

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 94-07701

PRIORITY: August 31, 2010

Maximum Diversion Rate: 0.05 CFS

Maximum Diversion Volume: 2.6 AF

It is hereby certified that:

DAVID MC DANIEL 12915 S ROSE CREEK CATALDO ID 83810 And/Or

KATHY MC DANIEL 12915 S ROSE CREEK CATALDO ID 83810

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated August 31, 2010, and has submitted Proof of Beneficial Use on January 19, 2016. An examination confirms water is diverted from:

SOURCE: ROSE CREEK

TRIBUTARY: COEUR D ALENE 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	03/15 to 10/31	0.03 CFS	2.4 AF
STOCKWATER	01/01 to 12/31	0.02 CFS	0.2 AF

LOCATION OF POINT(S) OF DIVERSION:

ROSE CREEK SW¼SW¼ Sec. 29, Twp 49N, Rge 01W, B.M. KOOTENAI 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	
49N	01W	32						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	
49N	01W	32						0.8											.8

Total Acres: 0.8

CONDITIONS OF APPROVAL

1. The approach velocity at the point of diversion shall not exceed 0.5 feet per second.
2. This right does not grant any right-of-way or easement across the land of another.
3. A fish screen of 0.25 inch or smaller mesh shall be installed and maintained at the point of diversion.
4. Water shall not be diverted under this right when flows in the Coeur d'Alene River are below minimum flow amounts as defined by Right 94-7341. The right holder shall be responsible for monitoring the daily flow of the Coeur d'Alene River using real-time data and shall cease diverting water when flows in the Coeur d'Alene River are below established minimum flow amounts. Unless otherwise specified

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 94-07701

by the Director of the Department of Water Resources, data from the U.S. Geological Survey Harrison gauging station, No. 12413860, may be used for purposes of determining the daily flow amounts.

5. 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.

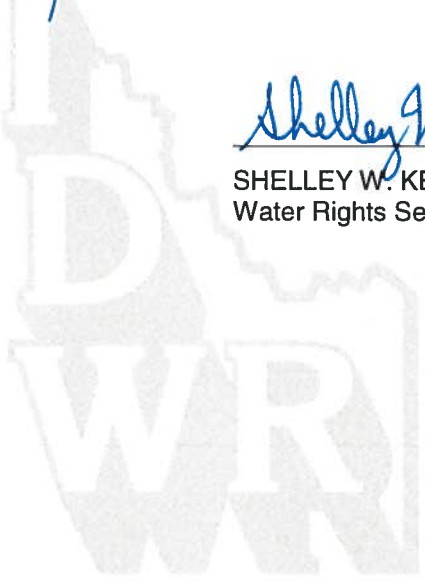
This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed this 7th day of May, 2016.



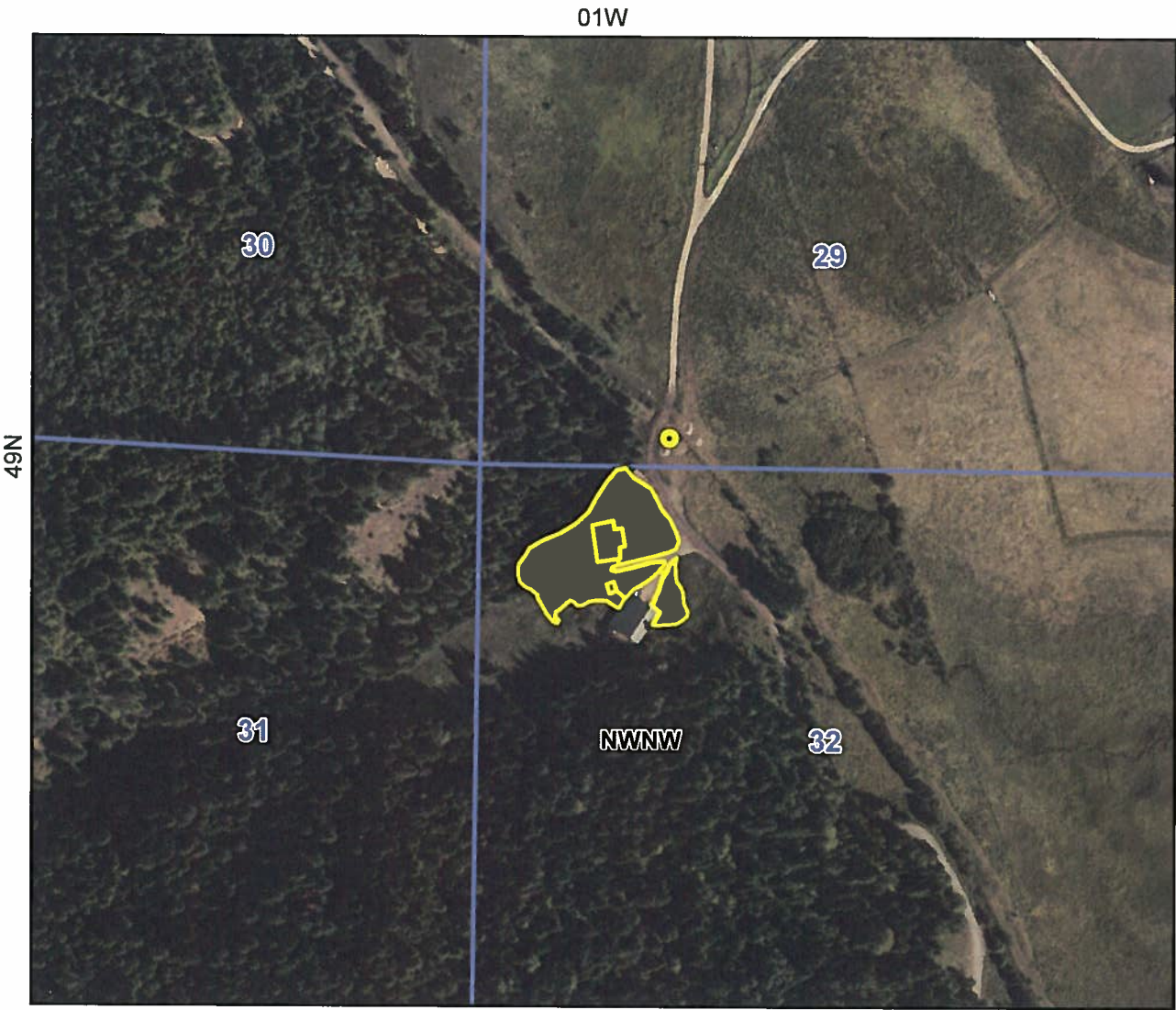
A handwritten signature in blue ink, reading "Shelley W. Keen", is written over a horizontal line.

SHELLEY W. KEEN
Water Rights Section Manager

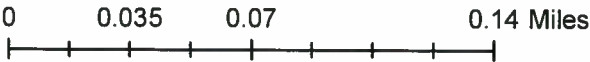


State of Idaho
Department of Water Resources
Attachment to Water Right License
94-7701

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.

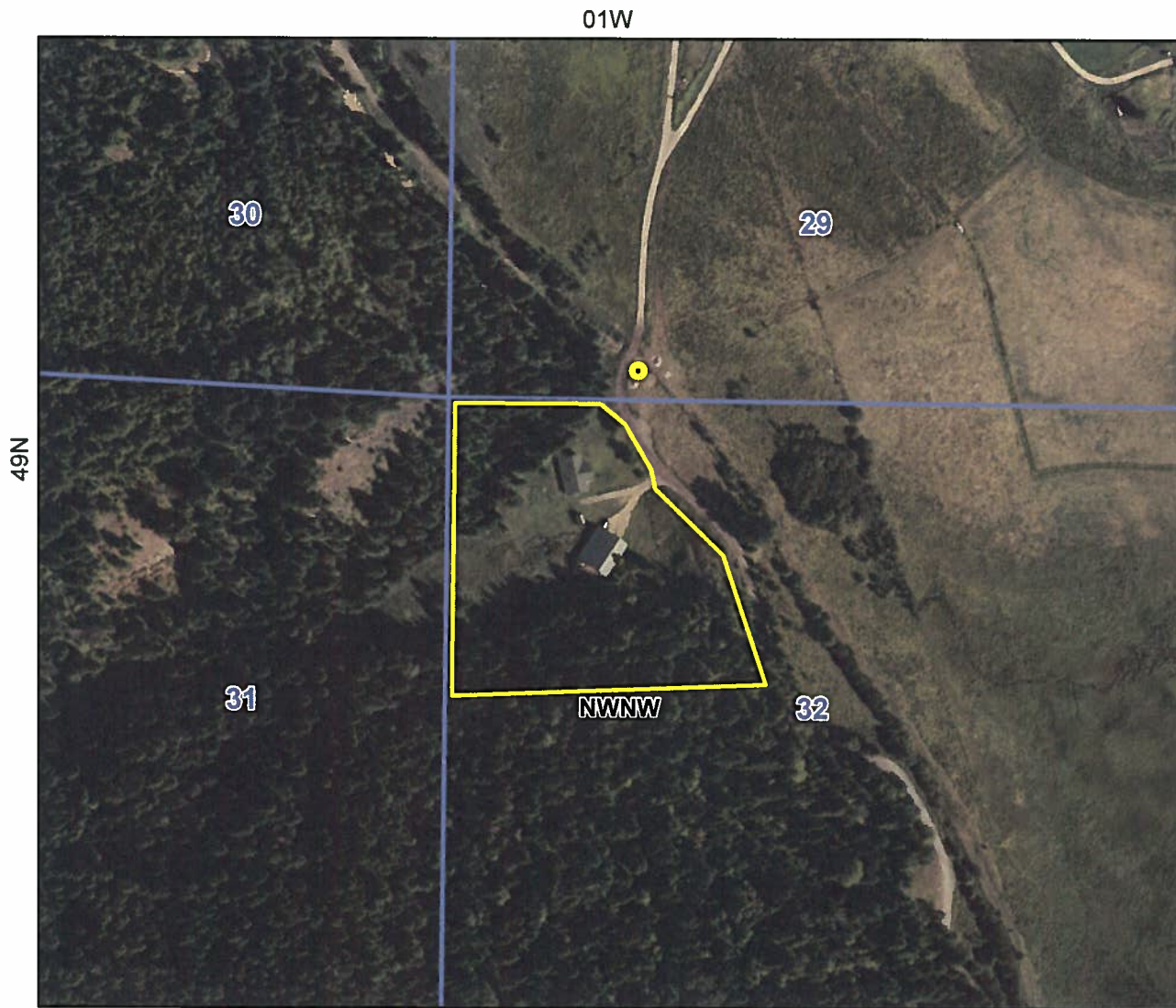


- Point of Diversion
- Place Of Use Boundary
- Townships
- PLS Sections



State of Idaho
Department of Water Resources
Attachment to Water Right License
94-7701

This map depicts the 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.



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

0 0.035 0.07 0.14 Miles



RECEIVED

APR 28 2016

DEPARTMENT OF
WATER RESOURCES

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State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 94-07701

PRIORITY: August 31, 2010

Maximum Diversion Rate: 0.05 CFS
Maximum Diversion Volume: 2.6 AF

Comes now

DAVID MC DANIEL 12915 S ROSE CREEK CATALDO ID 83810 And/Or

KATHY MC DANIEL 12915 S ROSE CREEK CATALDO ID 83810

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. 94-07701, and requests that the permit be changed as follows:

SOURCE: ROSE CREEK

TRIBUTARY: COEUR D ALENE RIVER

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
IRRIGATION	03/15 to 10/31	0.03 CFS	2.4 AF
STOCKWATER	01/01 to 12/31	0.02 CFS	0.2 AF

LOCATION OF POINT(S) OF DIVERSION:

ROSE CREEK SW¼SW¼ Sec. 29, Twp 49N, Rge 01W, B.M. KOOTENAI 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	
49N	01W	32						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	
49N	01W	32						0.8											.8

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 26 day of April, 2016.

David McDaniel
(Signature)

RECEIVED

APR 28 2016

DEPARTMENT OF
WATER RESOURCES

Page 2

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 94-07701

FOR DEPARTMENT USE ONLY

Preliminary check by _____ Fee = \$100.- Received by SKS # C101934 Date 4/28/16

ACTION OF THE DEPARTMENT OF WATER RESOURCES

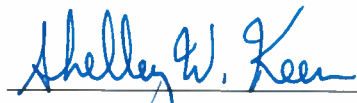
The Idaho Department of Water Resources hereby approves the above Application for Amendment for Permit No. 94-07701 with the following:

CONDITIONS OF APPROVAL

1. The approach velocity at the point of diversion shall not exceed 0.5 feet per second.
2. This right does not grant any right-of-way or easement across the land of another.
3. A fish screen of 0.25 inch or smaller mesh shall be installed and maintained at the point of diversion.
4. Water shall not be diverted under this right when flows in the Coeur d'Alene River are below minimum flow amounts as defined by Right 94-7341. The right holder shall be responsible for monitoring the daily flow of the Coeur d'Alene River using real-time data and shall cease diverting water when flows in the Coeur d'Alene 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 Harrison gauging station, No. 12413860, may be used for purposes of determining the daily flow amounts.
5. 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.

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

Signed this 7th day of May, 2016.

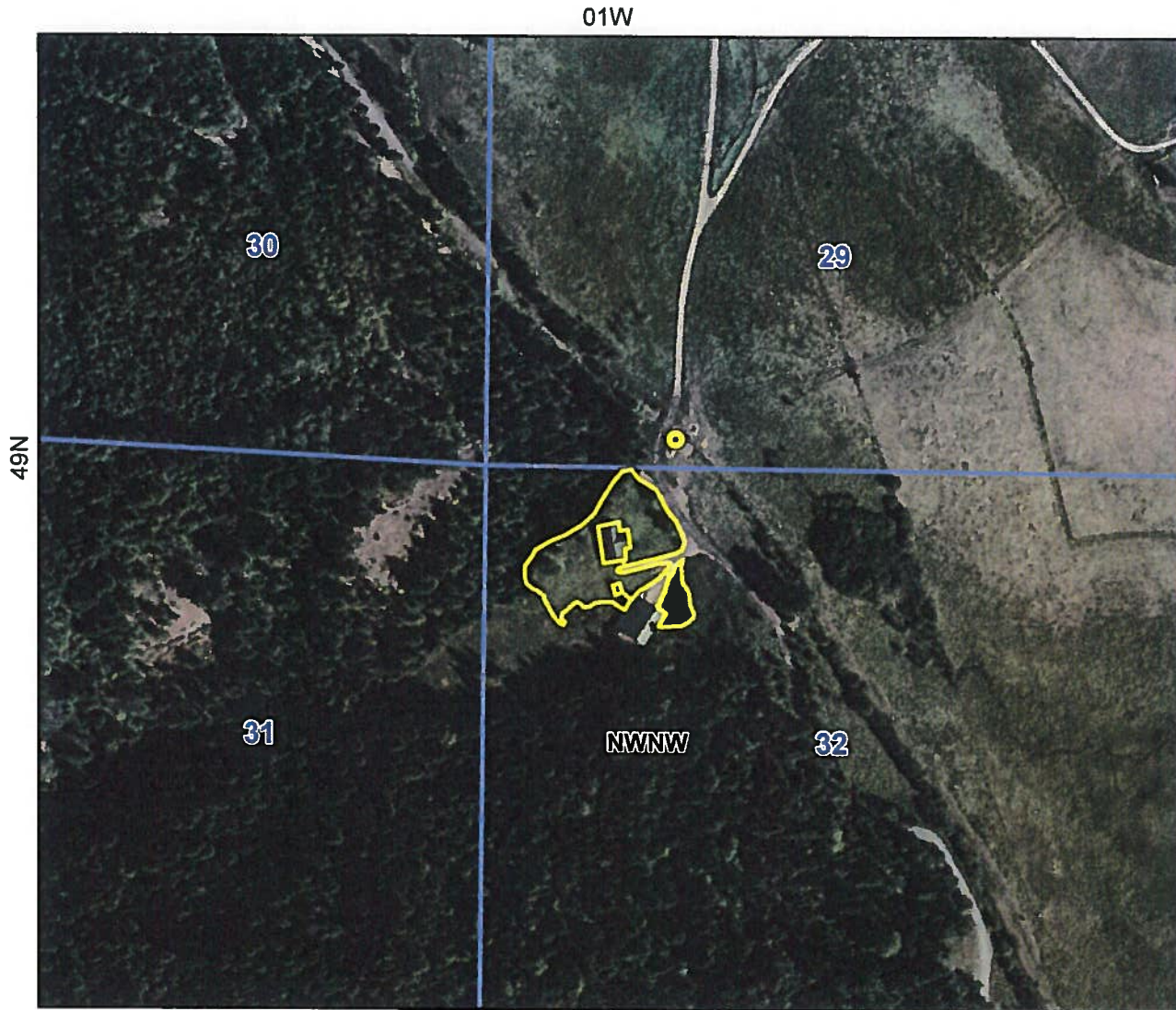

SHELLEY W. KEEN
Water Rights Section Manager

State of Idaho
Department of Water Resources

Attachment for Application to Amend a Permit

94-7701

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

May 9, 2016

DAVID MC DANIEL
KATHY MC DANIEL
12915 S ROSE CREEK
CATALDO ID 83810

RE: License No. 94-7701

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 May 10, 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.

94-7701

**DAVID MC DANIEL
12915 S ROSE CREEK
CATALDO ID 83810**

**KATHY MC DANIEL
12915 S ROSE CREEK
CATALDO ID 83810**



**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

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

April 7, 2016

DAVID AND KATHY MCDANIEL
12915 S ROSE CREEK
CATALDO ID 83810

RE: Water Right Permit No. 94-7701

Dear Permit Holders:

The Department of Water Resources is 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.

A review of your water right permit determined that the point of diversion from Rose Creek is actually located in the SWSW quarter of Section 29 in Township 49 North, Range 1 West instead of the NWNW quarter of Section 32 in Township 49 North, Range 1 West as stated on your permit. The location of the point of diversion was confirmed by in your letter received on March 28, 2016.

You will also notice that the irrigation use was reduced to 0.03 cfs and 0.8 acres, since that is the amount of land you stated is actually irrigated.

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 April 22, 2016.

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

Sincerely,

Daniel A. Nelson
Staff Hydrologist
Planning Bureau
Idaho Department of Water Resources
Telephone # (208) 287-4856
Email – dan.nelson@idwr.idaho.gov

Nelson, Dan

From: Nelson, Dan
Sent: Friday, March 11, 2016 7:24 AM
To: 'Kathy McDaniel'
Subject: RE: HI

Kathy,

I would be happy to hold the permit for another 30 days. I will hold the permit until April 11, 2016 to allow you to get things sorted out. Please let me know prior to April 11, 2016 what you find out or specific date that you can supply the information needed. I have no problem holding the file, but I have to a specific written time frame to submit the information per Idaho Code. This email is the written notice that allows me to hold the file until you supply the information by April 11, 2016.

If Dave would like to speak to me, I would be happy to talk with him. Is there a good time and telephone number that I can call and talk to him? If he wants to call me, I am generally in the office between 7:00 am and 3:00 pm Boise time, so I believe that would be 6:00 am to 2:00 pm your time if my time adjustments are correct. If I am in a meeting or on the telephone, have him leave a message and I will call him back as soon as I can.

If you have any further questions, I would be happy to answer them or if I can't I will find someone who can.

Thank you.

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

-----Original Message-----

From: Kathy McDaniel [<mailto:crazykat42@outlook.com>]
Sent: Thursday, March 10, 2016 5:59 PM
To: Nelson, Dan
Subject: HI

Hi Dan,

Did you get my message about needing a couple more weeks to get the diversion part figured out as far as who owns the land ?

Not having any luck hearing back from surveyer. My mother-in-law is having her land done. Need to find someone who will show up.

Oh well. Maybe you could call, Dave would like to talk to ya.

We don't want the stuff we've done so far to be started all over again. Ok.

Thank You for your help.

Kathy

Nelson, Dan

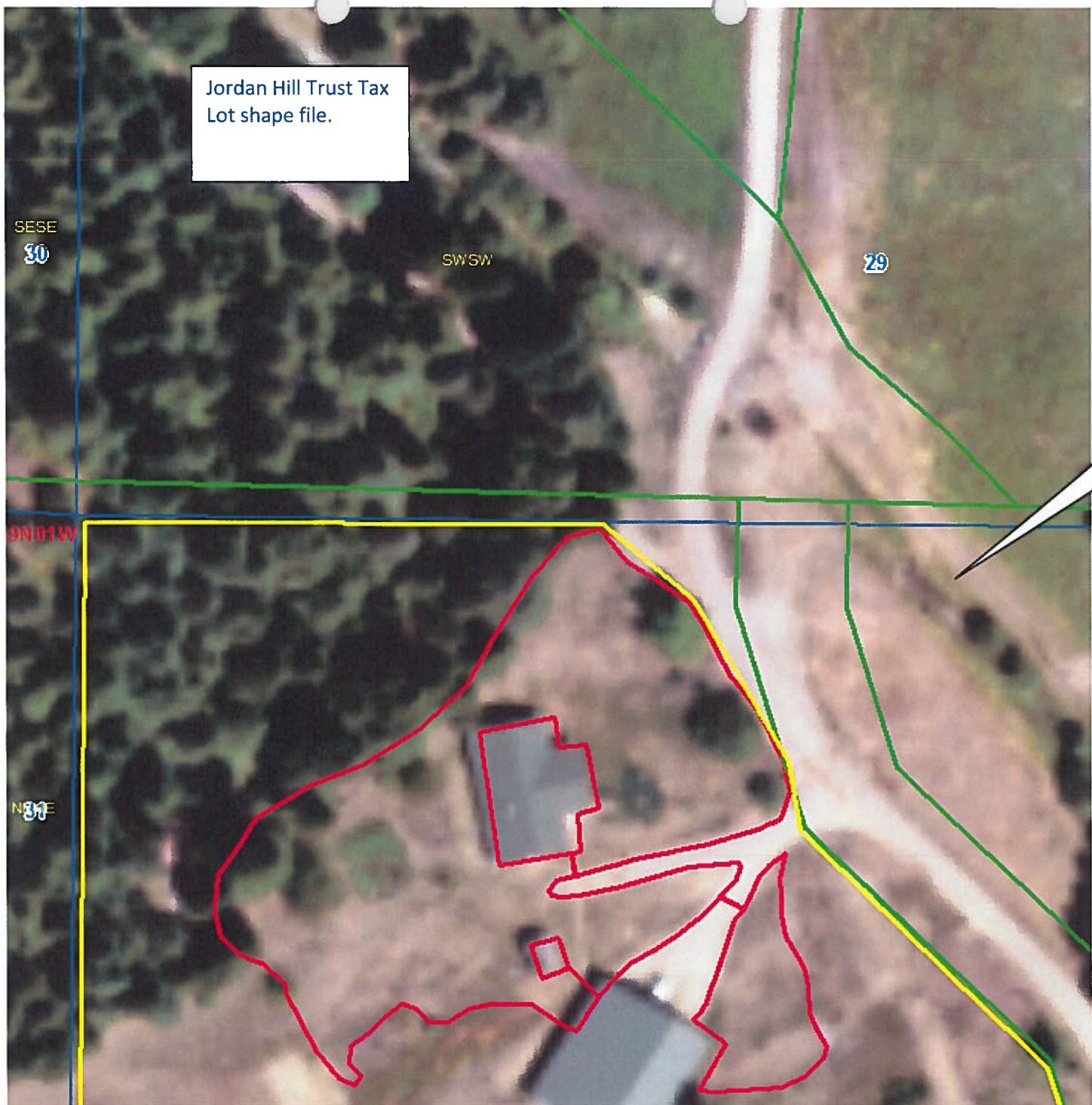
From: Nelson, Dan
Sent: Monday, February 29, 2016 12:17 PM
To: 'Kathy McDaniel'
Subject: RE: fish screen on pump

Hello Kathy and David,

This email is in response to the telephone conversation with Kathy this morning. The point of diversion (Yellow Dot) from the creek that I used was directly off of the application permit that you filed. You told us that you were diverting the water at that location. According to the application for permit, this land is owned by Buford or Ruby McDaniel. David said that you draw the water from the creek where the road crosses the creek. According to our records, the point where the road crosses the creek appears to be on property currently owned by Jordan M. Hill Trust, William Tegeler Jr. Trustee(See the map below). I don't know if the tax lot data we have is accurate, so I wanted to check to make sure exactly where the point of diversion is located. The green lines are the tax lots in the map below, and the blue line is the section line. If the point of diversion is north or to the top of the map below of the blue line, then it would be in a different 40 acre tract. **If the point of diversion is north of the blue line, we would need an amendment with a \$100.00 amendment fee and confirmation that you have permission to put the point of diversion on the Jordan Hill Trust property, or that the tax lot information is incorrect, and your family owns everything east of the road.** In speaking with Kathy, I think that the wide spot in the creek might be the place where you are diverting the water, but I need to confirm that. If the point of diversion is below that blue line, you will not need to file an amendment or pay the \$100 fee. We need to make sure we get this correct to avoid issues in the future, and I am happy to work with you to make sure we get your license correct. We can also give you some more time to send a map or get approvals from the Hill Trust if necessary, all you have to do is send me an email requesting additional time.

Thank you for your patience.

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



From: Kathy McDaniel [<mailto:crazykat42@outlook.com>]

Sent: Tuesday, February 23, 2016 6:33 PM

To: Nelson, Dan

Subject: fish screen on pump

Thank you Dan. Fish screen is on pump and the area map is good. Dave and Kathy McDaniel 208-682-3097 😊

MEMORANDUM

TO: 94-7701

FROM: Daniel A. Nelson, Staff Hydrologist

DATE: February 24, 2016

SUBJECT: Telephone Conversation

Kathy McDaniel called and spoke to me today to confirm that I received her email. She told me that the screen on the pump has "tiny tiny holes." They aren't sure what size the holes in the screen are for sure, but think they are complying with the Idaho Fish and Game requirements. The pump was set up with a screen that they believe would prevent injury to any fish.

Nelson, Dan

From: Kathy McDaniel [crazykat42@outlook.com]
Sent: Tuesday, February 23, 2016 6:33 PM
To: Nelson, Dan
Subject: fish screen on pump

Thank you Dan. Fish screen is on pump and the area map is good. Dave and Kathy McDaniel 208-682-3097 😊



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

February 3, 2016

DAVID AND KATHY MC DANIEL
12915 S ROSE CREEK
CATALDO ID 83810

RE: Water Appropriation Permit 94-7701

Request for Information

Dear Permit Holders:

In 2011 the Idaho Department of Water Resources (Department) issued permit 94-7701 (permit) authorizing the development of a right to divert 0.06 cfs of water for irrigation and 0.02 cfs of water for stockwater from Rose Creek in the NW1/4 NW1/4 of Section 32, Township 49 North, Range 1 West. The final step in the water appropriation process is the issuance of a Water Right License. By issuing a license, the Department recognizes that water has been put to beneficial use in accordance with the permit. For your convenience, I am enclosing a copy of permit listed above.

Due to the amount of water being diverted, this permit qualifies for what is known as in-house exam or desk top verification review instead of an in-field verification inspection of the property. A verification review is necessary to move this permit forward to a water right license. During my review of your file, I was able to verify all of the elements necessary to license your permit, except for verifying if the proper fish screens were installed on the pump intake. The permit has the following conditions:

A fish screen of 0.25 inch or smaller mesh shall be installed and maintained at the point of diversion.

The approach velocity at the point of diversion shall not exceed 0.5 feet per second.

The above conditions were placed on the permit to ensure you complied with fish screening requirements required on all streams regulated by Idaho Fish and Game. In the "Statement of Completion for Submitting Proof of Beneficial Use" form you submitted, you did confirm that you had complied with these conditions. **Please confirm that you have complied with the fish screen conditions on your permit.**

I have also included a copy of an aerial photo showing the area that I believe is irrigated from this point of diversion. I want to make sure that I have included all of the ground you are irrigating with this system. Please review the map and confirm it correctly described the lands being irrigated.

You can request that IDWR personnel go into the field to collect this information accompanied by yourself or your representative. For this to occur, please contact me within 30 days. If you would like your representative to be present, please have the name, telephone number, and email of your representative. Be aware that you and the representative must be available to be contacted for scheduling of the required visit {before insert date or in a timely manner}.

Please provide the requested information March 7 1, 2016. If I do not receive the requested information or I have not been contacted by you by march 7, 2016, I will need to take action to void your permit under the provision of Section 42-219(8) of the Idaho Code.

If you have any questions, please contact me. Thank you for your attention to this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "Daniel A. Nelson", with a long horizontal flourish extending to the right.

Daniel A. Nelson
Staff Hydrologist
Telephone # (208) 287-4867
Fax (208) 287-6700 (attn: Dan Nelson)
Email dan.nelson@idwr.idaho.gov

Enclosure(s): Computer generated water right permit report
Map of property

Permit 94-7701 - Preliminary Map

The Green Border is the tax lot.

The Yellow Border is the stockwater border.

The Red Border surrounds the lands irrigated.

The Yellow Dot is the point water is diverted from Rose Creek.