

State of Idaho
Department of Water Resources
Amendment of Permit

NO. 95-09055

Priority: November 13, 2000

Maximum Diversion Rate: 1.00 CFS

This is to certify, that BLACK ROCK UTILITIES INC
KYLE CAPPS, CGCS
PO BOX 3070
COEUR D ALENE ID 83816

has applied for an amendment of a permit and the amendment is APPROVED for development of water as follows:

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
MUNICIPAL	01/01 to 12/31	1.00 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	L2 (SW1/4NW1/4)	Sec. 16, Twp 48N, Rge 04W, B.M.
KOOTENAI County		
GROUND WATER	L2 (SW1/4NW1/4)	Sec. 16, Twp 48N, Rge 04W, B.M.
KOOTENAI County		
GROUND WATER	L3 (SE1/4NW1/4)	Sec. 16, Twp 48N, Rge 04W, B.M.
KOOTENAI County		
GROUND WATER	L3 (SE1/4NW1/4)	Sec. 16, Twp 48N, Rge 04W, B.M.
KOOTENAI County		
GROUND WATER	NE1/4NW1/4	Sec. 16, Twp 48N, Rge 04W, B.M.
KOOTENAI County		
GROUND WATER	L2 (SW1/4NW1/4)	Sec. 16, Twp 48N, Rge 04W, B.M.
KOOTENAI County		
GROUND WATER	L3 (SE1/4NW1/4)	Sec. 16, Twp 48N, Rge 04W, B.M.
KOOTENAI County		

CONDITIONS OF APPROVAL

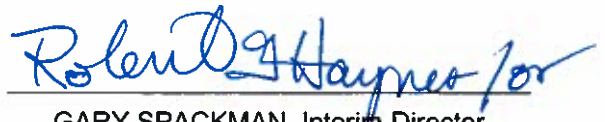
1. Proof of application of water to beneficial use shall be submitted on or before **August 01, 2011**.
2. Subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
4. This right does not grant any right-of-way or easement across the land of another.
5. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
6. 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.

State of Idaho
Department of Water Resources
Amendment of Permit

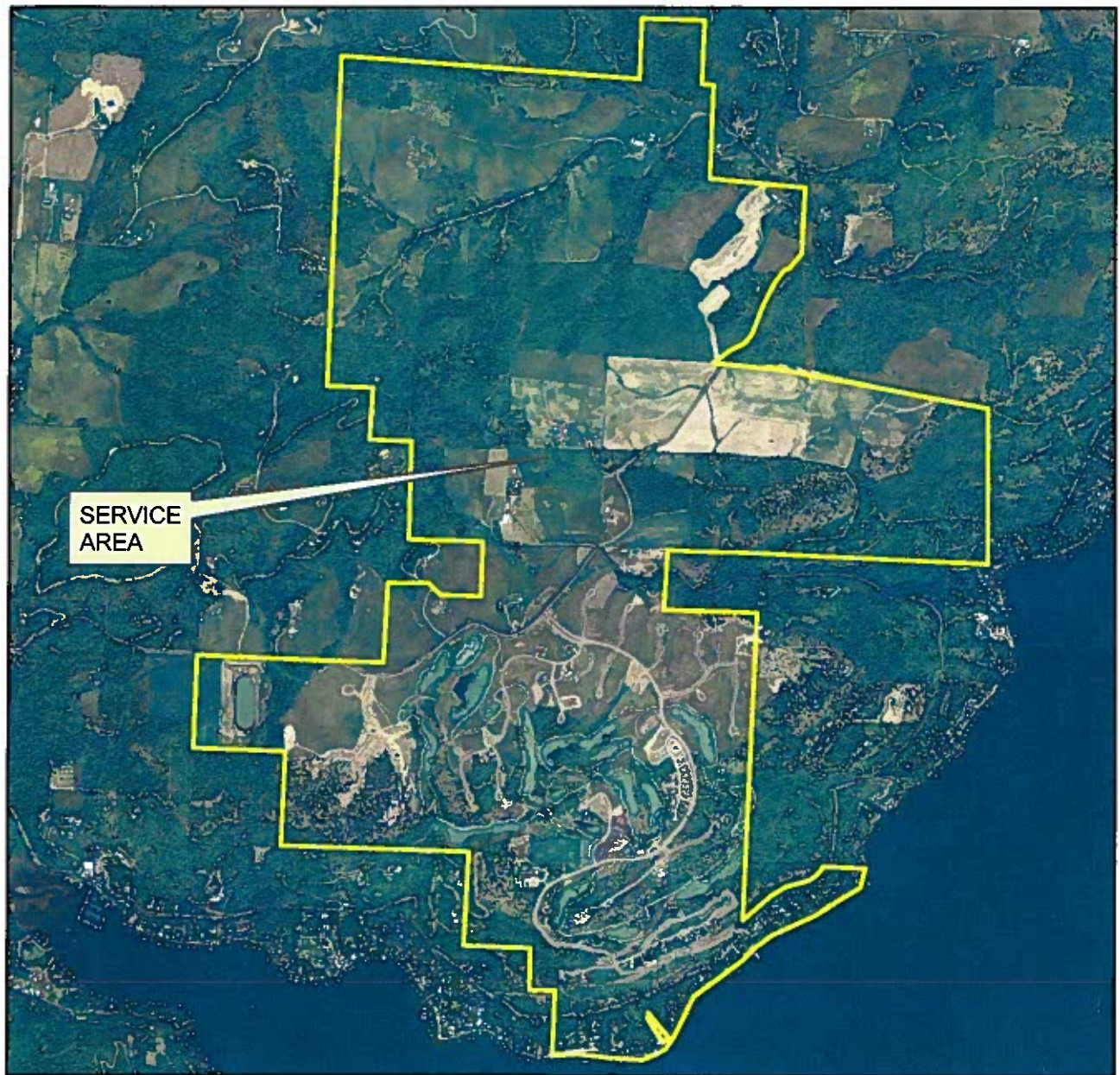
NO. 95-09055

7. The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.
8. Place of use is within the service area of Black Rock Utilities LLC as provided for under Idaho law.
9. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustrative purposes.
10. Prior to or in connection with the proof of beneficial use statement to be submitted for municipal water use under this right, the right holder shall provide the department with documentation showing that the water supply system is being regulated by the Idaho Department of Environmental Quality as a public water supply and that it has been issued a public water supply number.

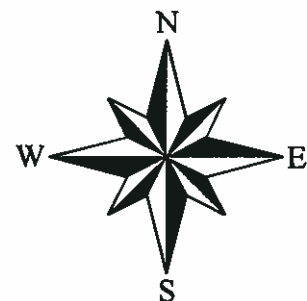
This amendment of permit is issued pursuant to the provisions of Section 42-211, Idaho Code. Witness the signature of the Director, affixed at Coeur d'Alene, this 10th day of March 2010.


GARY SPACKMAN, Interim Director

95-9055



0 1,000 2,000 4,000 6,000 8,000 Feet



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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

March 10, 2010

BLACK ROCK UTILITIES INC
KYLE CAPPS, CGCS
PO BOX 3070
COEUR D ALENE ID 83816

RE: Amended Permit No. 95-9055

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) 762-2800.

Sincerely,


Keith E. Franklin
Sr. Water Resources Agent

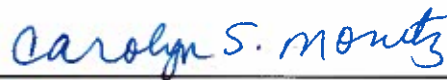
Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2010 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Amended Permit) to the person(s) listed below:

RE: WATER RIGHT NO. 95-9055

**BLACK ROCK UTILITIES INC
KYLE CAPPS, CGCS
PO BOX 3070
COEUR D ALENE ID 83816**



**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.

76358

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Fee \$50.00
Receipt NO 23652
Received by db
Date 3/2/10

APPLICATION FOR AMENDMENT OF A PERMIT

RECEIVED
MAR 02 2010
IDWR / NORTH

Name of Applicant Black Rock Utilities, Inc. Phone 208-665-2005

Mailing address PO Box 3070, Coeur d'Alene, ID 83816 Email kylec@blackrockdevelopment.com

Representative Christopher H. Meyer, Givens Pursley, LLP, PO Box 2720, Boise, ID 83701-2720 208-388-1200

I am the owner and the holder of Permit to appropriate the Public Waters of the State of Idaho No. 95-9055
and request that the permit and permit map be amended and/or changed as follows:

Purpose of Amendment:
☐ Change nature of use ☐ Change point of diversion ☐ Add point of diversion ☒ Change place of use
☐ Change period of use ☐ Other _____

1. Point of diversion: 1/4 1/4 1/4, Section , Township , Range , B.M.,
County of . Other points of diversion No change

2. Period and nature of use: (irrigation, domestic, stockwatering, industrial, etc.) No change

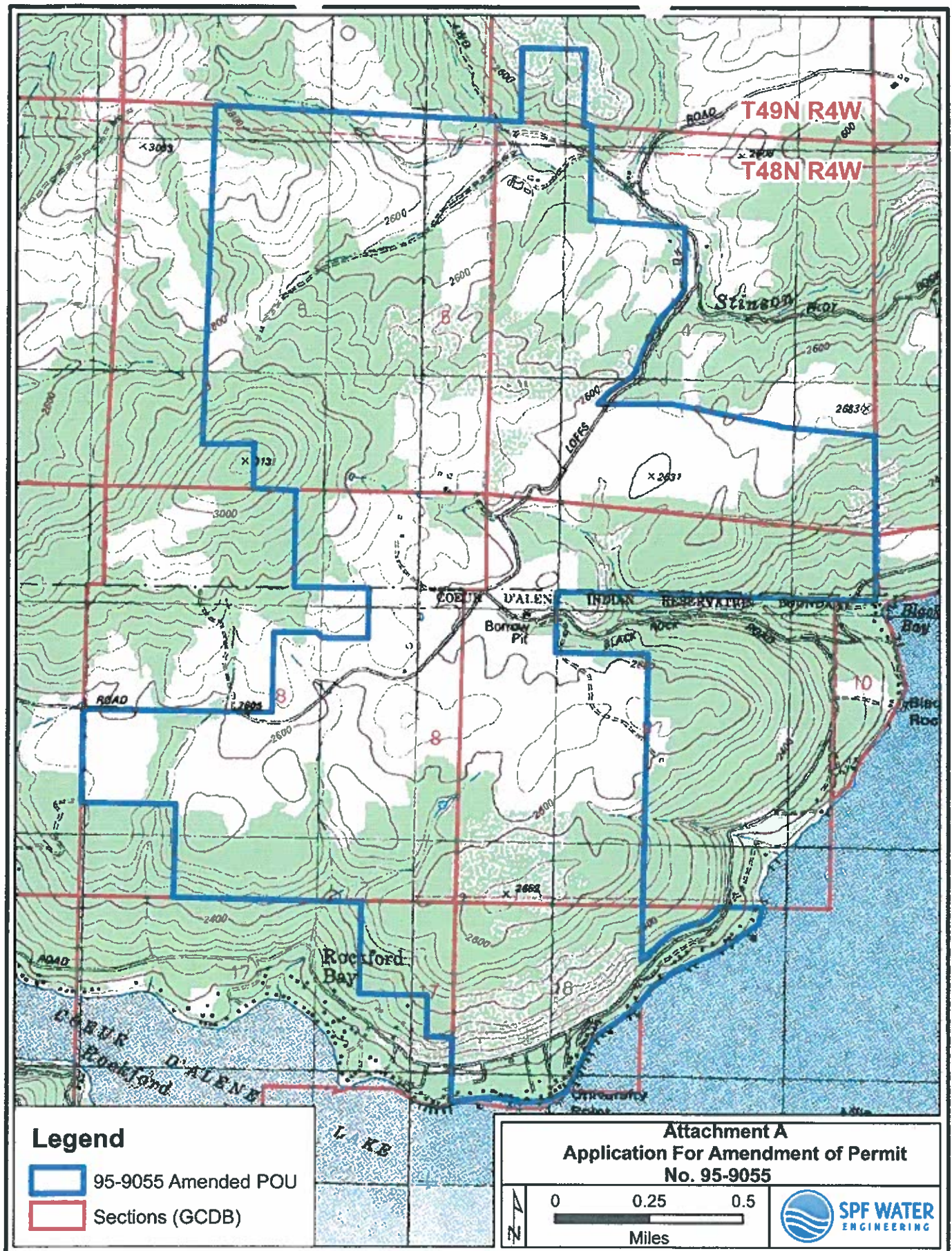
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year) (water use) (Begin Month) (End Month)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year) (water use) (Begin Month) (End Month)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year) (water use) (Begin Month) (End Month)

3. Place of use or land to be irrigated: Municipal use is within the service area of the applicant as indicated on the attached topographical map.

TWP	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total number of acres to be irrigated _____

4. a. Who owns the property at the point of diversion? Applicant
- b. Who owns the land to be irrigated or place of use? Applicant; Black Rock Development, Inc.; Black Rock Homeowners Assn.; The Club at Black Rock; individual lot owners.
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: Applicant will provide water services to users within the subdivision.



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State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

September 29, 2008

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

CHRISTOPHER H MEYER
GIVENS PURSLEY LLP
601 W BANNOCK ST
PO BOX 2720
BOISE ID 83701-2720

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OCT 1 2008

Givens Pursley, LLP

RE: Water Right Nos. 95-9055 and 95-9248 – Land Application of Treated Effluent

Dear Mr. Meyer:

This letter responds to your written correspondence dated September 2, 2008 regarding water right permits nos. 95-9055 and 95-9248. Your letter posed the general question of whether either permit must be amended to land apply treated wastewater to golf courses within The Club at Black Rock and Black Rock North (collectively the "Project"). In addition, you asked five specific questions pertaining to this issue. Please find below each of your questions restated in italics followed by my response.

1. *The condition on Water Right No. 95-9055 stating "Place of use is within the service area of CAG Investments, LLC." will be understood to apply to the service area of the current owner and municipal provider, Black Rock Utilities, Inc.*

The water right database is a representation of the actual water right documents and is not an official record. Ideally, the data base would be an exact simulacrum of the official record. Nonetheless, there is a discrepancy between the place of use described upon the actual signed permit and the proof report document generated from information contained in the data base. The signed permit establishes the terms of the permit. Permit no. 95-9055 does not describe a "service area" place of use. Instead, the permit describes the place of use by the traditional means of a specific quarter-quarter delineation.

2. *The place of use for Water Right No. 95-9055 describes an expanding municipal service area and is not limited to the specific forty-acre tracts identified in the Water Permit Report.*

Unfortunately, the place of use identified on the official record of permit no. 95-9055 does not describe an expanding municipal service area but delineates a specific place of use by quarter-quarter description.

3. *The condition of Water Right No. 95-9055 prohibiting use of this ground water right for irrigation of land to which surface rights are available does not prohibit land application of treated municipal effluent on such land.*

You are correct. This condition addresses the primary or first use of the diverted groundwater. IDWR recognizes municipal use as being fully consumptive. Once the

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MAR 02 2010

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groundwater has been used for its initial purpose, the municipal provider may reuse the reclaimed water within its place of use for other purposes that are defined as specific uses of water within the broader municipal purpose.

4. *The condition on Water Right No. 95-9248 stating "Place of use is within the area served by the public water supply system of the Ridge at Blackrock Bay Homes, Inc. The place of use is generally located within Government Lot Numbers 1, 2, and 3 of section 9, Township 48N, Range 4W." will be understood to apply to the service area of the current owner and municipal provider, Black Rock Utilities, Inc.*

Permit no. 95-9248 recognizes a generally described service area as the place of use of the water diverted under the permit. The Ridge at Blackrock Bay Homes, Inc. assigned the permit to Black Rock Utilities, Inc., and Black Rock intends to similarly use the water. The service area is the portion of the Black Rock project served by the Black Rock municipal system.

5. *The place of use for Water right No. 95-9248 describes an expanding municipal service area and is not limited to the lots identified in the condition quoted above.*

Based upon Idaho Code § 42-202(B) and § 42-219, the place of use for permit no. 95-9248 describes an expanding municipal service area and is not limited to the lots identified in condition number six of the permit.

In response to your general question of whether a permit amendment is required to land apply treated wastewater to golf courses within the project, the answer is different for each permit. Permit no. 95-9055 does not describe a "service area" place of use. Treated water used for irrigation would have to be applied to those portions of the golf course(s) that are within the described place of use on the permit document.

If Black Rock wishes to land apply water diverted under permit no. 95-9055 outside the current place of use, a permit amendment would be required modifying the place of use. IDWR has discretion to publish notice of an application for amendment. The original public notice for this permit used the language "municipal use is within the service area of the applicant." IDWR will not require publication of notice of the application for amendment, assuming Black Rock only proposes to change the place of use to a generally described service area.

Permit no. 95-9248 describes the place of use as a "service area." The place of use may change as the service area changes. An amendment to permit no. 95-9248 is not required to land apply reclaimed municipal water.

Respectfully,



Gary Spackman

Cc: Bob Haynes, Regional Manager, Northern Regional Office, IDWR
John R. Layman, Layman, Layman & Robinson
Barry Rosenberg, Executive Director, Kootenai Environmental Alliance
Jai K. Nelson, Coordinator, Coalition for Positive Rural Growth

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MAR 02 2010
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M E M O R A N D U M

Date: March 09, 2010
To: Water Right File 95-9055
From: kfranklin
Re: Amendment of Permit

This permit is amended to enlarge the service area of the municipal water right. It was further determined the amendment did not need to be advertised.