

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 65-23589

Priority: June 05, 2014

Maximum Diversion Rate: 3.91 CFS

This is to certify, that NOVITAS ACADEMY
C/O ANDY SAPP
PO BOX 678
EMMETT ID 83617

has applied for a permit to appropriate water from:

Source: GROUND WATER

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
DOMESTIC	01/01 to 12/31	0.11 CFS
IRRIGATION	03/01 to 11/15	0.45 CFS
FIRE PROTECTION	01/01 to 12/31	3.35 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER L1 (NW1/4NW1/4) Sec. 34, Twp 07N, Rge 01W, B.M. GEM County
GROUND WATER L1 (NW1/4NW1/4) Sec. 34, Twp 07N, Rge 01W, B.M. GEM County

PLACE OF USE: DOMESTIC

Twps Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07N 01W 27											X						
07N 01W 33	X										L 10						
07N 01W 34						X											
						L 1											

PLACE OF USE: IRRIGATION

Twps Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07N 01W 27											4.0						4.0
07N 01W 33	5.0										L 10						5.0
07N 01W 34						17.0											17.0
						L 1											

Total Acres: 26

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PLACE OF USE: FIRE PROTECTION

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07N 01W 27											X						
											L 10						
07N 01W 33	X																
	L 4																
07N 01W 34						X											
						L 1											

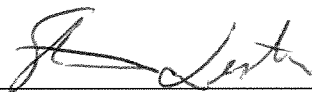
CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **November 01, 2019**.
2. Subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
5. To prevent injury to prior water rights appropriating water from the underlying shallow aquifer or the surface water system, the well used as a point of diversion for this water right shall be constructed and maintained with unperforated casing and sealed into the first significant confining layer.
6. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.
7. Water shall not be diverted for fire protection use under this right except to fight or repel an existing fire.
8. Domestic use is for a boarding school facility with 80 students and staff. Irrigation use is for school landscape and athletic fields.
9. This right is limited to the irrigation of 20 acres within the authorized place of use in a single irrigation season.
10. This right when combined with all other rights shall provide no more than 4.5 afa per acre at the field headgate for irrigation of the place of use.
11. Use of this right is combined with water from Last Chance Ditch Co.
12. The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right for land with an appurtenant surface water right(s) to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.

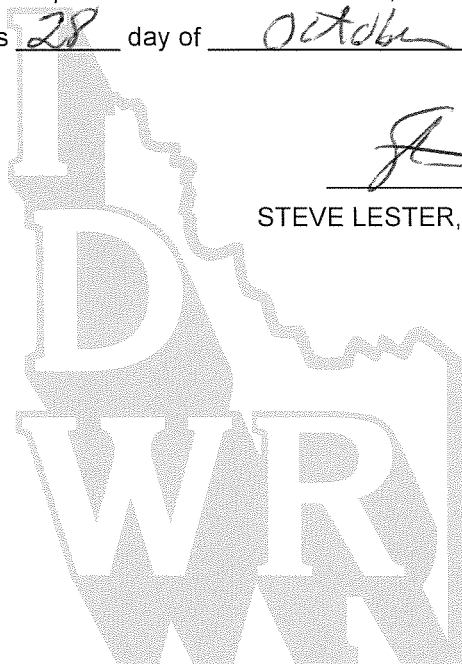
State of Idaho
Department of Water Resources
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NO. 65-23589

13. If the surface water right(s) appurtenant to the place of use is abandoned, forfeited, sold, transferred, leased or used on any other place of use, this right to divert ground water shall not be used for irrigation purposes on the land with an appurtenant surface water right(s) without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
14. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor exceed a combined annual maximum diversion volume of 90.0 af at the field headgate for the place of use.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 28 day of October, 2014.



STEVE LESTER, Interim Western Region Manager





State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

October 28, 2014

NOVITAS ACADEMY
C/O ANDY SAPP
PO BOX 678
EMMETT ID 83617

RE: Permit No.65-23589

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review the conditions of approval and remarks listed on your permit.

The permit 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.

As a permit owner you must commence the excavation or construction of the diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed. The date shown under condition no. 1 is the date when the project must be completed.

The Department will send you a 'Proof Due Notice' approximately 60 days prior to the above referenced date requesting you to file either a Proof of Beneficial Use form or a Request for Extension of Time form.

The right to drill a well is not a part of this permit to appropriate water. Beginning in July of 1987, a statute was enacted which requires a drilling permit for new well construction and deepening of existing wells. If the well(s) proposed for use under this water right permit were drilled or deepened after July 1, 1987, a separate drilling permit must be obtained from this Department. Please contact the Ground Water Protection Section located here at this office or our regional office nearest you.

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. 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)334-2190.

Sincerely,



for:

Steve Lester
Interim Western Region Manager

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2014 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO. 65-23589

**NOVITAS ACADEMY
C/O ANDY SAPP
PO BOX 678
EMMETT ID 83617**

**SPF WATER ENGINEERING LLC
C/O LORI GRAVES
300 E MALLARD DR STE 350
BOISE ID 83706**

A handwritten signature in black ink, appearing to read "Rachel Sommer", is written over a horizontal line.

**Rachel Sommer
Administrative Assistant 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.

29512 1162887

1 IDAHO DEPT. OF WATER RESOURCES

WESTERN REGION
2735 AIRPORT WAY
BOISE ID 83705

LEGAL NOTICE

The following applications have been filed to appropriate the public waters of the State of Idaho:

65-23588

NOVITAS ACADEMY

C/O ANDY SAPP

PO BOX 678

EMMETT, ID 83617

Point of Diversion L1(NWNW) S34 T07N R01W GEM County

Source GROUND WATER Tributary PAYETTE RIVER

Point of Diversion L4(NENE) S33 T07N R01W GEM County

Source GROUND WATER Tributary PAYETTE RIVER

Use: AESTHETIC STORAGE 01/01 to 12/31 11 AF

Total Diversion: 11 AF

Date Filed: 6/5/2014

Place of Use: AESTHETIC STORAGE

T07N R01W S33 L4(NENE)

T07N R01W S34 L1(NWNW)

65-23589

NOVITAS ACADEMY

C/O ANDY SAPP

PO BOX 678

EMMETT, ID 83617

(2)Points of Diversion L1(NWNW) S34 T07N R01W GEM

County Source GROUND WATER

Use: DOMESTIC 01/01 to 12/31 0.11 CFS

Use: IRRIGATION 03/01 to 11/15 0.45 CFS

Use: FIRE PROTECTION 01/01 to 12/31 3.35 CFS

Total Diversion: 3.91 CFS

Date Filed: 6/5/2014

Place of Use: DOMESTIC, IRRIGATION, FIRE PROTECTION

T07N R01W S27 L10(SWSW)

T07N R01W S33 L4(NENE)

T07N R01W S34 L1(NWNW)

Total Acres: 26

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Western Region office at (208) 334-2190; or for a full description of the right(s), please see www.idwr.idaho.gov/apps/ExtSearch/WRFiling.asp. Protests may be submitted based on the criteria of Idaho Code § 42-203A. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 10/6/2014. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

September 17, 24, 2014

1162887

AFFIDAVIT OF PUBLICATION STATE OF IDAHO

County of Canyon

LINDA SPENCER

of Nampa, Canyon County, Idaho, being
first duly sworn, deposes and says:

1. That I am a citizen of the United States, and at all times hereinafter mentioned was over the age of eighteen years, and not a party to the above entitled action.
2. That I am the Principle Clerk of the Emmett Messenger-Index, a weekly newspaper published in the City of Emmett, in the County of Gem, State of Idaho; that the said newspaper is in general circulation in the said County of Gem, and in the vicinity of Emmett, and has been uninterruptedly published in said County during a period of seventy-eight consecutive weeks prior to the first publication of this notice, a copy of which is hereto attached.
3. That the notice, of which the annexed is a printed copy, was published in said newspaper 2 times(s) in the regular and entire issue of said paper, and was printed in the newspaper proper, and not in a supplement.
4. That said notice was published the following:
09/17/2014 09/24/2014

Linda Spencer
STATE OF IDAHO
County of Canyon)

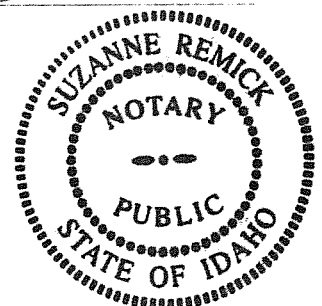
On this 24th day of September in the year of 2014 before me a Notary Public, personally appeared. LINDA SPENCER, known or identified to me to be the person whose name is subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledge to me that he/she executed the same.

Suzanne Remick
Notary Public for Idaho
Residing at Canyon County
My Commission expires 07/25/2018

RECEIVED

OCT 06 2014

WATER RESOURCES
WESTERN REGION



OK
10/6/14
RS

Walker, Kay

From: Walker, Kay
Sent: Tuesday, September 30, 2014 10:18 AM
To: The Spencers
Cc: Walker, Kay
Subject: RE: Application For Permit 65-23589

Mr. Spencer:

In response to your e-mail regarding the above referenced application for permit I offer the following:

Domestic use is water for one or more households and water used for all other purposes including irrigation of a residential lot in connection with each of the households where the diversion to each household does not exceed 13,000 gallons per day. The 13,000 gallons per day limit applies to single family domestic units only. This is not a limit for domestic uses in excess of single family units. The school has filed for domestic use for a boarding school facility consisting of 50 students and 30 staff members. The 0.11 cfs that they have filed on will provide all the water for the domestic needs of the facility. If we do the math they are requesting only 49 gallons per minute for the facility which is not excessive. I believe the domestic use is a good description of the what they propose to use the water for.

As for the proposed diverting works, the applicant intends to drill two wells for their irrigation and domestic systems. In looking at this application, it appears to me that there will be some interconnection between the two wells and that is why they can be on the same application. If, when we go out to do our field examination, the wells are not interconnected, we will split the water right into two parts to describe the separate systems. Until the system is developed we can only speculate on how it will be utilized.

This application proposes a supplemental irrigation use when water is not available from the Last Chance Ditch Company. They will be required to use their ditch company shares before they can utilize their well water for irrigation purposes. This restriction is placed on all supplemental ground water rights unless the applicant submits something to show why their surface water shares will no longer be used and they obtain a waiver to that effect.

As for the amount of water proposed for fire protection purposes, this is normally a requirement of the fire district that the proposed water use is located in. The fire marshal in the area of the proposal usually determines the amount of water required to add this additional use to their district boundaries. The permit, if issued, would be conditioned that water cannot be diverted for fire protection purposes unless they are actually fighting a fire. A water right is not normally required for fire protection purposes; however, if a proposed project is required to obtain fire suppression water in order to be approved to develop their system, we cannot deny their request.

I hope this answers your concerns regarding the Novitas Academy application. If you need additional information, feel free to contact this office.

Sincerely,

Kay Walker
Sr. Water Resource Agent

From: The Spencers [mailto:lsspencer@gmail.com]
Sent: Tuesday, September 30, 2014 6:57 PM

To: Walker, Kay
Cc: "John.Westra "@idwr.idaho.gov
Subject: Application For Permit 65-23589

Kay,

I have three observations that generate some questions regarding Application For Permit 65-23589 filed by Novitas Academy. I do not intend to file a protest to this application because the questions pertain more to the Departments application of existing statute and administrative rule to the application and not to the application itself.

My primary concern and observation is that the application has a 'Domestic' component of 0.11 cfs. The applicant clearly states in #7. d. that the facility is a Boarding School for 50 students and 30 staff. My reading of 42-111 tells me that 'Domestic' purposes are defined as being for:

- a. Homes, organization camps, public campgrounds, livestock and irrigation of up to ½ acre not to exceed 13,000 gallons per day.
- b. B would not seem to apply because the diversion rate of 0.11 cfs exceeds 0.04 cfs. In addition without careful metering it would be difficult to know if 50 students 24 hours a day and 30 staff per day plus kitchen/cafeteria, shower, and other uses would be less than 2,500 gpd.

In reality, this is a private boarding school with tuition costs in the neighborhood of \$10,000, with paid staff, teachers, cooks, mentors, counselors, administrators, teachers and professionals. It is not a traditional single family home or residence, organization camp where kids come for a week or two, or a public campground. Simply stated – it is a business and not a domestic use falling into any category in (a) above. It should probably be a commercial use and not domestic.

My second observation is of lessor concern, that the application appears to be a compilation of what should be two individual applications. The purposes of use are irrigation and domestic.

- Number 6. a. clearly states there are two proposed wells and followed immediately by an apparent description of two separate water systems – pressurized irrigation and domestic.
- Number 6. c. shows two distinctly different wells based on diameter – 8 inch and 16 inch. It is unfortunate that the application provides no additional detail about whether or not these two 'systems' are independent or connected. If they are independent then it appears that there should be two individual applications for permit – one for commercial use and one for irrigation. Because of the number of users of the water system it would appear that the water used for purposes inside the buildings for direct use and consumption by people will be a Community Water System subject to regular water quality monitoring. This would probably be the 8 inch well. The 16 inch well would then appear to be for irrigation of 20 acres. I realize because of the indicated proximity of the two wells it might be that they are going to be interconnected with the 16 inch well supplying all the water when irrigation is occurring and the 8 inch well being relied upon when irrigation is not occurring. The point is that this is unclear in the application.

Finally, I find it interesting that the quantity for fire protection of 3.35 cfs is nearly 6 times the additive quantities of 0.11 domestic and 0.45 irrigation. The apparent design and planned pump capacity of the water system seems to far exceed the present planned uses. This is unusual, possibly speculative and may set the applicant up to divert more water than it is applying to beneficially use. It may be difficult for the Department to administer.

I would appreciate the Department considering these things as it works toward the approval of this application. If you have any questions about these comments please contact me.

Thank you,

Steve

*Steve Spencer
4555 Frozen Dog Road
Emmett, Idaho 83617*

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