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IDWR/North

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

APPLICATION FOR AMENDMENT OF A PERMIT

Note: Information in italics is provided by Applicant.

 Fee 150.00
 Receipt NO1967
 Received By [Signature]
 Date 4/14/08
Name of Applicant Black Rock Utilities, Inc. Phone 208-665-2005Mailing address P.O. Box 3070, Coeur d'Alene, ID 83816 Email kylec@blackrockdevelopment.comI am the owner and holder of Permit to Appropriate the Public Water of the State of Idaho No. 95-9045, and request that the permit and permit map be amended and/or changed as follows:
 Purpose of Amendment: Change point of diversion Add point of diversion
x Change place of use x Change nature of use x Change period of use x Other

 1. Point of diversion: 1/4 1/4 1/4, Section , Township , Range , B.M.,
 County of . Other points of diversion

(No change in point of diversion)

2. Period and nature of use: (irrigation, domestic, stockwatering, industrial, etc.)

Amount 2.5 cfs / 1,215 acre-feet for municipal purposes from 1/1 to 12/31 (both dates inclusive)Amount 2.46 cfs for diversion to storage purposes from 1/1 to 12/31 (both dates inclusive)Amount 209 acre-feet for aesthetic storage purposes from 1/1 to 12/31 (both dates inclusive)Amount 369 acre-feet for municipal storage purposes from 1/1 to 12/31 (both dates inclusive)Amount 369 acre-feet for municipal from storage purposes from 1/1 to 12/31 (both dates inclusive)

Note: Total diversion rate and diversion volume, including storage volume, from Lake Coeur d'Alene for all uses: 2.5 cfs and 1,215 acre-feet per year.

Note: Total storage volume for all uses: 369 acre-feet per year.

Note: There is no change to the municipal use stated above. The irrigation use on the existing permit would be eliminated.

3. Place of use or land to be irrigated:

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
48N	4W	4						M Li 4	J,M	J,M	J,M, N	J,M, N	J,M, N	J,M, N		M	M	M	
48N	4W	5	M Li 1	M Li 2	J,M	J,M	M Li 3			M	M			M	M	M	M	M	
48N	4W	8	J,M Li 1	M Li 2	M	M					M	M		M	J,M	J,M, N	J,M	J,M	
48N	4W	9						J,M Li 4	M Li 5	M Li 6	M	J,M	J,M	J,M					
48N	4W	16	M Li 1				M	J,M	M Li 2	M Li 3	M Li 3	M Li 2							
48N	4W	17	M			M Li 4													

Total number of acres to be irrigated 545

Key: J = aesthetic storage. N = municipal storage. M = municipal from storage.

Note: Municipal use (not displayed above) is limited to fire protection, construction, and irrigation of 545 acres within sections 4, 5, 8, 9, 16, and 17, T48N, R4W, Kootenai County. See Exhibit B for water feature description details. See Exhibit C for explanation and proposed conditions.

Fee _____
Receipt _____
Received By _____
Date _____

4. a. Who owns the property at the point of diversion? Black Rock Development, Inc.
- b. Who owns the land to be irrigated or place of use? Black Rock Development, Inc.; Black Rock Utilities, 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:
Black Rock Utilities, Inc. will provide water services to users within the subdivision.

(See Exhibit A)

[illegible]

Chetophyll. Ullman

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Exhibit A: Map

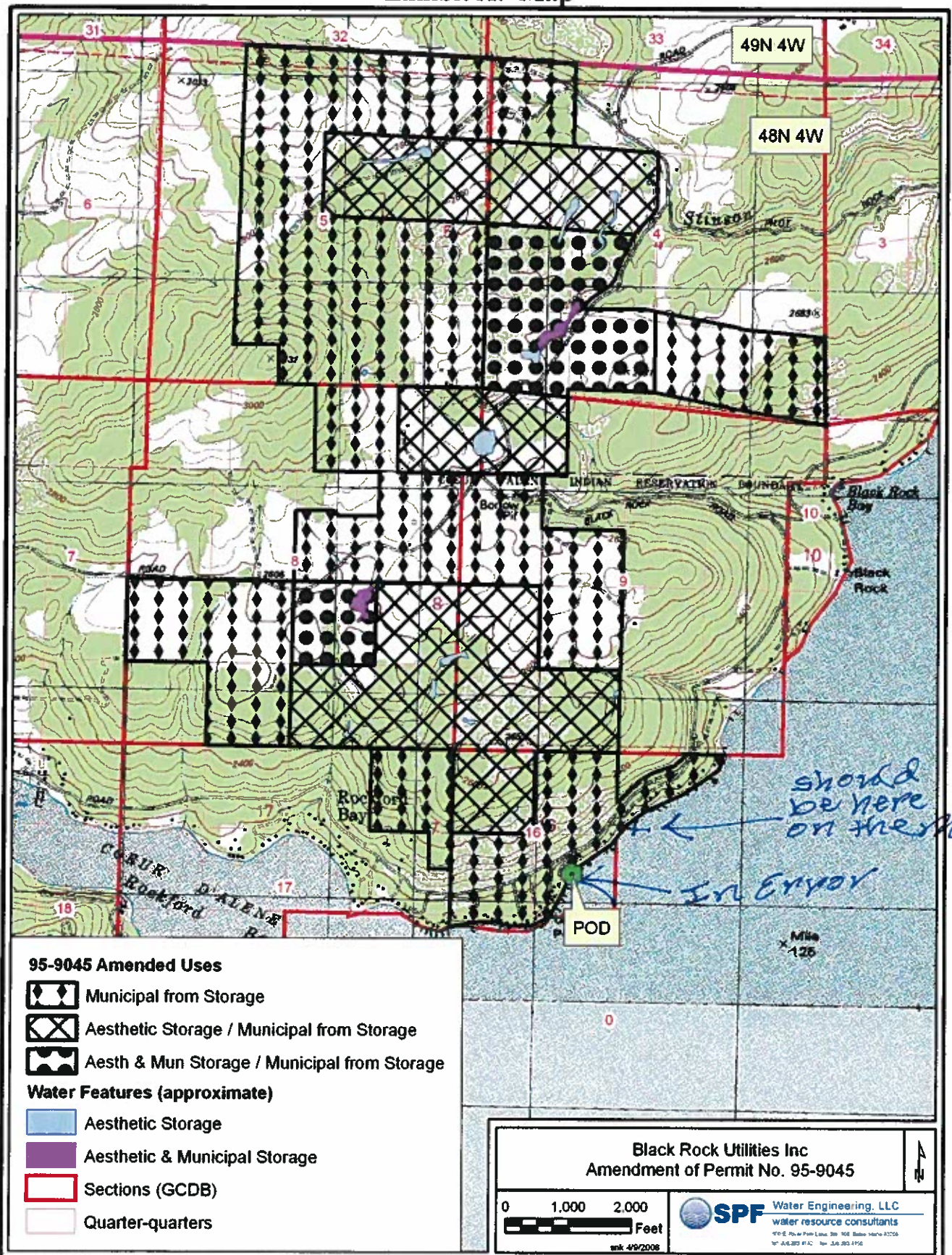


Exhibit B: Ponds and Water Features

Black Rock has constructed or intends to construct ponds and water features as described in the table below:

	Number	Name	Surface		Volume (gallons)	Volume (acft)	Depth (ft)	Calc Avg Depth (ft)
			Surface Area (sqft)	Area (acres)				
BRN	1	Irrigation Lake	100,690	2.31	18,830,288	57.79		25.0
BRN	2	Lake #2	48,720	1.12	4,235,814	13.00		11.6
BRN	3	Kootenai Lake	44,895	1.03	9,263,774	28.43		27.6
BRN	4a	Hole #11 to #12	8,800	0.20	78,994	0.24		1.2
BRN	4b	Catch Pond	6,000	0.14	269,298	0.83	6	6.0
BRN	5a	Hole #15	6,000	0.14	53,285	0.16		1.2
BRN	5b	Catch Pond	3,600	0.08	161,578	0.50	6	6.0
BRN	6a	Hole #16	8,400	0.19	75,403	0.23		1.2
BRN	6b	Catch Pond	5,200	0.12	233,391	0.72	6	6.0
BR	8	#3 Waterfall & Pond	900	0.02	15,260	0.05		2.3
BR	9	Irrigation Pond	65,000	1.49	5,000,000	15.35		10.3
BR	10	#8 Ponds	31,250	0.72	403,000	1.24		1.7
BR	11	#9 Ponds	15,900	0.37	596,000	1.83		5.0
BR	12	#11 Waterfalls and po	9,800	0.22	368,000	1.13		5.0
BR	13	#13 Waterfalls and po	4,500	0.10	135,000	0.41		4.0
BR	14	#16 Ponds	48,300	1.11	906,000	2.78		2.5
Totals			407,955	9.37	40,625,085	124.68		

Table 1: Black Rock Ponds

Key: BRN = Black Rock North. BR = The Club at Black Rock

This data is provided for informational purposes to show the derivation of the overall volume (125 acre-feet). It is not intended to restrict Black Rock's ability to modify the location or dimensions of individual ponds or water features.

Exhibit C: Explanation and Proposed Conditions

Black Rock Utilities, Inc. ("Black Rock") is the owner of Water Right No. 95-9045 (the "Water Right"). As initially permitted, the Water Right authorized 2.5 cfs for irrigation use on 668 acres of land and 1.0 cfs for domestic use. The original permit contained no stated volume limits.

The permit for this Water Right was amended per preliminary order of the Department on June 4, 2007 (the "Order"), which Order became final without further action on June 18, 2007. Per the Order, an Amendment of Permit (the "Amended Permit") was issued on July 27, 2007 authorizing municipal use of 2.5 cfs on 545 acres with a total diversion volume of 1,215 acre-feet per year. A copy of the Amended Permit is set out as Exhibit E. The domestic component (1.0 cfs) was eliminated. The Order left in place, temporarily, a portion of the original irrigation component of the Water Right corresponding to 123 acres of irrigation authorized under the original permit but not required for the new municipal use (668 acres minus 545 acres) (the "Residual Irrigation Component").

The Amended Permit contained conditions implementing a stipulation with protestant KEA. These conditions limited the new municipal use component of the Water Right to the following uses: irrigation use within the irrigation season, fire protection, and construction use for two years (starting at a date to be designated by the holder). Accordingly, the Amended Permit did not authorize use of the municipal component of the Water Right for storage uses (except to the extent authorized under the Department's "24-hour rule" as reflected in condition No. 4).¹

Per Condition Nos. 5 and 14 of the Amended Permit, Black Rock was given until June 18, 2008² to identify other water rights it owns that authorize storage of water in its ponds and water features. Condition No. 14 of the Amended Permit provided that a further amendment of the permit for this Water Right was one means of satisfying this requirement. (This is further described in Conclusions of Law Nos. 12 through 21 of the Order.) The purpose of this second Application for Amendment of Permit ("Application") is to satisfy the requirements set out in the Order and Amended Permit respecting the identification of water rights for storage.

Per Conclusion of Law No. 20 of the Order, the Residual Irrigation Component corresponding to the 123 acres of irrigation no longer required under the permit (equating to 2.46 cfs—a miner's inch per acre—and 369 acre-feet per year—at 3.0 acre-feet per annum) is available for reallocation per a subsequent amendment of the permit to storage uses. This application is intended to accomplish that change, as contemplated by the Department's Order and the Amended Permit.

¹ All references to condition numbers correspond to the numbers on the Amended Permit issued on July 27, 2007. Note that condition numbers on the water right summary available on the Department's website vary.

² Condition No. 14 sets the deadline as one year from the date of final approval of the amendment. The most conservative interpretation of that would be June 18, 2007 (14 days after the date of issuance of the preliminary order on June 4, 2007). However, the deadline may run from the service of the preliminary order on June 5, 2007, or from issuance of the Amended Permit on July 27, 2007. In any event, the applicant has met the deadline.

The municipal component of this right would remain unchanged (2.5 cfs up to 1,215 acre-feet per year).

This amendment seeks to change the Residual Irrigation Component (2.46 cfs up to 369 acre-feet per year) to four storage uses:

- “Diversion to storage” at a flow rate of 2.46. This corresponds to the flow rate associated with the Residual Irrigation Component of the Amended Permit, based on a miner’s inch per acre for 123 acres (0.02×123). This authorizes diversion to storage for both municipal and aesthetic uses.
- “Aesthetic storage” (209 acre-feet) includes 125 acre-feet corresponding to the total volumetric capacity shown in Exhibit B for total pond volume, plus 13 acre-feet for annual evaporation from pond surfaces (at 1.4 acre-feet per year per ETIdaho for 9.4 acres of surface area) and 71 acre-feet for pond seepage (at 0.25 inches per day). There are no diversions from aesthetic storage.

mm/day	month	days/month	mm/month
0.92	April	30	27.6
1.69	May	31	52.4
2.17	Jun	30	65.1
3.81	July	31	118.1
3.22	August	31	99.8
2.01	September	30	60.3
0.20	October	31	6.2
Total			429.5

Table 2: Precipitation deficit shallow open water evaporation per Coeur d’Alene (NWS NOAA #101956) climate station for months with positive net evaporation conditions.

- “Municipal storage” authorizing the ponds to be filled and refilled for municipal purposes (limited to irrigation, construction, and fire protection) up to 369 acre-feet per year. This corresponds to the total annual volume associated with the 123-acre Residual Irrigation Component on the existing permit (123×3.0 acre-feet per acre). This storage volume is in addition to storage allowed under the Department’s 24-hour rule. This volume (369 acre-feet) is greater than the volume for aesthetic storage (209 acre-feet), allowing some additional flexibility for filling and re-filling up to the authorized volume. Municipal storage will be used primarily for irrigation with the typical associated efficiencies. Therefore, limiting the new quantity to prior consumptive use is not applicable.
- “Municipal from storage” authorizing water to be withdrawn from storage in the ponds in an amount equal to the municipal storage right described above. This “municipal from storage” use is in addition to the use authorized under the direct flow municipal component right. Thus, the water right holder could briefly satisfy instantaneous municipal demand in excess of 2.5 cfs by simultaneously diverting from Lake Coeur d’Alene and drawing down storage. Per conditions on this permit, “municipal from storage” use is limited to irrigation of 545 acres, construction for two years, and fire protection.

The same storage water may be used simultaneously for more than one authorized purpose. Thus, for example, the water in a pond might be stored for both aesthetic and municipal

purposes. The stated quantities for each purpose are not cumulative. Total storage authorized is 369 acre-feet per year. The total quantity that may be diverted from Lake Coeur d'Alene under this Water Right for all purposes remains 1,215 acre-feet per year at a maximum diversion rate of 2.5 cfs. Accordingly, this amendment would not result in injury or enlargement.

Black Rock does not believe that it is necessary to identify a separate storage purpose for fire protection. Instead, Black Rock recommends that the Department include an additional condition (replacing Condition No. 4 which described the right to store water for irrigation and fire protection under the Department's "24-hour rule") stating as follows:

- "4. ~~Storage of water under this right is limited to 5.0 acre-feet for irrigation and 1.5 acre-feet for fire protection. Furthermore, the 5 acre-feet stored for irrigation must be stored in a reservoir from which water for irrigation is pumped and delivered. The remaining 1.5 acre-feet may be stored in a separate reservoir. The holder of this right is authorized to use any water stored under this water right for fire protection purposes. Water shall not be diverted from storage except to fight or repel an existing fire.~~"

The ponds will serve multiple purposes, including recreation and fish and wildlife. Black Rock is not seeking separate storage uses for recreation or fish and wildlife, because doing so would be redundant with the aesthetic use and would add nothing to the right. The same is true for fire protection storage, as discussed above. The fact that these additional storage uses would not be stated on the face of the permit should not be understood to limit or restrict the use of the ponds for these uses. Black Rock suggests including an additional condition (which we have numbered "13" since conditions 5 and 14 would be eliminated) stating as follows:

- "13. The aesthetic storage use under this right also includes use for fish and wildlife and recreation purposes."

Black Rock requests that the season of use for each of the storage rights be made year-round. This will not result in injury or enlargement. The effect would be to spread out the same quantity of demand over a longer period of time. This change would slightly increase withdrawals during the non-irrigation season and slightly reduce them during the irrigation season. The impact of this change will be de minimus given the small quantity of change and the large size of the lake. To the extent it could be felt, however, the change would be beneficial to other water right holders and to the local public interest. There are very few non-irrigation season water rights out of Lake Coeur d'Alene (e.g., hydropower and municipal use). These users would benefit from this change, because their water requirements are greatest during the summer season. This would also benefit downstream users in Washington State where summer water quality issues are tied to low summer flows.

If the requested changes to storage are approved, the Department should eliminate Condition Nos. 5 and 14 of the Amended Permit (limiting storage to 6.5 acre-feet per year under the 24-hour rule)—in addition to the change to Condition No. 4 discussed above.

The conditions limiting this right set out in the existing Amended Permit (including the limitations imposed by the KEA stipulation) would remain unchanged. Specifically, Condition Nos. 1, 2, 3, 6, 7, 9, 10, 12, and 13 would remain in place (and be renumbered as appropriate).

Condition No. 11 would remain, except that it should be modified as follows (new language shown here in underlining):

“~~11~~10. The diversion and use of water for municipal purposes is subject to additional conditions and limitations agreed to by both Kootenai Environmental Alliance and the water right holder under a separate agreement to which the Department is not a party and which is independently enforceable by a court of law. A copy of the agreement shall be included in the Department water right file”

Black Rock suggests modifying Condition No. 8 to reflect the additional purposes added by this amendment (new language shown here in underlining, deleted language shown in ~~strikeout~~):

“~~8~~7. The total volume diverted from Lake Coeur d’Alene for irrigation under the municipal all uses, including storage, shall not exceed 1,215 acre-feet per year. The diversion of water from Lake Coeur d’Alene for both direct flow and storage purposes shall not exceed 2.5 cfs. The total storage volume for all uses shall be 369 acre-feet per year.”

Until further notice from Black Rock, please direct communications regarding this Application and this Water Right as follows:

Kyle Capps, CGCS
Vice President of Site Development and Maintenance
Black Rock Development
P.O. Box 3070
Coeur d’Alene, ID 83816
Office: 208-665-5815
Cell: 208-755-4744
Fax: 208-665-5844
Email: kylec@blackrockdevelopment.com

In addition, Black Rock requests that copies of all communications regarding this Application and this Water Right be sent to:

Scott N. King, P.E.
Senior Project Engineer
SPF Water Engineering, LLC
600 E. River Park Lane, Ste. 105
Boise, ID 83706
Office: 208-383-4140 x209
Fax: 208-383-4156
Email: sking@spfwater.com

Christopher H. Meyer, Esq.
Givens Pursley LLP
601 West Bannock Street
P.O. Box 2720
Boise, ID 83701
Office: 208-388-1236
Fax: 208-388-1300
Email: chrismeyer@givenspursley.com

Exhibit D: Copy of Special Power of Attorney for Water Rights

RECEIVED

MAR 31 2006

SPECIAL POWER OF ATTORNEY FOR WATER RIGHTS

Givens Pursley, LLP

Black Rock Utilities, Inc., whose mailing address is P.O. Box 3070, Coeur d'Alene, ID 83816, hereby appoints the attorneys of Givens Pursley LLP, 601 West Bannock Street, P.O. Box 2720, Boise, Idaho, 83701 as its true and lawful attorneys for the purpose of signing on its behalf the following forms for submission to the Idaho Department of Water Resources and/or any Court undertaking an adjudication of water rights held by Black Rock Utilities, Inc.:

1. Notice of Claim to a Water Right;
2. Application for Amendment of Permit to Appropriate the Waters of the State of Idaho;
3. Notice of Change of Water Right Ownership;
4. Request for Extension of Time to Provide Additional Time in Which to Submit Proof of Beneficial Use for a Water Right Permit;
5. Notice of Protest;
6. Application for Transfer of a Water Right;
7. Proof of Beneficial Use;
8. Application for Exchange of Water;
9. Application for Extension of Time to Avoid Forfeiture of a Water Right;
10. Application to Sell or Lease a Water Right to the Water Supply Bank;
11. Application for Temporary Approval of a Water Application;
12. Application for Permit to Appropriate the Waters of the State of Idaho;
13. Pleadings submitted to any Court undertaking a general or special adjudication of water rights held by Black Rock Utilities, Inc.; and
14. Any other document in support or furtherance of any of the above.

All may rely on such authority. This Special Power of Attorney shall be effective until revoked in writing by Black Rock Utilities, Inc.

For purposes of the exercise of the powers herein granted, the facsimile signature of said attorneys shall be lawful and binding and any person may rely upon such facsimile signature as if it were an original.

[End of text]

IN WITNESS WHEREOF, we have executed this Special Power of Attorney effective as of the last date noted.

Dated: 3.18.08


Marshall Chesrown
President
Black Rock Utilities, Inc.

ACKNOWLEDGMENT

State of Idaho)
County of Cootenai) ss

On this 18 day of March, in the year of 2008, before me Nancy E. Nick, a notary public, personally appeared **Marshall Chesrown**, known or identified to me to be the President of the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.




Notary Public for Idaho
Residing at Montpelier, ID
My Commission Expires 10.31.2009

SPECIAL POWER OF ATTORNEY

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Exhibit E: Copy of Amendment of Permit

State of Idaho
Department of Water Resources
Amendment of Permit

NO. 95-09045

Priority: April 12, 2000

Maximum Diversion Rate: 2 50 CFS

Maximum Diversion Volume: 1,215 0 AF

This is to certify, that BLACK ROCK UTILITIES INC
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: COEUR D ALENE LAKE Tributary: SPOKANE RIVER

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION	ANNUAL VOLUME
MUNICIPAL	01/01 to 12/31	2 50 CFS	1,215.0 AF
IRRIGATION OF RESIDUAL 123 ACRES	03/15 to 11/15	2 46 CFS	369.0 AF

LOCATION OF POINT(S) OF DIVERSION:

COEUR D ALENE LAKE L1 (SW¼NE¼) Sec 16, Twp 48N, Rge 04W, B.M KOOTENAI County

PLACE OF USE: MUNICIPAL-SEE ATTACHED MAP

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	
48N 04W 8			6 0	22 0					38 0	30 0		40 0	40 0	38 0	40 0	40 0	294 0
48N 04W 9					13 0		40 0	26 0	40 0	40 0	40 0	40 0			3 0		242 0
48N 04W 16		2 0	1 0		40 0	40 0	23 0	6 0									112 0
48N 04W 17		20 0															20 0

Total Acres: 668

CONDITIONS OF APPROVAL

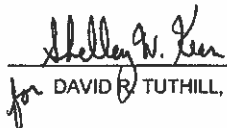
- 1 Proof of application of water to beneficial use shall be submitted on or before September 1, 2010.
- 2 Subject to all prior water rights
- 3 Municipal use is limited to irrigation of 545 acres and fire protection within Sections 4, 5, 8, 9, 16 and 17, Township 48 North, Range 4 West, Kootenai County. In addition, water diverted under this right may be used for construction within the Black Rock North Development for two years during initial development. Black Rock shall inform the Department in writing when the two years begin. The construction period must be complete within two years and prior to the date proof of beneficial use is due.

State of Idaho
Department of Water Resources
Amendment of Permit

NO. 95-09046

- 4 Storage of water under this right is limited to 5.0 acre-feet for irrigation and 1.5 acre-feet for fire protection. Furthermore, the 5 acre-feet stored for irrigation must be stored in a reservoir from which water for irrigation is pumped and delivered. The remaining 1.5 acre-feet may be stored in a separate reservoir.
- 5 The holder of this water right shall not store water in the Black Rock North Development and must reduce its storage to 6.5 acre-feet or less in the Club at Black Rock unless it obtains or identifies other water rights it owns that authorize storage of water in the ponds. Furthermore, if water from other sources is commingled with water diverted from Coeur d'Alene Lake, the holder of the permit must develop a plan, approved by IDWR, that will insure no more than 6.5 acre-feet of water from Coeur d'Alene Lake diverted under this right will be stored.
- 6 Water may only be diverted and used for irrigation from March 15 through November 15.
- 7 This right when combined with all other rights shall provide no more than 3.0 acre-feet annually per acre at the field headgate for irrigation.
- 8 The total volume diverted for irrigation under the municipal use shall not exceed 1,215 acre-feet.
- 9 The right holder shall submit to the Department the final design of the water use facilities including wastewater treatment and storm runoff facilities for the project for review and approval prior to construction.
- 10 The right holder shall install and maintain a fish screen at the point of diversion with 1/4 inch or smaller screen mesh.
- 11 The diversion and use of water is subject to additional conditions and limitations agreed to by both Kootenai Environmental Alliance and the water right holder under a separate agreement to which the Department is not a party and which is independently enforceable by a court of law. A copy of the agreement shall be included in the Department water right file.
- 12 The right holder shall install a suitable measuring device and shall annually report the total volume of water diverted under this right to the Department on or before October 15 of each year.
13. The right holder shall comply with all water quality statutes and rules administered by the Idaho Department of Environmental Quality.
- 14 After the expiration of one year from the date of final approval of amendment no. 72669 the irrigation use identified separately from the municipal use authorized by the amendment shall be stricken from the permit unless the use has been changed or is the subject of a change application pending before the Department.

This amendment of permit is issued pursuant to the provisions of Section 42-211, Idaho Code. Witness the signature of the Director, affixed at Boise, this 27th day of July, 2007.


for DAVID B. TUTHILL, JR., Director

State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 95-09045
Digital Boundary for Black Rock Utilities Inc.
July 27, 2007

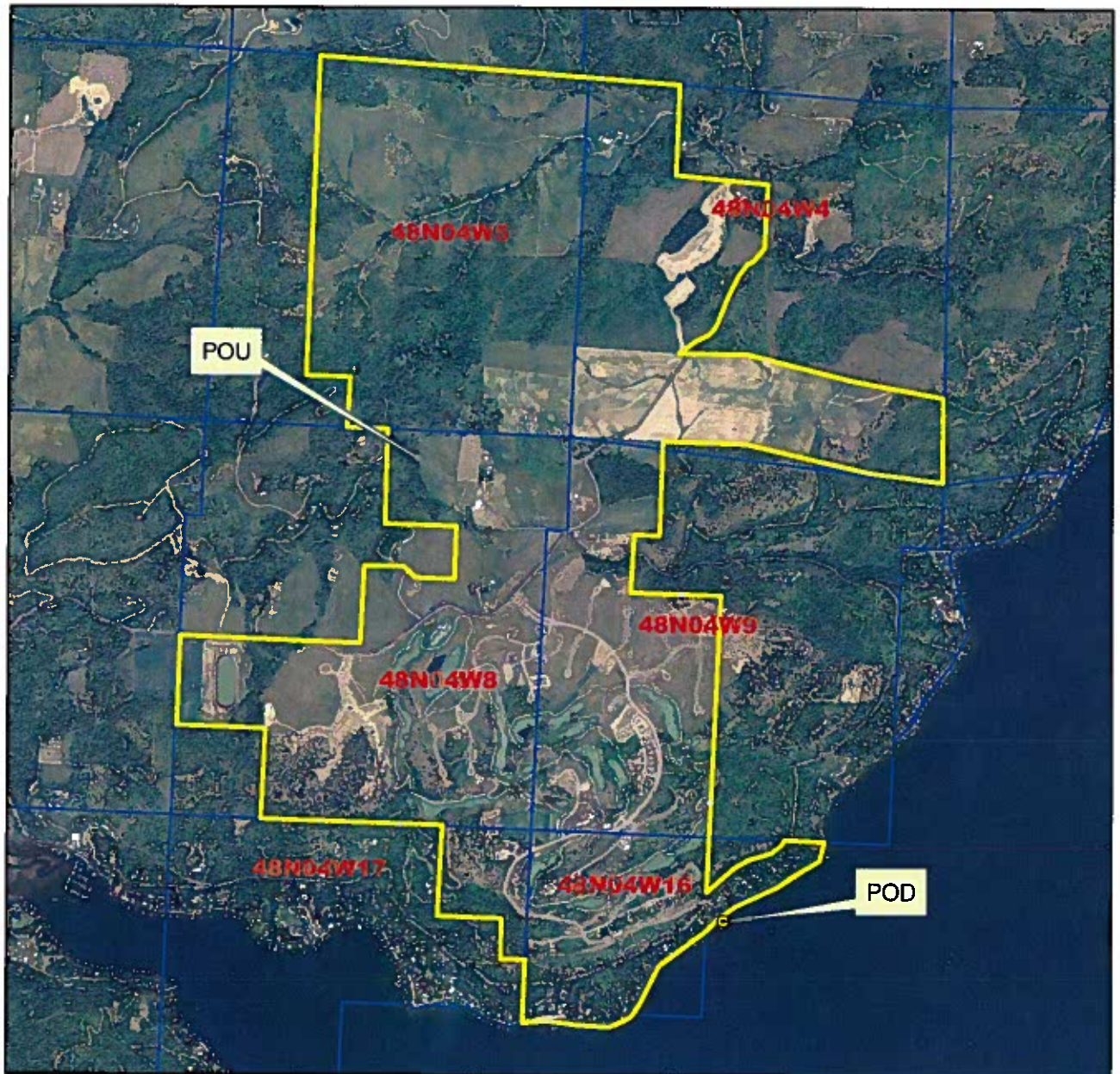


0.7 0 0.7 1.4 Miles



-  **45-9045 Place of Municipal Use**
 **Sections**
QQ

95-9045



Place of Use for Municipal and Municipal from Storage

-  Taxlots
-  Application POU
-  Application POD
-  Sections

