

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 79-14227

Priority: November 08, 2010

Maximum Diversion Rate: 0.60 CFS

Maximum Storage Volume: 2.0 AF

This is to certify, that BUY THE WAY LLC
217 E MAIN ST
PO BOX 711
GRANGEVILLE ID 83530

has applied for a permit to appropriate water from:

Source: JOHNS CREEK

Tributary: ROCK CREEK

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>	<u>ANNUAL VOLUME</u>
DIVERSION TO STORAGE	01/01 to 12/31	0.60 CFS	
RECREATION STORAGE	01/01 to 12/31		2.0 AF
AESTHETIC STORAGE	01/01 to 12/31		2.0 AF

LOCATION OF POINT(S) OF DIVERSION:

JOHNS CREEK SE1/4NW1/4SW1/4 Sec. 25, Twp 30N, Rge 02E, B.M., IDAHO County

PLACE OF USE: RECREATION STORAGE

Twp Rge Sec	NE				NW				SW				SE				
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
30N 02E 25										X							

PLACE OF USE: AESTHETIC STORAGE

Twp Rge Sec	NE				NW				SW				SE				
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
30N 02E 25										X							

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **February 01, 2012**.
2. Subject to all prior water rights.
3. Prior to the diversion and use of water under this approval, the right holder shall comply with all fish screening and/or fish passage requirements of the Idaho Department of Fish and Game at the point of diversion from Johns Creek and the point of return flow to Johns Creek. The screens at both locations shall have a maximum mesh size of 0.25 inch.

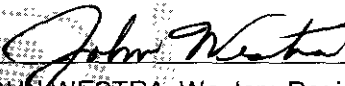
State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 79-14227

4. The approach velocity at the point of diversion shall not exceed 0.5 feet per second.
5. The amount of water diverted under this water right may not exceed 25% of the stream flow of Johns Creek at the point of diversion described above at any given time. Upon notification by the Department, the right holder shall install a measuring device on Johns Creek or provide stream flow measurement data from a qualified party.
6. The pond established by the storage of water under this right and right 79-14134 shall not exceed a total capacity of 2.5 acre-feet or a total surface area of 0.4 acres. Right 79-14227 authorizes 1.0 acre-foot of the total capacity plus 1.0 acre-foot for replacement of losses caused by seepage and evaporation.
7. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.
8. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 17th day of February, 20 11.


JOHN WESTRA, Western Regional Manager



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

February 17, 2011

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

BUY THE WAY LLC
217 E MAIN ST
PO BOX 711
GRANGEVILLE ID 83530

RE: Permit No.79-14227

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.

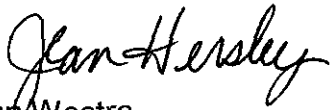
Enclosed is a form entitled 'Instructions for Proof of Beneficial Use.' Please read the instructions carefully since you must take further action to develop this permit into a licensed water right. Also enclosed is a form entitled 'Proof of Beneficial Use.' If your project is already completed, you should 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 208-334-2190.

Sincerely,


for John Westra
Western Regional Manager

Enclosure(s)

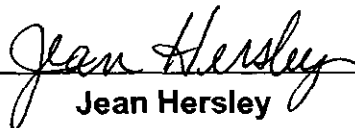
CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2011 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.

79-14227

**BUY THE WAY LLC
217 E MAIN ST
PO BOX 711
GRANGEVILLE ID 83530**

A handwritten signature in cursive script, reading "Jean Hersley", is written over a horizontal line.

**Jean Hersley
Office Specialist II**

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: Application No. 79-14227
FROM: Kay Walker *KW*
DATE: February 10, 2011
RE: Addendum to Memo of 12/2/2010

Discussion

This application is for an existing pond that was built larger than Permit 79-14134 intended. The application was submitted following a field examination of IDWR employee, Mat Weaver, on July 9, 2008. A license for this development was issued on September 15, 2008.

License 79-14134 was issued for 1.5 af of storage

Exam 79-14134 determined capacity of the pond was 2.5 af and covered 0.4 acre of surface area

Pipe flow estimate 0.56 cfs

Pursuant to pond evaporation map it is determined 1.0 af is needed to keep the pond full.

Capacity	2.5 af
Evaporation	+1.0 af
<u>License</u>	<u>-1.5 af</u>
Total App	2.0 af (partial capacity and all evaporation)

POND EVAPORATION MAP

Estimate AF lost to evaporation

Data

Pond surface area - acres

Inches/year evap - best fit from map

Convert inches of loss/year to feet

AF loss = feet x acres

Example

Pond covers 5 acres in nw Ada County

Average depth = 10 ft

Pond capacity = 5 ac x 10 ft = 50 AF

Inches of loss/year = 42 (between 40 & 45)

AF loss = $(42/12) \times 5 = 17.5$ AF

WR COVERAGE NEEDED = CAPACITY + LOSS

Need $50 + 17.5 = 67.5$ AF

http://snow.ag.uidaho.edu/publications/pond_evap/pond.html

(see map under "example of use", item #1)

e 30"

EVAP e 30"

$$\frac{30}{12} \times 0.4 = 1.0 \text{ AF}$$

ADA
COUNTY

inches
of evap

RECEIVED

DEC 27 2010

WATER RESOURCES
WESTERN REGION

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

79-14227

BUY THE WAY LLC

217 E MAIN ST

PO BOX 711

GRANGEVILLE, ID 83530

Point of Diversion SENWSW S25

T30N R02E IDAHO County

Source JOHNS CREEK Tributary

ROCK CREEK

Use: RECREATION STORAGE

01/01 to 12/31 2 AF

Use: AESTHETIC STORAGE

01/01 to 12/31 2 AF

Use: DIVERSION TO STORAGE

01/01 to 12/31 0.6 CFS

Total Diversion: 0.6 CFS

Date Filed: 3/9/2009

Place Of Use: RECREATION

STORAGE & AESTHETIC

STORAGE

T30N R02E S25 NWSW

Permits will be subject to all prior

water rights. Protests may be sub-

mitted based on the criteria of

Idaho Code § 42-203A. Any protest

against the approval of this applica-

tion must be filed with the Director,

Dept. of Water Resources, Western

Region, 2735 Airport Wy, Boise ID

83705 together with a protest fee of

\$25.00 for each application on or

before 1/3/2011. The protestant

must also send a copy of the protest

to the applicant.

GARY SPACKMAN,

Interim Director

Published on 12/15 & 12/22/2010

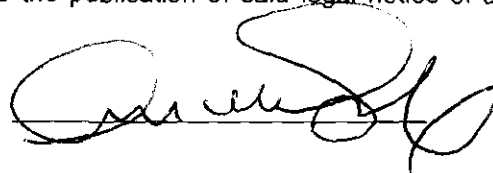
D15-22

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO

County of Idaho - ss.

Andrew J. McNab, being first duly sworn, says he is the Publisher of the IDAHO COUNTY FREE PRESS, a weekly newspaper published and issued weekly at Grangeville, Idaho County, State of Idaho, and is of general circulation in said county and state, that the said legal notice, of which the one hereto attached is a true copy, was published in said paper for two weeks, being published two times, the first publication being on the 15th day of December, 2010; and the last publication on the 22nd day of December, 2010; and that the said legal notice was published in the newspaper proper and not a supplement; that said newspaper has been continuously and uninterruptedly published in said county during a period of seventy-eight consecutive weeks prior to the publication of said legal notice of advertise-

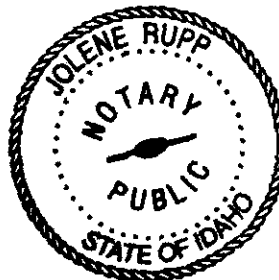


STATE OF IDAHO)

COUNTY OF IDAHO)

✓ OK DB 1-7-2011

On this 22nd day of December in the year of 2010, before me a Notary Public personally appeared Andrew J. McNab, 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.



Jolene Rupp
Notary Public for Idaho
Residing at Grangeville, ID
My commission expires: 1-24-13

MEMORANDUM

RECEIVED

DEC 21 2010

WATER RESOURCES
WESTERN REGION

Via E-mail

DATE: December 10, 2010
TO: Denise Buffington
FROM: Sandy Thiel
RE: Application for Permit No. 79-14227

The IDWR Planning Section does not wish to raise any public interest concerns over Application No. 79-14227 which proposes the diversion of a total of 0.6 cfs of surface water from Johns Creek. The water will be diverted to storage for recreation and aesthetic purposes.

The Idaho Water Resource Board holds two minimum stream flow water rights downstream of the applicant's point of diversion, 79-14117 on Rock Creek and 79-14119 on the Salmon River.

The Rock Creek minimum stream flow allows for additional development in the amount of 1.3 cfs for water rights that are not for Domestic, Commercial, Municipal, or Industrial purposes. If approved, the new appropriation should be counted against this 1.3 cfs. The Idaho Water Resource Board would like assurance that any appropriation junior to the minimum stream flow be recorded in the water right file for tracking purposes.