

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 96-09532

Priority: October 21, 2013

Maximum Diversion Rate: 0.14 CFS

This is to certify, that SCOTT HERNDON And
ARLENE HERNDON
246 OTTS RD
SAGLE ID 83860
(208) 610-2680

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>
STOCKWATER	01/01 to 12/31	0.02 CFS
IRRIGATION	04/01 to 10/31	0.12 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER, SW1/4SE1/4, Sec. 14, Twp 56N, Rge 03W, B.M., BONNER County

PLACE OF USE: IRRIGATION, STOCKWATER

Twp Rge Sec	NE				NW				SW				SE				
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
56N 03W 14															2.0	2.0	4.0
															x	x	

Total Acres: 4

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **February 01, 2019**.
2. Subject to all prior water rights.
3. This right does not grant any right-of-way or easement across the land of another.
4. 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.
5. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 3.0 afa per acre at the field headgate for irrigation of the place of use.
6. Stockwater use is for 20 head of mixed stock.
7. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Coeur d'Alene, this 21 day of January, 2014.


For, GARY SPACKMAN, Director



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region, 7600 Mineral Drive, Suite 100, Coeur d'Alene, Idaho 83815

Phone: (208) 762-2800 FAX: (208) 762-2819 www.idwr.idaho.gov

January 23, 2014

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

SCOTT HERNDON
246 OTTS RD
SAGLE ID 83860

ARLENE HERNDON
246 OTTS RD
SAGLE ID 83860

RE: Permit No.96-9532

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.

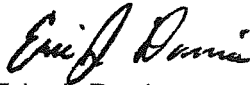
The Department will send you a 'Proof Due Notice' approximately 60 days prior to the above referenced date requesting you to file either a Proof of Beneficial Use form or a Request for Extension of Time form.

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 208 762-2800.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric J. Davis". The signature is written in a cursive, flowing style.

Eric J. Davis

Sr. Water Resource Agent

Enclosure(s)

CERTIFICATE OF SERVICE

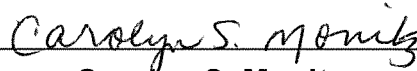
I hereby certify that on January 23, 2014 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO.

96-9532

**ARLENE HERNDON
246 OTTS RD
SAGLE ID 83860**

**SCOTT HERNDON
246 OTTS RD
SAGLE ID 83860**

A handwritten signature in cursive script, reading "Carolyn S. Monitz", is written over a horizontal line.

**Carolyn S. Monitz
Technical Records Clerk**

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.

HO DEPARTMENT OF WATER RESOURCES
APPROPRIATION APPLICATION ANALYSIS SHEET

W.R. # 96-9532

APPLICATION ID # 78904

ENT. 12/15 BCA 12/17/13 OK to Publish 12/16/13

APPLICANT: Herndon

INITIAL REVIEW

BY: KJ DATE: 12/11/13

ITEM REQUIRED INFORMATION

1. ☒ Name and Address
2. ☒ Source
3. ☒ Point of Diversion & County
4. ☒ Quantity
5. ☒ Nature of Proposed Use
6. ☒ Period of Use
7. ☒ Total Quantity
8. ☒ Description of diverting works
9. ☒ Time required for b/u
10. ☒ Proposed use
11. ☒ Place of use or acres irrigated
12. ☒ Other water Rights
13. ☒ Ownership
14. ☒ Map
15. ☒ Signature
16. ☒ Fee (Amt, receipt, acknowledgement)

*** Send info sheet Y () N ()

ADDITIONAL INFORMATION

(Yes)(No)

☒ Shape File Created Date 12/11 By: KJ
☐ Field check: by _____
☐ Field report attached
☐ Analysis Supp. Attached (>5cfs/500af)

☐ Water delivered by water master? Water District # _____

PROCESSING

(Yes)(No)

PRIORITY DATE: 10/21/2013

(Include Moratorium Remark)

Statewide Advertising: (Diversion rate greater than 10 cfs or 1,000 af).

ADVERTISE IN:

Newspaper: Bonner County

Dates scheduled for publication 12/19 & 26/13

Affidavit of Publication received: 1/3/14

Dates actually published: 12/19 & 26/13

Application published correctly. Yes ☒ No ☐

If not, action taken: _____

Final Date for Protest: 1/6/14

Protests Received: Yes ☐ No ☒

LETTERS SENT REQUESTING:

() Dam Information () Fish Information
() Power Information () Other: _____

INFORMATION RECEIVED:

() Dam Information () Fish Information
() Power Information () Other: _____

GROUNDWATER SECTION

WD Permit No.'s:	Tag #	Type:	Fees	Receipt No.	Upgrade Needed?
_____	_____	Dom.____ Non-Dom.____	Paid \$ _____	_____	Y () N (☒)
_____	_____	Dom.____ Non-Dom.____	Paid \$ _____	_____	Y () N ()
_____	_____	Dom.____ Non-Dom.____	Paid \$ _____	_____	Y () N ()

☐ Groundwater management area
☐ Critical ground water area
☐ Well Drilling Permit required
☐ Well Drilling Application and Fees received
☐ Well Drilling Application approved?

Remarks: Hand dug to access groundwater

FINAL REGIONAL PROCESSING/REVIEW

(Yes)(No)
☒ Notice of pending void order issued.
☒ Further information required from applicant _____

Final order response date: ____/____/____

☒ Measuring device required
☒ Measuring port required
☒ Special conditions: _____
☒ Special conditions of approval supplement and/or cover letter attached: _____

Approval Recommended by:

Heather Frankel

Date: 1/21/2014 Sr. Agent initial KJ

January 15, 2014

MEMO: TO THE FILE
FROM: KEITH FRANKLIN
SUBJECT: WATER RIGHT APPLICATION 96-9532 SITE VISIT

This water right application was not protested by surrounding landowners; however, the department received various calls concerning the source of water for the application. The concerned parties felt the applicant was planning to utilize surface water from Moore Creek instead of groundwater as proposed. They also stated the applicant had rechanneled the creek and constructed pipe cisterns in the creek itself. The Moore Creek channel is on a fairly progressive slope and is approximately 30 to 40 ft lower in elevation than the applicant's property.

Greg Taylor and I met with the applicant, Scott Herndon at 8:00 am this day to review the source and point of diversion prior to the issuance of a permit.

We observed two concrete upright pipes, approximately 4 ft in diameter constructed next to the creek but not in the creek itself. According to Mr. Herndon, the pipes are approximately 9 ft deep and rest on a sandy-gravel layer. The pipes have no perforations; therefore water has to enter the pipes from the bottom. There is no connection between pipes and no direct connection to the creek. Mr. Herndon stated when the holes were excavated for the pipes; water entered the holes from all directions.

One pipe is located fairly close to the creek channel and the other, that is next to the first pipe is approximately 10 to 12 ft from the creek channel. Mr. Herndon stated he plans to pump out of the pipe that is farther away from the creek. The pipe closest to the creek, he states, is there to possibly aid in a small amount of storage. This pipe in my opinion is not part of the water right.

The creek channel did not appear to have been relocated to accommodate the cisterns as presented by concerned parties.

In my opinion, the applicant's diversion is from a ground water source. However, the ground water source in all likelihood is tributary to the creek. It is my intent to proceed with the issuance of a permit and indicate on the permit that the ground water source is tributary to Moore Creek.

On January 16, 2014 Mr. Herndon called and said he would abandon the cistern closest to the creek and only use the one farthest from the creek. I agreed with his suggestion.

AFFIDAVIT OF PUBLICATION

RECEIVED
JAN 03 2014
IDWR / NORTH

STATE OF IDAHO)

) ss.

County of Bonner)

Danielle Rucker, being first duly sworn on oath, deposes and states:

1. I am a citizen of the United States of America, over the age of 18 years, a resident of Bonner County, Idaho, and am not a party to the proceedings referred to in the attached Application.
My business address is P.O. Box 159, Sandpoint, Idaho.

2. I am the Bookkeeper of the Bonner County Daily Bee, a newspaper of general publication in Bonner County, Idaho;

3. Said newspaper has been continuously and uninterruptedly published in Bonner County, Idaho during a period of 12 months prior to the first publication of said Notice, and thereafter.

4. The attached Notice was published in the regular and entire issue of the Bonner County Daily Bee for a period of 2 consecutive weeks, commencing on the 19 day of December, 2013, and ending on the 26 day of December, 2013.

Danielle Rucker

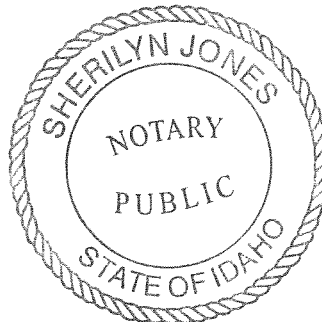
State of Idaho, county of Bonner ss.

On this 26 day of Dec, in the year of 2013, before me, Sherilyn Jones, Notary Public, personally appeared

Danielle Rucker, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he

(or they) executed the same.

Sherilyn Jones
Notary Public
Residing at: Sandpoint
Comm. Exp.: 3/24/17



RECEIVED
JAN 03 2014
IDWR / NORTH

APPLICATION

The following application(s) have been filed to appropriate the public waters of the State of Idaho:
95-9532

SCOTT HERNDON

ARLENE HERNDON

246 OTTS RD SAGLE, ID 83860

Point of Diversion SWSE S14 T56N R03W BONNER CO

Source GROUND WATER

Use: IRRIGATION 04/01 to 10/31 0.12 CFS

Use: STOCKWATER 01/01 to 12/31 0.02 CFS

Date Filed: 10/21/2013

Total Diversion: 0.14 CFS

Place of Use: STOCKWATER T56N R03W S14 SWSE SESE

Place of Use: IRRIGATION same as STOCKWATER

Total Acres: 4

Stock water use is for 20 head of mixed stock.

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Northern Region office at (208) 762-2800. 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, Northern Region, 7600 Mineral Drive, Suite 100, Coeur D'Alene ID 83815 together with a protest fee of \$25.00 for each application on or before 1/6/2014. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

SNP Legal 2559

December 19, 26, 2013