

State of Idaho
Department of Water Resources
Water Right License

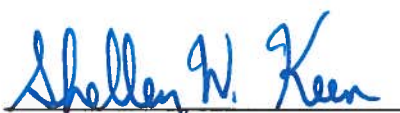
WATER RIGHT NO. 37-08439

CONDITIONS OF APPROVAL

1. This right does not grant any right-of-way or easement across the land of another.
2. Domestic use is for 55 homes and does not include lawn, garden, landscape, or other types of irrigation.
3. This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.
4. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
5. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 37.
6. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversions.
7. This right is limited to the irrigation of 29.7 acres within the place of use described above in a single irrigation season.
8. Irrigation within Lots 1, 6, 9, 11, 12, 17, 19, 20, 22, 25, 27, 28, 32-35, 40, 41, 45, 47, 49, and a portion of lot 53 in Starweather Subdivision is limited to a collective total of 16.4 acres.
9. Irrigation within Lots 2-5, 7, 8A, 10, 13-16, 18, 21, 23, 24, 26, 29-31, 36-39, 42, 43, 44A, 46, 48, 50, 51A, 52A, 59, 60A-1, and 60B in Starweather Subdivision is limited to a collective total of 13.3 acres not to exceed 0.4 acres per lot.
10. The domestic place of use is located within Lots 1-7, 8A, 10-43, 44A, 45- 50, 51A, 52A, 59, 60A-1, and 60B in Starweather Subdivision.
11. Points of diversion are located within Lot 16, Starweather Subdivision.

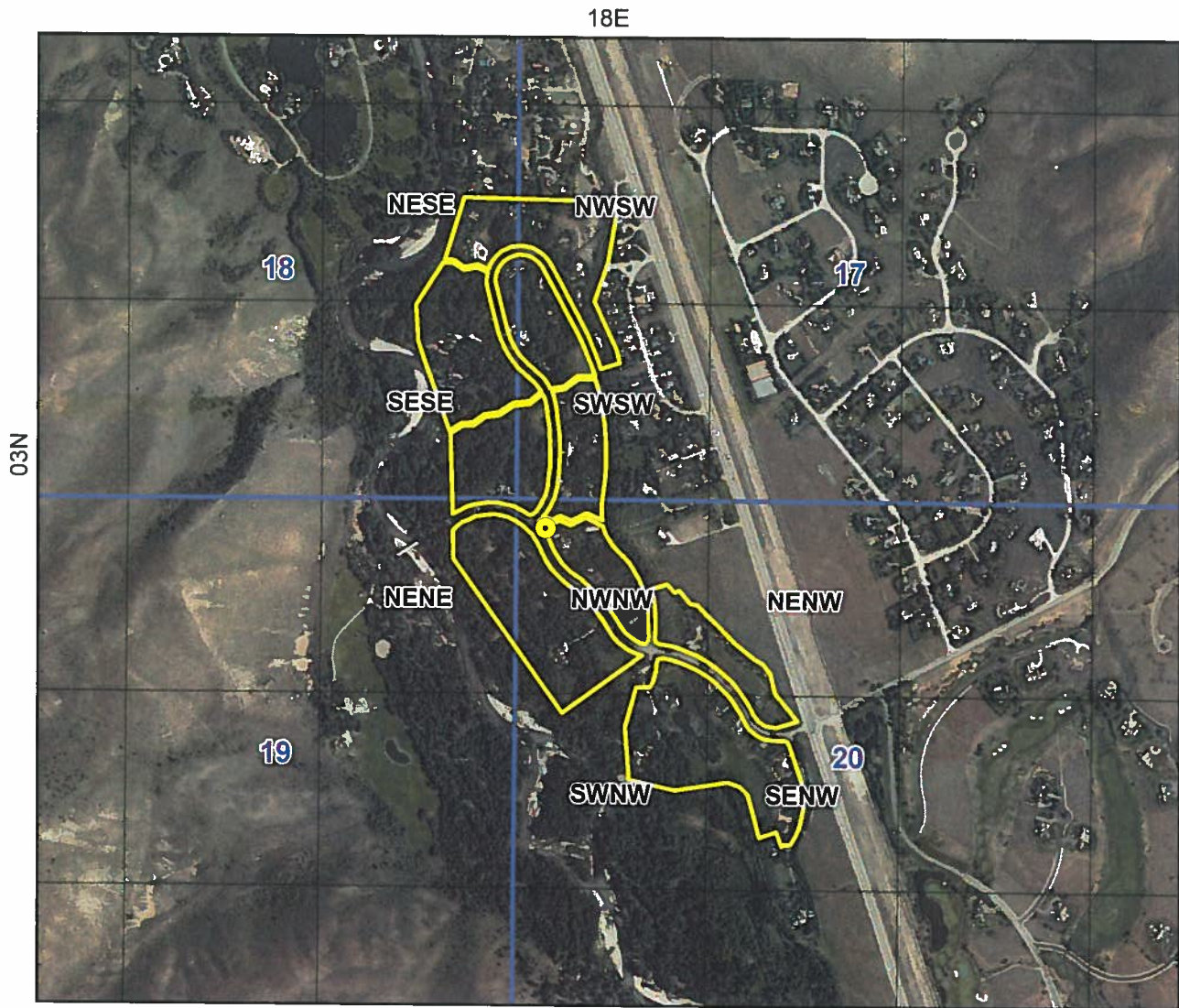
This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed this 30th day of July, 2014.


for GARY SPACKMAN
Director

State of Idaho
Department of Water Resources
Attachment To Water Right License
37-8439

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.



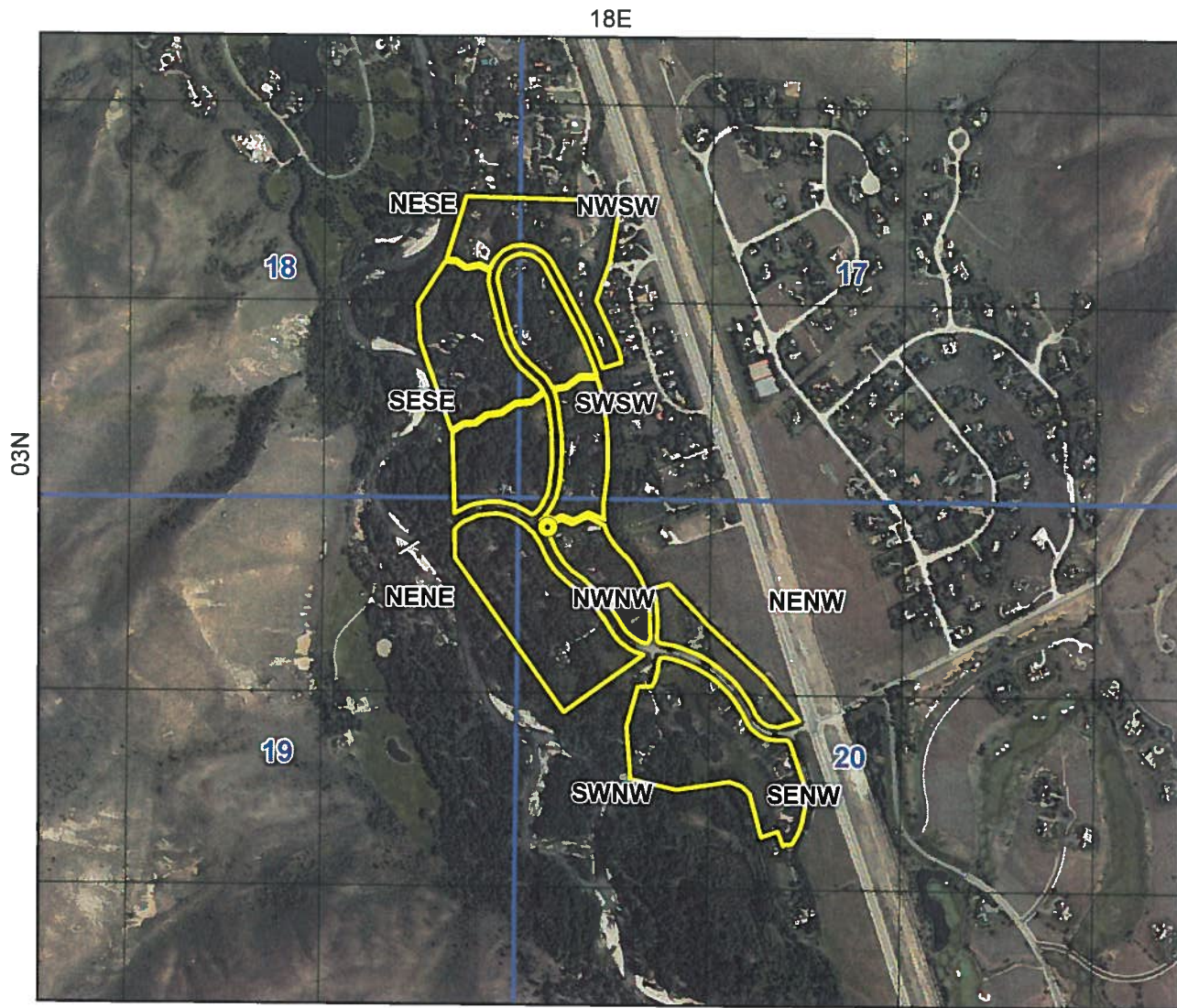
-  Point of Diversion
-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters

0 0.15 0.3 0.6 Miles



State of Idaho
Department of Water Resources
Attachment To Water Right License
37-8439

This map depicts the DOMESTIC 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
-  Quarter Quarters

0 0.15 0.3 0.6 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

July 30, 2014

STARWEATHER SUBDIVISION PROPERTY OWNERS
C/O JAMES P SPECK
PO BOX 987
KETCHUM ID 83340-0987

RE: License No. 37-8439

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,

Pamela Skaggs

Water Rights Supervisor

Enclosure(s)

cc: SPECK & AANESTAD

CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2014, 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. 37-8439

**SPECK & AANESTAD
JAMES P SPECK
PO BOX 987
KETCHUM ID 83340**

**STARWEATHER SUBDIVISION PROPERTY OWNERS
C/O JAMES P SPECK
PO BOX 987
KETCHUM ID 83340-0987**



**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. 37-08439

RECEIVED
JUL 28 2014
DEPARTMENT OF
WATER RESOURCES

Date of Priority: October 25, 1988

Maximum Diversion Rate:

0.93 CFS

Maximum Diversion Volume:

137.0 AF

Comes now STARWEATHER SUBDIVISION PROPERTY OWNERS
C/O JAMES P SPECK
PO BOX 987
KETCHUM ID 83340-0987

and represents to the Director of 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. 37-08439, and requests that the permit be changed as follows:

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	04/15 to 10/31	0.59 CFS	104.0 AF
DOMESTIC	01/01 to 12/31	0.34 CFS	33.0 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER NW1/4NW1/4 Sec. 20, Twp 03N, Rge 18E, B.M. BLAINE County
GROUND WATER NW1/4NW1/4 Sec. 20, Twp 03N, Rge 18E, B.M. BLAINE County

PLACE OF USE: IRRIGATION

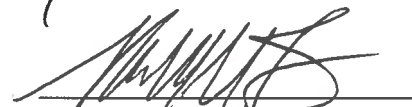
Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
03N 18E 17									9.0		16.0						25.0
03N 18E 18													7.1			16.0	23.1
03N 18E 19	6.0																6.0
03N 18E 20					2.9	24.0	8.1	9.7									44.7

Total Acres: 98.8

PLACE OF USE: DOMESTIC

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
03N 18E 17									X		X						
03N 18E 18													X			X	
03N 18E 19	X																
03N 18E 20					X	X	X	X									

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 22nd day of July, 2014.


(Signature)

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 37-08439

FOR DEPARTMENT USE ONLY

Preliminary check by _____ Fee = \$100.00 Received by CS # C099240 Date 7/28/14

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, GARY SPACKMAN, of the Department of Water Resources hereby approve the
above Application for Amendment for Permit No. 37-08439 with the following:

CONDITIONS OF APPROVAL

1. This right does not grant any right-of-way or easement across the land of another.
2. Domestic use is for 55 homes and does not include lawn, garden, landscape, or other types of irrigation.
3. This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.
4. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
5. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 37.
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9. Irrigation within Lots 2-5, 7, 8A, 10, 13-16, 18, 21, 23, 24, 26, 29-31, 36-39, 42, 43, 44A, 46, 48, 50, 51A, 52A, 59, 60A-1, and 60B in Starweather Subdivision is limited to a collective total of 13.3 acres not to exceed 0.4 acres per lot.
10. The domestic place of use is located within Lots 1-7, 8A, 10-43, 44A, 45-50, 51A, 52A, 59, 60A-1, and 60B in Starweather Subdivision.
11. Points of diversion are located within Lot 16, Starweather Subdivision.

Witness my hand this 30th day of July, 2014.


GARY SPACKMAN
Director

SPECK & AANESTAD
A PROFESSIONAL CORPORATION
ATTORNEYS

JAMES P. SPECK
jim@speckandaanestad.com
DOUGLAS J. AANESTAD
doug@speckandaanestad.com

120 EAST AVENUE
POST OFFICE BOX 987
KETCHUM, IDAHO 83340

TELEPHONE
(208) 726-4421
FACSIMILE
(208) 726-0752

July 25, 2014

Daniel A. Nelson
Staff Hydrologist
Idaho Department of Water Resources
322 E. Front St.
Boise, Idaho 83720-0098

**Re: Starweather Subdivision Property Owners - Applications for Amendment -
No. 37-8439**

Dear Dan:

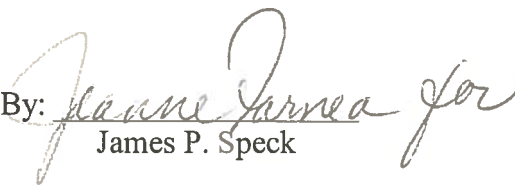
Enclosed you will find the original and one copy of the above-referenced Application for Amendment together with my firm's check payable to the Department for the \$100 filing fee. Please receipt date-stamp the copy and return it to me in the postage prepaid self-addressed envelope I have included for that purpose. Kindly call me right away if you have any questions.

Thank you.



Sincerely,

SPECK & AANESTAD
A Professional Corporation

By: 
James P. Speck

JPS:jef
Enclosures
cc: Client w/encl.

Nelson, Dan

From: Nelson, Dan
Sent: Thursday, July 17, 2014 2:38 PM
To: 'Jim Speck'
Subject: Starweather Subdivision
Attachments: Final scanned amendment.pdf

Hello Jim,

Here is the amendment that has been approved. Please look it over and have your client sign and return it with the \$100.00 fee within 14 days.

Thank you.

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

Nelson, Dan

From: Nelson, Dan
Sent: Monday, July 07, 2014 7:54 AM
To: 'Jim Speck'
Subject: RE: RE: RE: RE: RE: Starweather Subdivision 37-8439
Attachments: 2nd scanned amendment.pdf

Jim,

Here is the corrected copy of the letter and amendment. Please let me know if you have any further questions.

Dan

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

From: Jim Speck [mailto:jim@speckandaanestad.com]
Sent: Sunday, July 06, 2014 5:13 PM
To: Nelson, Dan
Cc: Karl Nichols
Subject: RE: RE: RE: RE: RE: Starweather Subdivision 37-8439

Dan,

I believe my client will accept the terms of the licensing amendment. However, the last full version I received from you is attached.

With apologies for the lines added by our scanner, you can see the cover letter refers to the wrong permit and the conditions are still wrong. Would you please send me a corrected letter and an application for amendment with the corrected conditions attached so I can be certain my client signs the right document. I hope you had a nice 4th extended weekend.

Jim

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

From: Nelson, Dan
Sent: Monday, June 30, 2014 1:16 PM
To: Jim Speck

Jim,

Here is the explanation that I have:

During the processing of the application for this permit, the permit was held to address Trust Water issues, since it is within the Trust Water area.

While waiting for the Trust Water processing backlog to allow further processing of this permit, the order for the Big Wood Ground Water Management Area (BWGWMA) was issued in 1991 preventing processing of water rights within the BWGWMA that did not meet the limitations set forth in Idaho Code 42-111. The order did allow water rights for subdivisions to be processed as long as each of the lots within the subdivision were limited to ½ acre per lot.

The application was filed in such a way to allow the already existing 21 homes in the subdivision to continue to irrigate the same amount property that they had always done approximately 16.7 acres, and then restrict the 39 undeveloped lots to 13.3 acres not to exceed ½ acre per lot. When added together, this limits the subdivision use to 30 total acres for 60 lots or ½ acre per lot. I think this was done not only to address the existing development, but to also comply with the Trust Water requirements and the BWGMA requirements.

This does raise an issue of whether or not we can include the 5 common area lots in the license. If we followed the 42-111 standard, we could only count the overall residential lots of 55 lots X 0.5 acres per lot = 27.5 acres total. This would reduce the amount of irrigation that we could allow on the remaining lots of $27.5 - 16.4 = 11.1$ acres. We didn't want to do this reduction because some of the lots have already been constructed with the consideration that the remaining lots would be limited to 13.3 acres.

Another issue is that only 37 of the lots were developed at the time that the field exam was performed. We typically don't allow a stub in rule to go towards the irrigation component of a water right, but we decided to allow this to happen, since it was based on the domestic irrigation limitations. Therefore we are going to allow up to 13.3 acres for the remaining 34 residential lots based on the condition that limited the remaining lots to 13.3 acres. It is our opinion that if we don't adhere to the 13.3 acre amount described in the condition, then we need to look at the allowable irrigation use as whole, and we would have to make a determination on the total amount of acres that can actually be irrigated from this system.

I hope this helps. I am happy to answer any question that you may have.
Please don't hesitate to contact me if have anything further.

.
-----Original Message-----

From: Jim Speck [mailto:jim@speckandaanestad.com]
Sent: Monday, June 30, 2014 12:43 PM
To: Nelson, Dan
Cc: Karl Nichols
Subject: RE: RE: RE: RE: Starweather Subdivsion 37-8439

Dan,

Please explain again the reason IDWR will not change the 13.3A limit that was a clear mutual mistake on the original permit. Thank you.

Jim

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

From: Nelson, Dan
Sent: Monday, June 30, 2014 12:33 PM
To: Jim Speck

Jim,

We can't exceed the 13.3 acres for the remaining 34 lots. We generally round acre amounts to the nearest tenth, so that is why the acre amount is limited to 0.4 acres. The actual amount per lot is $13.3 / 34 = 0.391176471$.

I could talk with my boss and see if we can change the number from 0.4 to

0.39 acres per lot. That would allow 13.26 acres. Let me know what works best for you, and I will see what I can get accomplished.

Thank you

Dan

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

From: Jim Speck [mailto:jim@speckandaanestad.com]

Sent: Monday, June 30, 2014 12:21 PM

To: Nelson, Dan

Cc: Karl Nichols

Subject: RE: RE: RE: Starweather Subdivision 37-8439

Dan,

I will go over the list of lots and allocated irrigated acres on the spreadsheet with my client. However, the limitation for the 34 undeveloped lots is not quite clear. If it's to be 0.4A/lot for administration, this totals 13.6A rather than the 13.3A. If the 13.3A limit also applies, then the first 33 lots will use up 13.2A leaving only 0.1A for the last to be developed lot. The total of 16.4 and 13.6 is 30A which is still within the original permit limit. Can we do this?

Jim

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

From: Nelson, Dan

Sent: Monday, June 30, 2014 11:28 AM

To: Jim Speck

Jim,

I am really sorry that the conditions didn't come out correctly. I found the original that I had in the file, and it had all of the correct conditions. I must have sent you a initial draft. I do apologize. I have attached the spreadsheet with this email. My sent records show it went out, so if you don't get the attachments, please let me know.

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: Jim Speck [mailto:jim@speckandaanestad.com]

Sent: Monday, June 30, 2014 10:48 AM

To: Nelson, Dan

Cc: 'Karl Nichols'
Subject: RE: RE: Starweather Subdivision 37-8439

Dan,

Please include the spreadsheet with the revised licensing amendment as it was not attached to your earlier e-mail. Thanks.

Jim

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

From: Jim Speck
Sent: Monday, June 30, 2014 9:43 AM
To: 'Nelson, Dan'
Cc: Karl Nichols (karl@nichols-property.com)

Dan,

The permit allows for the development of 30 acres. If only 15.9A were actually irrigated why can't up to 14.1A be allocated to the then undeveloped lots? It's clear the acre limitations in conditions of the permit were arrived at through a mutual mistake made by the applicant and IDWR. The effect of that mistake should not be to reduce the permissible development from 30 acres to the 29.7 acres in the proposed licensing amendment.

Jim

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

From: Nelson, Dan
Sent: Monday, June 30, 2014 8:05 AM
To: Jim Speck

Hello Jim,

I am going to call you back today after 9:00 am, but I wanted to give you a spreadsheet showing how we came up the acre numbers for the conditions on the permit.

We decided that it would be impossible to regulate the 13.3 acres on the 34 lots remaining without putting a limitation on them. So we divided the 13.3 acres by the 34 lots to come up with the 0.4 acre limitation per lot. This is the only way that we can prevent exceeding the 13.3 acres on the undeveloped lots.

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

Attachment(s): Acre Accounting 37-8439.xlsx; Amendment Conditions 37-8439.pdf

Nelson, Dan

To: 'Jim Speck'
Subject: RE: Starweather/Water Right 37-8439
Attachments: 37-8439 scanned amendment and letter.pdf

Hello Jim,

I have finished my review and discussed this file with my bosses. We have determined that you will need an amendment to get this permit licensed. The first reason for the amendment is that the original permit was only for one well. The other well for the subdivision was supposed to be covered under the two adjudication claims that were withdrawn. Since this is the only right for this subdivision, I wanted to make sure both wells were on this license. We also decided to treat the irrigation use as being in a permissible place of use. The permissible place of use includes all of the residential lots, and a berm in Lot 53 that was found irrigated during the field exam.

I wanted to give you as much notice as possible, so I have attached a copy of the amendment with maps to this email. I have placed the original in the mail. You can print out the amendment attached to this email and have you client sign and mail it back to me with the \$100.00 amendment fee if you wish. You do not need to wait for the amendment that I mailed. The amendment also has the suggested conditions that we plan to use on the water right license, so this will give you an opportunity to review them as well.

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

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

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

From: Nelson, Dan
Sent: Monday, June 02, 2014 8:05 AM
To: 'Jim Speck'
Subject: RE: Starweather/Water Right 37-8439

Hello Jim,

I am sorry I haven't responded to your email. I was out in the field most of last week, and I may have to go out again later this week. I will look over your proposal and speak with staff, and see what we can come up with. I feel that we are pretty close. I will let you know by the end of next week what I found out.

Thank you for your response, and I will get back with you as soon as I possibly can.

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

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

From: Jim Speck [<mailto:jim@speckandaanestad.com>]
Sent: Tuesday, May 27, 2014 3:45 PM
To: Nelson, Dan
Cc: Karl Nichols
Subject: Re: Starweather/Water Right 37-8439

Dan,

I am responding to your May 7, 2014 letter regarding licensing the above water right. My client prefers your Option 2 with one change. I have attached a copy of the list of the 21 lots to which the original 15.9 acres were allocated. Included is Lot 19 with an allocation of 0 acres. This lot should not have been in that category and, instead, it should be allocated the same allotment as the other then undeveloped lots. In other words, there should be 35 lots at 0.4A each for a total of 14A. The total irrigated acres for the license will then be 29.9A which is within the permitted 30A limit.

Is this acceptable?

Jim

James P. Speck
SPECK & AANESTAD
A Professional Corporation
120 East Avenue North
P.O. Box 987
Ketchum, ID 83340
208.726.4421
208.726.0752 (fax)
jim@speckandaanestad.com

CONFIDENTIAL COMMUNICATION

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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

6/27/2014

STARWEATHER SUBDIVISION PROPERTY OWNERS
C/O JAMES P SPECK
PO BOX 987
KETCHUM ID 83340-0987

RE: Water Right Permit No. 37-8439

Dear Permit Holder(s):

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.

Based on the examiner's there are actually two wells for this system instead of one well at the same legal description. It was also determined that the only practical way to describe the irrigation use was to create a permissible place of use using the borders of the tax lots that could be irrigated. In order to licensed these rights with these changes, and amendment is needed.

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 within 14 days.

If you have any questions, please contact me.

Sincerely,

Daniel A. Nelson
Staff Hydrologist
Planning Bureau
Idaho Department of Water Resources
Telephone # (208) 287-4856

Enclosure(s)

MEMORANDUM

TO: File 36-8439

FROM: Daniel Nelson – Staff Hydrologist

DATE: April 25, 2014, 2014

SUBJECT: Licensing Review of Water Right 36-8439

The field examiner for this permit provided adequate information on the diversion rate to license this permit. However, there are some questions regarding the number of acres irrigated, which in turn would affect the volume for this permit.

This permit was filed in 1988 to cover water use for a subdivision in the Big Wood Valley area that was developed in 1981 without a water right. Two Snake River Basin Adjudication claims (37-12027 and 37-12029) were filed to cover the use for this subdivision, but both of these claims were withdrawn since the subdivision's wells were developed after the 1963 mandatory permitting requirements. This permit is the only water right for this subdivision.

The original permit only discusses a single well, but there are actually two wells for this subdivision. The original permit expected water rights 37-12027 and 37-12029 to be decreed, so they only addressed a single well in the permit. There are actually two wells on this property. Since the adjudication claims were withdrawn, I am recommending both points of diversion for these permits. An amendment will be needed to include the second well. According the field examiner, the second well appears to be a backup well, and flow rate for the permit was approved at a higher rate than we can allow, so there shouldn't be any expansion of the rate or volume by adding the second well. The wells were drilled in 1981 and 1982 before this permit was filed, so a new well wasn't added after permit was filed.

During the processing of the application for this permit, the permit was held to address Trust Water issues, since it is within the Trust Water area. While waiting for the Trust Water processing backlog to allow further processing of this permit, the order for the Big Wood Ground Water Management Area (BWGWMA) was issued in 1991 preventing processing of water rights within the BWGWMA that did not meet the limitations set forth in Idaho Code 42-111. The order did allow water rights for subdivisions to be processed as long as each of the lots within the subdivision were limited to ½ acre per lot.

The application was filed in such a way to allow the already existing 21 homes in the subdivision to continue to irrigate the same amount property that they had always done approximately 16.7 acres, and then restrict the 39 undeveloped lots to 13.3 acres not to exceed ½ acre per lot. When added together, this limits the subdivision use to 30 total acres for 60 lots or ½ acre per lot. I think this was done not only to address the existing development, but to also comply with the Trust Water requirements and the BWGWMA requirements.

The owner's attorney, Jim Speck, sent a letter to the Department showing a breakdown of the acres irrigated for the 21 homes. The field examiner found that there was an error in the original calculations for the 21 homes, and determine that only 15.9 acres instead of 16.7 acres were actually irrigated for the 21 homes. I agree with field examiner's assessment of the irrigation numbers supplied by Mr. Speck. I wrote a letter to Mr. Speck regarding the licensing of this permit on May 7, 2014 to discuss a couple of the options regarding this permit. Mr. Speck responded to this letter by email on Tuesday May 27, 2014 and stated that one of the 21 original lots was marked with no irrigation, but they actual did irrigate 0.4 acres. This would increase the irrigation of the original 21 lots from 15.9 acres to 16.3 acres. Please see the attached sheet. The field examiner did not provide any documentation that during the field examination, that he actually verified the acres irrigated for the original 21 acres, therefore, we can only use the list supplied by Mr. Speck for the irrigation use.

The field examiner found that at the time of the field exam that 55 of the 60 lots were residential lots, and the remaining lots were non-irrigated common area except for approximately 0.1 acres at the entrance to the subdivision in lot 53. The 0.1 acres in lot 53 should be added to the acre amount for the original 21 lots making the original 22 lots (including lot 53) total irrigation of 16.4 acres (16.3 acres + 0.1 acre from lot 53 = 16.4 acres). Of the 55 residential lots, only 37 of the lots had actually been developed.

This creates a bit of a dilemma. This permit was filed as a domestic use for 60 homes for in-house use only, and irrigation use for 30 acres. With the limitation of the $\frac{1}{2}$ acre per lot beyond the original 21 homes, this would only leave 16 homes with a possible $\frac{1}{2}$ acre of irrigation or 8 acres that could be licensed according to Department standards (37 homes – 21 original homes = 16 homes X 0.5 acres per lot = 8 acres). When this is added to the total irrigation use allowed, this would limit the subdivision to a total of 23.9 acres. It would also prevent the remaining 18 homes the ability to irrigate any portion of their property.

The way that this permit was filed, I am assuming that the intent was to allow the existing lots to continue irrigating as they always had, but limit the entire use of the subdivision to maximum of $\frac{1}{2}$ acres per lot not. The conditions limit the irrigation use to not exceed 16.7 acre for the original 21 lots and 13.3 acres for the remaining lots in the subdivision. In my May 7, 2014 letter I gave Mr. Speck and the homeowners a couple of options on how we could license this permit. Mr. Speck respond in a May 27, 2014 email that he would prefer that we license the original 21 lots at 16.3 acre and the 34 remaining lots at 13.3 acre not to exceed 0.4 acres per lot. This was determined by dividing the 13.3 acres by the remaining 34 lots to come up with the 0.4 acres per lot limitation. This was done to avoid any questions or confusion for the remaining homeowners.

I will make the following recommendations for licensing and conditions:

Domestic use = 0.34 cfs and 33 af

(Diversion rate was taken from admin memo and volume calculated by 0.6 af/home X 55 homes.)

Condition -- 1.) Domestic use is for 55 homes.

2.) Domestic use is for in-house use only, yard irrigation is covered under the irrigation portion of this right.

3.) The domestic place of use is located within Lots 1-7, 8A, 10-43, 44A, 45- 50, 51A, 52A, 59, 60A-1, and 60B in Starweather Subdivision.

Irrigation use = 0.59 cfs and 104 af --- 29.7 acre within a permissible place of use.

Conditions -- 1.) Irrigation within Lots 1, 6, 9, 11, 12, 17, 19, 20, 22, 25, 27, 28, 32-35, 40, 41, 45, 47, 49, and a portion of lot 53 in Starweather Subdivision is limited to a collective total of 16.4 acres.

2.) Irrigation within Lots 2-5, 7, 8A, 10, 13-16, 18, 21, 23, 24, 26, 29-31, 36-39, 42, 43, 44A, 46, 48, 50, 51A, 52A, 59, 60A-1, and 60B in Starweather Subdivision is limited to a collective total of 13.3 acres not to exceed 0.4 acres per lot.

3.) This right is limited to the irrigation of 29.7 acres within the place of use described above in a single irrigation season.

4.) Points of diversion are located within Lot 16, Starweather Subdivision.

Due to the need to make this a permissible place of use, an amendment will be needed. This shouldn't be an issue, since an amendment was needed to add the second well anyway. I have also added water district conditions, since this system is now in the water district and flow meters and lockable headgates have been installed.

Starweather Subdivision

LOT #	Lot Acres	Type	Permit Acres Allotted
1 LOT 1	1.21@ SEC 20 3N 18E	Residential	1.00 *
2 LOT 2	1.51@ SEC 20 3N 18E	Residential	
3 LOT 3	1.37@ SEC 20 3N 18E	Residential	
4 LOT 4	1.06@ SEC 20 3N 18E	Residential	
5 LOT 5	1.00@ SEC 20 3N 18E	Residential	
6 LOT 6	1.00@ SEC 20 3N 18E	Residential	0.50 *
7 LOT 7	1.02@ SEC 20 3N 18E	Residential	
8 LOT 8A	2.52 SEC 20 3N 18E	Residential	
9 LOT 9	1.41@ SEC 20 3N 18E	Residential	0.75 *
10 LOT 10	1.55@ SEC 20 3N 18E	Residential	
11 LOT 11	2.88@ SEC 20 3N 18E	Residential	2.00 *
12 LOT 12	1.37 SEC 20 3N 18E	Residential	1.37 *
13 LOT 13	1.05@ SEC 20 3N 18E	Residential	
14 LOT 14	1.04@ SEC 20 3N 18E	Residential	
15 LOT 15	1.11@ SEC 20 3N 18E	Residential	
16 LOT 16	1.63@ SEC 20 3N 18E	Residential	
17 LOT 17	1.24@ SEC 20 3N 18E	Residential	0.50 *
18 LOT 18	1.12@ SEC 20 3N 18E	Residential	
19 LOT 19	1.07@ SEC 17	Residential	0.00 *
20 LOT 20	1.08@ SEC 17	Residential	0.50 *
21 LOT 21	1.12@ SEC 17	Residential	
22 LOT 22	1.00@ SEC 17	Residential	0.50 *
23 LOT 23	1.25@ SEC 17	Residential	
24 LOT 24	1.11@ SEC 17	Residential	
25 LOT 25	1.01@ SEC 17	Residential	1.00 *
26 LOT 26	1.25@ SEC 18	Residential	
27 LOT 27	1.00@ SEC 17	Residential	0.50 *
28 LOT 28	1.04@ SEC 18	Residential	0.75 *
29 LOT 29	1.07 @ SEC 18	Residential	
30 LOT 30	1.10@ SEC 17	Residential	
31 LOT 31	1.26@ SEC 17	Residential	
32 LOT 32	1.65@ SEC 17	Residential	0.50 *
33 LOT 33	1.32@ SEC 17	Residential	0.50 *
34 LOT 34	1.38@ SEC 17	Residential	1.30 *
35 LOT 35	1.19@ SEC 18	Residential	0.50 *
36 LOT 36	1.92@ SEC 18	Residential	
37 LOT 37	1.39@ SEC 18	Residential	
38 LOT 38	1.99@ SEC 18	Residential	
39 LOT 39	2.40@ SEC 18	Residential	
40 LOT 40	2.48@ SEC 18	Residential	0.50 *
41 LOT 41	2.46@ SEC 18	Residential	1.00 *
42 LOT 42	3.14@ SEC 18	Residential	
43 LOT 43	3.36@ SEC 17	Residential	
44 AMENDED LOT 44A	3.60@ SEC 17&18&19&20 3N 18E	Residential	
45 LOT 45	2.66@ SEC 19&20 3N 18E	Residential	0.75 *
46 LOT 46	2.43@ SEC 19&20 3N 18E	Residential	
47 LOT 47	2.31@ SEC 19&20 3N 18E	Residential	1.00 *
48 LOT 48	2.13@ SEC 19&20 3N 18E	Residential	
49 LOT 49	2.59@ SEC 20 3N 18E	Residential	0.50 *
50 LOT 50	2.65@ SEC 20 3N 18E	Residential	
51 AMENDED LOT 51A	2.67@ SEC 20 3N 18E	Residential	
52 AMENDED LOT 52A		Residential	
53 LOT 53	13.96@ SEC 20 3N 18E	Common Pasture	Part of Berm Irrigated
54 LOT 54	15.6@ SEC 20 3N 18E	Common Pasture	ion within taxlot
55 LOT 55 COMMON PARK	75.65@ SEC 20 3N 18E	Common Park	no irrigation
56 Lot 56 COMMON REC	7.15@ SEC 20 3N 18E	Common REC	no irrigation
57 LOT 57	9.58@ SEC 19 3N 18E	Common Park	no irrigation
58 LOT 58	24.13@ SEC 18&19 3N 18E	Common Park	no irrigation
59 LOT 59	1.86@ SEC 17	Replatted to Residential	
60 AM LOT 60A-1	3.99 SEC 20 3N 18E	Residential	
61 LOT 60B	3.63 SEC 20 3N 18E	Residential	
Pre 1987 total			15.9 acres

PER Jim Speck's
5-27-2014 Email
LOT 19 actually
has 0.4 acres.

TOTAL acres
FOR THE
Existing 21

HOUSES FOR
THIS PERMIT
IS NOW

$$15.9 + 0.4 = 16.3$$

16.3 acres

FOR Existing
21 Homes.

DAN

6-20-14

ADD an
Additional
0.1 acres
FOR BERM
IN LOT 53
TOTAL = 16.4 acres

*The original 21 lots developed prior to 1987 that were given 16.7 acres total irrigation.

These are the acreages from a letter on June 17, 1996 sent to IDWR from Attorneys for Starweather Subdivision.

The acreages from the letter only add up to 15.92 acres not 16.7 acres

SCANNED
FEB 09 2006

Nelson, Dan

To: Jim Speck
Subject: RE: Starweather/Water Right 37-8439

Hello Jim,

I am sorry I haven't responded to your email. I was out in the field most of last week, and I may have to go out again later this week. I will look over your proposal and speak with staff, and see what we can come up with. I feel that we are pretty close. I will let you know by the end of next week what I found out.

Thank you for your response, and I will get back with you as soon as I possibly can.

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

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

From: Jim Speck [<mailto:jim@speckandaanestad.com>]
Sent: Tuesday, May 27, 2014 3:45 PM
To: Nelson, Dan
Cc: Karl Nichols
Subject: Re: Starweather/Water Right 37-8439

Dan,

I am responding to your May 7, 2014 letter regarding licensing the above water right. My client prefers your Option 2 with one change. I have attached a copy of the list of the 21 lots to which the original 15.9 acres were allocated. Included is Lot 19 with an allocation of 0 acres. This lot should not have been in that category and, instead, it should be allocated the same allotment as the other then undeveloped lots. In other words, there should be 35 lots at 0.4A each for a total of 14A. The total irrigated acres for the license will then be 29.9A which is within the permitted 30A limit.

Is this acceptable?

Jim

James P. Speck
SPECK & AANESTAD
A Professional Corporation
120 East Avenue North
P.O. Box 987
Ketchum, ID 83340

208.726.4421
208.726.0752 (fax)
jim@speckandaanestad.com

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**STARWEATHER PROPERTY OWNERS
OF ACRES IRRIGATED**

<u>NAME</u>	<u>LOT #</u>	<u>ACRES</u>
August	45	.5 - .75
Armstrong Jensen	6	.5
Epperson	1	1.0
Giacobbi	17	.5
Heston	34	1.3
Kimmich	28	.75
Kirk	19	0
Kresge	20	.5
Levenstein	41	1.0
Miller	35	.5
Mills	25	1.0
Mosher	12	1.37
Newcomb	11	2.0
Parnes	49	.5
Stone	9	.75
Werth	47	1.0
	<u>16</u>	
TOTAL		14.17

No Response:

Chase	32	.5
Christopher/Hurst	33	.5
Gortner	40	.5
Peebles	22	.5
Thornton	27	.5
	<u>5</u>	
TOTAL		2.5

AUG 07 1986



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 7, 2014

STARWEATHER SUBDIVISION PROPERTY OWNERS
C/O JAMES P SPECK
PO BOX 987
KETCHUM ID 83340

RE: Additional information request on field report for water right 37-8439

Dear Mr. Speck:

I have been asked to review several water right permit files where a field examination has been made, but a license has yet to be issued. Water right permit 37-8439 is one of these files. The permit was issued in 1996, and a field examination was done in 2005 for this file. However, some issues arose that have never been addressed that have prevented the licensing of this permit.

I have attached a copy of the computer generated proof report for your reference. As you can see from the report, this permit was filed to cover domestic use for 60 homes, and the irrigation of 16.7 acres for 21 lots developed prior to the permit, and 13.3 acres for the remaining 39 lots not to exceed ½ acre per lot. Proof of beneficial use was submitted on May 2, 1997 stating that entire subdivision had been developed.

In the 2005 field exam report, the field examiner found that only 37 of the 60 lots had been developed and out of the 60 lots, only 55 lots were residential lots. The field examiner also discovered that an error had been made in the acres presented for the 21 lots in your letter dated June 17, 1996. Your June 17th letter showed the number of acres irrigated per each of the original 21 lots with a total acreage of 16.7 acres. However, after adding up all of the acres on the list, the total was only 15.9 acres. The field examiner then recommended that the remaining acres should be spread over the 34 residential lots available. Unfortunately, the field examiner did not verify the actual acres that were irrigated in 2005.

The above recommendation would be acceptable if the water use on the permit was only for domestic use. The permit filed was for a domestic use for in-house use only and the irrigation of 30 acres split as mentioned above. The Idaho Department of Water Resources (Department) generally requires that the proof of beneficial use not be submitted until the entire project has been completed. There is an exception to this rule for domestic uses that are part of a subdivision that have been stubbed into the community system. Unfortunately, this exception does not apply to irrigation uses. Irrigation uses are limited to the amount of acres that have been irrigated at the time that proof of beneficial use was submitted. In this case, that would have been in 1997

This creates a bit of dilemma. If the standard rules are followed, then all of the irrigation for the lots developed after May 2, 1997 would not be able to be covered under this water right. After considerable discussion, Department staff has come up with two options. The options are listed below:

OPTION 1:

This option follows the Department's standard. If you choose this option, you would need to supply me with total number of acres that were irrigated at this site as of May 21, 1997. We would then license this permit based on the number of actual acres irrigated in 1997, and domestic use for 55 homes. In this case, Starweather Subdivision Property Owners (SSPO) would then need to file another permit to cover the acres irrigated by the remaining lots. If you cannot determine the number of acres irrigated on the lots developed prior to 1997, I would be happy to re-visit the site and help determine the number of acres that were irrigated once it is determined which lots were developed prior to May 21, 1997.

OPTION 2:

The timing of this permit and the way it was filed suggests that this permit was filed to meet the standard domestic exemption for all 60 lots. Therefore, we have decided that we could license this permit for in-house use only for the original 21 homes, 15.9 acres of irrigation, and domestic use for remaining 34 homes for in-house use and up to 0.4 acre of irrigation. The reason for the reduction of the irrigation component is that 13.3 acres were allowed on the remaining 39 lots not to exceed $\frac{1}{2}$ acre per lot. If you divide the 13.3 acres by the actual 34 residential lots, that leaves an average irrigation use of 0.4 acres per lot. Since some of these lots still have not been developed, this appears to be the only way that we can cover the current and future development of this subdivision. The Department will need a written and signed approval from the SSPO and you that you agree with moving forward with licensing this permit with this option.

After significant discussion over this issue, the above two options are the only way that we feel we can proceed with licensing of this water right. Please read over the above options and supply the information require for one of the two options. Your response must be supplied by June 9, 2014. If you have any questions, please don't hesitate to contact me.

Respectfully,



Daniel A. Nelson

Staff Hydrologist

Telephone # (208) 287-4867

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

Email dan.nelson@idwr.idaho.gov

Enclosure