

State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 63-34629

Priority: November 29, 2018

Maximum Diversion Rate: 0.09 CFS

This is to certify, that PACIFIC WEST COMMUNITIES INC
430 E STATE ST STE 100
EAGLE ID 83616

has applied for a permit to appropriate water from:

Source: GROUND WATER

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
IRRIGATION	03/01 to 11/15	0.09 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER NW¼SW¼ Sec. 8, Twp 03N, Rge 01W, B.M. CANYON County

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
03N 01W 8									7.0	4.0							11.0

Total Acres: 11

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **February 01, 2020**.
2. Subject to all prior water rights.
3. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor exceed a combined annual maximum diversion volume of 49.5 af at the field headgate for the place of use.
4. This right when combined with all other rights shall provide no more than 4.5 afa per acre at the field headgate for irrigation of the place of use.
5. The right holder shall make full beneficial use of all surface water available to the right holder for irrigation of lands within the authorized place of use for this right. The right holder may divert ground water under this right to irrigate land with appurtenant surface water rights when the surface water supply is not reasonably sufficient to irrigate the place of use for this water right or is not available due to drought, curtailment by priority, or the seasonal startup and shutoff or maintenance schedule for canal company deliveries. The right holder shall not divert ground water for irrigation purposes under this right if use of the surface water supply is intentionally discontinued or reduced (for example abandoned, forfeited, sold, disallowed by court decree, or leased to the Water Supply Bank), or is not deliverable due to non-payment of annual assessments, without an approved transfer pursuant to Idaho Code § 42-222 or other Department approval.

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6. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.
7. 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.
8. Right holder shall comply with the drilling permit requirements of Idaho Code § 42-235 and applicable Well Construction Rules of the Department.

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

Signed this 29th day of January, 2019.


Nick Miller

Manager, IDWR Western Region

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

63-34629

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.

01W



-  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

January 29, 2019

PACIFIC WEST COMMUNITIES INC
430 E STATE ST STE 100
EAGLE ID 83616

RE: Permit No. 63-34629

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

Nick Miller
Engineer, Manager 2

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2019, I served a true and correct copy of Permit to Appropriate Water No. 63-34629 by U.S. Mail, postage prepaid, to the following:

PACIFIC WEST COMMUNITIES INC (Current Owner)
430 E STATE ST STE 100
EAGLE ID 83616

ENGINEERED STRUCTURES INC (Representative)
3330 E LOUISE DRIVE STE 300
MERIDIAN ID 83642



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.

Kaiser, Anna

From: Kaiser, Anna
Sent: Tuesday, January 29, 2019 12:04 PM
To: 'bryce@sawtoothlaw.com'
Subject: Water Right Approval Notification
Attachments: 20190129115651.pdf

Dear Mr. Farris,

Attached are documents showing approval of Water Right No. 63-34629. This approval maybe of interest to you as you provided a letter commenting on the application.

Please contact the Department with any further questions or concerns.

Thank you,
Anna

Anna Kaiser | Administrative Assistant I
IDWR-Western Region
2735 W Airport Way, Boise ID 83705
(208).334.2190 | anna.kaiser@idwr.idaho.gov

Boise Office

1101 W. River St., Ste. 110
P.O. Box 7985
Boise, Idaho 83707
Tel. (208) 629-7447

Challis Office

1301 E. Main Ave.
P.O. Box 36
Challis, Idaho 83226
Tel. (208) 879-4488

Twin Falls Office

236 River Vista Place
Suite 301
Twin Falls, Idaho 83301
Tel. (208) 969-9585

Fax (all offices)
(208) 629-7559



SAWTOOTH LAW

OFFICES, PLLC

David P. Claiborne *

S. Bryce Farris

Patxi Larrocea-Phillips

Evan T. Roth

Daniel V. Steenson

Andrew J. Waldera **

Guy B. Zimmerman

James R. Bennetts (retired)

Katie L. Vandenberg (law clerk)

Attorneys licensed in Idaho
Also licensed in Washington
** Also licensed in Oregon

Friday, January 25, 2019

RECEIVED

JAN 28 2019

WATER RESOURCES
WESTERN REGION

Patrick Kelly
Idaho Department of Water Resources – Western Region
2735 Airport Way
Boise, ID 83705

Re: Application for Permit No. 63-34629; Comments by Nampa & Meridian
Irrigation District

Dear Mr. Kelly:

This firm represents Nampa & Meridian Irrigation District (hereinafter “NMID”) and these comments are being submitted on behalf of NMID. First of all, thank you for reaching out to NMID regarding the above-referenced Application and requesting NMID’s comments. NMID has an interest in new water right applications within its boundaries and it appreciates the Department reaching out to solicit comments when processing new applications within NMID’s boundaries.

As to the above-referenced Application, the property referenced is located within NMID’s boundaries and is currently delivered irrigation water via NMID’s Kennedy Lateral. NMID appreciates the fact that your letter dated January 16, 2019 indicates that “[s]upplemental irrigation conditions will be placed on the permit approval.” Given the fact that the property is already supplied irrigation water by NMID, and the use of the primary surface water delivered/supplied by NMID must continue, NMID agrees that such conditions are necessary. In fact, NMID would request that any new applications for irrigation use within NMID’s would include these conditions as standard practice unless NMID specifically consents to the removal of such conditions.

As to the conditions, NMID realizes that the Department has standard conditions relating to such supplemental use, and NMID has been utilizing variations of these standard conditions to resolve protests to new applications for supplemental use within its boundaries. These

conditions, and which NMID would now request to be placed on any approved Permit for Application for Permit No. 63-34629, are as follows:

- a. The primary surface irrigation water for the place of use authorized under this right is delivered by Nampa & Meridian Irrigation District. The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.
- b. If the surface water right(s) appurtenant to the place of use is abandoned, forfeited, sold, transferred, leased or used on any other place of use, this right to divert ground water shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
- c. This right when combined with all other rights shall provide no more than one (1) inch, 0.02 cfs, per acre or more than 4.5 afa per acre at the field headgate for irrigation of the place of use.

In addition, while not necessarily conditions to the permit, NMID also would request agreement from the applicant to the following as they relate to connections to NMID's pump stations or delivery facilities:

Applicant further agrees to the following with respect to this right:

- a. The right holder/applicant shall provide notice to Nampa & Meridian Irrigation District prior to the right holder's commencement of any construction or installation of the diversion works for this right.
- b. Nampa & Meridian Irrigation District shall review and approve any connection and design to the extent the right holder/applicant intends to connect to the pump station and/or irrigation facilities of Nampa & Meridian Irrigation District.

Again, thank you for seeking NMID's comments. Please contact me should you have any questions.

Yours very truly,


S. Bryce Farris

Cc: NMID



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

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

BRAD LITTLE
Governor

GARY SPACKMAN
Director

January 16, 2019

COPY

NAMPA MERIDIAN IRRIGATION DISTRICT
5525 E GREENHURST RD
NAMPA ID 83686

Re: Application for Permit No. 63-34629

Dear Interested Party:

The above referenced application may be of interest to you. I have enclosed a copy of the application for your convenience. This information is also available on our website www.idwr.idaho.gov.

Supplemental irrigation conditions will be placed on the permit approval. Please provide comment within the next thirty (30) days. If no comment is received, it will be assumed that you have no further interest in the application.

If you have any questions regarding the application, please contact this office at 208-334-2190.

Sincerely,

Patrick Kelly
Western Regional Office

Enclosures Application for Permit 63-34629

JAN 04 2019

WATER RESOURCES
WESTERN REGION

29512 1847624

1 IDWR - WESTERN REGION

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

County of Canyon)

Sharon Jessen
of Nampa, Canyon County, Idaho, being
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 City of Nampa, in the County of Canyon, State of Idaho; that the said newspaper is in general circulation in the said County of Canyon, and in the vicinity of Nampa and Caldwell, and has been uninterruptedly published in said County 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.

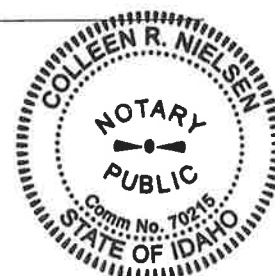
That said notice was published the following:
12/20/2018 12/27/2018*Sharon Jessen*

STATE OF IDAHO)

County of Canyon)

On this 28th day of December in the year of 2018 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.

Colleen R. Nielsen
Notary Public for Idaho
Residing at Canyon County
My Commission expires 06/28/2023



LEGAL NOTICE

The following application has been filed to appropriate the public waters of the State of Idaho:

63-34629
PACIFIC WEST
COMMUNITIES INC
430 E STATE ST STE 100
EAGLE, ID 83616
Point of Diversion NWSW
S8 T03N R01W CANYON
County Source GROUND
WATER
Use: IRRIGATION 03/01 to
11/15 0.09 CFS
Total Diversion: 0.09 CFS
Date Filed: 10/25/2018
Place Of Use: IRRIGATION
T03N R01W S8 NESW
NWSW
Total Acres: 11
Water bearing zone to be
appropriated is from 20 to
80 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. 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 1/7/2019. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN,
Director

December 20, 27, 2018
1847624

John H.
1/15/2019