



State of Idaho

## DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

June 10, 2013

NORTH KOOTENAI WATER DISTRICT  
ATTN MIKE GALANTE  
PO BOX 2290  
HAYDEN ID 83835

RE: Water Right Permits 95-9129, 95-8244 and 95-10019

**COPY**

Dear Mr. Galante:

On May 20, 2013, we met our Northern Region office to discuss the licensing of the above water rights. During that meeting you asked if a portion of your water rights would be exempt from a volume limitation because they were within the service area of the City of Hayden. I couldn't answer that question, so I told you that I would meet with my Section Manager to find out the answer.

After speaking with my Section Manager, it was determined that it would be best to discuss this issue with our Bureau Chief and the Department's Legal Council. In this meeting, I was informed that unless you are the primary provider for the City of Hayden, then a volume is required for all of your water rights. Therefore, we will be issuing a volume on each of the water rights I have been asked to license, and a combined volume limitation will be included in the water right conditions. This decision was made based on Idaho Code 42-202b, Section 9, which says the following:

The service area for a municipality may also include areas outside its corporate limits, or other recognized boundaries, that are within the municipality's established planning area if the constructed delivery system for the area shares a common water distribution system with lands located within the corporate limits.

The key phrase here is "if the constructed delivery system for the area shares a common water distribution system." Since your systems do not share a common distribution system with all of the City of Hayden, it was determined that you would need a volume limitation on your water right. It is our interpretation of the code, that if you are not the sole provider for a municipality, then you must adhere to the rules for a municipal provider, which requires a volume be added to the water right.

This section of Idaho Code also raised another issue. A water right can only be issued to a single delivery system and not to multiple delivery systems. Therefore, we have changed our position on how the three water rights I am working on will need to be licensed. The following is the direction that I have been given to license these water rights:

95-9129 – Will only be licensed for Selkirk Meadows Subdivision and will be limit to the 48 lots, single well, rate and volume determined for this subdivision in the field exam.

95-10019 – Will be limited to the place of use and the wells that share the “common distribution system” for the East Seasons Acres Subdivision. You will not be allowed to include any additional wells or place of use serviced by the North Kootenai Water District if they were not all connected into the “common distribution system” at the time proof of beneficial use was filed. The rate of diversion and annual volume will be determined for this subdivision in the field exam.

95-9244 – Will need to be split into separate water rights for each “common distribution system” serviced by this water right. I am not allowed to license this water right as an over reaching place of use with all of the wells included. Each “common distribution system” will be independently licensed with the wells and place of use that the “common distribution systems” provides water under this water right. If this water right does not increase the diversion rate or volume for a particular distribution system, then that system will not be included under one of the splits of this water right.

This requires that I take a very different approach to the licensing of these water rights. In the past, you filed water right transfer 70394 to connect all of your wells and all of your delivery systems in a single system, and spread water rights 95-7138, 95-7713, 95-7827, and 95-8522 throughout your entire service area use water from any of your wells for these water rights. Also, water right 95-8639 was issued by the Northern Regional Manager stating that all of your systems were interconnected into a common system that allowed you supply water from all of your wells to any of your subdivisions. However, it appears as though didn’t interconnect all of your wells and delivery systems into a common system, and you still have multiple delivery systems that are not interconnected. A water right or group of combined water rights is supposed to only describe a single delivery system. If your multiple systems are not physically connected together, then multiple water rights or groups of water rights are required.

Therefore, I will need to determine how many "common distribution systems" you have, and which water rights serve them. If water right 95-8639 serves multiple systems, then we will need to know how much of this water right supplies each separate system. I will need the following for each individual system:

- Common Distribution System name
- Water rights that serve this system
- Amount of water (rate and volume) supplied to this system from each of the existing water rights. This would include any water supplied by water right 95-8639.
- The amount of additional water (rate and volume) supplied to this system from 95-9244.

In order to get these water rights licensed as quickly as possible, you will need to provide this information to me by no later than July 31, 2013. I have allowed a couple of weeks beyond the normal 30 day requirement to supply information to allow you to discuss this request with your consultant Necia Maiani. If you have any questions, please contact me at (208) 287-4856.

Respectfully,

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

Daniel Nelson  
Staff Hydrologist

Cc Necia Maiani