

NO. 96-09467

Maximum Diversion Rate: 0.04 CFS

GARY SPACKMAN, Interim Director



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region, 7600 N. Mineral Drive, Suite 100 • Coeur d'Alene, Idaho 83815

Phone: (208) 762-2800 • Fax: (208) 762-2819 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

August 3, 2010

JOHN R KILLEN
PO BOX 1051
PONDERAY ID 83852

OLIVE M KILLEN
PO BOX 1051
PONDERAY ID 83852

RE: Permit No.96-9467

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.

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,


Keith E. Franklin
Sr. Water Resources Agent

Enclosure(s)

CERTIFICATE OF SERVICE

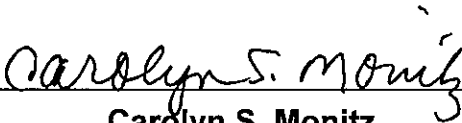
I hereby certify that on August 3, 2010 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO.

96-9467

**JOHN R KILLEN
PO BOX 1051
PONDERAY ID 83852**

**OLIVE M KILLEN
PO BOX 1051
PONDERAY ID 83852**



Carolyn S. Monitz
Technical Records Clerk

Statement of Available Procedures and Applicable Time Limits

RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES (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 issuance 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.

Knoblock, Ken

From: Haynes, Bob
Sent: Wednesday, July 28, 2010 2:39 PM
To: Spackman, Gary; Peppersack, Jeff; Galloway, Chuck; Northern Region
Subject: Delegation

I'll be out of the office from July 28 thru August 2. Ken Knoblock is authorized to act in my place.

Bob

**IDAHO DEPARTMENT OF WATER RESOURCES
APPROPRIATION APPLICATION ANALYSIS SHEET**

W.R. # 96 - 9467

APPLICATION ID # 76550

ENT. ED

BCA 5/28

OK to Publish

P
5/28/10

INITIAL REVIEW

APPLICANT: KILLEN

BY: ED

DATE: 5/24/2010

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)

*** Send info sheet Y () N ()

ADDITIONAL INFORMATION

(Yes)(No)

- ☒ Shape File Created Date 5-24-10 By: ED
- ☐ Field check: by _____
- ☐ Field report attached
- ☐ Analysis Supp. Attached (>5cfs/500af)

☐ Water delivered by water master? Water District # _____

PROCESSING

(Yes)(No)

PRIORITY DATE: 5/21/2010

☒

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

ADVERTISE IN:

BONNER

County

Newspaper: BCDB

Dates scheduled for publication 6/3 & 10/10

Affidavit of Publication received: 7/6/10

Dates actually published: _____

Application published correctly. Yes ☒ No ☐

If not, action taken: _____

Final Date for Protest: 6/21

Protests Received: Yes ☐ No ☒

LETTERS SENT REQUESTING:

- ☐ Dam Information ☐ Fish Information
- ☐ Power Information ☐ Other: _____

INFORMATION RECEIVED:

- ☐ Dam Information ☐ Fish Information
- ☐ Power Information ☐ Other: _____

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?

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: ED

Date: 7/7/2010 Sr. Agent initial ED

AFFIDAVIT OF PUBLICATION

RECEIVED
JUL 06 2010
IDWR / NORTH

STATE OF IDAHO)
) ss.
County of Bonner)

Jennifer Albert, 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 legal notice.
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.

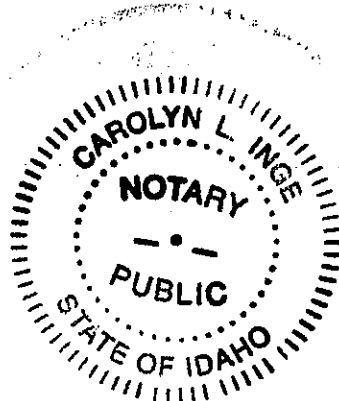
4. The attached Notice was published in the regular and entire issue of the Bonner County Daily Bee for a period of 2 consecutive weeks, commencing on the 3rd day of June, 2010, and ending on the 10th day of June, 2010.

Jennifer Albert

State of Idaho, county of Bonner ss.

On this 10 day of June, in the year of 2010, before me, Carolyn Inge, Notary Public, personally appeared Jennifer Albert, 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.

Carolyn L Inge
Notary Public
Residing at: Sandpoint
Comm. Exp.: 8-7-12



RECEIVED
JUL 06 2010
IDWR/NORTH

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

96-9465

TERRY L MELTON

JEROME COOK

JOHN R COOK

1257 E GLENMORE CT

HAYDEN ID 83835

Point of Diversion NWSWSW S3 T53N R01W BONNER CO

Source SPRING Tributary SINKS

Use: DOMESTIC 01/01 to 12/31 0.04 CFS
Total Diversion: 0.04 CFS

Date Filed: 5/12/2010

Place Of Use: DOMESTIC T53N R01W S3 SWSW

Domestic use is for 1 home.

96-9466

WILLIAM R BORTON

2580 BORTON RD

YAKIMA WA 98903

Point of Diversion L1(NWNWNE) S31 T56N R03W

BONNER CO

Source PEND OREILLE RIVER Tributary COLUMBIA RIVER

Use: IRRIGATION 04/01 to 10/31 0.05 CFS
Total Diversion: 0.05 CFS

Date Filed: 5/14/2010

Place Of Use: IRRIGATION T56N R03W S31 L1(NWNE)

Total Acres: 2.5

96-9467

JOHN R KILLEN

OLIVE M KILLEN

PO BOX 1051

PONDERAY ID 83852

Point of Diversion L3(SENW) S3 T54N R01W BONNER CO

Source PEND OREILLE LAKE

Tributary PEND OREILLE RIVER

Use: DOMESTIC 01/01 to 12/31 0.04 CFS
Total Diversion: 0.04 CFS

Date Filed: 5/21/2010

Place Of Use: DOMESTIC T54N R01W S3 L3(SENW)

Domestic use is for 1 home.

Permits will be subject to all prior water rights. 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 6/21/2010. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Interim Director

SNP Legal 11940

June 3, 10, 2010

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

96-9465

TERRY L MELTON

JEROME COOK

JOHN R COOK

1257 E GLENMORE CT

HAYDEN, ID 83835

Point of Diversion NWSWSW S3 T53N R01W BONNER CO

Source SPRING Tributary SINKS

Use: DOMESTIC 01/01 to 12/31 0.04 CFS

Total Diversion: 0.04 CFS

Date Filed: 5/12/2010

Place Of Use: DOMESTIC T53N R01W S3 SWSW

Domestic use is for 1 home.

96-9466

WILLIAM R BORTON

2580 BORTON RD

YAKIMA, WA 98903

Point of Diversion L1(NWNWNE) S31 T56N R03W BONNER CO

Source PEND OREILLE RIVER Tributary COLUMBIA RIVER

Use: IRRIGATION 04/01 to 10/31 0.05 CFS

Total Diversion: 0.05 CFS

Date Filed: 5/14/2010

Place Of Use: IRRIGATION T56N R03W S31 L1(NWNE)

Total Acres: 2.5

96-9467

JOHN R KILLEN

OLIVE M KILLEN

PO BOX 1051

PONDERAY, ID 83852

Point of Diversion L3(SENW) S3 T54N R01W BONNER CO

Source PEND OREILLE LAKE Tributary PEND OREILLE RIVER

Use: DOMESTIC 01/01 to 12/31 0.04 CFS

Total Diversion: 0.04 CFS

Date Filed: 5/21/2010

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GARY SPACKMAN, Interim Director

Legal #

Published on 6/3/2010 and 6/10/2010

Ball, Dianne

From: Ball, Dianne
Sent: Friday, May 28, 2010 9:53 AM
To: Legal Notices-Bonner Co Daily Bee-Sheri Jones
Subject: Applications for Permit Nos. 96-9465, 96-9466, 96-9467

Good morning, Sheri,

Please publish the enclosed legal notice on the dates indicated, June 3 and 10, 2010, (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 6/21/2010. Your cooperation is appreciated.

Please also send a proof/preview copy for my review. I try to match your columns and font but occasionally because you fully justify setup, we need minor adjustments.

Thanks for ALL your wonderful help over the time we've worked through these together.



LegalNotice
5-28-10 BCDB e-ma.

Dianne Ball

Administrative Assistant
Idaho Department of Water Resources
7600 N Mineral Dr., Ste. 100
Coeur d'Alene, ID 83815
208-762-2800 Fax 208-762-2819



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region, 7600 N. Mineral Drive, Suite 100 • Coeur d'Alene, Idaho 83815

Phone: (208) 762-2800 • Fax: (208) 762-2819 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

May 28, 2010

JOHN R KILLEN
OLIVE M KILLEN
PO BOX 1051
PONDERAY, ID 83852

Application For Permit No. 96-9467

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 BONNER COUNTY DAILY BEE on 6/3/2010 and 6/10/2010. Protests to this application may be submitted for a period ending ten (10) days after the second publication.

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,

Eric J. Davis
Sr. Water Resource Agent

Ball, Dianne

From: Jim Brady [jbrady@idl.idaho.gov]
Sent: Tuesday, June 01, 2010 8:07 AM
To: Ball, Dianne; mary.terra-berns@idfg.idaho.gov
Subject: RE: Applications for Permit Nos. 96-9465 Melton or Cook - Spring, 96-9466 Borton - Pend Oreille River, 96-9467 Killrn - Pend Oreille Lake

Dianne, Melton does not need a permit from us.
Borton- I will contact because he needs a permit from us.
Killen- I will contact because he needs a permit from us.

Thanks

Jim Brady

From: Ball, Dianne [mailto:Dianne.Ball@idwr.idaho.gov]
Sent: Friday, May 28, 2010 10:08 AM
To: mary.terra-berns@idfg.idaho.gov; Jim Brady
Subject: Applications for Permit Nos. 96-9465 Melton or Cook - Spring, 96-9466 Borton - Pend Oreille River, 96-9467 Killrn - Pend Oreille Lake

Dear Interested Party:

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.

Jim, you probably won't be interested in 96-9465— from a spring.

These are being scheduled for publication in the Bonner County Daily Bee on June 3 and 10, 2010, making June 21, 2010 final date for protests to be received in our office.

<<96-9465 Melton or Cook.pdf>> <<96-9466 Borton.pdf>> <<96-9467 Killen.pdf>>

This office 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.

Sincerely,

Dianne Ball

Administrative Assistant

Idaho Department of Water Resources

Ball, Dianne

From: Ball, Dianne
Sent: Friday, May 28, 2010 10:08 AM
To: mary.terra-berns@idfg.idaho.gov; jbrady@idl.idaho.gov
Subject: Applications for Permit Nos. 96-9465 Melton or Cook - Spring, 96-9466 Borton - Pend Oreille River, 96-9467 Killrn - Pend Oreille Lake

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96-9465 Melton or
Cook.pdf



96-9466 Borton.pdf



96-9467 Killen.pdf

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

Sincerely,

Dianne Ball

Administrative Assistant
Idaho Department of Water Resources
7600 N Mineral Dr., Ste. 100
Coeur d'Alene, ID 83815
208-762-2800 Fax 208-762-2819