does not establish a ROW or easement across the land

⁵ POD = T31N-R5W-S10.

⁶ From mouth of river T29N-R4W-S14 upstream thru about Shepp Ranch T24N-R6E-S12.

of another since the land at the POD is not owned by the applicants, it is National Forest System land; that the POU is on Mineral Survey 1416; that the water right is subject to the terms and conditions of the Forest Service Special Use Permit. Aside from these conditions, the USF does not oppose this water right permit.

Conditions of Approval

In addition to typical standard conditions (004, 121 etc.), use the following standard, modified &/or unique conditions for Basins 77-79.

Per WSR processing, part of Basin 77 & 78, no water district currently planned, use the following:

Exceeding 42-111, any source – must use all 4 conditions 195 thru 198:

- **195 standard** - Prior to diversion of water under this right, the right holder shall install a lockable device, subject to the approval of the Department, in a manner that will provide suitable control of the diversion.
- **196 standard** - The right holder shall install or construct a straight length of conduit or ditch suitable for installation of a device for measuring the entire flow of water being diverted in connection with this right. If the right holder uses conduit, the straight length of conduit shall be at least fifteen times the diameter of the conduit and shall be above ground or otherwise easily accessible.
- **197 standard** - Upon specific notification by the Department, the right holder shall install and maintain acceptable measuring device(s), including data logger(s), at the authorized point(s) of diversion, in accordance with Department specifications.
- **198 standard** - When notified by the Department or by a watermaster with regulatory authority over this right, the right holder shall report the amount of water diverted in connection with this right. The report shall be submitted in the manner and frequency specified by the Department or the watermaster.

Shearer, Justin

From: Spencer, Steven M -FS <sspencer@fs.fed.us>
Sent: Friday, February 1, 2019 11:02 AM
To: Shearer, Justin
Cc: Valle, Cynthia - FS; McClory, Adam B -FS
Subject: Application 77-14369 Daines
Attachments: BLM MTP T26N R8E Sec 27.pdf; MS 1416 Plat.pdf; MS 1416 Manipulated.pdf; Daines Proposed Water Line Map.pdf; Daines Property Plat.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Steve



Steven M. Spencer
Water Use Specialist
Idaho Water Right Coordinator

Forest Service
Intermountain & Northern Regions

p: 208-365-7055

sspencer@fs.fed.us

or

Steven.Spencer@usda.gov

1805 Hwy 16 Rm 5
Emmett, ID 83617

www.fs.usda.gov



Caring for the land and serving people

From: Spencer, Steven M -FS
Sent: Friday, February 1, 2019 11:00 AM
To: 'Justin Peterson' <justinvpeterson@gmail.com>
Cc: Cynthia Valle (cvalle@fs.fed.us) <cvalle@fs.fed.us>; McClory, Adam B -FS <amccclory@fs.fed.us>
Subject: Application 77-14369 Daines

Justin,

Thank you for talking with me a few minutes ago about Application for Permit 77-14369. The Forest Service is not opposed to this water right. The applicants have filed for a Special Use Permit because the spring source is on National Forest System (NFS) land and water is piped from the spring across NFS land to the Daines private property on Mineral Survey 1416. An important part of the legal description of the POU is that it is on Mineral Survey 1416. Because of this I am requesting that the legal description of the POU include language something to the effect that it is on private land that is part of MS 1416. In addition I'm requesting that a clause be added to the permit that the water right does not grant a ROW or easement across the land of another thereby necessitating the special use permit the applicant has applied for.

The five attachments to this message are additional information that may be helpful for you and to have in the water right record.

The first attachment is an enlarged portion of the BLM MTP for T26N R8E showing Mineral Survey 1416 with the approximate location of this water right circled in red.

The second attachment is a copy of the Mineral Survey 1416 Plat with Corner 26 highlighted. Corner 26 shows on subsequent maps.

The third attachment is Mineral Survey Plat 1416 that I manipulated to get the lineal nature of the subject mineral survey all in one shape.

The fourth attachment is a portion of a USGS Quad showing the POD, POU and relationship with MS 1416.

The fifth attachment is a portion of the applicable subdivision plat showing the Daines property.

I think it is to the advantage of IDWR, the FS, the water right holder and any other interested party to have this information on file and these clauses on the water right to assure or at least reduce any confusion that may arise in the future.

If you have any questions about this matter please contact me.

Steve



Steven M. Spencer
Water Use Specialist
Idaho Water Right Coordinator
Forest Service
Intermountain & Northern Regions
p: 208-365-7055
sspencer@fs.fed.us

or

Steven.Spencer@usda.gov

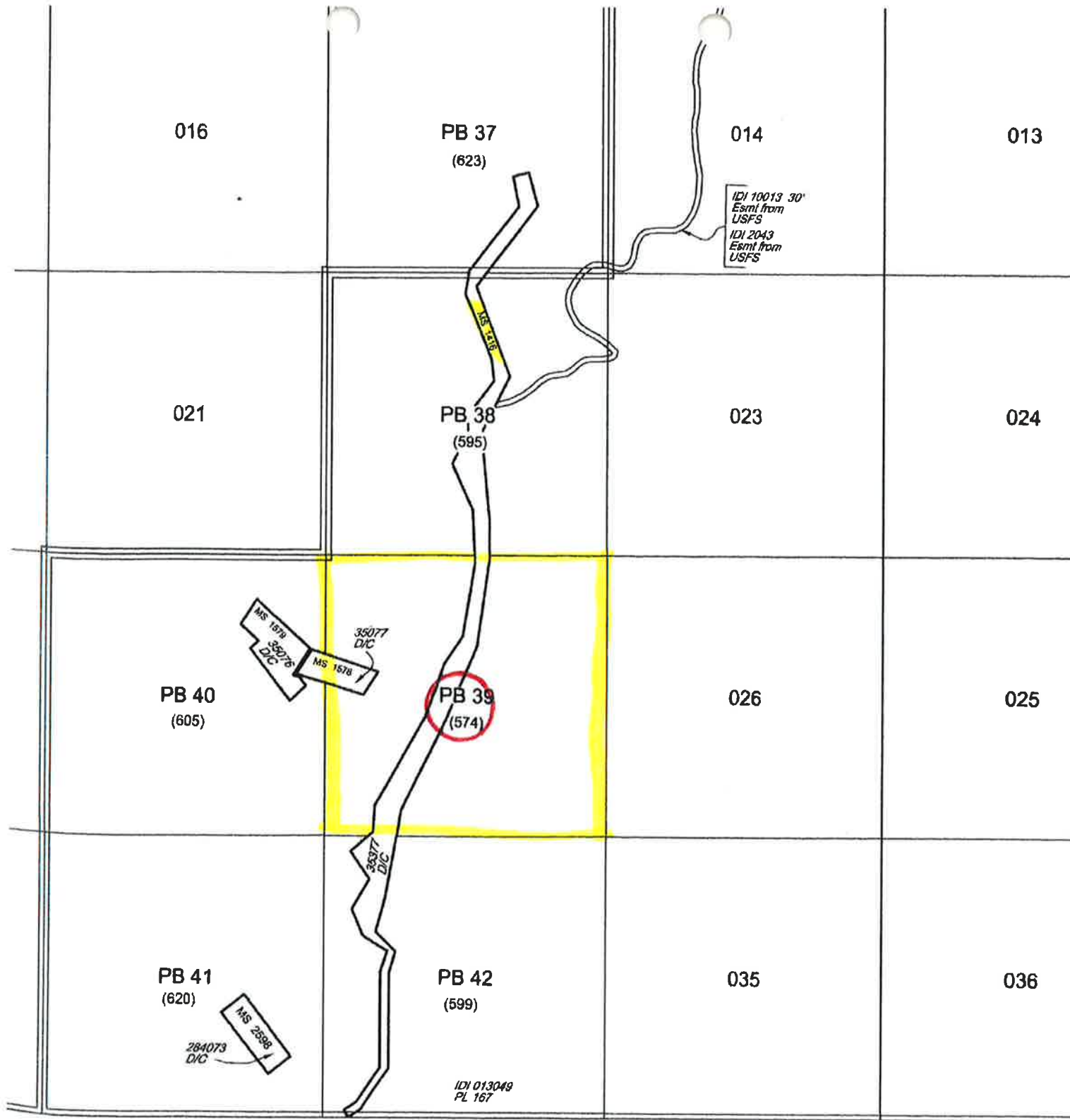
1805 Hwy 16 Rm 5
Emmett, ID 83617

www.fs.usda.gov

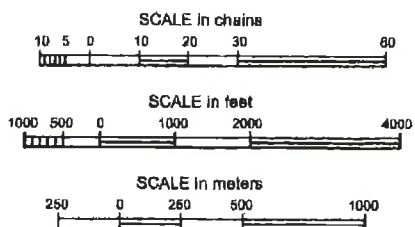


Caring for the land and serving people

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25 N-8 E



DISCLAIMER:

This plat is only a graphic display of the Bureau of Land Management's (BLM) Record of Title do not reflect title changes which may have been affected by lateral movements of river or oth for official information.

The notation shown on withdrawals represent the last action taken, but may not be the effectiv of original withdrawal order.

No warranty is made by the Bureau of Land Management. The accuracy, reliability, or comple aggregate use with other data is not guaranteed.

16

Nugget

EXHIBIT 1
DAINES, EUGENE
SPECIAL USE PERMIT APPLICATION

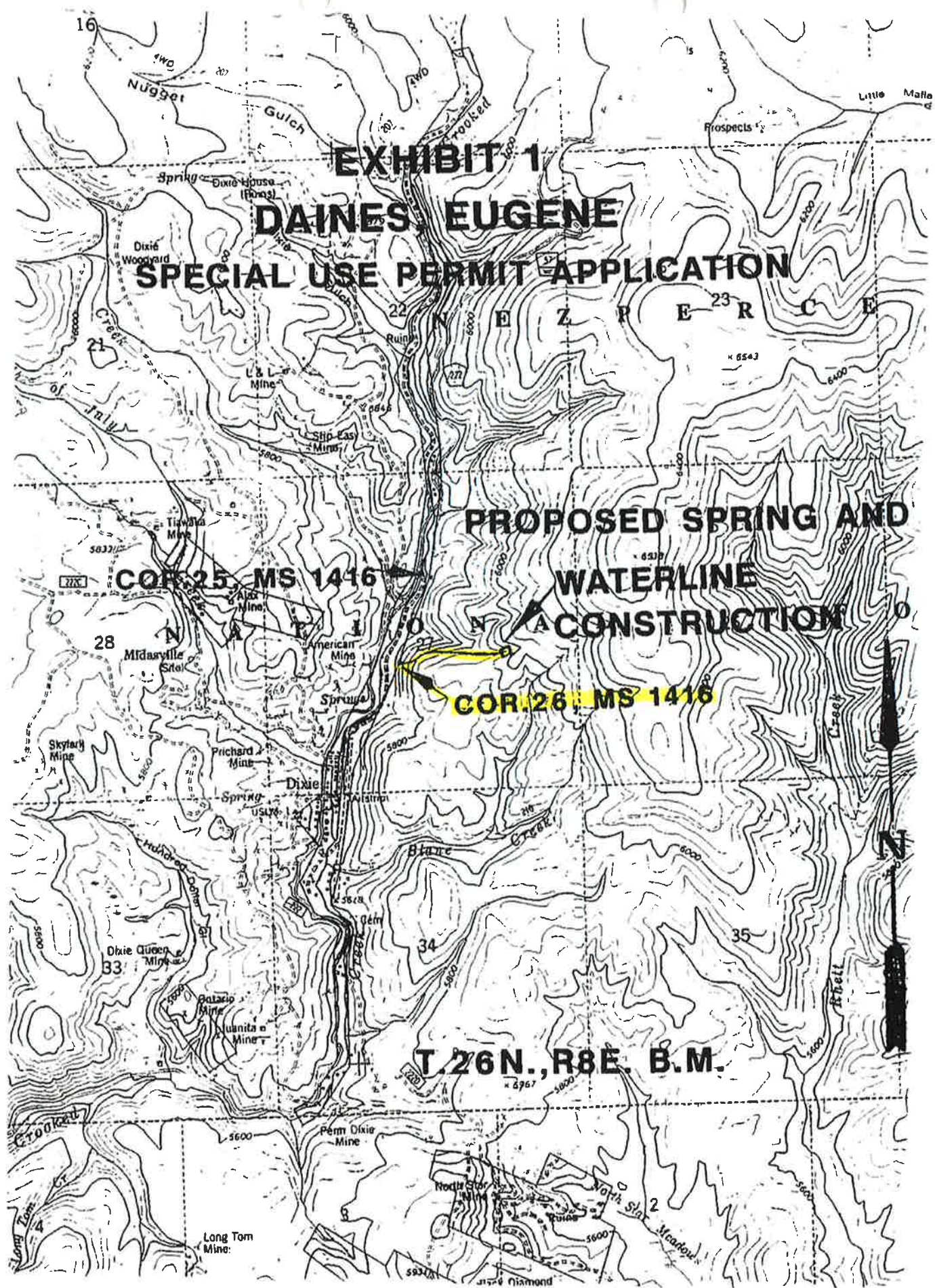
N E Z P E R C E

**PROPOSED SPRING AND
WATERLINE
CONSTRUCTION**

COR. 25 MS 1416

COR. 26 MS 1416

T. 26 N., R. 8 E. B.M.



7. 1.000
 1.000

[illegible]

26582
DAINES, EUGENE T.

MS 1416

CORNER 76

77-14369

MILLICENT DAINES

EUGENE DAINES

803 12TH ST

KAMIAH, ID 83536

Point of Diversion SE/4WNE

S27 T26N R08E

IDAHO County

Source SPRING Tributary

CROOKED CREEK

Use: DOMESTIC 01/01 to

12/31 0.04 CFS

Use: IRRIGATION 05/01 to

10/31 0.03 CFS

Total Diversion: 0.07 CFS

Date Filed: 8/24/2018

Place Of Use: DOMESTIC,

IRRIGATION

T26N R08E S27 NESW

Total Acres: 1

This application proposes the diversion and use of water tributary to a federally designated Wild & Scenic River. The decreed minimum stream flow rights for the federal Wild & Scenic Rivers are subordinate to certain categories of water use and to specific amounts of water use established after the minimum stream flow. The water use proposed in this application will benefit from the subordination provision because it is for domestic purposes and the irrigation diversion rate and acres will be applied to the subordination amounts specified in the decree for the applicable Wild & Scenic River.

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Western Region office at (208) 334-2190. 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, Western Region, 2735 W AIRPORT WAY, BOISE ID 83705-5082 together with a protest fee of \$25.00

for each application on or before 2/4/2019. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director
Published on 1/17/2019 and 1/24/2019

Jok
Ak
2/5/2019

RECEIVED

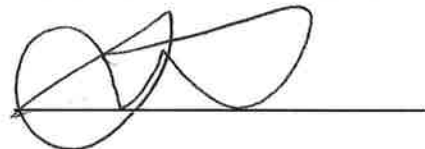
JAN 25 2019

WATER RESOURCES
WESTERN REGION

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO
County of Idaho - ss.

Sarah S. Klement, being first duly sworn, says she is the Publisher of the IDAHO COUNTY FREE PRESS, a weekly newspaper published and issued weekly at Grangeville, Idaho County, State of Idaho, and is of general circulation in said county and state, that the said legal notice, of which the one hereto attached is a true copy, was published in said paper for two weeks, being published two times, the first publication being on the 16th day of January, 2019; and the last publication on the 23rd day of January, 2019; and that the said legal notice was published in the newspaper proper and not a supplement; that said newspaper has been continuously and uninterruptedly published in said county during a period of seventy-eight consecutive weeks prior to the publication of said legal notice of advertisement.

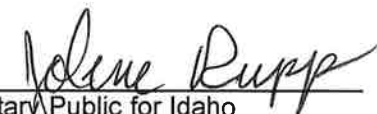


STATE OF IDAHO)

COUNTY OF IDAHO)

On this 23rd day of January in the year of 2019, before me a Notary Public personally appeared Sarah S. Klement, 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 she executed the same.




Notary Public for Idaho
Residing at Grangeville, ID
My commission expires: 1-29-19