

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 71-10944

Priority: March 20, 2012

Maximum Diversion Rate: 0.12 CFS

This is to certify, that NIECE SMILEY CREEK LLC
344 W PLEASANT VIEW DR.
OGDEN UT 84414

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>
COMMERCIAL	01/01 to 12/31	0.10 CFS
IRRIGATION	05/01 to 10/31	0.02 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	NE1/4NE1/4	Sec. 9, Twp 10N, Rge 13E, B.M.
CUSTER County		
GROUND WATER	NE1/4NE1/4	Sec. 9, Twp 10N, Rge 13E, B.M.
CUSTER County		

PLACE OF USE: COMMERCIAL

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
10N	13E	9	X																

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	
10N	13E	9	.5																.5

Total Acres: 0.5

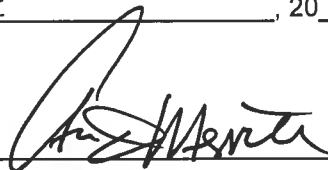
CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **July 01, 2017**.
2. Subject to all prior water rights.
3. 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. 71.

State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 71-10944

4. Prior to diversion of water under this right, the right holder shall install a lockable device, subject to the approval of the Department, in a manner that will provide the watermaster suitable control of the diversion.
5. The right holder shall install or construct a straight length of conduit or ditch suitable for installation of a device for measuring the entire flow of water being diverted in connection with this right. If the right holder uses conduit, the straight length of conduit shall be at least fifteen times the diameter of the conduit and shall be above ground or otherwise easily accessible.
6. Upon specific notification by the Department, the right holder shall install and maintain acceptable measuring device(s), including data logger(s), at the authorized point(s) of diversion, in accordance with Department specifications.
7. When notified by the Department or by a watermaster with regulatory authority over this right, the right holder shall report the amount of water diverted in connection with this right. The report shall be submitted in the manner and frequency specified by the Department or the watermaster.
8. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
9. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable water quality permitting requirements administered by the Department of Environmental Quality or the Department of Agriculture.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 25th day of June, 2012.


FOR _____ GARY SPACKMAN, Interim Director

State of Idaho
Department of Water Resources

Attachment To Permit to Appropriate Water

71-10944

This map depicts the COMMERCIAL 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.



0 0.0425 0.085 0.17 Miles

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





State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 1341 Fillmore Street, Suite 200 • Twin Falls, Idaho 83301-3380

Phone: (208) 736-3033 • Fax: (208) 736-3037 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

June 25, 2012

NIECE SMILEY CREEK LLC
344 W PLEASANT VIEW DR.
OGDEN UT 84414

RE: Permit No. 71-10944

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 208-736-3033.

Sincerely,

A handwritten signature in black ink, appearing to read "Allen Merritt". The signature is stylized with a large, sweeping initial "A" and a cursive "Merritt".

Allen Merritt
Southern Region Manager

Enclosure(s)

cc: SAWTOOTH VALLEY BUILDERS

CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2012 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. 71-10944

**NIECE SMILEY CREEK LLC
344 W PLEASANT VIEW DR.
OGDEN UT 84414**

**SAWTOOTH VALLEY BUILDERS
HC 64 BOX 9937
STANLEY ID 83278**

A handwritten signature in cursive script that reads "Denise Maline". The signature is written in dark ink and is positioned above a solid horizontal line.

**Denise Maline
Administrative Assistant**

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

Southern Region, 1341 Fillmore Street, Suite 200 • Twin Falls, Idaho 83301-3380

Phone: (208) 736-3033 • Fax: (208) 736-3037 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

June 25, 2012

JAN SKRUKRUD
WATER DISTRICT #71
PO BOX 203
STANLEY, ID 83278

RE: APPROVED Permit No(s). 71-10944 (Niece Smiley Creek LLC)

Dear Ms. Skrukraud:

For your information and records, we have enclosed a copy of an APPROVED Application for Permit within your district.

If you have any difficulty obtaining or reading the documents, or if you have other questions, please feel free to contact our office.

Sincerely,

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

Denise Maline
Administrative Assistant
Southern Region

Enclosure

AFFIDAVIT OF PUBLICATION

State of Idaho, County of Custer, ss:

I, Susan Callahan, representing the Challis Messenger, a weekly newspaper, published at Challis, Idaho, do solemnly swear that the notice hereto attached and made a part hereof, was published in the regular and entire issue of the Challis Messenger for 2 consecutive weeks, commencing with the issue dated 5/17 2012 and ending with the issue dated 5/24 2012

Susan Callahan

STATE OF IDAHO)

COUNTY OF CUSTER)

On this 29th day of May in the year of 2012, before me, a Notary Public,

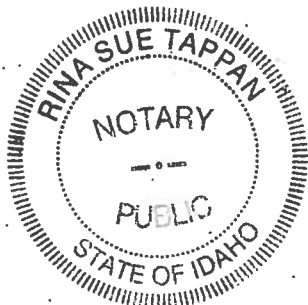
personally appeared Susan Callahan, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Rina Sue Tappan

Notary Public for Idaho.

Residing at Challis, ID

My commission expires: 12-8-14



RECEIVED

JUN 07 2012

DEPT. OF WATER RESOURCES
SOUTHERN REGION

WR

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

71-10944

NIECE SMILEY CREEK LLC
344 W PLEASANT VIEW DR.
OGDEN, UT 84414

Point of Diversion NENE S9
T10N R13E CUSTER County
Source GROUND WATER
Tributary

Point of Diversion NENE S9
T10N R13E CUSTER County
Source GROUND WATER
Tributary

Use: COMMERCIAL 01/01
to 12/31 0.1 CFS

Use: IRRIGATION 05/01 to
10/31 0.02 CFS

Total Diversion: 0.12 CFS

Date Filed: 3/20/2012

Place Of Use: COMMERCIAL
& IRRIGATION

T10N R13E S9 NENE

Total Acres: 0.5

Application proposes to divert up to 0.12 CFS from two proposed wells to be located in Stanley, approximately 0.4 miles SW of the intersection of HWY 75 & HWY 21, for Commercial (0.1 CFS) and Irrigation (0.5 Acres, 0.02 CFS) uses at proposed mixed use commercial and residential buildings at the same site. This application proposes the diversion and use of water tributary to a federally designated Wild & Scenic River. The decreed minimum stream flow rights for the federal Wild & Scenic Rivers are subordinate to certain categories of water use and to specific amounts of water use established after the minimum stream flow. The water use proposed in this application will benefit from the subordination provision because the diversion rate and acres will be applied to the subordination amounts specified in the decree for the Salmon River (Wild and Scenic River).

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Southern Region office at (208) 736-3033; or for a full description of the right(s), please see www.idwr.idaho.gov/apps/ExtSearch/WRfiling.asp. 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, Southern Region, 1341 Fillmore St, Suite 200, Twin Falls, ID 83301 together with a protest fee of \$25.00 for each application on or before June 4, 2012. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Interim
Director

Published: May 17 and 24, 2012

✓ OK DM
6/8/2012

State of Idaho
Department of Water Resources
Application for Permit
RECOMMENDATION FORM

RECEIVED
MAY 21 2012
DEPT. OF WATER RESOURCES
SOUTHERN REGION

Application No.: 71-10944
Applicant's Name: NIECE SMILEY CREEK LLC
344 W PLEASANT VIEW DR
OGDEN, UT 84414

Watermaster's Recommendation:

- a) ☐ I do not oppose approval of this application.
b) ☒ I do not oppose approval of this application if it is conditioned as follows:

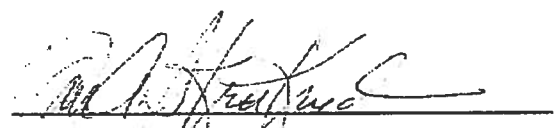
*installation of a CFS or Total Volume flow
meter on each well.*

- c) ☐ I oppose approval of this application for the following reasons:

- d) ☐ Additional comments:

Dated this 20 day of May, 2012

Water District No. 170 71


Watermaster's Signature

Tom Skrudrud
Printed Name