

State of Idaho
Department of Water Resources

**** AMENDED ****

Water Right License

**** AMENDED ****

WATER RIGHT NO. 65-23054

Priority: November 06, 2006

Maximum Diversion Rate: 0.13 CFS
Maximum Diversion Volume: 8.4 AF

It is hereby certified that CRUSHER LLC
1110 ELO RD
MC CALL ID 83638 has complied with the terms and conditions of the
permit, issued pursuant to Application for Permit dated June 20, 2006; and has submitted Proof of
Beneficial Use on February 13, 2012. An examination confirms water is diverted from:

SOURCE

GROUND WATER

Tributary: NORTH FORK PAYETTE RIVER

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
DOMESTIC	01/01 to 12/31	0.10 CFS	5.4 AF
IRRIGATION	04/15 to 10/31	0.03 CFS	3.0 AF

LOCATION OF POINT OF DIVERSION:

GROUND WATER NW1/4SE1/4 Sec. 3, Twp 18N, Rge 03E, B.M., VALLEY County

PLACE OF USE: DOMESTIC

Twp	Rge	Sec	NE				NW				SW				SE				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
18N	03E	3														X			

PLACE OF USE: IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
18N	03E	3														1.0			1.0

Total Acres: 1

CONDITIONS OF APPROVAL

- Domestic use is for 9 condominiums. Irrigation of lawn, garden and landscaping associated with the condominiums is authorized under the irrigation component of this right.
- Property is also known as Nordic Village.

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 65-23054

3. The right holder shall contact the watermaster by June 15 each year for authorization to continue diverting and using water. The right holder shall not divert water after June 15 each year unless the watermaster authorizes continued diversion and use of water under this water right. When the watermaster informs the right holder that water is not available to fill this right, the right holder shall cease diversion, shall rent water from the Payette River Rental Pool, or shall otherwise mitigate for the depletion of water caused by this water use. The department may amend the contact date listed in this administrative provision to more closely coincide with the date when water is not available to fill this water right.
4. 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 lands above.
5. When ordered by the Director, the right holder shall provide mitigation acceptable to the Director to offset depletion of lower Snake River flows needed for migrating anadromous fish. The amount of water required for mitigation, which is to be released into the Snake River or a tributary for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this right. Any order of the Director issued in accordance with this paragraph shall be in conformance with applicable rules allowing the right holder due process as the need for mitigation and the amount of mitigation are determined.

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 17th day of January, 2013.


JOHN WESTRA
Western Regional Manager

BEFORE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE)
NO. 65-23054 IN THE NAME OF)
CRUSHER LLC)
_____)

**PRELIMINARY ORDER
AMENDING LICENSE**

This matter having come before the Department of Water Resources (Department) as a result of the filing of a petition for reconsideration to correct a water right license, the Department finds, concludes and orders as follows:

FINDINGS OF FACT

1. On November 26, 2012 John Borkoski (Petitioner) contacted the Department regarding condition of approval #1 on the issuance of water right license no. 65-23054. The Petitioner submitted a petition for reconsideration to the Department on November 30, 2012.
2. On November 15, 2012 , the Department issued Water Right License 65-23054 to the Petitioner with condition of approval no.1 as follows:

Domestic use is for 8 condominiums and does not include lawn, garden, landscape, or other types of irrigation.
3. The Petitioner asserted the condition should list 9 condominiums. The project was platted and developed for 9 condominiums; a water supply line was stubbed to the remaining buildable lot. .
4. On December 12, 2012, the Department issued a conditional order granting the petition for reconsideration. The Petitioner was granted 30 days to provide documents/information confirming the domestic water supply line was stubbed to the 9th condominium building lot.
5. On January 3, 2013, the Department received an as-built copy of the Nordic Village development construction plans. A water supply line was stubbed to the 9th condominium buildable lot (unit #1) per the plans.

CONCLUSIONS OF LAW

1. The Petitioner has timely provided the proper documentation/information confirming there were 9 condominiums in the domestic water supply development.

2. Irrigation of Nordic Village lawn, garden, and landscape is not covered under the domestic beneficial use as stated in the condition of approval. However, irrigation of 1 acre of lawn, garden, and landscape is covered under the irrigation beneficial use of license no. 65-23054.
3. The Department should amend the license condition of approval #1 to show 9 condominiums.

ORDER

IT IS HEREBY ORDERED that Condition of Approval #1 on Water Right License 65-23053 shall be amended to read:

Domestic use is for 9 condominiums. Irrigation of lawn, garden, and landscaping associated with the condominiums is authorized under the irrigation component of this right.

Dated this 17 day of January, 2013



John Westra, Manager Western Region.



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

January 18, 2013

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

CRUSHER LLC
1110 ELO RD
MC CALL ID 83638

RE: License No. 65-23054

Issuance of Amended License

Dear Water Right Holders:

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.

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)334-2190.

Sincerely,



FOR:

John Westra
Western Regional Manager

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2013 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Amended License) to the person(s) listed below:

RE: WATER RIGHT NO.

65-23054

**CRUSHER LLC
1110 ELO RD
MC CALL ID 83638**

A handwritten signature in black ink, reading "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.

MEMORANDUM

TO: File
FROM: Steve Lester 
DATE: January 10, 2013
RE: Amended License 65-23054

The original license was issued to include domestic use for 8 condos. The examiner was not provided any information to confirm a stubbed lot for a 9th condo.

A timely petition to reconsider was granted to allow the right owner a reasonable amount of time to document a stubbed line. The owner provided an "asbuilt drawing" on 1/3/2013 confirming a 2" water line to "unit 1." This allows a 9th unit to be recognized in licensing.

The owner continues to be confused by Condition WB5 that domestic use does not cover any irrigation, despite being informed several times that irrigation is explicitly allowed under the irrigation term in the license. To put that concern to rest, an amended license can substitute Condition 132 for WB5.

Result

Domestic use for 9 condos.

Condition 132 replaces WB5.

Domestic volume is 5.4 af:

$$V_r = 9 \times .6 = 5.4 \text{ af}$$

$$V_d = .10 \times 365 \times 1.9835 = 72.4 \text{ af}$$

allow 5.4 af

Total volume is therefore 8.4 af.

I discussed this with the examiner, who was comfortable with a memo from me (supervisor) to justify an amended license.



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
Interim Director

December 12, 2012

John Borkoski
Crusher LLC
1110 Elo RD
McCall ID 83638

RECEIVED

JAN 03 2013

WATER RESOURCES
WESTERN REGION

RE: License #65-23054- Petition for Reconsideration

Dear Mr. Borkoski:

Attached is a preliminary order conditionally granting your petition for reconsideration. I would draw your attention to the deadline and needed documentation on page 2 under ORDER.

Should you have questions, please contact me at the Western Regional Office, phone 334-2190.

Sincerely,

John Westra, Manager

Enclosure: preliminary order.

12-31-2012

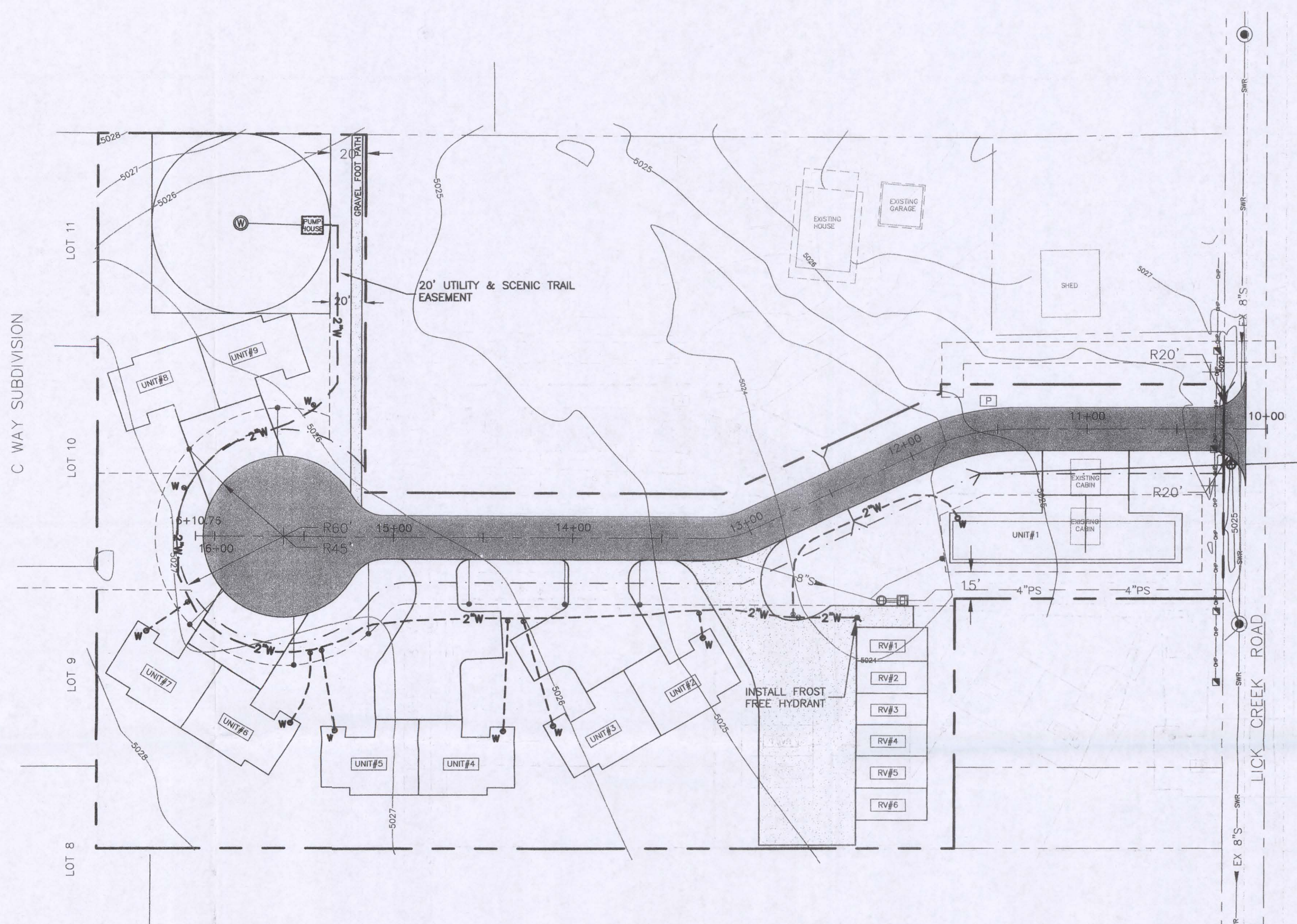
Dear Mr. Westra, Please find enclosed the *As Built Drawing* of **Nordic Village**.

As you can see, a 2-inch water line has been stubbed to Unit 1. This should satisfy your understanding and the requirements to reissue the **Nordic Village** license for 9 units.

The Water Right License lists under conditions of approval the fact that it does not include lawn, garden, landscape or other types of irrigation - yet, Conclusion of Law #3 states the irrigation of lawn, garden, landscape and other types of irrigation is not included in the domestic use portion of the license; however, those water uses are part of the irrigation use portion of the license. Therefore, please confirm that wording entitles me to irrigate **Nordic Village**.

Kindly advise me what steps are to be taken next.

John S. Borkoski



LEGEND

- 5020 EXISTING CONTOUR
- PROPOSED GRAVEL SURFACE
- EXISTING ASPHALT SURFACE
- 8"SS PROPOSED GRAVITY SEWER
- 4"PS PROPOSED PRESSURE SEWER
- EX 8"SS EXISTING GRAVITY SEWER
- 2"W INSTALLED 2" WATER LINE
- W INSTALLED WATER SERVICE LINE W/1-1/4" CORP STOP
- PROPOSED DRY HYDRANT
- W PROPOSED WATER SERVICE

SCALE 1" = 40'

NOTES

- ALL WORK SHALL CONFORM TO THE 2005 EDITION OF THE IDAHO STANDARDS FOR PUBLIC WORKS CONSTRUCTION (ISPMC) AND CITY OF MCCALL STANDARDS.
- REFER TO ATTACHED CUT SHEETS FOR INSTALLED MATERIALS.
- WATER MAINS AND SERVICE LINES SHALL BE INSTALLED WITH A MINIMUM COVER OF 6 FEET AND SHALL HAVE TYPE 1 BEDDING. REFER TO ISPMC SD-301 FOR STANDARD TRENCH DETAIL.
- THRUST BLOCKS SHALL BE INSTALLED AT ALL FITTINGS IN ACCORDANCE WITH ISPMC SD-403.
- THE WATER LINE SHALL BE TESTED AND DISINFECTED IN ACCORDANCE WITH SECTION 401 OF THE ISPMC.
- WATER MAINS AND NON-POTABLE MAINS (SEWER, STORM DRAIN AND IRRIGATION) SHALL HAVE A MINIMUM HORIZONTAL SEPARATION OF 10 FEET AND A MINIMUM VERTICAL SEPARATION OF 18 INCHES. REFER TO ISPMC SD-407 "NON-POTABLE WATER LINE (NPWL) SEPARATION" FOR ADDITIONAL INFORMATION.
- WHEN MINIMUM VERTICAL SEPARATION IS NOT OBTAINED, NON-POTABLE MAINS SHALL BE SLEEVED WITH C900 WATER CLASS PIPE TWO SIZES LARGER CENTERED ABOUT THE POTABLE MAIN LINE. EACH END SHALL BE SEALED WITH NON-SHRINK GROUT. IN ADDITION, THE CROSSINGS SHALL BE CENTERED SO THAT JOINTS ACHIEVE MAXIMUM HORIZONTAL SEPARATION.

ASBUILT DRAWING
 This asbuilt drawing has been prepared, in part based upon information furnished by others. While this information is believed to be reliable, the DESIGN PROFESSIONAL cannot assure its accuracy, and thus is not responsible for the accuracy of this record drawing or for any errors or omissions which may have been incorporated into it as a result. Those relying on this record document are advised to obtain independent verification of its accuracy before applying it for any purpose.

Date: 2/25/08
 SECESH ENGINEERING, INC.

*65-23054 oversized plot
 Revised 1/3/2013 with
 Owner's cover letter*



REV. NO.	REVISION DESCRIPTION	BY	DATE	DESIGNED	DRAWN BY	APPROVED	DATE
1	ASBUILT DRAWING	SA	2/25/08		NTS		12/14/2008

NORDIC VILLAGE
MCCALL, IDAHO
WATER DISTRIBUTION IMPROVEMENTS
WATER LINE ASBUILT

SECESH ENGINEERING INC.
 335 DEINHARD LANE, SUITE 1
 MCCALL, IDAHO 83638
 208.634.6836 - FAX 208.634.6822





State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

December 12, 2012

John Borkoski
Crusher LLC
1110 Elo RD
McCall ID 83638

RE: License #65-23054- Petition for Reconsideration

Dear Mr. Borkoski:

Attached is a preliminary order conditionally granting your petition for reconsideration. I would draw your attention to the deadline and needed documentation on page 2 under ORDER.

Should you have questions, please contact me at the Western Regional Office, phone 334-2190.

Sincerely,

A handwritten signature in cursive script that reads "John Westra". The signature is written in dark ink and is positioned above the printed name.

John Westra, Manager

Enclosure: preliminary order.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF LICENSE)	
NO. 65-23054 IN THE NAME OF)	ORDER GRANTING PETITION
CRUSHER LLC)	FOR RECONSIDERATION
_____)	

This matter having come before the Department of Water Resources (Department) as a petition to reconsider the issuance of a water right license, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On November 15, 2012, the Department issued a preliminary order (order) granting Water Right License No. 65-23054 (license) in the name of Crusher LLC.
2. On November 26, 2012, John Borkoski (Petitioner) contacted the Department regarding the condition of approval that stated: *Domestic use is for 8 condominiums and does not include lawn, garden, landscape, or other types of irrigation.* The petitioner asserts the condition should list 9 condominiums as the project was platted for 9 condominiums and water is stubbed in to the remaining buildable lot. A petition for reconsideration was received by the Department on November 30, 2012. via express mail.

CONCLUSIONS OF LAW

1. Idaho Code § 67-5243(3) provides in pertinent part as follows:

Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of a recommended order or a preliminary order within fourteen (14) days of the issuance of that order. The presiding officer shall render a written order disposing of the petition.
2. The petition for reconsideration is considered timely by the petitioner's initial contact to the Department.
3. The irrigation of lawn, garden, landscape, and other types of irrigation is not included in the domestic use portion of the license; however, those water uses are part of the irrigation use portion of the license. The Department should conditionally grant the petition for reconsideration pursuant to Idaho Code § 67-5243(3) to give the petitioner an opportunity to provide information regarding the stubbed-in domestic water supply line to the 9th condominium building lot.

ORDER

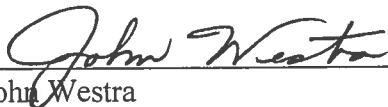
IT IS HEREBY ORDERED that the petition is **CONDITIONALLY GRANTED** pursuant to Idaho Code § 67-5243(3) to allow the Petitioner 30 days to provide the following:

-As-built drawings or other documents/information confirming the domestic water supply line is stubbed-in to the 9th condominium building lot.

-If the water line is stubbed-in, will this serve unit #1 shown on the plat map?

IT IS FURTHER ORDERED that if the petitioner does not submit additional information in support of the petition within 30 days of the service date of this order, the November 15, 2012 preliminary order issuing the license is automatically reinstated and shall again be in full force and effect.

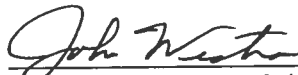
Dated this 12th day of December, 2012



John Westra
Manager, Western

CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2012 I mailed a true and correct copy, postage prepaid of the foregoing **PRELIMINARY ORDER** to the person(s) listed below:


for Rachel Sommer, Administrative Assistant

Preliminary order conditionally granting petition for reconsideration.

John Borkoski
Crusher LLC
1110 Elo RD
McCall ID 83638

Preliminary Order Rescinding Transfer

RECEIVED

NOV 30 2012

WATER RESOURCES
WESTERN REGION

NORDIC VILLAGE

1110 Elo Rd
McCall ID 83638-5125

27 November 2012

State of Idaho ~ Department of Water Resources, Western Region
2735 Airport Way
Boise ID 83703-5082

Attention: John Westra, Western Regional Manager

Reference: License No. 65-23054 PETITION for RECONSIDERATION

Dear Mr. Westra,

I am in receipt of your 11/15/12 letter regarding the *Issuance of License*. Pursuant to our phone conversation from the other day, I am petitioning Water Right License # 65-23054, as the *conditions of approval* make no sense to me.

There are 8 condominiums completed with a remaining buildable lot for 1 more condominium, bringing the total to 9. The water is already stubbed up to this lot, as was discussed in our meeting. The application has always been for 9 condominiums and the project was platted for 9 condominiums.

Your *conditions of approval* do not include lawn, garden, landscaping and other types of irrigation. While you were in the Nordic Village well house with me, you asked me about the irrigation system; I explicitly stated this well serviced our landscaping needs in addition to the 9 condominiums. During the time we were together, I also called the landscaper to get the approximate gallons used for watering and passed this data onto you.

I am hoping that this has merely been an oversight and can be easily rectified a.s.a.p. I would deeply appreciate any help that you can offer to correct this situation. I look forward to hearing from you at your earliest opportunity.

Sincerely yours,

NORDIC VILLAGE



John Borkoski