

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 37-22594

PRIORITY: February 02, 2011

Maximum Diversion Rate: 1.45 CFS

Maximum Diversion Volume: 4.8 AF

It is hereby certified that:

COTTONWOOD CREEK HOMEOWNERS ASSN C/O LAURIE SANDERS
56 MONTAGUE RD WESTHAMPTON MA 01027

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated February 02, 2011, and has submitted Proof of Beneficial Use on October 01, 2012. An examination confirms water is diverted from:

SOURCE:
BIG WOOD RIVER

TRIBUTARY:
SNAKE RIVER

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>
DIVERSION TO STORAGE	04/15 to 10/31	1.45 CFS	
RECREATION STORAGE	01/01 to 12/31		4.8 AF
AESTHETIC STORAGE	01/01 to 12/31		4.8 AF
WILDLIFE STORAGE	01/01 to 12/31		4.8 AF

LOCATION OF POINT(S) OF DIVERSION:

BIG WOOD RIVER SW¼NW¼ Sec. 20, Twp 03N, Rge 18E, B.M. BLAINE County

PLACE OF USE: AESTHETIC, RECREATION and WILDLIFE STORAGE

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	18E	29			X											X			

CONDITIONS OF APPROVAL

1. Rights 37-577CG, 37-657E and 37-22594 when combined shall not exceed a total diversion rate of 1.45 cfs.
2. The eight lined ponds established by the storage of water under this right shall not exceed a total capacity of 4.8 acre-feet or a total surface area of 1.5 acres.
3. Rights 37-577CG and 37-657E authorize the storage of water to replace evaporation losses from the ponds authorized by this right.
4. Use of water under this right shall be non-consumptive.
5. If any of the ponds are ever emptied, they shall not be refilled without the implementation of a mitigation plan approved by the Department.

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6. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 37.
7. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversions.
8. This right shall be junior and subordinate to future water rights authorizing the diversion and use of water from the Big Wood River and its tributaries, including ground water, for consumptive uses, except that this right shall not be subordinate to future water rights for similar wildlife, recreation and/or aesthetic uses.
9. Noncompliance with any condition of this right, including the requirement for mitigation, is cause for the director to issue a notice of violation, cancel or revoke the right, or, if the right is included in a water district, request that the watermaster curtail diversion and use of water.
10. This right is for the use of trust water, and it is subject to review 20 years after its initial approval (October 18, 2011) to re-evaluate the availability of trust water for the authorized use and to re-evaluate the public interest criteria for reallocating trust water.

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 19th day of April, 2018.

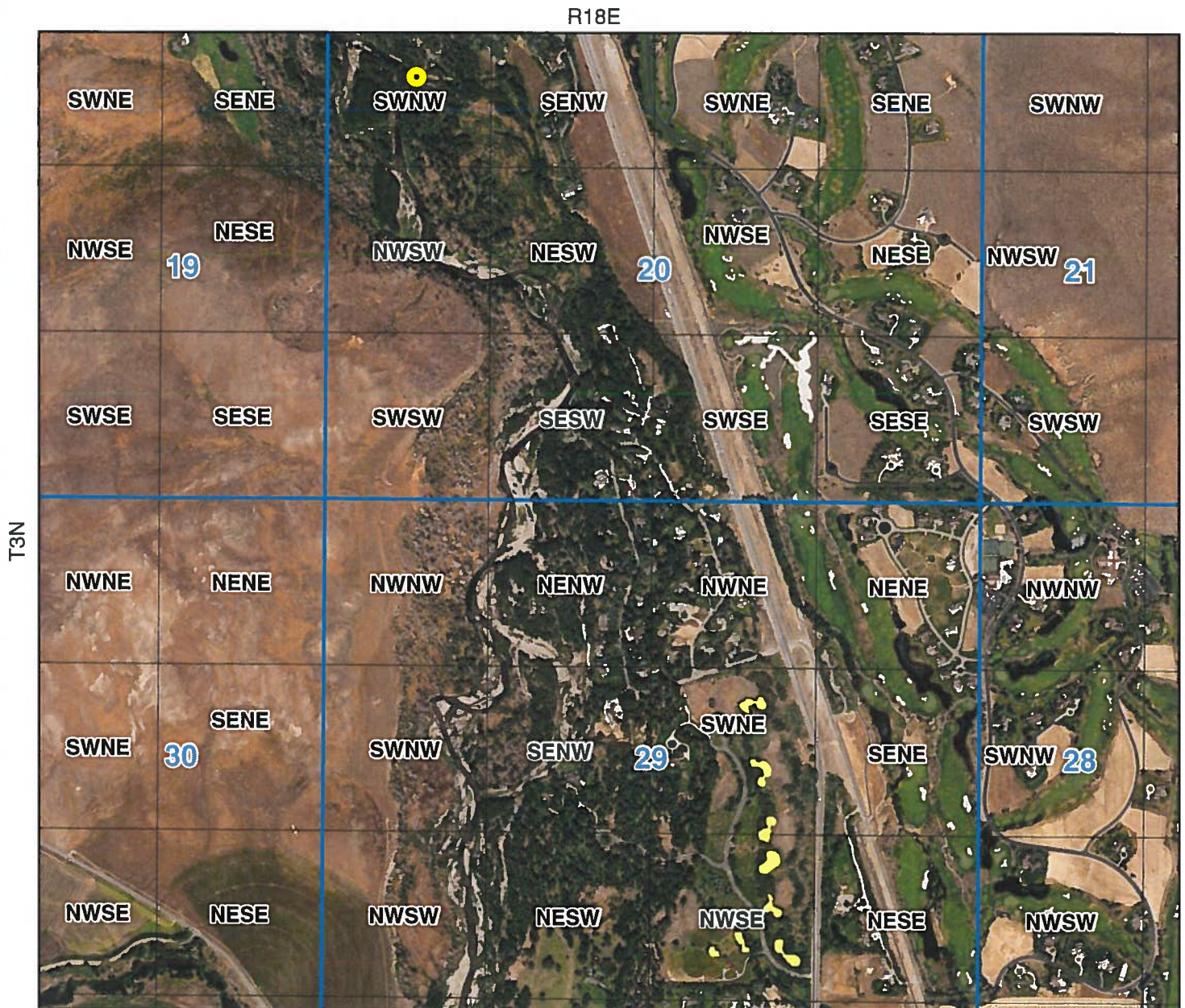


SHELLEY W. KEEN
Water Rights Section Manager

State of Idaho
Department of Water Resources
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37-22594

This map depicts the RECREATION STORAGE, AESTHETIC STORAGE, AND WILDLIFE STORAGE place of use boundary and point of diversion 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
-  Quarter Quarters
-  PLS Sections



0 0.25 0.5 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

April 23, 2018

COTTONWOOD CREEK HOMEOWNERS ASSN
C/O LAURIE SANDERS
56 MONTAGUE RD
WESTHAMPTON MA 01027

RE: License No. 37-22594

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,

A handwritten signature in blue ink that reads "Pamela S. Skaggs". The signature is written in a cursive, flowing style.

Pamela S Skaggs
Water Rights Supervisor

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2018, I served a true and correct copy of **Water Right License No. 37-22594** by U.S. Mail, postage prepaid, to the following:

COTTONWOOD CREEK HOMEOWNERS ASSN (Current Owner)
C/O LAURIE SANDERS
56 MONTAGUE RD
WESTHAMPTON MA 01027

BROCKWAY ENGINEERING PLLC (Representative)
CHARLES E BROCKWAY
2016 N WASHINGTON ST STE 4
TWIN FALLS ID 83301

JAMES P SPECK (Attorney)
SPECK & AANESTAD
PO BOX 987
KETCHUM ID 83340

WATER DISTRICT #37
KEVIN D LAKEY (Watermaster)
107 W 1ST
SHOSHONE ID 83352



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 Rights File 37-22594
FROM: Sandra Thiel
DATE: April 23, 2018
SUBJECT: Water Right License

On October 1, 2012, Charles E Brockway submitted a Beneficial Use Field Report for permit 37-22594. According to the field report, the Cottonwood Creek Home Owners Association diverts water from the Big Wood River, through a headgate to the Hiawatha Canal. The canal delivers water approximately 1.5 miles from the headgate to a ditch and from there to the first of 8 ponds. Water flows to the successive ponds through a series of ditches.

According to *The Cottonwood Creek HOA – Permit 37-22594 First Fill Analysis Summary* dated February 7, 2001, the ponds are for irrigation management. Multiple pumps divert from the ponds for pressurized irrigation.

Mr. Brockway measured the depth of the ponds and found a total storage volume of 5.0 acre-feet for the entire system. A condition on the permit estimated there would be approximately 12 ponds in the system. Based upon the field exam, and a review of aerial photography, the license will be limited to eight ponds.

Transfer 76280 changed the point of diversion, place of use and nature of use for a portion of rights 37-577CG and 37-657E. These rights provide the annual diversion volume of 2.5 af intended for replacement of losses caused by evaporation from the ponds. According to the field exam the ponds are lined and no seepage values were reported. Additionally, these two rights provided mitigation for the initial fill of the ponds by curtailing three acres in 2012. Right 37-22594 shall be non-consumptive as required by condition 027 on the permit.

A historical review of the imagery reveals that at least six of the ponds existed in 1992.

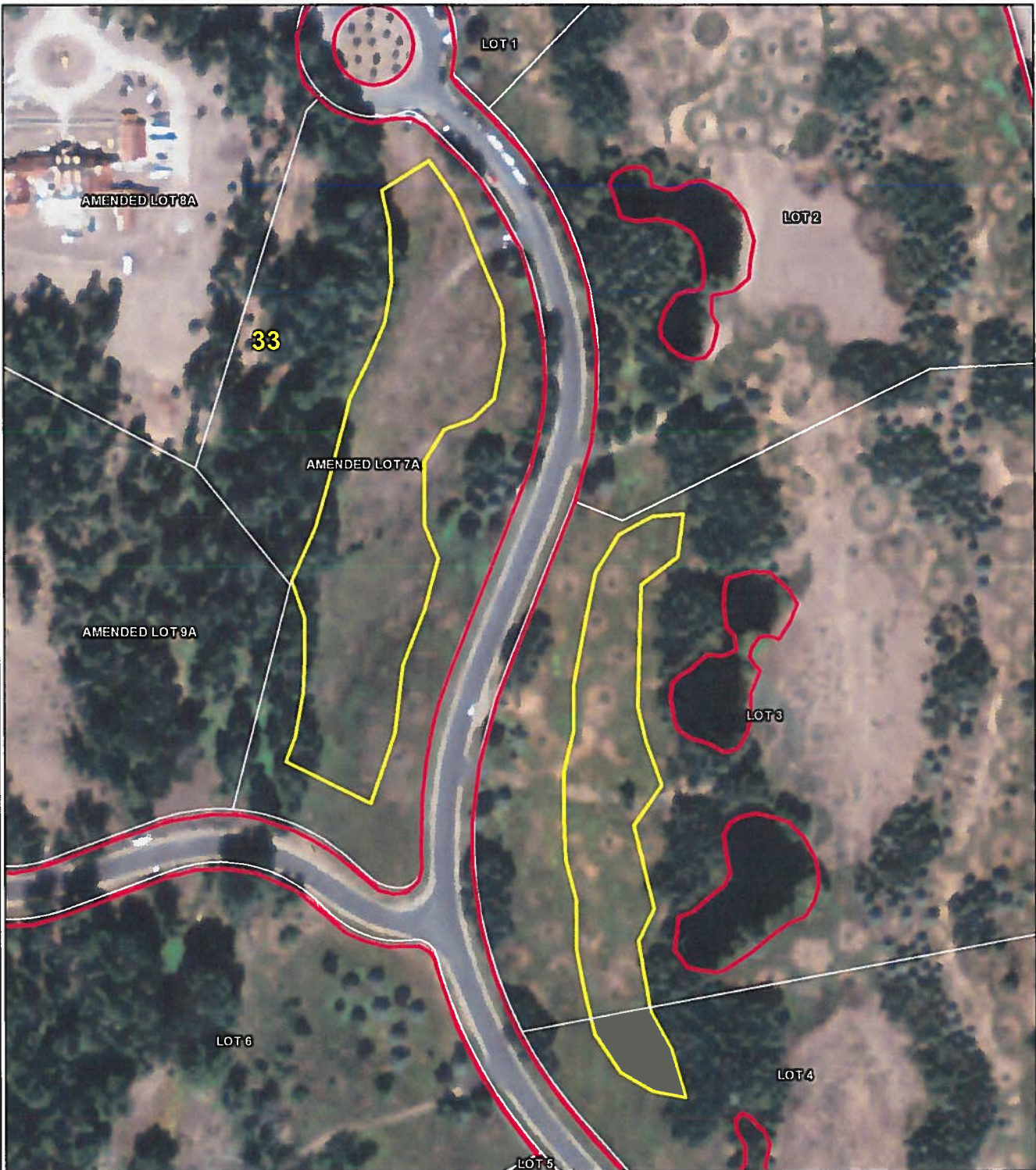


Brockway Engineering provided a map (see attachment) outlining the three acres curtailed for the initial fill. However, there is no corroboration from any other source that the curtailment took place. The water master's report for 2012, when compared with other years, does not conclusively show a diversion reduction by Cottonwood Creek HOA for the 2012 irrigation season.

The permit included two points of diversion, a second from the Osborn Ditch. According to the field report on page 3, Mr. Brockway recommended removing the Osborn Ditch point of diversion.

On January 12, 2011, Brockway Engineering wrote a Ponds Volume Estimate report. In the report they estimated the total storage at 4.84 af.

Recommended Volume: 4.8 af



0 75 150 Feet

BROCKWAY ENGINEERING, PLLC.
ZL- 1/31/11

**ATTACHMENT 7A:
COTTONWOOD CREEK HOA
PROPOSED PPU
T.03N R.18E SEC.20, 29
2011 NAIP AERIAL PHOTOGRAPH**

Legend

-  CCHOA- 3.0 Acres to Dry Up for First Fill Mitigation
-  cotton_admt
-  Cottonwood Creek Subdivision Parcels

Palmer, Cherie

From: Zach Latham [zach.latham@brockwayeng.com]
Sent: Monday, October 15, 2012 3:58 PM
To: Palmer, Cherie
Subject: RE: Cottonwood Creek HOA 37-22594

Cherie-

Thanks for the email. I am working on getting you the requested information, confirmation of the 2012 irrigation. I will be in touch this week, thanks again-

Zach Latham

Hydrologist
Brockway Engineering, P.L.L.C.
2016 Washington Street North, Suite 4
Twin Falls, ID 83301
t. 208-736-8543
c. 208-308-0739
f. 208-736-8506

zach.latham@brockwayeng.com

All information, calculations, maps, drawings, or other documents transmitted via e-mail are preliminary unless explicitly stated in the e-mail text or in the documents themselves.

From: Palmer, Cherie [<mailto:Cherie.Palmer@idwr.idaho.gov>]
Sent: Thursday, October 11, 2012 5:35 PM
To: Zach Latham
Subject: Cottonwood Creek HOA 37-22594

Zach,

Hello, it's been awhile! I hope you had a great summer and got a little of riding in.

I just tried to call you and realized it's after 5 and I wanted to get in touch with you about 37-22594 sooner than later. I was reviewing your field exam and everything looked good and I think we can consider the exam and proof acceptable but I had one item that needs to be addressed. Condition #7 of the permit required mitigation for the 2012 season and we need to have this confirmed somehow. If you can submit this information as "supplemental information" to the field exam that would be great.

I'll be in tomorrow if you want to discuss otherwise have a great weekend.

*Cherie Palmer, Sr. Water Resource Agent
Idaho Dept of Water Resources
Water Allocation Bureau
322 E. Front Street (Front St. & Broadway Ave)
Mail: PO BOX 83720*

*Boise, ID 83720-0098
email: cherie.palmer@idwr.idaho.gov*

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