

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public water of the State of Idaho

RECEIVED

MAR 20 2012

DEPT. OF WATER RESOURCES
SOUTHERN REGION

1. Name: NIECE SMILEY CREEK LLC
344 W PLEASANT VIEW DR.
OGDEN UT 84414
(801) 782-5015

2. Source: GROUND WATER

3. Location of Point of Diversion:

- | | | | |
|----|---------------|------------|--------------------------------|
| #1 | GROUND WATER | NE1/4NE1/4 | Sec. 9, Twp 10N, Rge 13E, B.M. |
| | CUSTER County | | |
| #2 | GROUND WATER | NE1/4NE1/4 | Sec. 9, Twp 10N, Rge 13E, B.M. |
| | CUSTER County | | |

4. Water will be used for the following purposes:

<u>Purpose</u>	<u>From</u>	<u>To</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
COMMERCIAL	01/01	to 12/31	0.10 CFS	
IRRIGATION	05/01	to 10/31	0.02 CFS	

5. Total quantity to be appropriated is: 0.12 CFS

6. Proposed diverting works:

POINT OF DIVERSION #1

- a. Type and size of devices used to divert water from the source: PROPOSED WELL
- b. Height of storage dam _____ feet;
Active reservoir capacity _____ acre-feet;
Total reservoir capacity _____ acre-feet;
- c. Proposed well diameter is _____ inches;
Proposed depth of well is _____ feet.
- d. Is ground water with a temperature of greater than 85F being sought?
- e. If well is already drilled, when? _____;
Drilling Firm _____;
Drilling Permit No. _____.

**STATE OF IDAHO
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POINT OF DIVERSION #2

- a. Type and size of devices used to divert water from the source:
- b. Height of storage dam _____ feet;
Active reservoir capacity _____ acre-feet;
Total reservoir capacity _____ acre-feet;.
- c. Proposed well diameter is _____ inches;
Proposed depth of well is _____ feet.
- d. Is ground water with a temperature of greater than 85F being sought?
- e. If well is already drilled, when? _____;
Drilling Firm _____;
Drilling Permit No. _____.

7. Time required for the completion of the works and application of the water to the proposed beneficial use is 5 year(s).

8.

PLACE OF USE: COMMERCIAL

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

PLACE OF USE: IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
10N	13E	9	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
			.5																.5

Total Acres: 0.5

9a. Who owns the property at the point of diversion? If other than applicant, describe the arrangement enabling the applicant to make this filing.

APPLICANT

9b. Who owns the land to be irrigated or place of use? If other than applicant, describe the arrangement enabling the applicant to make this filing.

APPLICANT

10. Remarks:

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

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Purpose of application is to provide sufficient water for two mixed use commercial & residential buildings in downtown Stanley. Existing well that currently services this property can thereby be dedicated to the Stanley Community Library. Two wells are proposed but if one is sufficient only one will be drilled.

11. Map of proposed point of diversion and place of use attached? [x]

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Leon Jones, member by Keith Reese

Applicant

Received by J. Cooper Date 3/20/2012 Time 11:39 Preliminary check by _____
Publication prepared by DM Date 5/10/2012 Published in **CHALLIS MESSENGER**
Publication approved _____ Date MAY 17 & 24, 2012

Receipt No. 5032431

Date: 3/20/2012

Received by: J. Cooper



Proposed Point of Diversion #1

Proposed Point of Diversion #2

LIMITED POWER OF ATTORNEY

KNOWN ALL MEN BY THESE PRESENT:

I, Leon Jones, member of Niece Smiley Creek LLC, hereby nominate and appoint Keith Reese of Sawtooth Valley Builders LLC as my attorney-in-fact with full authority to act for and on my behalf to undertake any and all acts or matters pertaining to water right transfers and claims before the Idaho Department of Water Resources for the following water right transactions:

All portions of all water rights transactions pertaining to property owned by Niece Smiley Creek LLC in Custer County, Idaho. Additionally, I hereby ratify and confirm any and all such acts on matters as contemplated herein.

Keith Reese is hereby authorized to sign, seal and deliver, as my act in deed, those said instruments of writing that may be necessary or proper to carry into execution and effect the applications, and transfers above-mentioned. Further, I hereby declare that each and every application, transfer, agreement, receipt, or payment which shall be by my said agent given, made or done for the afore said purposes shall be as good, valid, and effectual as if they had been signed, sealed, and delivered by myself in my own proper person; and I hereby undertake at all times to ratify whatsoever my said agent shall lawfully do or cause to be done in or concerning the said premises by virtue of these present. This Limited Power of Attorney will become void upon approval, denial, or withdrawal of the above referenced applications.

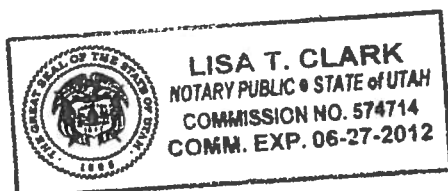
Dated this 12 day of March, 2012.

Leon L. Jones
Signature State of UT

County of Wilder

On this 12th Day of March, 2012, before me, a Notary Public in and for said County and State, personally appeared Leon L. Jones down or identified to me to be the individual whose name and subscription to the wintin instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Lisa T. Clark
Notary Public in and for said State and County

6/27/2012
My Commission Expires



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

May 11, 2012

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

Re: Application For Permit No. 71-10944

Dear Applicant(s):

The Department of Water Resources has received your water right application. Please refer to the number referenced above in all future correspondence regarding this application.

A legal notice of the application has been prepared and is scheduled for publication in the **CHALLIS MESSENGER** on **5/17/2012** and **5/24/2012**. Protests to this application may be submitted for a period ending ten (10) days after the second publication (**June 4, 2012**).

If the application is protested, you will be sent a copy of each protest. All protests must be resolved before the application can be considered for approval. If the protest(s) cannot be resolved voluntarily, the Department will conduct a conference and/or hearing on the matter.

If the application is not protested, the Department will process your application and notify you of any action taken on the application. If your application is approved, the Department will send you a copy of the permit.

Please contact this office if you have any questions regarding the application.

Sincerely,

Denise Maline
Administrative Assistant

cc:

SAWTOOTH VALLEY BUILDERS
HC 64 BOX 9937
STANLEY, ID 83278

Maline, Denise

From: Miller, Nick
Sent: Friday, May 11, 2012 11:31 AM
To: Maline, Denise; Jan Skrukud (goodonya_19@yahoo.com)
Subject: FW: Comment Letter for 71-10944
Attachments: Comment Letter to WD170 for 71-10944.doc; 71-10944 App.pdf

Denise,

I am forwarding this to Jan Skrukud, as she is the local watermaster for sub-district 71.

Nick Miller, P.E.
Water Distribution Section
Idaho Department of Water Resources
322 E. Front St. Boise, ID 83720-0098
208-287-4956 (Office)
208-287-6700 (Fax)

From: Maline, Denise
Sent: Friday, May 11, 2012 11:27 AM
To: Miller, Nick
Subject: Comment Letter for 71-10944

Attached is a cover letter and copy of an application(s) for your review &/or comments. If you have any questions regarding the attached information, please feel free to contact our office.

Thank you in advance,

Denise Maline (*formerly Buffington*)
Administrative Assistant
Dept of Water Resources
1341 Fillmore St, Ste 200
Twin Falls, ID 83301
(208) 736-3033
denise.maline@idwr.idaho.gov



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

May 11, 2012

Via E-mail

NICK MILLER
WATER DISTRICT #170
322 E FRONT ST
PO BOX 83720
BOISE, ID 83720-0098

RE: Application for Permit: 71-10944

Dear Mr. Miller:

A copy of the above referenced application is enclosed. Please review the application, then complete the enclosed recommendation form and return it to this office within 21 days of the date of this letter.

If the application is approved, IDWR will include appropriate standard conditions of approval for a water right located within a water district, such as regulation by the watermaster, lockable controlling works, and/or measuring devices. Any special conditions or other concerns you have related to this application should be specifically addressed in your recommendation.

IDWR's regional offices can finish reviewing an unprotested application as soon as the protest period has past. Your prompt response to this request will ensure that your recommendation can be considered. If IDWR has not received your written recommendation within 21 days from the date of this letter, IDWR will presume that you do not oppose approval of the application and that you have no comments for IDWR to consider.

Sincerely,

Denise Maline
Administrative Assistant

Enclosure(s)



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

May 11, 2012

IDAHO DEPT OF FISH & GAME
PO BOX 1336
SALMON, ID 83467

RE: Application for Permit No. 71-10944

Dear Fish & Game:

The Department of Water Resources is seeking written comment and/or recommendations from your agency regarding the above referenced water right application. A copy of the application is enclosed for your reference. Please review the application, complete the enclosed recommendation form, and submit it to this office within 21 days.

The Department can publish notice of the application as soon as the initial review is completed. Therefore, your prompt response to this request is appreciated. If your agency desires to formally protest the approval of this application, you may do so after the notice is published by filing a written protest along with a \$25.00 filing fee within 10 days after final publication.

Please contact this office if you have any questions regarding the application, or you may visit our website at www.idwr.idaho.gov.

Sincerely,

Denise Maline
Administrative Assistant
Southern Region

Enclosure(s)

Buffington, Denise

From: Buffington, Denise
Sent: Thursday, May 10, 2012 11:44 AM
To: Challis Messenger
Subject: LEGAL NOTICE
Attachments: Challis Messenger Cover Letter.docx; Challis Messenger Ad.docx

Attached please find (1) legal notice being submitted for publication on May 17th & 24th, 2012. Please contact me if you have any questions, or if you are not able to run the ad on the dates requested.

Also, please note my new e-mail address listed below. I recently got married and have changed my name. If you have any trouble reaching me via e-mail, please call our office at (208) 736-3033.

Thank you in advance,

Denise Maline (Buffington)
Administrative Assistant
Idaho Department of Water Resources
1341 Fillmore St, Ste 200
Twin Falls, Idaho 83301
(208) 736-3033
denise.maline@idwr.idaho.gov

May 10, 2012

LEGAL NOTICE DEPARTMENT
CHALLIS MESSENGER
PO BOX 405
CHALLIS, ID 83226

RE: Application For Permit No.(s): 71-10944

Dear Legal Notice Department:

Please publish the enclosed legal notice on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before June 4, 2012. Your cooperation is appreciated.

Sincerely,

Denise Maline
Administrative Assistant

Enclosure(s)

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 on May 17th & 24th, 2012

Cooper, Jeff

From: Case, Morgan
Sent: Thursday, May 03, 2012 11:12 AM
To: Cooper, Jeff
Subject: RE: Application for Permit 71-10944

Thanks for the heads up, Jeff.

Morgan

From: Cooper, Jeff
Sent: Friday, April 27, 2012 2:38 PM
To: Case, Morgan
Subject: Application for Permit 71-10944

Morgan-

Just a heads up to let you know that we will be advertising application 71-10944, which proposes to divert up to 0.12 CFS for Irrigation (0.5 acres) and Commercial, from proposed wells located in Stanley. Denise is currently out on leave, so it probably won't be scanned until next week sometime. Please let me know if you have any questions. Thank you!

-Jeff C. (Southern)



State of Idaho

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

March 20, 2012

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

RE: Application to Appropriate Water in the Upper Salmon River Basin

Dear Water Right Applicant:

The Department of Water Resources' (IDWR) records show you filed an application to establish a new use of water in the upper Salmon River basin. Idaho Code § 42-203A(5) requires IDWR to determine whether each water right application satisfies all the criteria necessary for appropriating water in Idaho. One statutory criterion requires IDWR to determine the local public interest relative to the proposed water use. Idaho Code § 42-202B(3) defines the local public interest as "the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource." The local public interest has many facets, including the effects of a proposed water use on aquatic habitat for fish and wildlife resources.

The upper Salmon River basin is home to stocks of chinook salmon, sockeye salmon, steelhead trout, and bull trout, all of which are listed as threatened or endangered under the Endangered Species Act (ESA). Since the early 1990s, local water users, conservation districts, and federal and state agencies have cooperated to implement conservation measures intended to protect and restore habitat for ESA-listed species in the upper Salmon River watershed. For example, at the request of local water users the Idaho Legislature directed the Idaho Water Resource Board (IWRB) to establish a minimum stream flow in the lower Lemhi River for fish passage. The minimum stream flow is maintained through a water supply bank and temporary or permanent acquisition of additional water supplies by willing buyers from willing sellers.

Pursuant to the Snake River Water Rights Agreement of 2004, Idaho has been developing a long term conservation plan for the benefit of ESA-listed species in the Lemhi River basin. Improving conditions in flow-limited river reaches and streams is a fundamental component of the Lemhi plan. In addition to IDWR, numerous state agencies, including the Office of Species Conservation, Idaho Department of Fish and Game, Idaho Department of Environmental Quality, Idaho Soil and Water Conservation Commission, and Idaho Department of Lands, have committed and continue to commit significant resources toward this objective under the following programs:

- Columbia Basin Water Transactions Program
- National Marine Fisheries Service Pacific Coastal Salmon Recovery Fund
- U. S. Fish & Wildlife Service Aquatic Species Conservation Fund
- Salmon and Clearwater River Basins Habitat Fund
- 2008 Columbia Basin Fish Accords

Letter to Upper Salmon River Basin Water Right Applicants

March 20, 2012

Page 2

A myriad of habitat restoration projects are being constructed/implemented in other parts of the upper Salmon River basin. These projects have been coordinated with the local communities and water users through the Upper Salmon River Basin Watershed Program and predecessor programs, including the model watersheds. Furthermore, the Snake River Water Rights Agreement of 2004 contemplates the development of additional conservation plans for other upper Salmon River basin watersheds. Accordingly, the draft Comprehensive State Water Plan under revision by the IWRB contains policies for the Salmon River basin that focus on the protection and restoration of instream habitat for ESA-listed species through voluntary participation in conservation programs.

Because of the ESA-listed species recovery efforts in the upper Salmon River basin, IDWR must determine on a case-by-case basis whether it is in the local public interest to authorize proposed water uses that would further deplete flow-limited stream reaches.

Pursuant to Rule 40.04.c of the Water Appropriation Rules (IDAPA 37.03.08.040.04.c), the applicant has the ultimate burden of persuasion regarding the items that must be evaluated in connection with each water right application. Before proceeding further with your application, IDWR requests you submit additional information about how your proposal invokes any local public interest concerns for ESA species recovery. Within 30 days, please submit any additional information you believe IDWR may need to evaluate and determine the local public interest in the water you propose to divert and use. If IDWR has not received a response from you within 30 days, IDWR will assume you have no comment regarding the local public interest, and processing of your application will resume with the information currently on file. Processing will include public notice and the potential for formal protests by other interested parties. Applications that are not in the local public interest will be denied. If you wish to withdraw your application before it is processed, please notify IDWR in writing.

If you have any questions, please call Shelley Keen at 208-287-4947, or email him at shelley.keen@idwr.idaho.gov. For applications in administrative basins 73-75, you may also contact IDWR's Eastern Region office in Idaho Falls at 208-525-7161. For applications in administrative basins 71 or 72, you may also contact IDWR's Southern Region office in Twin Falls at 208-736-3033.

Sincerely,



Jeffrey S. Cooper
Sr. Water Right Agent, IDWR Southern Region

CC: Keith Reese, File