

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 96-09709

Priority: July 23, 2018

Maximum Diversion Rate: 0.24 CFS

This is to certify, that DARRELL MC KENNA
PO BOX 21
LACLEDE ID 83841

has applied for a permit to appropriate water from:

Source: PEND OREILLE RIVER**Tributary:** COLUMBIA RIVER

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	04/01 to 10/31	0.24 CFS

LOCATION OF POINT(S) OF DIVERSION:

PEND OREILLE RIVER L3 (NE1/4SE1/4) Sec. 20, Twp 56N, Rge 03W, B.M. BONNER 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	
56N 03W 20													11.0	1.0			12.0
													L 3				

Total Acres: 12

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **September 01, 2023**.
2. Subject to all prior water rights.
3. 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.
4. A fish screen of 1/4 inch or smaller mesh shall be installed and maintained at the point of diversion.
5. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.0 afa per acre at the field headgate for irrigation of the place of use.
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. Water shall not be diverted under this right when flows in the Pend Oreille River are below minimum flow amounts as defined by Right 96-8730. The right holder shall be responsible for monitoring the daily flow of the Pend Oreille River using real-time data and shall cease diverting water when flows in the Pend Oreille 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 Newport WA gauging station, No. 12395500, may be used for purposes of determining the daily flow amounts.

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8. This right does not grant any right-of-way or easement across the land of another.

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

Signed this 11th day of September, 2018.



DOUGLAS JONES, Northern Regional Manager

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

96-9709

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.

03W



0 0.04 0.08 0.16 Miles

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





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

C.L. "Butch" Otter
Governor

Gary Spackman
Director

September 12, 2018

DARRELL MC KENNA
PO BOX 21
LACLEDE ID 83841

RE: Permit No. 96-9709

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.

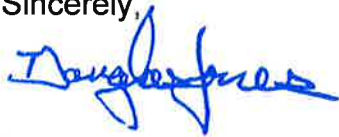
The final step in the water right process is issuance of a water right license. To receive a water right license, you must first commence the excavation or construction of your diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is complete. 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 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,



Douglas Jones, P.E.
Northern Regional Manager

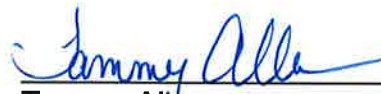
Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2018, I served a true and correct copy of Permit to Appropriate Water No. 96-9709 by U.S. Mail, postage prepaid, to the following:

DARRELL MC KENNA (Current Owner)
PO BOX 21
LACLEDE ID 83841

JAMES A SEWELL & ASSOC (Representative)
ATTN MARTIN TAYLOR
1319 N DIVISION AVE
SANDPOINT ID 83864



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

DATE: August 29, 2018
TO: Tammy Alleman
FROM: Emily Skoro
RE: IDWR Application for Permit No. 96-9709

The Idaho Water Resource Board (Board), would like to submit the following comments for consideration when processing the Application for Permit No. 96-9709. The applicant is requesting a water right which includes an irrigation use (0.24 cfs). The water supply source is the Pend Oreille River which is a tributary of the Columbia River.

The applicant should be aware that the Board holds a minimum stream flow (MSF) water right 96-8730 on the Pend Oreille River downstream of the applicant's POD. Any water rights with a priority date junior to the Board's water right should be administered in priority and may be curtailed if the MSF is not being met. USGS Gage 12395500 (Pend Oreille River at Newport WA) is located along the Board's MSF water right. Historic records show that this reach of the Pend Oreille River are generally below the MSF most of the year except parts of May and June during minimum flow years. Therefore, flows measured at the referenced gage should be used to verify current Pend Oreille River stream flows, and diversions should be limited to times when the Board's MSF water right is met. Please see the attached Proof Report for the diversion rates authorized under the Board's MSF water right 96-8730.

IDAHO DEPARTMENT OF WATER RESOURCES

8/17/2018

Proof Report

Water Right 96-8730

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	STATE OF IDAHO IDAHO WATER RESOURCE BOARD 322 E FRONT ST PO BOX 83720 BOISE, ID 83720-0098 (208) 287-4800

Priority Date: 6/15/1992**Basis:** License**Status:** Active

<u>Source</u>	<u>Tributary</u>
PEND OREILLE RIVER	COLUMBIA RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
MINIMUM STREAM FLOW	1/01	12/31	10,655.000 CFS	
	<u>Total Diversion</u>		10,655.000 CFS	

Source and Point(s) of Diversion

PEND OREILLE RIVER	SWSW	Sec. 13, Twp 56N, Rge 06W,	BONNER County(E)
PEND OREILLE RIVER	NWNW	Sec. 24, Twp 56N, Rge 06W,	BONNER County(E)
PEND OREILLE RIVER	NWNW	Sec. 29, Twp 56N, Rge 05W,	BONNER County(B)
PEND OREILLE RIVER	NWSW	Sec. 13, Twp 56N, Rge 06W,	BONNER County(E)
PEND OREILLE RIVER	SWNW	Sec. 24, Twp 56N, Rge 06W,	BONNER County(E)
PEND OREILLE RIVER	NWSW	Sec. 24, Twp 56N, Rge 06W,	BONNER County(E)

Place Of Use

MINIMUM STREAM FLOW

Conditions of Approval:

1. 027 Use of water under this right shall be non-consumptive.
2. Establishment of a minimum flow on the Pend Oreille River in the requested reach shall serve to protect water released from Albeni Falls Dam as it flows through the requested reach at rates up to the established flow, but shall not directly or indirectly cause any change in the operation of Albeni Falls Dam.

Upon the future finding and order of the Director that gaging stations are required to maintain the approved minimum stream flow, the right holder shall permanently install and maintain gaging stations as specified by the department.

The Director retains jurisdiction, as described below, to review and amend any and all parameters of this right. The Board, upon receiving a request, or upon its own initiative, may petition the Director for an amendment to the right. The petition must set forth any significant change in circumstances and evidence of the public interest supporting the proposed amendment. The Director will notify the general public and specific persons or known interested parties of the proposed change, and conduct a hearing for the purpose of determining whether the right should be amended in the public interest. The burden of proof at the hearing shall be upon the persons or parties seeking the amendment to establish that the amendment of the right would be in the public interest.

IDAHO DEPARTMENT OF WATER RESOURCES
Proof Report

8/17/2018

This minimum stream flow begins at Albeni Falls Dam in the NWNW, S29, T56N, R5W and ends 2.4 miles downstream at the state line on the west side of Sections 13 and 24, T56N, R6W.

This minimum stream flow is for the protection of fish and wildlife habitat, aquatic life and recreational values.

Comments:

- | | | | |
|----|---|-----------|------------------------------|
| 1. | CZIMMERM | 2/18/1998 | DIVERSION DESCRIPTION |
| | From Albeni Falls Dam to the Idaho/Washington state line. | | |
| 2. | VAULT | 9/8/1998 | Proof of Beneficial Use Rcvd |
| | Proof of Beneficial Use Rcvd | | |
| 3. | segbert | 10/2/2008 | POD |
| | Updated Shape | | |
| 4. | segbert | 10/2/2008 | POD |
| | Deleted Shape | | |
| 5. | mciscell | 6/10/2013 | POD |
| | Bulk Generate Shape From PLS | | |

Dates and Other Information

Licensed Date: 2/19/1999

Mitigation Plan: False

Combined Use Limits

N/A

Verification Log

SubCase:

N/A

Water Supply Bank:

N/A

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO)
) ss.
County of Bonner)

Ashley Kinzer, being first duly sworn on oath, deposes and states:

1. I am a citizen of the United States of America, over the age of 18 years, a resident of Bonner County, Idaho, and am not a party to the proceedings referred to in the attached Legal Notice.
My business address is P.O. Box 159, Sandpoint, Idaho.

2. I am the Legal Clerk of the Bonner County Daily Bee, a newspaper of general publication in Bonner County, Idaho;

3. Said newspaper has been continuously and uninterruptedly published in Bonner County, Idaho during a period of 12 months prior to the first publication of said Notice, and thereafter.

4. The attached Notice was published in the regular and entire issue of the Bonner County Daily Bee for a period of 2 consecutive weeks, commencing on the 15 day of August, 2018, and ending on the 22 day of August, 2018.

Ashley Kinzer

State of Idaho, county of Bonner ss.

On this 22 day of August, in the year of 2018, before me, Katrina George, Notary Public, personally appeared Ashley Kinzer, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (or they) executed the same.

Katrina George
Notary Public

Residing at: Kootenai County

Comm. Exp.: MY COMMISSION EXPIRES 8/29/23



Water Permit Application

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

96-9709

DARRELL MCKENNA

PO BOX 21

LACLEDE, ID 83841

Point of Diversion L3(NESE)

S20 T56N R03W

BONNER County

Source PEND OREILLE

RIVER

Tributary COLUMBIA RIVER

Use: IRRIGATION

04/01 to 10/31 0.24 CFS

Total Diversion: 0.24 CFS

Date Filed: 7/23/2018

Place Of Use: IRRIGATION

T56N R03W S20 L3 (NESE)

NWSE

Total Acres: 12

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Northern Region office at (208) 762-2800. 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 9/4/2018. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

SNP LEGAL 6127

AD#217237

AUGUST 15, 22, 2018