

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 65-23245

PRIORITY: November 20, 2007

Maximum Diversion Rate: 0.51 CFS

Maximum Diversion Volume: 83.2 AF

It is hereby certified that:

SECOND FORK LLC PO BOX 8126 BOISE ID 83707-2126

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated November 20, 2007, and has submitted Proof of Beneficial Use on May 09, 2018. An examination confirms water is diverted from:

SOURCE:
GROUND WATER

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
IRRIGATION	03/15 to 10/31	0.46 CFS	80.5 AF
STOCKWATER	01/01 to 12/31	0.05 CFS	2.7 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER NW¼SE¼ Sec. 35, Twp 11N, Rge 01E, B.M. GEM County

PLACE OF USE: STOCKWATER

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11N	01E	35														X	X		

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	
11N	01E	35														16.0	7.0		23.0

Total Acres: 23

CONDITIONS OF APPROVAL

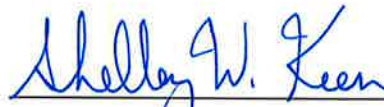
1. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.
2. After specific notification by the Department, the right holder shall install a suitable measuring device or shall 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.

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3. When ordered by the Director, the right holder shall provide mitigation acceptable to the Director to offset depletion of lower Snake River flows needed for migrating anadromous fish. The amount of water required for mitigation, which is to be released into the Snake River or a tributary for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this right. Any order of the Director issued in accordance with this paragraph shall be in conformance with applicable rules allowing the right holder due process as the need for mitigation and the amount of mitigation are determined.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed this 30th day of June, 2018.



SHELLEY W. KEEN
Water Allocation Bureau Chief

State of Idaho
Department of Water Resources
Attachment to Water Right License
65-23245

This map depicts the IRRIGATION and STOCKWATER 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.

01E



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

0 0.05 0.1 0.2 Miles





State of Idaho

DEPARTMENT OF WATER RESOURCES

322 E FRONT ST STE 648 PO BOX 83720 • BOISE, ID 83720-0098

Phone: (208)287-4800 • Fax: (208)287-6700 • Website: www.idwr.idaho.gov

C.L. "Butch" Otter
Governor

Gary Spackman
Director

July 03, 2018

SECOND FORK LLC
PO BOX 8126
BOISE ID 83707-2126

RE: License No. 65-23245

Issuance of License

Dear Water Right Holder(s):

The Department of Water Resources ("Department") has issued the enclosed Water Right License confirming that a water right has been established in accordance with your permit. Please be sure to thoroughly review all the conditions of approval listed on your license. The conditions may include ongoing requirements, such as maintenance of a measuring device or implementation of mitigation, as well as information about how your water use may be administered, such as regulation by a watermaster in a water district.

The license is a PRELIMINARY ORDER issued by the Department 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.

Also, please note that water right owners are required to report any change of water right 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. Water right forms are available from any office of the Department or on the Department's website at idwr.idaho.gov

If you have any questions concerning the enclosed information, please contact me at (208) 287-4951.

Sincerely,

Pamela S. Skaggs
Water Rights Supervisor

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on July 05, 2018, I served a true and correct copy of Water Right License No. 65-23245 by U.S. Mail, postage prepaid, to the following:

SECOND FORK LLC (Current Owner)
PO BOX 8126
BOISE ID 83707-2126

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



Darla Block
Technical Records Specialist I

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: Water Right File 65-23245

FROM: Daniel Nelson – Analyst 3

DATE: June 27, 2018

SUBJECT: Licensing Review of Water Right 65-23245

This field exam for this right was performed by Certified Field Examiner Scott King of SPF Water Engineering. Mr. King recommended that this permit be licensed for 0.46 cfs and 80.5 af for the irrigation of 23 acres and 0.05 cfs and 2.7 af for stockwater for a total of 0.51 cfs and 83.2 af. Mr. King suggested that an amendment was needed to correct the acres in each 40 acre tract, but an amendment shouldn't be needed for this adjustment. A review the information supplied by Mr. King is reasonable to license this permit for the rates, volumes and acres recommended by Mr. King.

Overlap:

The portion of place of use for this permit in the NWSE of Section 35 appeared to be within the borders of the Squaw Creek Irrigation District borders. The application for permit and the permit were confusing, because it appeared as though the water user was diverting water through a pipeline across Squaw Creek to this property.

Mr. King confirmed that there is a pipeline across Squaw Creek that does supply water to the place of use for this permit. However, when questioned about the number of shares that are available to the place of use described in this permit, it was discovered that none of the place of use is authorized to be irrigated with water from Squaw Creek Irrigation District. Please see the email from Mr. King dated June 26, 2018. There are no wastewater rights on the place of use, so any water diverted to the property should be considered Squaw Creek Irrigation District water. Therefore, any use of water from Squaw Creek Irrigation District on the place of use would be considered an illegal use of water. The water user has been informed by Mr. King that the well and this permit is the only legal water source and water right that legally authorizes the irrigation of the place of use.

Whereas there are no other legal water rights authorized for the place of use, this permit should be licensed as a primary water right. The water user will need to attain Squaw Creek Irrigation District shares or file a new application for permit to legally use any other water source on this property.

Conditions:

Conditions 1 (26A), 2 (046) and 6 (X02) should be removed at licensing as is standard. Conditions 3 (01M) should be carried forward to licensing. Condition 7 (121) should be changed to condition 103 as is standard.

Condition 4 stated the following:

Use of water under this permit is supplemental to the extent it is determined by Squaw Creek Irrigation District that the above described place of use is eligible for storage water from Sage Hen Reservoir.

This condition should not be carried forward to licensing, because water from Squaw Creek Irrigation District cannot be legally be diverted onto the property associated with this permit.

Nelson, Dan

From: Scott King <SKing@spfwater.com>
Sent: Tuesday, June 26, 2018 11:27 AM
To: Nelson, Dan
Cc: Bill Mulder; Andrew J. Waldera (andy@sawtoothlaw.com)
Subject: RE: 65-23245 Second Fork Ranch

Dan,

Thanks. And I talked with the owner about using well water only on this land. Your message reinforces it.
Scott

From: Nelson, Dan <Dan.Nelson@idwr.idaho.gov>
Sent: Tuesday, June 26, 2018 10:51 AM
To: Scott King <SKing@spfwater.com>
Cc: Bill Mulder <wjmulder@treetopranches.com>; Andrew J. Waldera (andy@sawtoothlaw.com) <andy@sawtoothlaw.com>
Subject: RE: 65-23245 Second Fork Ranch

Scott,

Thank you for this information. This clearly shows they are not authorized to use any Squaw Creek Irrigation District water on the field associated with permit 65-23245. There is also no authorization for wastewater use on this place of use.

Therefore, I would make sure your client is aware that they cannot use irrigation district water or wastewater from the pipeline across Squaw Creek on this field. You might also inform them that if they continue to use any water other than the well water on this field, they could be subject to the enforcement procedures found in Idaho §42-1701B and/or any of the Irrigation District's procedures for insuring that none of their water is used on lands not authorized by their water rights.

I will move forward with licensing this permit as a primary water right, which allow them to irrigate this field exclusively with well water. I appreciate the information and will do my best to get this permit licensed as soon as possible.

Respectfully,

Daniel Nelson
Water Right Analyst 3
Idaho Department of Water Resources
Telephone (208) 287-4856
Fax (208) 287-6700 (attn: Dan Nelson)

From: Scott King [<mailto:SKing@spfwater.com>]
Sent: Tuesday, June 26, 2018 8:46 AM
To: Nelson, Dan <Dan.Nelson@idwr.idaho.gov>
Cc: Bill Mulder <wjmulder@treetopranches.com>; Andrew J. Waldera (andy@sawtoothlaw.com) <andy@sawtoothlaw.com>
Subject: 65-23245 Second Fork Ranch

Dan,

Good morning. Sheryl Stelling with Squaw Creek Irrigation District provided the attached marked up maps and message below explaining that her records show there are no irrigation district entitlements to the lands irrigated under permit 65-23245.

I hope this is sufficient for licensing this permit. Please let me know if you have any questions.

Thanks,
Scott

From: Bill Mulder <wjmulder@treetopbranches.com>
Sent: Thursday, June 21, 2018 2:17 PM
To: Scott King <SKing@spfwater.com>
Subject: FW: 2 of 2

Fwd #2

From: sstelling idahorcd.org [<mailto:ssstelling@idahorcd.org>]
Sent: Thursday, June 21, 2018 11:12 AM
To: Bill Mulder <wjmulder@treetopbranches.com>
Subject: 2 of 2

Bill,

As we talked about on the phone you can see the blue line on each document and see what I was trying to tell you. We show there are no water rights in the quad marked out with black lines.

Let me know if we can assist with any other questions.

Thank you

Sheryl Stelling

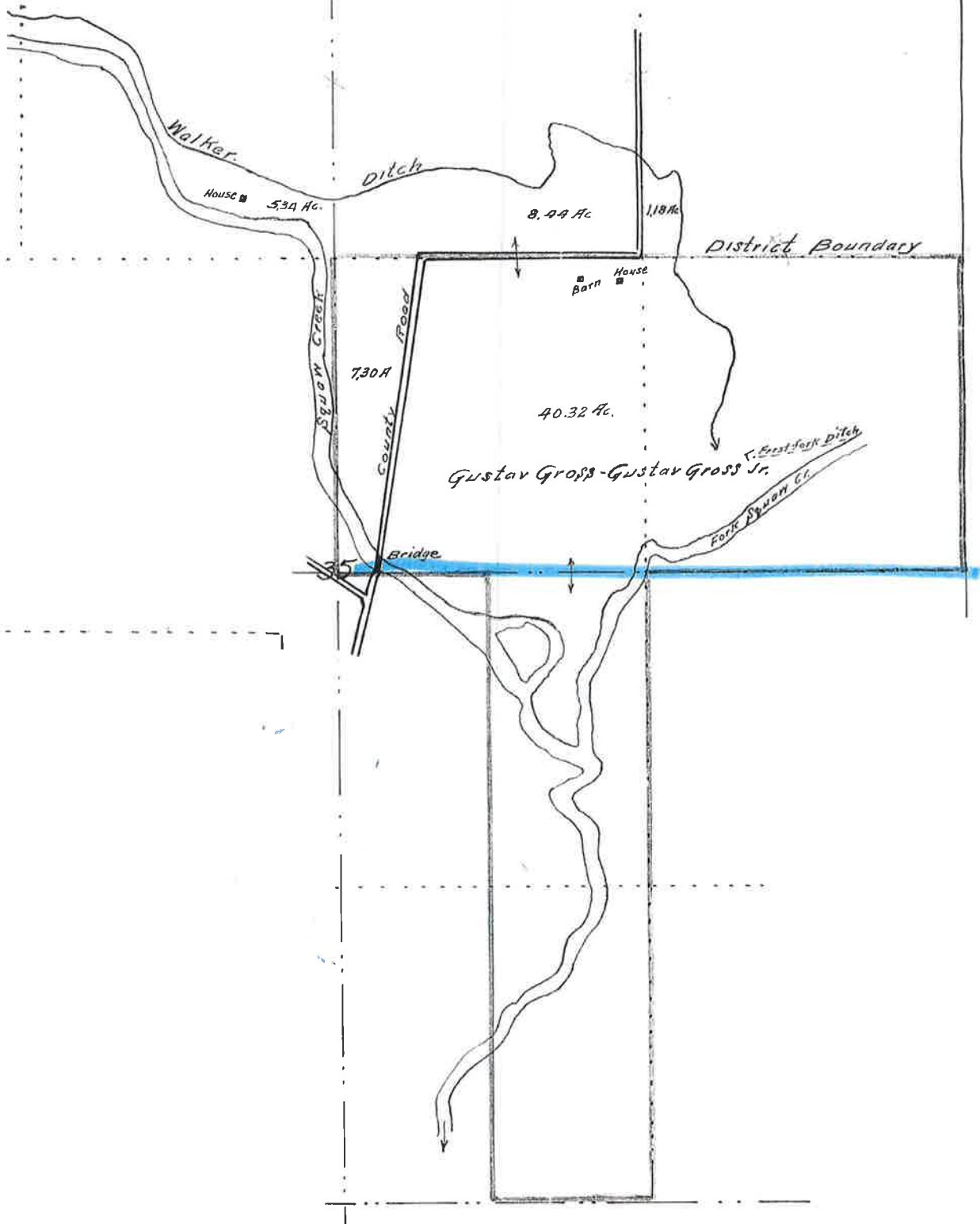
Squaw Creek Irrigation District

Emmett, ID 83617

208.571.8836

TP 11 N R 1 E

24 25
35 36





State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

June 14, 2018

SPF WATER ENGINEERING
ATTN SCOTT KING
300 E MALLAD DRIVE SUITE 300
BOISE ID 83706

RE: Field exam for water right permit 65-23245.

Dear Mr. King:

Our office has received your certified field exam for water right 65-22882. There is an issue that needs to be addressed prior to moving forward with the licensing process.

Your field report supplied excellent information concerning the how the system operates and rates and volumes needed to supply the water right. The field report also states that the property is overlapped by Squaw Creek Irrigation District water rights. However, you neglected to mention the number of shares and how the water is delivered. Per email and telephone conversations with you, you have described how the Squaw Creek Irrigation District water is delivered to the property, but were unable to determine how many shares were available to the property.

I wish to express the reason for the need for the shares allowed to be used on this property. According to the place of use decreed in the Snake River Basin Adjudication, only ½ of the field described in this permit is within the borders of the Squaw Creek Irrigation District. There was also a bit of ambiguity in the application for permit specifying how much water is available. This is permit was issued as a supplemental use to the Squaw Creek Irrigation District water rights, but if Squaw Creek Irrigation District water cannot be used on the lands described in this place of use, then we will need to address that issue. Additionally, Idaho Administration Procedures Act (IDAPA) Beneficial Use Rule 37.03.02.035.01.d states the following:

Any interconnection of the water use being examined with other water rights or with other conveyance systems shall be described on the field report. Interconnection includes, but is not limited to, sharing the same point of diversion, distribution system, place of use, or beneficial use. The examination report shall also include an evaluation of how the water use being examined is distinct from prior existing water rights and provides an alternate source of water or increment of beneficial use not authorized by prior existing water rights. (7-1-93)

As you can see from the above IDAPA Beneficial Use rule, it is important that Department have a clear understanding not just of the water be diverted, but all of the water right used on the property. Once this issue has been clarified, we can move forward with the review of the field exam, and possible licensing of the water right permit. You must also be aware that IDAPA Beneficial Use Rule 37.03.02.02.c states the following:

c. If the Director determines that a field report prepared by a certified water right examiner is acceptable but that additional information is needed to clarify the field report, he will notify the examiner in writing of the information required. If the additional information is not submitted within thirty (30) days or within the time specified in the written notice, the priority date of the permit will be advanced one (1) day for each day the information submittal is late. Failure to submit the required information within one (1) year of the date of the department's request is cause for the Director to take action to cancel the permit.

To avoid advancing the priority date of the permit, you will need to supply a flow measurement under normal operating conditions for this system, or you will need to provide information showing why this system needs to be operated at such a high diversion rate. The information requested above will need to be supplied by July 16, 2018 to avoid advancing the priority date of the water right. If you have any questions, please don't hesitate to contact me.

Respectfully,



Daniel Nelson

Water Right Analyst 3

Idaho Department of Water Resources

Telephone (208) 287-4856

Fax (208) 287-6700 (attn: Dan Nelson)

Nelson, Dan

From: Nelson, Dan
Sent: Monday, May 21, 2018 9:17 AM
To: 'Scott King'
Subject: Possible Contacts for water right 65-23245

Hello Scott,

I reviewed all of the files for the Smith permit 65-23245 to see if I missed anything. I didn't find anything that explains how the Squaw Creek Irrigation District water is delivered to the Smith property, or where exactly it is used. I am assuming that is only used on the east side of the Creek, since the place of use for the Squaw Creek Irrigation District rights cuts the field associated with permit 65-23245 in half. Unfortunately, I need some type of verification of that.

I looked completely through the Squaw Creek Irrigation District's adjudication files, and I did not find any telephone numbers for you to call to find out what is going on. Squaw Creek is in a water district, and the watermaster is Eric Herr – Telephone number (208)584-3515. The watermaster may be able to give you a contact for the District, since it is the major water user on the Creek. I hope this helps.

I will put the file on hold for a couple of weeks to give you time to find out what is going on. If I don't hear from you, I will send out a more formal information request. I will check a couple of more sources on our end, and if I find out anything, I will let you know.

Thank you for the help. I performed a formal review of the rest of the field report, and this appears to be the only thing needed to move forward with licensing.

I hope this information helps.

Daniel Nelson
Water Right Analyst 3
Idaho Department of Water Resources
Telephone (208) 287-4856
Fax (208) 287-6700 (attn: Dan Nelson)