

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 96-09478

PRIORITY: May 16, 2011

Maximum Diversion Rate: 0.03 CFS

Maximum Diversion Volume: 2.4 AF

It is hereby certified that:

MAUREEN KILLORAN 25942 HWY 2 PO BOX 218 DOVER ID 83825 And
RAY DANIELS 25942 HWY 2 PO BOX 218 DOVER ID 83825

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated April 29, 2011, and has submitted Proof of Beneficial Use on October 20, 2016. An examination confirms water is diverted from:

SOURCE:
PEND OREILLE RIVER

TRIBUTARY:
COLUMBIA 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>
IRRIGATION	04/01 to 10/31	0.03 CFS	2.4 AF

LOCATION OF POINT(S) OF DIVERSION:

PEND OREILLE RIVER L1 (NW¼NE¼) Sec. 32, Twp 57N, Rge 02W, 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	
57N	02W	29												0.4			0.1 L 2		.5
57N	02W	32		0.3 L 1															.3

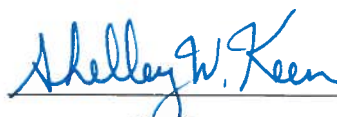
Total Acres: 0.8

CONDITIONS OF APPROVAL

1. This right when combined with all other rights shall provide no more than 0.03 cfs nor more than 2.4 afa at the field headgate for irrigation of the place of use.
2. A fish screen of 0.25 inch or smaller mesh shall be installed and maintained at the point of diversion.
3. This right does not grant any right-of-way or easement across the land of another.

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 2nd day of December, 2016.



SHELLEY W. KEEN
Water Rights Section Manager

State of Idaho
Department of Water Resources

Attachment to Water Right License

96-9478

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.



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

0 0.035 0.07 0.14 Miles





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

December 5, 2016

MAUREEN KILLORAN
RAY DANIELS
25942 HWY 2 PO BOX 218
DOVER ID 83825

RE: License No. 96-9478

Issuance of License

Dear Water Right Holder(s):

The Department of Water Resources 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 the conditions of approval and remarks listed on your license. Also enclosed is a copy of the approved application for amendment.

The license 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 by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

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. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at 208-287-4951.
Sincerely,

A handwritten signature in blue ink that reads "Pamela Skaggs".

Pamela Skaggs

Water Rights Supervisor

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2016, I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Approved License) to the person(s) listed below:

RE: WATER RIGHT NO.

96-9478

**MAUREEN KILLORAN
25942 HWY 2 PO BOX 218
DOVER ID 83825**

**RAY DANIELS
25942 HWY 2 PO BOX 218
DOVER ID 83825**



**Darla Block
Technical Records Specialist**

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.

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 96-09478

RECEIVED

DEC 02 2016

DEPARTMENT OF
WATER RESOURCES

PRIORITY: May 16, 2011

Maximum Diversion Rate: 0.03 CFS

Maximum Diversion Volume: 2.4 AF

Comes now

MAUREEN KILLORAN 25942 HWY 2 PO BOX 218 DOVER ID 83825 And

RAY DANIELS 25942 HWY 2 PO BOX 218 DOVER ID 83825

and represents to the Idaho Department of Water Resources that he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 96-09478, and requests that the permit be changed as follows:

SOURCE:
PEND OREILLE RIVER

TRIBUTARY:
COLUMBIA RIVER

BENEFICIAL USE
IRRIGATION

PERIOD OF USE
04/01 to 10/31

DIVERSION RATE
0.03 CFS

**ANNUAL
DIVERSION VOLUME**
2.4 AF

LOCATION OF POINT(S) OF DIVERSION:

PEND OREILLE RIVER L1 (NW¼NE¼) Sec. 32, Twp 57N, Rge 02W, 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	
57N	02W	29												0.4					.5
57N	02W	32		0.3 L 1													0.1 L 2		.3

Total Acres: 0.8

Permit holder asserts that no one will be injured by such change and that such change will be made at permit holder's own risk. Signed this 23 day of NOVEMBER, 2016.



(Signature)

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 96-09478

FOR DEPARTMENT USE ONLY

Preliminary check by SWK Fee = \$100.00 Received by VC # C102745 Date 12/2/2016

ACTION OF THE DEPARTMENT OF WATER RESOURCES

The Idaho Department of Water Resources hereby approves the above Application for Amendment for Permit No. 96-09478 with the following:

CONDITIONS OF APPROVAL

1. This right when combined with all other rights shall provide no more than 0.03 cfs nor more than 2.4 afa at the field headgate for irrigation of the place of use.
2. A fish screen of 0.25 inch or smaller mesh shall be installed and maintained at the point of diversion.
3. This right does not grant any right-of-way or easement across the land of another.

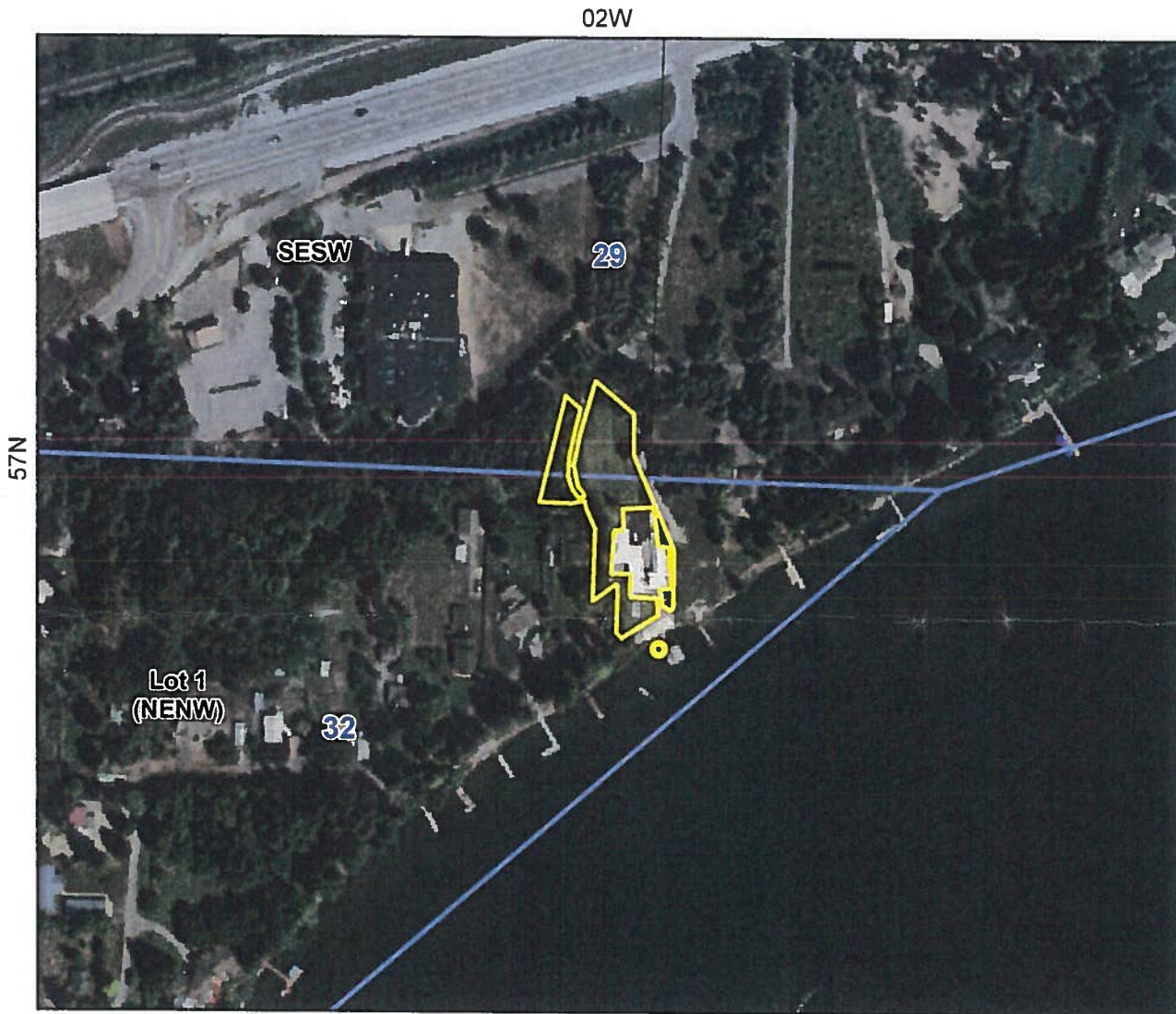
This amendment is issued pursuant to the provisions of Section 42-211, Idaho Code.

Signed this 2nd day of December, 2016.


SHELLEY W. KEEN
Water Rights Section Manager

Attachment for Application to Amend a Permit 96-9478

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.



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

0 0.035 0.07 0.14 Miles



Nelson, Dan

From: Nelson, Dan
Sent: Wednesday, November 23, 2016 1:35 PM
To: 'Ray Daniels'
Subject: RE: Water Right Permit 96-9478

Hi Ray,

I am glad they are correct. I would send the amendment to the following address:

Idaho Department of Water Resources
Attn Dan Nelson
PO Box 83720
Boise, ID 83720-0098

This will send it to the State Mail system, and it will actually get to my office a bit quicker. I also like to let everyone know that with the state house mail, the post office box number is the same as the zip code.

Have a great weekend.

Dan Nelson

From: Ray Daniels [<mailto:RDaniels@enerplus.com>]
Sent: Wednesday, November 23, 2016 1:25 PM
To: Nelson, Dan
Subject: RE: Water Right Permit 96-9478

I have now been able to access the attachments you sent, and all appears to be in order.

"If everything appears correct, you will not need to do anything with the reinstatement order" – all appears to be correct so no action with the reinstatement order

"you will need to sign the amendment and return it to our office with the \$100.00 fee within 14 days." – agreed – I will sign the amendment and send back to you with a check for \$100.

Is it to this address Dan?

Idaho Water Center
322 East Front Street
Boise, ID 83702-7374

Thanks
Ray

From: Nelson, Dan [<mailto:Dan.Nelson@idwr.idaho.gov>]
Sent: Wednesday, November 16, 2016 2:28 PM

To: Ray Daniels

Subject: Water Right Permit 96-9478

Ms. Killoran and Mr. Daniels;

I have completed the reinstatement order and amendment of permit for your permit 96-9478. As we discussed earlier, you will need to review both documents to ensure their accuracy. If everything appears correct, you will not need to do anything with the reinstatement order, but you will need to sign the amendment and return it to our office with the \$100.00 fee within 14 days. If the order is not correct, you will need to follow the steps given for filing a petition for reconsideration described in the attachment to the order. If the amendment is not correct, please contact me as soon as possible so I can get it corrected.

I am required by Idaho Code to mail the original order to the Dover, Idaho address shown on the water right, but I also mailed a copy of the attached documents to the Calgary Alberta address. Hopefully, with this email and the two mailings, you will get these documents in a timely fashion. You can print out the amendment with this email, sign it, and send in the \$100.00 fee, or you can wait for either of the other mailings to address the amendment of permit.

If you have any questions, please don't hesitate to contact me.

Respectfully,

Daniel Nelson

Analyst 3

Idaho Department of Water Resources

Telephone (208) 287-4856

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

Confidentiality Notice: This electronic transmission and any attachments are confidential and intended solely for the attention and use of the named addressee(s). This information may be subject to legal, professional or other privilege. Any disclosure, distribution, copying or the taking of any action concerning the contents of this communication or any attachments by anyone other than the named recipient is strictly prohibited. If you have received it in error, please notify the sender immediately and delete the message from your systems.

Nelson, Dan

From: Nelson, Dan
Sent: Friday, November 18, 2016 12:18 PM
To: 'Ray Daniels'
Subject: RE: Water Right Permit 96-9478

Ray,

Giving you an extra week won't be a problem at all. I will move the date due for the amendment out to December 8, 2016. If you need more time than that, please don't hesitate to contact me.

Thank you

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

From: Ray Daniels [<mailto:RDaniels@enerplus.com>]
Sent: Friday, November 18, 2016 11:37 AM
To: Nelson, Dan
Subject: Re: Water Right Permit 96-9478

If you could give another week that would be fantastic. I just can't do much until I get back to CANADA next week.

Sent from my iPhone

On Nov 17, 2016, at 4:56 AM, Nelson, Dan <Dan.Nelson@idwr.idaho.gov> wrote:

Hello Ray,

If you need more time, please send me an email telling me when you think you can get it our office, and I will hold the file until that time. We want you to have the time to properly review everything before we issue the license. If you do ask for more time to submit, give yourself plenty of time to review the amendment and allow extra time for the mail delivery.

Thank you Ray, and enjoy your trip.

Dan

From: Ray Daniels [<mailto:RDaniels@enerplus.com>]
Sent: Wednesday, November 16, 2016 7:07 PM
To: Nelson, Dan
Subject: Re: Water Right Permit 96-9478

Thanks Dan. We are out of the country right now, but I will do all I can to get this back within the 14 day period.

Sent from my iPhone

On Nov 16, 2016, at 11:32 AM, Nelson, Dan <Dan.Nelson@idwr.idaho.gov> wrote:

Ms. Killoran and Mr. Daniels;

I have completed the reinstatement order and amendment of permit for your permit 96-9478. As we discussed earlier, you will need to review both documents to ensure their accuracy. If everything appears correct, you will not need to do anything with the reinstatement order, but you will need to sign the amendment and return it to our office with the \$100.00 fee within 14 days. If the order is not correct, you will need to follow the steps given for filing a petition for reconsideration described in the attachment to the order. If the amendment is not correct, please contact me as soon as possible so I can get it corrected.

I am required by Idaho Code to mail the original order to the Dover, Idaho address shown on the water right, but I also mailed a copy of the attached documents to the Calgary Alberta address. Hopefully, with this email and the two mailings, you will get these documents in a timely fashion. You can print out the amendment with this email, sign it, and send in the \$100.00 fee, or you can wait for either of the other mailings to address the amendment of permit.

If you have any questions, please don't hesitate to contact me.

Respectfully,

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

<AMENDMENT COVER LETTER.pdf>

<AMENDMENT OF PERMIT.pdf>

<ORDER REINSTATING PERMIT.pdf>

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communication or any attachment by anyone other than the named recipient is strictly prohibited. If you have received it in error, please notify the sender immediately and delete the message from your systems.

Nelson, Dan

From: Nelson, Dan
Sent: Wednesday, November 16, 2016 2:28 PM
To: 'Ray Daniels'
Subject: Water Right Permit 96-9478
Attachments: AMENDMENT COVER LETTER.pdf; AMENDMENT OF PERMIT.pdf; ORDER REINSTATING PERMIT.pdf

Ms. Killoran and Mr. Daniels;

I have completed the reinstatement order and amendment of permit for your permit 96-9478. As we discussed earlier, you will need to review both documents to ensure their accuracy. If everything appears correct, you will not need to do anything with the reinstatement order, but you will need to sign the amendment and return it to our office with the \$100.00 fee within 14 days. If the order is not correct, you will need to follow the steps given for filing a petition for reconsideration described in the attachment to the order. If the amendment is not correct, please contact me as soon as possible so I can get it corrected.

I am required by Idaho Code to mail the original order to the Dover, Idaho address shown on the water right, but I also mailed a copy of the attached documents to the Calgary Alberta address. Hopefully, with this email and the two mailings, you will get these documents in a timely fashion. You can print out the amendment with this email, sign it, and send in the \$100.00 fee, or you can wait for either of the other mailings to address the amendment of permit.

If you have any questions, please don't hesitate to contact me.

Respectfully,

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



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

November 17, 2016

MAUREEN KILLORAN
AND RAY DANIELS
PO BOX 218
DOVER ID 83825

RE: Amendment of Permit and Proof Acknowledgement Letter for Water Right 96-9478

Dear Permit Holders:

The Department acknowledges receipt of the Proof of Beneficial Use form ("proof") and license examination fee for the above-referenced water right permit. Enclosed is an order that reinstates this permit since proof and the license examination fee were submitted after the proof deadline. Please note that the priority date for this permit has been advanced to **May 16, 2011**, as provided in section 42-218a(2), Idaho Code.

Please be advised that Section 42-248, Idaho Code, requires you or the owner of this water right to maintain current ownership and address records on file with the Department. Forms to file a change of ownership of a water right and/or a change in the address of the water right owner are available from any Department office or at the Department's website at www.idwr.idaho.gov.

The Department of Water Resources is also reviewing the permit referenced above prior to issuing a water right license. By issuing a license, the Department confirms the extent of development that has been established in compliance with the terms of the permit. The examiner who verified your water use reported that certain elements of the permit have been developed differently than described on your permit. Changes that do not increase the authorized use of water under the permit can be requested and approved in accordance with Section 42-211, Idaho Code. Before a license can be issued, your permit must be amended to depict your water use as it was actually developed.

During the application process for the permit, the surveyor working with the original permit holder claimed the Department's mapping system was incorrect. Subsequently, the permit was issued based on the surveyor's description of the property. During the licensing review, Department staff discovered that surveyor was correct, but neglected to include a portion of the place of use for the water right found in Government Lot 1 (SW ¼ of the SE ¼) of Section 29 in Township 57 North, Range 2 West, B.M. In order to move forward with the licensing of this permit, you will need to amend the permit to correct the legal description to include the legal tract of land not included.

The enclosed Application for Amendment form depicts the elements of the water right as they will appear on the license when it is issued. Please review the amendment form carefully. If you concur with the information presented, please sign the form and return it with the \$100.00 filing fee by December 1, 2016. If the amendment form is not received by December 1, 2016, then the license could be issued for an amount less than what was developed.

This letter provides two functions. The first function was to reinstate the permit due the late filing of proof, and the second function was to request an amendment of the permit. No action on your part is necessary for the reinstatement of the permit, unless you disagree with the order. If you disagree with the order, the explanatory information sheet accompanying the order will give you the needed information to file the needed petition for reconsideration. You will need to submit the amendment of permit and the associated by December 1, 2016, or the license for this permit could be voided or issued for the acres irrigated in the legal descriptions described in the permit.

Please don't hesitate to contact me if you have any questions, or need a better explanation of the information included in this letter.

Sincerely,



Daniel A. Nelson
Analyst 3
Water Right Section
Idaho Department of Water Resources
Telephone # (208) 287-4856
Email – dan.nelson@idwr.idaho.gov

Please Note:

A copy of this letter was also sent to the following address:

MAUREEN KILLORAN
AND RAYMOND DANIELS
3620 13th STREET SW
CALGARY ALBERTA T2T3R1

CERTIFICATE OF SERVICE

I hereby certify that on **November 17, 2016** I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (**PRELIMINARY ORDER REINSTATING A PERMIT**) to the person(s) listed below:

RE: Preliminary Order in the Matter of Permit No. **96-9478**

**MAUREEN KILLORAN
PO BOX 218
DOVER ID 83825**

**RAY DANIELS
PO BOX 218
DOVER ID 83825**

**MAUREEN KILLORAN
3620 13TH STREET SW
CALGARY ALBERTA T2T3R1**

**RAY DANIELS
3620 13TH STREET SW
CALGARY ALBERTA T2T3R1**

A handwritten signature in black ink, reading "Darla Block", written over a horizontal line.

**Darla Block
Technical Records Specialist**

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.

Nelson, Dan

From: Nelson, Dan
Sent: Friday, November 04, 2016 2:21 PM
To: 'Ray Daniels'
Subject: RE: Water Right Permit 96-9478

Ray,

Thank you for this information. It really helps a bunch. I knew about the Czap easement from the plat map that you sent, and the water rights associated with that line. I was looking for a system that may have diverted water from a couple of parcels east of yours. This really helps in my analysis of the overlapping water rights for this area. They are bit confusing, so I needed your impute.

Thank you so much.

Dan Nelson

From: Ray Daniels [mailto:RDaniels@enerplus.com]
Sent: Friday, November 04, 2016 1:46 PM
To: Nelson, Dan
Subject: RE: Water Right Permit 96-9478

The 2 lots (one being mine) that make up the parcel we are referring to, had no house or irrigation system at the time I bought it. I don't know when the house was removed or when the and was officially split into two lots, but it was more than 5 years ago.

However, there is a line and pump-house on my property that is used to irrigate Thorne Research lands. It is situated in the west side of my land, near the water's edge and the pipeline runs up the easement to the Thorne Research property. It is operable and used through the summer. Thorne rent the land from Al Czap – who is responsible/owns that irrigation system. I have no access to that line or the water it draws from the river.

Cheers,
Ray

Ray Daniels
Senior VP, Operations

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Calgary, AB T2P 2Z1
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From: Nelson, Dan [mailto:Dan.Nelson@idwr.idaho.gov]
Sent: Friday, November 04, 2016 1:35 PM
To: Ray Daniels
Subject: RE: Water Right Permit 96-9478

Hello Ray,

I have run into an older water right that may have been used on your property. I need to clarify this issue before I can move forward with licensing. Was the property you purchased already being irrigated with water from the river, or was it irrigated using the municipal system? If was irrigated from the river, are you using that same pump or did you install a new pump? If the property was irrigated from the river, did you lose access to the pump when the property was split? My understanding is that you installed a new pump for your irrigation system.

I am sorry about all the questions. I have to figure out everything that is going on for your property, so I have to ask these questions.

Thank you, and I hope you have a great weekend.

Dan Nelson

From: Ray Daniels [<mailto:RDaniels@enerplus.com>]
Sent: Wednesday, November 02, 2016 11:43 AM
To: Nelson, Dan
Subject: FW: Water Right Permit 96-9478

Dan,
Apologies. I did not tell John that you and I had chatted.

Hope this does not cause any confusion,
Ray

Ray Daniels
Senior VP, Operations

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From: Bridgett Kayser <sandpointconcierge@nctv.com>
Date: November 2, 2016 at 9:33:16 AM MDT
To: "Nelson, Dan" <Dan.Nelson@idwr.idaho.gov>
Cc: "mekilloran@shaw.ca" <mekilloran@shaw.ca>
Subject: Re: Water Right Permit 96-9478

Maureen and Dan.

After reviewing the attached map, the green outlined parcel, as outlined by Bonner County, appears to be more accurate. I can clearly see our dock and house just to the west of the green outline, as well as Mr. Snedden's rock jetty directly to the east. Hope this helps clear up the confusion, and let me know if I can be of further assistance.

Sincerely,

John Hansen
Property Manager & Neighbor

Nelson, Dan

From: Nelson, Dan
Sent: Tuesday, November 01, 2016 2:54 PM
To: 'Ray Daniels'
Subject: RE: Water Right Permit 96-9478 - LOT 1 of Barretts Lot
Attachments: 96-9478 Adjusted.pdf

Hello Mr. Daniels,

I am sorry it has taken me so long to get back to you. I wanted to run this by our mapping specialist to determine exactly what was happening between our maps and the plat map you supplied. We have figured out what has happened, and why the permit was filed incorrectly. I would be happy to speak with you to explain everything to you. I will do my best in this email, but I think a call would be best, so I can answer your questions.

What we found is that the person that surveyed the property used the official "Survey Cap" at the site location to start the survey of your property. Bonner County and the Idaho Department of Water Resources (Department) relied on the BLM Public Land Survey lines supplied by the Federal Government for their locations of the 40 acre tract lines. The Department uses the 40 acre tract lines to determine legal description of a property in a water right. The current Public Land survey for this area was done in 1871, so it hasn't been updated in some time. Without a current survey of the area, the Survey Cap is considered the official location of the Public Land Survey lines, so the Public Land Survey lines Bonner County and the Department use are off by approximately 50 feet to the east and 45 feet to the north. The borders of the county parcels are registered to the Survey Caps and not the Public Land Survey Lines, so when looking at your tax parcel in the aerial photos for both the county and the Department, the tax parcel was completely in a different location than what was filed for in the application for permit and approved permit 96-9478. This resulted in the application for permit being submitted incorrectly resulting the permit being described incorrectly when it was approved.

I have attached a map to this email that should help explain everything. What we found is that your property is actually in 3 legal tracts of land and not 2 as described in the application for permit and the permit approval. You will notice in the map that I found a total of 0.7 acres that have been irrigated that I can recommend for the licensing.

The next steps are that I will need to draft an order to re-instate your water right permit due the late submittal of the proof of beneficial use notice. I will then create an amendment of permit form to send to you to correct the permit. I will send the re-instatement order and the amendment at the same time. You will then need to review the amendment of permit to ensure it is correct, and then send the amendment back to our office with the \$100.00 amendment fee. I will send you the amendment by email also, so you will give you a little extra time to review it. The amendment will have all of the conditions and acre limitations that will be included on the license, so this will be a good time to ensure that everything is correct.

Thank you so much for your patience in getting this issue corrected. I know that you were not the ones to originally file the application for permit, so I really do appreciate your help in fixing this problem.

Respectfully,

Daniel Nelson
Staff Hydrologist
Idaho Department of Water Resources
Telephone (208) 287-4856
Fax (208) 287-6700 (attn: Dan Nelson)

From: Ray Daniels [mailto:RDaniels@enerplus.com]
Sent: Monday, October 31, 2016 5:07 PM
To: Nelson, Dan
Cc: Ray Daniels
Subject: RE: Water Right Permit 96-9478 - LOT 1 of Barretts Lot

Hi Dan,
WRT the water rights permit 96-9478.

The land that we own, that the water rights are for, is actually the green outline shown on your pdf.

Please see Sewall's Plat drawing showing the outline that is the similar to the green outline

Also, and I don't mean to confuse the issue further and I don't know how important it is, but when the land was split into 2 lots, as shown on the Barrett's lot plat, the ownership line actually changed direction at the water's edge on the east side of our Lot 1. Again please see Barretts plat.

Dan – if you would like to talk, to avoid a lot of email traffic let me know, and I will call you.

Ray Daniels
Senior VP, Operations

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From: MAUREEN KILLORAN [mailto:mekilloran@shaw.ca]
Sent: Monday, October 31, 2016 3:51 PM
To: Ray Daniels
Subject: Fwd: Water Right Permit 96-9478

Sent from my iPhone

Begin forwarded message:

From: "Nelson, Dan" <Dan.Nelson@idwr.idaho.gov>
Date: October 31, 2016 at 2:45:50 PM MDT
To: "mekilloran@shaw.ca" <mekilloran@shaw.ca>
Cc: "sandpointconcierge@nctv.com" <sandpointconcierge@nctv.com>
Subject: RE: Water Right Permit 96-9478

Dear Mr. Daniels and Ms. Killoran;

Our office received your proof of beneficial use statement on October 20, 2016 for permit 96-9478. This permit allowed you to develop up to 1 acre of irrigation to be diverted from a Pend Oreille River. The permit is small enough, that with a little assistance from you, we can verify the water use without actually visiting the site, unless you would like someone from our staff to meet with your representative Mr. Hansen on sight to verify the property location and water use.

I have been asked to review this permit to verify the water use so it can be licensed. The aerial photos available to the Department provide a reasonable determination of the lands being irrigated by this permit, but there seems to be some confusion on exactly where the place of use is located. The attached map and the Bonner County website shows the place of use in a different location as what was described in the water right permit file.

Department staff went to great lengths to decipher the location of the place of use when the permit was originally filed, but there is still some concern that the location is not correct. The county parcel data matches the aerial photos and the United State Bureau of Land Management Public Land Use descriptions of the 40 acre tract lines seem reasonably accurate in our maps and the Bonner County Website. During the application for permit stage of this process, Mark Duffner from James A Sewell & Associates was convinced your parcel was east of the location given by Bonner County in their mapping website. I have attached a map that shows the county's description of your property with a green border and Mr. Duffner's description of your property with a red border. Mr. Duffner provided preliminary plat maps of the property, so I want to make sure that we have the correct information before licensing the permit. Mr. Duffner didn't supply a final plat map of the property, so I am not sure if this maps Mr. Duffner supplied are accurate.

Could you supply a copy of the metes and bounds description or written description of your property so we can ensure we have the property in the correct location. At the very least we need some type of confirmation on the exact location of the property. I would like to confirm the property location prior to licensing your permit to save you from a possible water right transfer to correct the place of use later on if the information in the application for permit was incorrect.

If the description in the Preliminary Plat maps in the application for permit are incorrect, you will want to amend the permit to correct the place of use prior to licensing the permit. If you do not correct the place of use in the licensing process, you may need to file a water right transfer later on to correct the place of use. The cost to amend the permit is only \$100.00, while the cost to file a water right transfer is \$200.00. By ensuring that the water right permit is accurate either through confirmation of the location or by amending the permit to the correct location prior to licensing, we can save you the additional cost of filing a water right transfer at a later date if the location is incorrect.

As I stated at the beginning of this email, if you wish to have someone from our staff come to your property to verify property location and water use, we are more than willing to accommodate that request. Please provide me with documentation describing your property in detail or a request for staff from our agency to come to your property to verify the land location by December 1, 2016, or we will license this permit as described in the maps supplied with the application for permit. If we license the permit and the legal description is incorrect, then you would need to file a transfer to correct the license at a later date. This could also affect the number of acres that are actually irrigated.

Please feel free to contact me if you have any questions. I would be more than happy to speak with by telephone or email to answer any questions you may have.

Respectfully,

Daniel Nelson
Staff Hydrologist
Idaho Department of Water Resources
Telephone (208) 287-4856
Fax (208) 287-6700 (attn: Dan Nelson)

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