

State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 95-11041

Priority: July 23, 2009

Maximum Diversion Rate: 0.20 CFS

This is to certify, that JON SCHWARTZ And
ANN CLEVINGER And
KEN GIMBEL
C/O HOLMES LAW OFFICE
PO BOX 569
HAYDEN ID 83835
(208) 762-0100

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>
DOMESTIC	01/01 to 12/31	0.08 CFS
IRRIGATION	03/15 to 11/15	0.12 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER, L1 (NE1/4NE1/4), Sec. 4, Twp 49N, Rge 03W, B.M., KOOTENAI County

PLACE OF USE: DOMESTIC

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
49N	03W	4	X																
			L 1																

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	
49N	03W	4	5.0																
			L 1																5.0

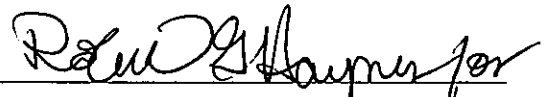
Total Acres: 5

State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 95-11041

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **January 01, 2015**.
2. Subject to all prior water rights.
3. This right does not grant any right-of-way or easement across the land of another.
4. 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.
5. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 3.0 afa per acre at the field headgate for irrigation of the lands above.
6. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
7. Domestic use is for 3 homes. Irrigation of lawn, garden and landscaping associated with the home is authorized under the irrigation component of this right.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Coeur d'Alene, this 8th day of January, 2010.


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

January 9, 2010

JON SCHWARTZ
C/O HOLMES LAW OFFICE
PO BOX 569
HAYDEN ID 83835

ANN CLEVINGER
C/O HOLMES LAW OFFICE
PO BOX 569
HAYDEN ID 83835

KEN GIMBEL
C/O HOLMES LAW OFFICE
PO BOX 569
HAYDEN ID 83835

RE: Permit No.95-11041

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,

A handwritten signature in black ink, appearing to read "Keith E. Franklin". The signature is stylized with a large, looped "K" and a cursive "Franklin".

Keith E. Franklin

Sr. Water Resources Agent

Enclosure(s)

cc: HOLMES LAW OFFICE

CERTIFICATE OF SERVICE

I hereby certify that on January 9, 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.

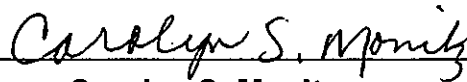
95-11041

**ANN CLEVINGER
C/O HOLMES LAW OFFICE
PO BOX 569
HAYDEN ID 83835**

**JON SCHWARTZ
C/O HOLMES LAW OFFICE
PO BOX 569
HAYDEN ID 83835**

**KEN GIMBEL
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**HOLMES LAW OFFICE
PO BOX 569
HAYDEN ID 83835**



**Carolyn S. Monitz
Technical Records Clerk**

**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.

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

W.R. # 95-11041

APPLICATION ID # 75794

ENT. 8/25 BCA 10/23 OK to Publish 10/21/09

APPLICANT: Ken Gimbel, Jon Schwartz, Ann
Clevinger

BY: KJ DATE: 8/25/2009

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 8/25 By: KJ
☐ Field check: by _____
☐ Field report attached
☐ Analysis Supp. attached(>5cfs/500af)
☐ Water delivered by water master? Water District # _____

PROCESSING

(Yes)(No) PRIORITY DATE: 7/23/2009

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

ADVERTISE IN:

Newspaper: Kootenai County
 Dates scheduled for publication: 11/5 & 12/09
 Affidavit of Publication received: 11/16/09
 Dates actually published: 11/5 & 12/09
 Application published correctly. Yes e No _____
 If not, action taken: _____

Final Date for Protest: _____
 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?
<u>751578</u>		Dom. ☒ Non-Dom. _____	Paid \$ _____		Y () N (<u>2</u>) <u>197°</u>
		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: Keith J. Smith Date: 12/19/2009 Sr. Agent initial KJ

RECEIVED
AFFIDAVIT OF PUBLICATION

NOV 16 2009

STATE OF IDAHO,
County of Kootenai,

} ss.

IDWR / NORTH

Kelli Buley being first duly sworn
upon oath deposes and says:

1. I am now and at all times hereinafter mentioned was a citizen of the United States, resident of the State of Idaho, over the age of twenty-one years and not a party of the above entitled action.

2. I am now and at all times hereinafter mentioned was the printer (principal clerk) of the "Coeur d'Alene Press," a newspaper printed and published daily except Sunday in Coeur d'Alene, Kootenai County, Idaho, and having a general circulation in said county.

3. The Legal Notice

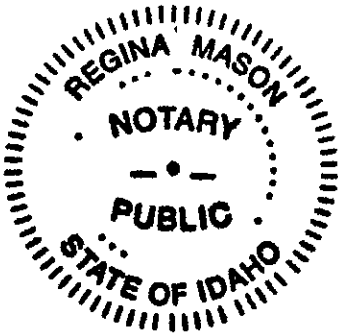
of which the annexed is a printed copy, was published in the regular Thursday issue of said newspaper for 2 consecutive weeks commencing on the 5 day of November 2009, and ending on the 12 day of November 2009, and such publication was made as often during said period as said Daily newspaper was regularly issued.

4. That said newspaper has been continuously and uninterruptedly published in said Kootenai County, during a period of more than seventy-eight consecutive weeks immediately prior to the first publication of said notice Kelli Buley. On this 12 day of November in the year of 2009, before me, a Notary Public, personally appeared Kelli Buley, 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.

Regina Mason

Notary Public for the State of Idaho,
residing at Coeur d'Alene, Idaho.

MY COMMISSION EXPIRES 6/18/15



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

95-11009

JERRY L HANSON ET UX TRUSTEES

9295 S TALL PINES RD

COEUR D ALENE, ID 83814

Point of Diversion SWNWSW S9 T49N R04W KOOTENAI CO

Source SPRINGS tributary to MICA CREEK

Points of Diversion(2) NWSWSW S9 T49N R04W KOOTENAI CO

Source SPRINGS

Use: WILDLIFE	01/01 to 12/31	0.2 CFS
Use: WILDLIFE STORAGE	01/01 to 12/31	4.7 AF
Use: RECREATION	01/01 to 12/31	0.2 CFS
Use: RECREATION STORAGE	01/01 to 12/31	4.7 AF
Use: FIRE PROTECTION	01/01 to 12/31	0.2 CFS
Use: FIRE PROTECTION STORAGE	01/01 to 12/31	6.1 AF
Use: AESTHETIC	01/01 to 12/31	0.2 CFS
Use: AESTHETIC STORAGE	01/01 to 12/31	6.1 AF
Total Diversion:	0.2 CFS	6.1 AF

Date Filed: 8/20/2009

Place Of Use: RECREATION T49N R04W S9 NWSW SWSW

Place Of Use: All other uses same as RECREATION

Recreation use is for fish

95-11024

DOUGLAS O NUSTAD

PO BOX 2776

HAYDEN, ID 83835

Point of Diversion L5(NESE) S4 T51N R03W KOOTENAI CO

Source HAYDEN LAKE tributary to SINKS

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

Date Filed: 8/20/2009

Place Of Use: DOMESTIC T51N R03W S4 L5(NESE)

Domestic use is for 1 home.

95-11041

KEN GIMBEL

JON SCHWARTZ

ANN CLEVINGER

PO BOX 569

HAYDEN, ID 83835

Point of Diversion L1(NENE) S4 T49N R03W KOOTENAI CO

Source GROUND WATER

Use: IRRIGATION	03/15 to 11/15	0.12 CFS
Use: DOMESTIC	01/01 to 12/31	0.08 CFS
Total Diversion:	0.2 CFS	

Date Filed: 7/23/2009

Place Of Use: DOMESTIC T49N R03W S4 L1(NENE)

Place Of Use: IRRIGATION same as DOMESTIC

Total Acres: 5

Domestic use is for 3 homes.

95-11042

DON L BUTLER

PO BOX 2889

POST FALLS, ID 83877

Point of Diversion NWSW S17 T51N R04W KOOTENAI CO

Source GROUND WATER

Use: IRRIGATION	03/15 to 11/15	0.18 CFS
Total Diversion:	0.18 CFS	

Date Filed: 8/25/2009

Place Of Use: IRRIGATION T51N R04W S17 NWSW

Total Acres: 9

95-11043

RANDY HURST

1920 S ROCKY RIDGE DR

SPOKANE VALLEY, WA 99212

Point of Diversion NESE S18 T53N R04W KOOTENAI CO

Source SPIRIT LAKE tributary to SPIRIT CREEK

Use: IRRIGATION	03/15 to 11/15	0.03 CFS
Use: DOMESTIC	01/01 to 12/31	0.04 CFS
Total Diversion:	0.04 CFS	

Date Filed: 7/29/2009

Place Of Use: DOMESTIC T53N R04W S18 NESE

Place Of Use: IRRIGATION same as DOMESTIC

Total Acres: 1

Domestic use is for 1 home.

95-11044

LEO R SIMPSON

PO BOX 989

HAYDEN, ID 83835

Point of Diversion L5(NESE) S4 T51N R03W KOOTENAI CO

Source HAYDEN LAKE tributary to SINKS

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

Date Filed: 8/25/2009

Place Of Use: DOMESTIC T51N R03W S4 L5(NESE)

Domestic use is for 1 home.

95-11046

RANDY BATES

SUSAN BATES

841 S PLEASANTVIEW RD

POST FALLS, ID 83854

Point of Diversion L1(SWNW) S8 T50N R05W KOOTENAI CO

Source SPOKANE RIVER tributary to COLUMBIA RIVER

Use: IRRIGATION	03/15 to 11/15	0.04 CFS
Total Diversion:	0.04 CFS	

Date Filed: 8/18/2009

Place Of Use: IRRIGATION

T50N R05W S7 L3(SENE)

T50N R05W S8 L1(SWNW)

Total Acres: 1.5

95-11048

DAVID M HESKETT

S 2614 VIEWMONT CT

SPOKANE VALLEY, WA 99016

Point of Diversion L6(SWSE) S13 T53N R05W KOOTENAI CO

Source SPIRIT LAKE tributary to SPIRIT CREEK

Use: DOMESTIC	01/01 to 12/31	0.01 CFS
Total Diversion:	0.01 CFS	

Date Filed: 8/21/2009

Place Of Use: DOMESTIC T53N R05W S13 L6(SWSE)

Domestic use is for 1 home.

95-11052

HARRY HAMMACK

BEVERLY HAMMACK

11960 W COUGAR GULCH RD

COEUR D ALENE, ID 83814

Point of Diversion SENWSE S35 T50N R05W KOOTENAI CO

Source SPRING tributary to SINKS

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

Date Filed: 8/26/2009

Place Of Use: DOMESTIC T50N R05W S35 NWSE

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 § 42-211. 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 11/23/2009. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Interim Director

Legal 8173

November 5, 12, 2009

RECEIVED
NOV 16 2009
IDWR / NORTH