

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 95-10679

Priority: June 17, 2009

Maximum Diversion Rate: 0.20 CFS

This is to certify, that FRED B BIRDSALL And/Or DARCY K BIRDSALL
27988 N BOHN RD
ATHOL ID 83801

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>
IRRIGATION	04/01 to 10/31	0.20 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER NW1/4SW1/4 Sec. 24, Twp 53N, Rge 03W, B.M. KOOTENAI County

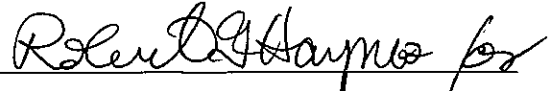
PLACE OF USE: IRRIGATION

Twp Rge Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals	
53N 03W 24																		20.0
Total Acres: 20																		

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **December 01, 2014**.
2. Subject to all prior water rights.
3. This right authorizes the diversion of ground water within the Rathdrum Prairie Ground Water Management Area (RPGWMA). Use of water under this right shall be subject to the provisions of the management plan approved by the director for the RPGWMA.
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 does not grant any right-of-way or easement across the land of another.
6. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.0 afa per acre at the field headgate for irrigation of the lands above.

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 14th day of December, 2009.


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

December 15, 2009

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

FRED B BIRDSALL
DARCY K BIRDSALL
27988 N BOHN RD
ATHOL ID 83801

RE: Permit No.95-10679

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, sweeping "K" and "F".

Keith E. Franklin

Sr. Water Resources Agent

Enclosure(s)

CERTIFICATE OF SERVICE

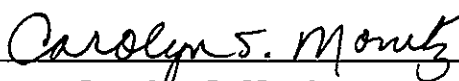
I hereby certify that on December 15, 2009 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO.

95-10679

**DARCY K BIRDSALL
27988 N BOHN RD
ATHOL ID 83801**

**FRED B BIRDSALL
27988 N BOHN RD
ATHOL ID 83801**

A handwritten signature in cursive script, reading "Carolyn S. Monitz", is written over a horizontal line.

**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.

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

W.R. # 95 - 10679

APPLICATION ID # 75685

ENT: EPH

BCA 7/29/09

OK to Publish 7/29/09

APPLICANT: Birdsall

INITIAL REVIEW

BY: EPH

DATE: 6/17/2009

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)

PROCESSING

(Yes)(No) PRIORITY DATE: 6/17/2009

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

ADVERTISE IN:

Newspaper: Kootenai County

Dates scheduled for publication 8/10 & 13/09

Affidavit of Publication received: 8/14/09 9/25/09

Dates actually published: 8/10 & 13/09

Application published correctly. Yes ☒ No ☒

If not, action taken: Ready to correct P04

Final Date for Protest: 8/27/09 10/5/09

Protests Received: Yes ☐ No ☐

LETTERS SENT REQUESTING:

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

INFORMATION RECEIVED:

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

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

ADDITIONAL INFORMATION

(Yes)(No)

Shape File Created Date _____ By: _____

Field check: by _____

Field report attached _____

Analysis Supp. Attached (>5cfs/500af) _____

Water delivered by water master? Water District # _____

GROUNDWATER SECTION

WD Permit No.'s:	Tag #	Type:	Fees	Receipt No.	Upgrade Needed?
<u>D0039941</u>		Dom. ☒ Non-Dom. _____	Paid \$ <u>125⁰⁰</u>	<u>N020946</u>	Y (X) 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: Eric [Signature]

Date: 10/30/2009 Sr. Agent initial _____

AFFIDAVIT OF PUBLICATION

RECEIVED

SEP 25 2009

I.O. }
enai, } ss.

Kelli Buley

being filed in IDWA / NORTH

uses and says:

now and at all times hereinafter mentioned was a citizen of the United States of the State of Idaho, over the age of twenty-one years and not a juvenile entitled action.

and at all times hereinafter mentioned was the printer (principal clerk) of "Coeur d'Alene Press," a newspaper printed and published daily except on Sundays in Coeur d'Alene, Kootenai County, Idaho, and having a general circulation in

Legal Notice

Annexed is a printed copy, was published in the regular Thursday newspaper for 2 consecutive weeks on the 17 day of September, 2009, and the 24 day of September, 2009, and such notices were made as often during said period as said Daily newspaper is regularly issued.

The said newspaper has been continuously and uninterruptedly published in Kootenai County, during a period of more than seventy-eight consecutive weeks or to the first publication of said notice.

Kelli Buley
4 day of September in the year of 2009, before me, personally appeared Kelli Buley

known to me to be the person whose name subscribed to the within instrument, and who, being duly sworn, declared that the statements therein are true, and acknowledged the same.

Regina Mason

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

MY COMMISSION EXPIRES 6/18/15



NOTICE OF CORRECTION
NOTICE IS HEREBY GIVEN THAT APPLICATIONS FOR PERMITS No.95-10671 in the name of James A & Marie P Garr, 16804 N Trails End Rd in Rathdrum, ID 83858, and No.95-10679 in the name of Fred B or Darcy K Birdsall, 27988 N Bohn Rd, Athol, ID 83801, and No.95-10687 in the name of James & Janet Allen, 17461 N Right Fork Rd, Hauser Lake, ID 83854, and No.95-101719 in the name of Michael Gurian, 417 W 32nd Ave, Spokane, WA 99203, and No.95-10725 in the name of Ted D. DePee, 9430 W Twin Lakes Rd, Rathdrum ID 83858, were incorrectly advertised on August 6 and 13, 2009.

In each case the Place of Use was incorrectly advertised.

Place of Use for Garr, Application No.95-10671 was shown as SENE whereas correctly it should be NWSE.

Place of Use for Birdsall, Application No.95-10679 was shown as SWNW whereas correctly it should be NWSW.

Place of Use for Allen, Application No.95-10687 was shown as NENW whereas correctly it should be NWNE.

Place of Use for Gurian, Application No.95-10719 was shown as SWSE whereas correctly it should be SESW.

Place of Use for DePee, Application No.95-10725 was shown as SENE whereas correctly it should be NWSE. (For additional information concerning the property locations, call the Northern Regional Office at 762-2800.)

Any protests against the approval of the above-referenced corrections must be filed with the applicant and with the Director, Dept. of Water Resources, 7600 N Mineral Drive, Suite 100, Coeur d'Alene, Id. 83815, together with a protest fee of \$25.00 on or before October 5, 2009.

GARY SPACKMAN, Interim Director
Legal 7695
September 17, 24, 2009

RECEIVED
AFFIDAVIT OF PUBLICATION

AUG 14 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.

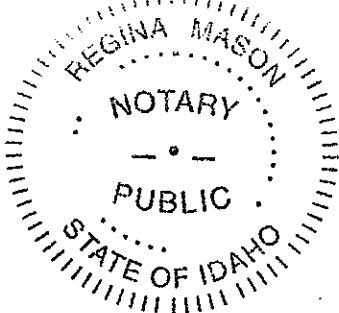
3. The Legal Notice

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 10 day of August, 2009, and ending on the 13 day of August, 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 13 day of August 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

RECEIVED
AUG 14 2009
IDWR / NORTH

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

95-10671

JAMES A GARR
MARIE P GARR
16804 N TRAILS END RD
RATHDRUM, ID 83858
Point of Diversion NWSE S29 T52N R04W KOOTENAI County
Source GROUND WATER
Use: IRRIGATION 03/15 to 11/15 0.12 CFS
Total Diversion: 0.12 CFS

Date Filed: 6/16/2009
Place Of Use: IRRIGATION T52N R04W S29 SENE
Number of acres: 4

95-10679

FRED B BIRDSALL
DARCY K BIRDSALL
27988 N BOHN RD
ATHOL, ID 83801
Point of Diversion NWSW S24 T53N R03W KOOTENAI County
Source GROUND WATER
Use: IRRIGATION 04/01 to 10/31 0.2 CFS
Total Diversion: 0.2 CFS

Date Filed: 6/17/2009
Place Of Use: IRRIGATION T53N R03W S24 SWNW
Number of acres 20

95-10687

JAMES ALLEN
JANET ALLEN
17461 N RIGHT FORK RD
HAUSER LAKE, ID 83854
Point of Diversion NWNE S30 T52N R05W KOOTENAI County
Source SPRING tributary to UNAMED STREAM
Use: DOMESTIC 01/01 to 12/31 0.04 CFS
Total Diversion: 0.04 CFS

Date Filed: 6/17/2009
Place Of Use: DOMESTIC T52N R05W S30 NENW
Domestic use is for 1 home.

95-10704

MARY F ANDERSON
24327 N FISH LAKE RD
RATHDRUM, ID 83858
Point of Diversion SESE S36 T53N R05W KOOTENAI County
Source TWIN LAKES tributary to RATHDRUM CREEK
Use: IRRIGATION 03/15 to 11/15 0.02 CFS
Total Diversion: 0.02 CFS

Date Filed: 6/23/2009
Place Of Use: IRRIGATION T53N R05W S36 SESE
Number of acres .5

95-10706

BOB WILSON
7875 E HIGHWAY 54
ATHOL, ID 83801
Point of Diversion SWSW S11 T53N R03W KOOTENAI County
Source GROUND WATER
Use: COMMERCIAL 01/01 to 12/31 0.1 CFS
Total Diversion: 0.1 CFS

Date Filed: 6/23/2009
Place Of Use: COMMERCIAL T53N R03W S11 SWSW
Commercial use is for greenhouse.

95-10719

MICHAEL GURIAN
417 W 32nd AVE
SPOKANE, WA 99203
Point of Diversion SESW S18 T53N R04W KOOTENAI County
Source SPIRIT LAKE tributary to SPIRIT CREEK
Use: DOMESTIC 01/01 to 12/31 0.04 CFS
Total Diversion: 0.04 CFS

Date Filed: 6/19/2009
Place Of Use: DOMESTIC T53N R04W S18 SWSE
Domestic use is for 1 home.

95-10725

TED D DEPEE
9430 W TWIN LAKES RD
RATHDRUM, ID 83858
Point of Diversion NWSE S36 T53N R05W KOOTENAI County
Source TWIN LAKES tributary to RATHDRUM CREEK
Use: DOMESTIC 01/01 to 12/31 0.04 CFS
Total Diversion: 0.04 CFS

Date Filed: 6/29/2009
Place Of Use: DOMESTIC T53N R05W S36 SENE
Domestic use is for 1 home

95-10759

JOHN GIESEN
7124 ENGLISH PT
HAYDEN, ID 83835
Point of Diversion SWNE S3 T52N R03W KOOTENAI County
Source SPRING tributary to SINKS
Use: IRRIGATION 04/01 to 10/31 0.03 CFS
Total Diversion: 0.03 CFS

Date Filed: 6/23/2009
Place Of Use: IRRIGATION T53N R03W S34 SESE
Number of acres: 1

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code.
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 8/24/2009. The protestant must also send a copy of the protest to the applicant.
GARY SPACKMAN, Interim Director
Legal 7250
August 6, 13, 2009

RECEIVED
AUG 14 2009
IDWR/NORTH