

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 96-09519

Priority: June 28, 2013

Maximum Diversion Volume: 1.4 AF

This is to certify, that DANIEL FOGARTY
PO BOX 1472
SANDPONIT ID 83864
208-263-5546

has applied for a permit to appropriate water from:

Source: SPRING

Tributary: SINKS

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

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>ANNUAL VOLUME</u>
AESTHETIC	01/01 to 12/31	1.4 AF
RECREATION	01/01 to 12/31	1.4 AF
FIRE PROTECTION	01/01 to 12/31	1.4 AF

LOCATION OF POINT(S) OF DIVERSION:

SPRING, NW1/4SE1/4SW1/4, Sec. 8, Twp 57N, Rge 02W, B.M., BONNER County

PLACE OF USE: AESTHETIC, RECREATION, 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	
57N 02W 8													X				

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **September 01, 2014**.
2. Subject to all prior water rights.
3. Water shall not be diverted for fire protection use under this right except to fight or repel an existing fire.
4. This right does not grant any right-of-way or easement across the land of another.
5. Recreational use is for swimming.
6. Aesthetic use is for wildlife viewing.

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 12 day of September, 2013.


For, GARY SPACKMAN, Director



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region • 7600 N. Mineral Drive, Suite 100 • Coeur d'Alene, Idaho 83815-7763
Phone: (208) 762-2800 • Fax: (208) 762-2819 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

September 12, 2013

DANIEL FOGARTY
PO BOX 1472
SANDPONIT ID 83864

RE: Permit No.96-9519

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.

Enclosed is a form entitled 'Instructions for Proof of Beneficial Use.' Please read the instructions carefully since you must take further action to develop this permit into a licensed water right. Also enclosed is a form entitled 'Proof of Beneficial Use.' If your project is already completed, you should complete and submit this form immediately.

Please note that a separate stream channel alteration permit must be obtained from the Department prior to any activity in the stream channel other than construction or maintenance of the diversion structure for your water right(s). Applications for stream channel alteration permits must be filed at least sixty days prior to the commencement of work in the stream.

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 Davis". The signature is written in a cursive, flowing style.

Eric Davis
Sr. Water Resource Agent

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2013 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.

96-9519

**DANIEL FOGARTY
PO BOX 1472
SANDPONIT ID 83864**



**Carolyn 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.

IDAHO DEPARTMENT OF WATER RESOURCES
APPROPRIATION APPLICATION ANALYSIS SHEET

P-7-19-13

W.R. # 96 - 9519

APPLICATION ID # 78701

ENT. E.D

BCA 7/16/13

OK to Publish 7/16/13

INITIAL REVIEW

APPLICANT: Fogarty

BY: E.D

DATE: 7/11/2013

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)

PROCESSING

(Yes)(No)

PRIORITY DATE: 6/28/2013

☒
☒

(Include Moratorium Remark)

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

ADVERTISE IN:

BONNER

County

Newspaper: BODB

Dates scheduled for publication 8/1 + 8/13

Affidavit of Publication received: 9/5/13

Dates actually published: 8/1 + 8/13

Application published correctly. Yes ☒ No ☐

If not, action taken:

Final Date for Protest: 8/19/13

Protests Received: Yes ☐ No ☒

LETTERS SENT REQUESTING:

☐ Dam Information ☐ Fish Information

☐ Power Information ☐ Other:

INFORMATION RECEIVED:

☐ Dam Information ☐ Fish Information

☐ Power Information ☐ Other:

ADDITIONAL INFORMATION

(Yes)(No)

☒ Shape File Created Date 7-11-13 By: ED

☐ Field check: by

☐ Field report attached

☐ Analysis Supp. Attached (>5cfs/500af)

☐ Water delivered by water master? Water District #

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?

Spring

Remarks:

FINAL REGIONAL PROCESSING/REVIEW

(Yes)(No)

☐ Notice of pending void order issued.

Final order response date: / /

☐ Further information required from applicant

☐ Measuring device required

☐ Measuring port required

☐ Special conditions:

☐ Special conditions of approval supplement and/or cover letter attached:

Approval Recommended by: [Signature]

Date: 9/6/2013

Sr. Agent initial E.D.

AFFIDAVIT OF PUBLICATION

RECEIVED
SEP 05 2013
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 for Public waters. 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.

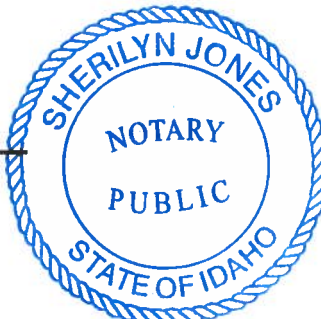
4. The attached Notice was published in the regular and entire issue of the Bonner County Daily Bee for a period of 2 consecutive weeks, commencing on the 1 day of August, 2013, and ending on the 8 day of August, 2013.

Danielle Rucker

State of Idaho, county of Bonner ss.

On this 8 day of Aug., 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.: 2/24/17



RECEIVED
SEP 05 2013
IDWR / NORTH

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

96-9519

DANIEL FOGARTY

PO BOX 1472

SANDPOINT, ID 83864

Point of Diversion NWSESW S8 T57N R02W BONNER CO

Source SPRING tributary SINKS

Use: AESTHETIC 01/01 to 12/31 1.4 AF

Use: FIRE PROTECTION 01/01 to 12/31 1.4 AF

Use: RECREATION 01/01 to 12/31 1.4 AF

Total Diversion: 1.4 AF

Date Filed: 6/28/2013

Place of Use: AESTHETIC T57N R02W S8 SESW

Place of Use: RECREATION T57N R02W S8 SESW

Place of Use: FIRE PROTECTION T57N R02W S8 SESW

Recreation use for swimming, wild life viewing and fire protection
97-7515

BUD MUELLER

620 SUPERIOR

SANDPOINT, ID 83864

Point of Diversion SWSW S34 T58N R05W BONNER CO

Source UNNAMED STREAM tributary MOORES CREEK

Use: IRRIGATION 04/01 to 10/31 0.15 CFS

Total Diversion: 0.15 CFS

Date Filed: 6/19/2013

Place of Use: IRRIGATION T58N R05W S34 SWSW

Total Acres: 5

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 8/19/2013. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

SNP Legal 2312

August 1 8, 2013