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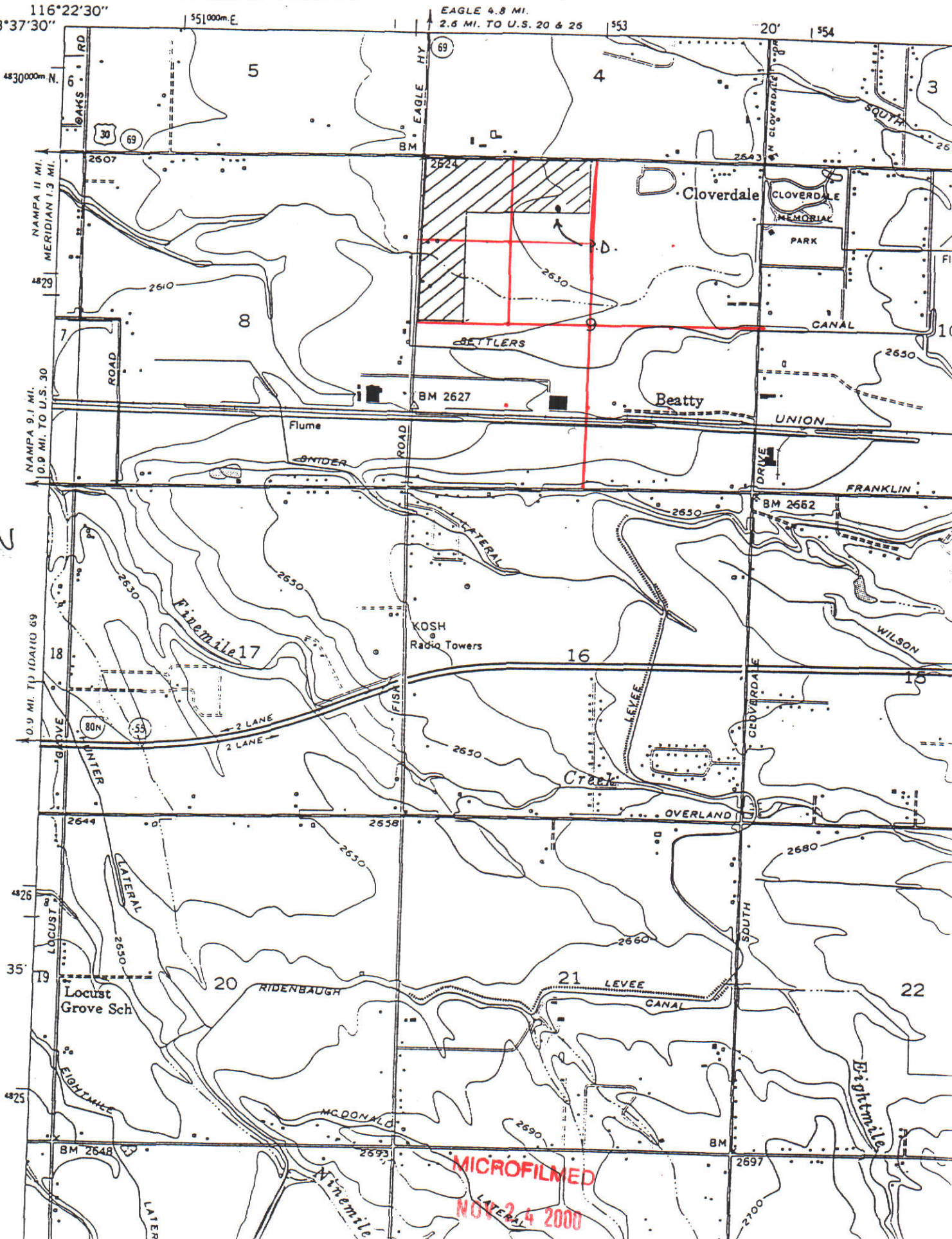
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THE HERMES BUILDING 415 EAST FIFTH SOUTH / SUITE 400 / SALT LAKE CITY, UTAH 84111 / (801) 363-5555



the Family Center®

DDR FAMILY CENTERS, LP — OWNER / DEVELOPER

FAX: (801) 364-1549

NUMBER OF PAGES: 2
(including this page)

DATE: _____

TO: Terry Scanlan

COMPANY: _____

FAX#: 208 363-4152FROM: Chris Trotter

SPECIAL INSTRUCTIONS

Re: Mountain Idaho project

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NOV 24 2000

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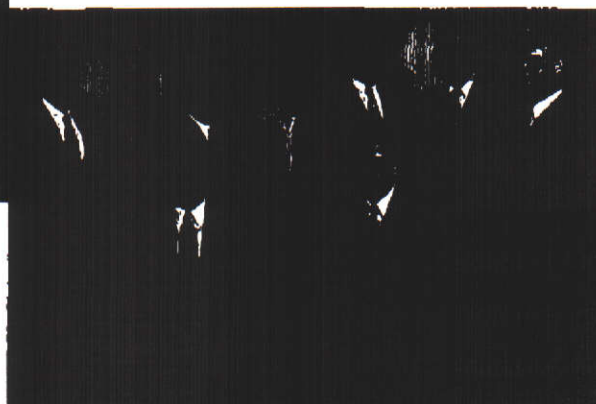
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Chairman Emeritus



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BridgeStreet Accommodations, Inc.

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President, Nomura Asset Capital Corporation

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Walter H. Teninga
Retired Vice Chairman and Chief Financial and Development
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November __, 1999

Shelley Walter Keen
Water Rights Supervisor
Idaho Department of Water Resources
1301 North Orchard Street
P.O. Box 83720
Boise, ID 83720-0068

DRAFT

Subject: Water Appropriation Application No. 63-12513 – Revised Mitigation Plan

Dear Shelley:

On behalf of Developers Diversified Realty (DDR), I am pleased to present the following revised mitigation plan for Water Appropriation Application No. 63-12513.

Application 63-12513 proposes supplemental irrigation of 20 acres with a diversion rate of up to 0.40 cfs from a groundwater source. The supplemental water supply is necessary for irrigation at those times when surface water from the canal system (Nampa & Meridian Irrigation District) is not available. In a normal year, supplemental water is needed from about April 1 through April 15 and October 15 through October 31. Irrigation demands during these periods are normally very low. As a result, the supplemental water requirement is typically less than 10 percent of the annual irrigation diversion requirement (4.5 acre feet per acre maximum), even though the supplemental irrigation season is 15 percent of the total irrigation season. However, in drought years when canal deliveries cease in September, the supplemental supply could be as much as 20 percent of the annual irrigation requirement. In all cases, the annual supplemental irrigation requirement should be 1 acre foot per acre or less. For the 20-acre proposed place of use, the supplemental irrigation requirement should be less than 20 acre feet annually.

We understand that the Department is currently not approving new applications for permit in the Boise River Basin. However, we also understand that the Department can approve new applications during this moratorium if the application includes an acceptable mitigation plan. In order to mitigate for the proposed appropriation under 63-12513, DDR proposes to retire a 5-acre portion of groundwater license 63-10780. This 5-acre water right is authorized to supply up to 22.5 acre feet annually. The water right is currently used for irrigation of lands located approximately 4.5 miles south of the lands proposed for irrigation under 63-12513. Eliminating the diversion of up to 22.5 acre feet annually under 63-10780 shall fully mitigate diversion of up to 22.5 acre feet annually under 63-12513.

A water right change of ownership for the 5-acre portion of water right 63-10780 is enclosed, along with a water right purchase agreement. The five acres of water right will be removed from

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FAX

Scanlan Engineering

600 East River Park Lane, #105
Boise, Idaho 83706

Date: September 3, 1999

Tel: 208 383-4140

Fax: 208 383-4156

To: Shelley Keen

Fax No: 327-7866

From: Terry Scanlan

Reference:

Subject: 63-12513

No. of Pages: 4
(including cover)

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SCANLAN ENGINEERING*Groundwater and Environmental Engineering*

September 2, 1999

Mr. Darren R. Cochrane
Secretary/Treasurer
Nampa & Meridian Irrigation District
1503 First Street South
Nampa, ID 83651-4395

Subject: Supplemental Irrigation Well for the Family Center At Meridian

Dear Darren:

Enclosed for your review and consideration is a July 29, 1999 letter from Mr. Shelley Keen of the Idaho Department of Water Resources. Mr. Keen's letter is a response to my inquiry regarding changing the nature of use of a portion of the District's water right to allow use of the water for groundwater recharge purposes. The proposed recharge would be mitigation for pending application for permit 63-12513 in the name of Developers Diversified Realty (DDR) for the Family Center at Meridian project.

The third paragraph of Mr. Keen's letter discusses as alternative to the application for permit and associated mitigation. He suggests that we consider recovering groundwater from the well using the District's existing water rights, as authorized under Idaho Code 42-228. The District would simply file a drilling permit for a new well with no need for a new water right or a transfer of the District's water right. For the drilling permit to be issued, the District would need to show the connection between the shallow groundwater (to be recovered from the well) and losses from the District's surface water distribution system.

As I have discussed with Charlie Honsinger, the alternative suggested by Mr. Keen would likely be less burdensome for both the District and the Family Center. The District would not have to change the nature of use of their water rights, and the Family Center would not have to operate recharge facilities for mitigation purposes. Therefore, I propose the following steps to obtain approval of a drilling permit and completion of a well.

1. The Family Center would annex it's irrigated lands into the District. The number of acres to be annexed will need to be worked out to the satisfaction of the District. The Family Center property currently has 75.03 rental roll Ridenbaugh acres. Irrigated area at completion of the project is anticipated to total approximately 20 acres. Therefore, the area to be annexed will likely be somewhere in the range of 20 to 75 acres. We welcome your input in determining the proper amount of acres to be annexed.
2. Scanlan Engineering, on behalf of the Family Center and the District, would prepare a study to substantiate the connection between shallow groundwater and losses from the

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Mr. Darren R. Conn

-2-

September 2, 1999

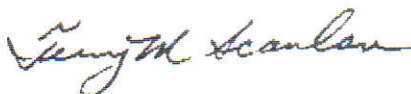
District's surface water distribution system. Pertinent data from the District regarding losses from the Ridenbaugh Canal and laterals would be useful for this purpose.

3. Scanlan Engineering would prepare a drilling permit application for the District's signature. The permit fee would be paid by the Family Center.
4. Upon approval of the drilling permit, the Family Center would contract for drilling and construction of an 8-inch diameter well. Following successful testing of the well, the Family Center would install and operate an irrigation pump to provide water for supplemental irrigation purposes.
5. All costs associated with annexation, permitting, and construction would be paid by the Family Center.

The Family Center proposes to both own and operate the well and well pump system. This arrangement makes sense because the Family Center both owns and operates the associated surface water pump system at the site. However, we are open to discussion of other avenues of ownership and operation that meet the needs and interests of both the District and the Family Center.

Please contact me to discuss this proposal. I understand that your Board meets on Tuesday September 7. I would be pleased to attend the meeting and discuss this proposal with you and the Board at that time.

Sincerely,



Terry M. Scanlan, P.E., P.G.
Engineer/Hydrogeologist

Cc: Steve Sweet - Quadrant Consulting
Tom Bauwens - Family Center

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State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

July 29, 1999

DIRK KEMPTHORNE
GOVERNORKARL J. DREHER
DIRECTORTERRY SCANLAN
SCANLAN ENGINEERING
600 EAST RIVER PARK LN #105
BOISE ID 83706

RE: Water Appropriation Application 63-12513

Dear Terry:

I am responding to the request from Nampa & Meridian Irrigation District (NMID) that you seek comment from IDWR on the possibility of changing the nature of use of an irrigation water right to groundwater recharge purposes to mitigate the groundwater withdrawals proposed under Water Appropriation Application 63-12513. In general, IDWR cannot predetermine the outcome of a prospective transfer application. The transfer process, described in §42-222, *Idaho Code*, includes the opportunity for the filing of protests and for a technical review and analysis by IDWR. Until the application is filed and advertised, all protests are addressed, and the technical review is conducted, it is not possible to predict the "potential for success" of a particular transfer application. Each application is approved or denied based on its individual merits.

I can think of no reason, however, that IDWR would automatically look with *disfavor* upon the *general* concept of changing a water right from irrigation to groundwater recharge. IDWR generally encourages the conservation of Idaho's water resources by limiting groundwater withdrawals and encouraging appropriate groundwater recharge projects, and IDWR is especially intent on limiting the depletion of groundwater throughout the Treasure Valley while the Treasure Valley Hydrologic Project proceeds.

As we discussed on the phone, §42-228, *Idaho Code*, may provide another mechanism for authorizing the use of groundwater for the irrigation project described in Application 63-12513. Under that provision of the code, irrigation districts do not need a separate water right to recover and use groundwater that results from losses within their surface water distribution systems. Documentation showing the connection between NMID water deliveries and the local shallow groundwater would need to be provided to IDWR to show the applicability of §42-228, *Idaho Code*, before a drilling permit would be issued.

If you have any questions, please contact me at 208-327-7946.

Sincerely,

Shelley Walter Keen
Water Rights Supervisor

IDWR03\skreen\NAMELTRS.scanlan6312513.doc

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NOV 24 2000

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 63-12513

Priority: March 30, 1999

Maximum Diversion Rate:

0.40 CFS

Maximum Diversion Volume:

20.0 AF

This is to certify, that DEVELOPERS DIVERSIFIED REALTY

455 E 500 S STE 400

SALT LAKE CITY UT 84111

has applied for a permit to appropriate water from: GROUNDWATER

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>	<u>ANNUAL VOLUME</u>
IRRIGATION	03/01 to 11/15	0.40 CFS	20.0 AF

LOCATION OF POINT(S) OF DIVERSION:

NENW , Sec. 9, Township 03N, Range 01E
ADA County

PLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
03N	01E	9	NENW 6.0	NWNW 8.0	SWNW 6.0	20.0

Total number of acres irrigated: 20.0

CONDITIONS OF APPROVAL AND REMARKS

1. Proof of application of water to beneficial use shall be submitted on or before June 1, 2005.
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 permit holder had no control.
4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
5. The right holder shall use the full allotment of appurtenant surface water rights in conjunction with groundwater diverted under this right and shall only divert groundwater under this right when water from the appurtenant surface water rights cannot be delivered to the right holder.
6. If the surface water right(s) appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert groundwater shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.

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2003-1-20

State of Idaho
Department of Water Resources

Permit To Appropriate Water

NO. 63-12513

CONDITIONS OF APPROVAL AND REMARKS

7. 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 determine the amount of water diverted from power records and shall annually report the information to the department.
8. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the lands above.
9. Water shall not be diverted under this right until the applicant formally notifies the department that the applicant has acquired and has permanently abandoned the right to irrigate five acres under Water Right 63-10666.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code.
Witness the signature of the Director, affixed at Boise, this

8th day of June, 2000

Karl J. Dreher
for
Karl J. Dreher, Director

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APR 24 1981

RECEIVED

MAY 26 1999

DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

Ident. No. 63-12513

RECEIVED

MAR 30 1999

WATER RESOURCES
WESTERN REGION

1. Name of Applicant DEVELOPERS Diversified REALTY Phone 801-363-5555
Mailing address 455 East 500 South, Suite 400, Salt Lake City, Utah, 84111
2. Source of water supply groundwater which is a tributary of NA
3. Location of point of diversion is Township 3N Range 1E Sec. 9, in the SE 1/4,
NE 1/4, NW 1/4, Govt. Lot _____, B.M., Ada County;
additional points of diversion if any: _____
4. Water will be used for the following purposes:
Amount 0.40 for irrigation purposes from 3/15 to 11/15 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated is (a) 0.40 and/or (b) _____
cubic feet per second acre feet per annum
6. Proposed diverting works:
a. Describe type and size of devices used to divert water from the source 8-inch well, 150-ft maximum depth, submersible pump
b. Height of storage dam NA feet; active reservoir capacity NA acre-feet; total reservoir capacity NA acre-feet
c. Proposed well diameter is 8 inches; proposed depth of well is 100 feet
d. Is ground water with a temperature of greater than 85°F being sought? no
e. If well is already drilled, when? NA; Drilling firm _____
Well was drilled for (well owner) _____; Drilling Permit No. _____
7. Time required for completion of works and application of water to proposed beneficial use is 5 years (minimum 1 year)
8. Description of proposed uses (if irrigation only, go to item 9):
a. Hydropower; show total feet of head and proposed capacity in KW. _____
b. Stockwatering; list number and kind of livestock. _____
c. Municipal; show name of municipality. _____
d. Domestic; show number of households. _____
e. Other; describe fully. MICROFILMED

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9. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	N E				N W				S W				S E				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
3N	1E	9					6	8	6										20

Total number of acres to be irrigated 20

10. Describe any other water rights used for the same purposes as described above. Nampa & Meridian Irrigation District (rental roll) will be the primary supply

11. a. Who owns the property at the point of diversion? applicant

b. Who owns the land to be irrigated or place of use? applicant

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: _____

12. Remarks: This application is entirely supplemental. Exemption from moratorium requested based on attached mitigation plan. Water bearing zone to be appropriated is from 50 to 150 feet.

Comments DAN 4-9-99

Mitigation is PROPOSED FOR CONSUMPTIVE USE. DAN 4-9-99

13. MAP OF PROPOSED PROJECT REQUIRED - Attach an 8½"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

BE IT KNOWN that the undersigned hereby makes this application for permit to appropriate the public waters of the State of Idaho as herein set forth.

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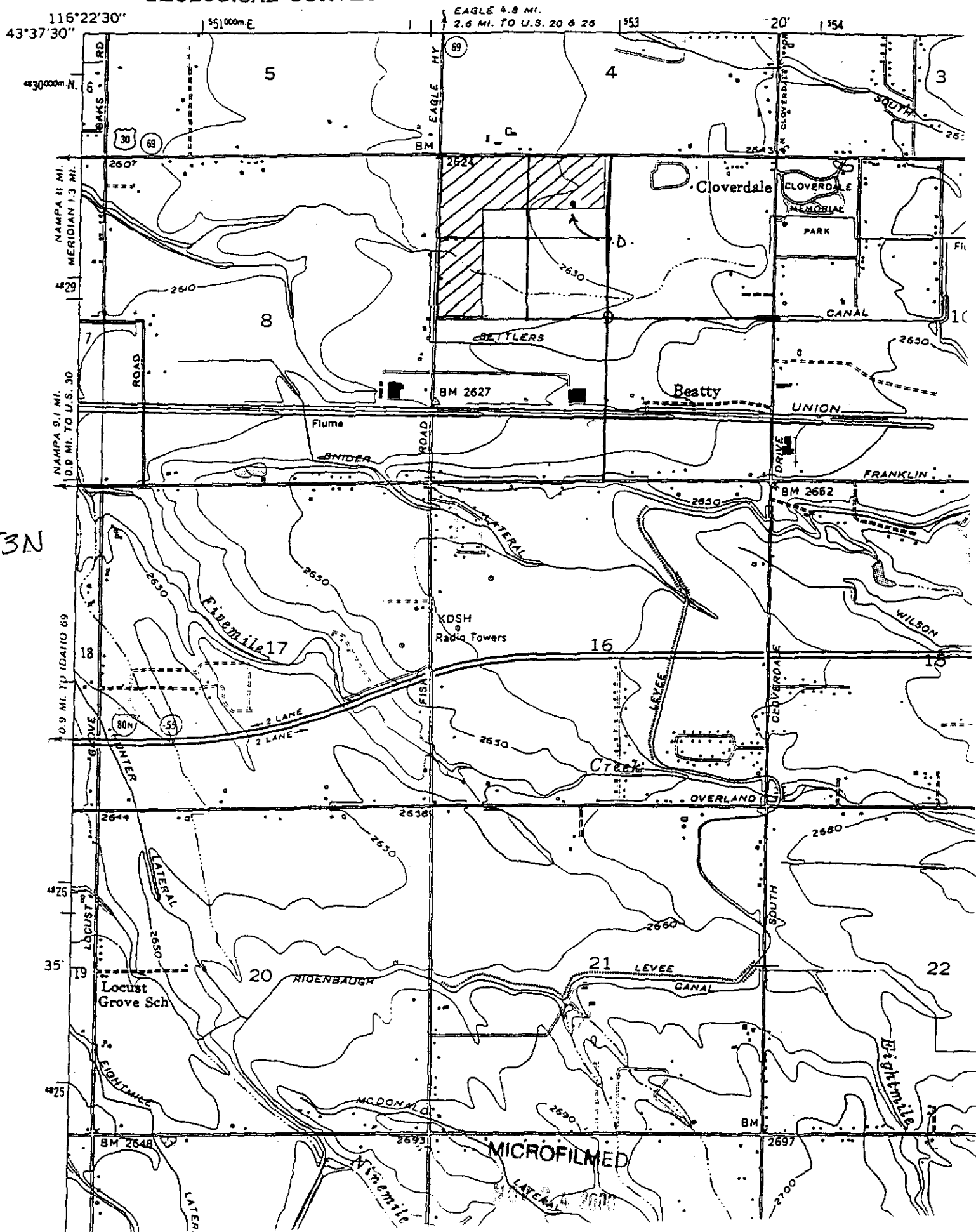
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[Signature] DAN
Signature of Applicant (and title, if applicable)
FOR DEVELOPERS DIVERSIFIED RENTY

Received by [Signature] Date 3/30/99 Time 11:18 Preliminary check by DAN
Fee \$ 10000 Received by [Signature] # 10004944 Date 3/30/99
Publication prepared by [Signature] Date 4-16-99 Published in [Signature]
Publication approved [Signature] Date 5-20-99

* See ATTACHED LIST OF CORPORATE OFFICERS IN FAXED DOCUMENT FROM TERRY SCANDLON'S OFFICE DATED 4-9-99. DAN 4-9-99

R I E



Comments: Date: 4/ 9/1999 User-ID: DNELSON

Subject: ADDITION INFORMATION

Owner states that this application is supplemental to Nampa and Meridian Irrigation District (rental roll) and will only be used to irrigate during times when irrigation district water is not being delivered when needed, in the spring or fall. Owner also states water will be taken from the 50 to 150 ft water bearing zone. IDWR review showed no overlapping water rights.

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**Family Center At Meridian
Mitigation Plan for Supplemental Irrigation Water Right Application**

The Family Center at Meridian is a commercial development located at the intersection of Fairview Avenue and Eagle Road in Meridian. The property has historically been irrigated using water from the Nampa & Meridian Irrigation District (NMID) under a rental roll contract. The commercial development will reduce the irrigated area from approximately 75 acres of crop land to 20 acres or less of landscape. The Family Center will continue to use NMID water as the primary source of irrigation water supply for the property. However, a supplemental irrigation supply is needed to support the landscape at times when canal water is not available (typically early April and late October). The proposed supplemental source is a shallow (i.e., 100 foot +/-) well. The well would be operated early and late in the irrigation season when canal water is not available. The estimated volume pumped from the well will range from approximately 5 to 20 acre feet per year.

The Family Center at Meridian proposes to mitigate for the use of groundwater for supplemental irrigation. Mitigation will be accomplished by ordering irrigation water for 35 acres, but only using water on 20 acres or less. The excess water not used for irrigation will flow past the Family Center site into the South Slough. The South Slough functions as a drain for surface water and groundwater and also as a source of irrigation delivery within the Settlers Irrigation District. The South Slough eventually discharges to the Phyliss Canal of the Pioneer Irrigation District. The excess water flowing past the Family Center site will provide between 60 and 80 acre feet of water to downstream users each year. This water will recharge the shallow groundwater when it is applied as irrigation, and it may reduce the use of groundwater for supplemental irrigation on downstream properties. The hydrologic benefits of this excess water delivery will more than offset the estimated 10 to 20 acre feet of groundwater used per year.

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NOV 24 2006

FAX**Scanlan Engineering**600 East River Park Lane, # 105
Boise, Idaho 83706**Date:** April 9, 1999**Tel:** 208 383-4140**Fax:** 208 383-4156**To:** Dan Nelson**Fax No:** 334-2348**From:** Terry Scanlan**Reference:****Subject:** Developers Diversified Realty**No. of Pages:** 3
(including cover)

Dan -

A list of corporate officers for Developers Diversified Realty follows.

The Application for Permit was signed by Tom Bauwens, VP Construction, Dakota Company, Inc. - Owners Representative for Developers Diversified Realty.

Please call me with any questions.

Terry

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DDR FAMILY CENTERS, LP — OWNER / DEVELOPER

FAX: (801) 364-1549

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(including this page)

TO: Teri Scanlan

COMPANY: _____

FAX#: 208 363-4152FROM: Chris Trotter

SPECIAL INSTRUCTIONS

Re: Mountain Idaho project

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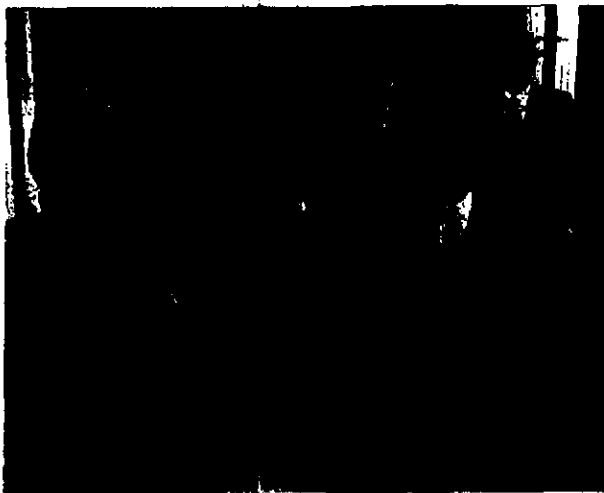
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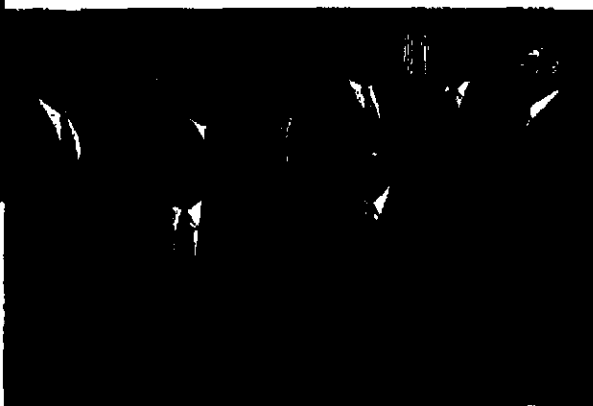
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Bert L. Wolstein
Chairman Emeritus



Board of Directors

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President and Chief Executive Officer,
BridgeStreet Accommodations, Inc.

Ethan Penner
President, Nomura Asset Capital Corporation

Dean S. Adler
President, Lubert Adler Management

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Regional Vice President of Leasing

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Vice President and Director of Management

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NOV 24 2000

03/30/2001

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

WATER RIGHT NO. 63-31195

<u>Owner Type</u> Current Owner	<u>Name and Address</u> DEVELOPERS DIVERSIFIED REALTY 455 E 500 S STE 400 SALT LAKE CITY, UT 84111 (801)363-5555
------------------------------------	--

Original Owner	L DARWIN MCKAY 6100 S EAGLE RD MERIDIAN, ID 83642 (208)888-3760
----------------	--

Priority Date: 07/22/1988
Basis: License
Status: Abandoned

<u>Source</u> GROUND WATER	<u>Tributary to</u>
-------------------------------	---------------------

<u>Beneficial Use</u> IRRIGATION	<u>From</u> 03/15	<u>To</u> 11/15	<u>Diversion Rate</u> 0.06 CFS	<u>Volume</u> 22.5 AFA	<u>Subuse Code</u>
Total Diversion			0.06 CFS	22.5 AFA	

Location of Point(s) of Diversion:

GROUND WATER	NENW	Sec. 21	Township 03N	Range 01E	ADA County
--------------	------	---------	--------------	-----------	------------

Licensed Diversion Capacity: 0.84

IRRIGATION Use:
Acre Limit: 5

Place(s) of use:

Place of Use Legal Description: IRRIGATION	ADA County
--	------------

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
03N	01E	21		NENW	5									

Total Acres: 5

Comments:

<u>Author</u>	<u>Date</u>	<u>Subject</u>	<u>Comment</u>
PSKAGGS	3/30/01	Ownership Split	Right 63-31195 is an ownership split of Right 63-10666C abandoned as mitigation for Permit 63-12513.

Dates:

Licensed Date:
Decreed Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Application Received Date:
Protest Deadline Date:

Permit Condition #9.

Number of Protests: 0

Other Information:

Receipt Number(s):

State or Federal:

Owner Name Connector:

Water District Number:

Generic Max Rate per Acre: 0.02

Generic Max Volume per Acre: 4.5

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Parent Right: 63-10666C

ChangeOfOwnership



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

June 8, 2000

DEVELOPERS DIVERSIFIED REALTY
455 E 500 S STE 400
SALT LAKE CITY UT 84111

PERMIT APPROVAL NOTICE

RE: PERMIT NO. 63-12513

Dear Permit Holder:

The Department of Water Resources (IDWR) 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 IDWR pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action by IDWR unless a party petitions for reconsideration or files an exception and/or brief 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 right were drilled or deepened after July 1, 1987, a separate drilling permit must be obtained from this Department. Please contact the Groundwater Protection Section located here at this office or our regional office nearest you.

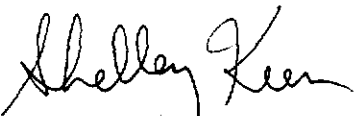
Also, please note that water right owners are required to report any change of water right ownership and/or change of address to the department within 120 days of the change. Failure

REC'D 24 2000

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 reporting form.

If you have any questions, please call me at 208-327-7946.

Sincerely,

A handwritten signature in cursive script, appearing to read "Shelley Keen".

Shelley W. Keen
Water Rights Supervisor

SK:klt

Enclosures

MICROFILMED

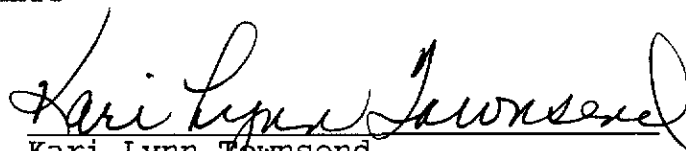
NOV 24 2000

CERTIFICATE OF MAILING

I hereby certify that on the 8th day of June, 2000, I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Approved Permit) to the person(s) listed below:

Water Right No. 63-12513

DEVELOPERS DIVERSIFIED REALTY
455 E 500 S STE 400
SALT LAKE CITY UT 84111


Kari Lynn Townsend
Secretary

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NOV 24 2000

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

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. 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 Idaho Water Resource Board (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.

APPLICATION FOR PERMIT
STATE OFFICE ANALYSIS

Reviewed by Sharla Curtis on 6/5/00

No. 63-12513 Name: Dev. Div. Realty Corp. Officers ✓ Ad ok ✓ Govt Lots

AREA OF CONCERN: No/Yes TVGW Moratorium GWMA ~~TRUST/NON-TRUST~~

Study area

GROUNDWATER: (✓Flow Chart)

DRILLING PERMIT

All wells - 046(P23)
Basin 34 - 084
Irr. w/in WD - P05
WMD - North/East/West
≤ 0.24 cfs/5 acres - No MD
> 0.24 cfs/5 acres - 067

~~WMD~~

Supp irr (irr = only use) - 065-104
Supp irr (+ other uses) - 100-105
≤ 0.24 cfs/5 acres - No MD
> 0.24 cfs/5 acres - 01M

LOCATION:

Boise Front LoGeo - 058 (<85 GW)
~~Mitigation~~ - 121
42-248 Area - P84 (20s-70s, 81-86)
Swan Falls Flag -
Trust - 051(P74) (consumptive uses)
Non-Trust - 048-049 (consumptive uses or non-cons. > 1.0 cfs)

USES:

~~STORAGE~~ - 18A-01H(P01), 01P-18B(P09)-NA
IRR ≤ 5 ac - R66/R67/R68/R69 (0.03 cfs/ac)
> 5 ac - R62/R63/R64/R65 (0.02 cfs/ac)
STOCKWATER - R37 (BLM/USFS)
MINING - 054-081(P10)
FISH PROP - 029(70'S only)-007-042-081(P10)
HEAT/COOL - R07(injection well)
FIRE PROT. - 077

BENEFICIAL USE DUE: 6/01/2005

MISC CONDITIONS/REMARKS:

~~Protested~~ - 020-W19
•Development Period
~~≤ 1 yr~~ - P16
> 1 yr - 264(P17)
Ownership - 004
Non-consumptive - 027
Water Quality - 081-R07

SURFACE WATER: (✓Flow Chart)

F&G contacted - Yes/No Response
In/Above MSF - WB9

PLANNING REVIEW/RESPONSE

In-stream development - P52
WD - B04 (WD#)
≤ 0.20 cfs/others - 01H(P01), 01P or No MD
> 0.20 cfs - 01J(P08)

SPRINGS/SINK, INACTIVE WD & REST OF STATE

≤ 0.24 cfs/5 acres - No MD
> 0.24 cfs/5 acres - 01M or No MD

RIVER BASINS: (SW special considerations)

Snake R (01) - W22(P04), N/A
(02,03) - 007 (w/ remark WB9 if above Weiser)
Payette R (65) - 047(P04) (Payette Lake)
Salmon R (70's) - 029 (fish screens)
Weiser R (67) - 086-087

USES:

POWER - 17H-17K (+uses)-08A-025(P18)-01N-081(P10)
MUNICIPAL
Restricted area - 022,075
Irr., GW supp to SW - 102
DOMESTIC
Surface water - WB5 (Big Wood or Boise above Star Bridge)
27A (Payette R)
> 1 in restricted area - 070-071-075(no parks/common areas, etc)
Irr use listed separate - WB5
Moratorium approvable - W03 (2500 gpd - meets domestic definition
i.e. D/convenience store)

Multiple pd's per 1/4 - W32
Subd lot desc (pd) - W59
Subd lot desc (pu) - W60
Use definitions - W02 example - S/50 range
Pre-1987 development - 068-074 (allow 120 days for proof due)
Single p/d intended - 076

IRRIGATION SEASON 3/1 - 11/15 (Per updated map)

OTHER CONDITIONS/REMARKS

COMMENTS

SCANLAN ENGINEERING

Groundwater and Environmental Engineering

RECEIVED

MAY 31 2000

Department of Water Resources

May 30, 2000

Shelley Walter Keen
Water Rights Supervisor
Idaho Department of Water Resources
1301 North Orchard Street
P.O. Box 83720
Boise, ID 83720-0098

Subject: Application for Permit No. 63-12513 – Revised Mitigation Plan

Dear Shelley:

On behalf of Developers Diversified Realty (DDR), I am pleased to present the following revised mitigation plan for Application for Permit No. 63-12513.

Application 63-12513 proposes supplemental irrigation of 20 acres with a diversion rate of up to 0.40 cfs from a groundwater source. The supplemental water supply is necessary for irrigation at those times when surface water from the canal system (Nampa & Meridian Irrigation District) is not available. In a normal year, supplemental water is needed from about April 1 through April 15 and October 15 through October 31. Irrigation demands during these periods are normally very low. As a result, the supplemental water requirement is typically less than 10 percent of the annual irrigation diversion requirement (4.5 acre feet per acre maximum), even though the supplemental irrigation season is 15 percent of the total irrigation season. However, in drought years when canal deliveries cease in September, the supplemental supply could be as much as 20 percent of the annual irrigation requirement. In all cases, the annual supplemental irrigation requirement should be 1 acre foot per acre or less. For the 20-acre proposed place of use, the supplemental irrigation requirement should be less than 20 acre feet annually.

We understand that the Department is currently not approving new applications for permit in the Boise River Basin. However, we also understand that the Department can approve new applications during this moratorium if the application includes an acceptable mitigation plan. In order to mitigate for the proposed appropriation under 63-12513, DDR proposes to retire a 5-acre portion of groundwater license 63-10666. A 5-acre portion of water right 63-10666 is authorized to supply up to 22.5 acre feet annually. The water right is currently used for irrigation of lands located approximately 2 miles south of the lands proposed for irrigation under 63-12513. Eliminating the diversion of up to 22.5 acre feet annually under 63-10666 shall fully mitigate diversion of up to 22.5 acre feet annually under 63-12513.

A water right purchase agreement for the 5-acre portion of water right 63-10666 is enclosed. The five acres of water right will be removed from the NENW Section 21, T3N, R1E. The change of

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MAY 24 2000

May 30, 2000

ownership will be effective upon approval of 63-12513, and a water right change of ownership form will be sent to you at that time.

Please contact me with any questions.

Sincerely,

A handwritten signature in cursive script, reading "Terry M. Scanlan".

Terry M. Scanlan, P.E., P.G.
Engineer/Hydrogeologist

Enclosures

Cc: Darwin McKay
Cumer Green
Tom Bauwens

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NOV 24 2000

GREEN LAW OFFICES

Cumer L. Green

P.O. BOX 2597
1505 Tyrell Lane
Boise, Idaho 83701-2597

May 25, 2000

William D. Collins, Esq.
Westberg & McCabe
P.O. Box 2836
Boise, ID 83701

Re: Supplemental Water Rights
GLO File No. 4387.34

Dear Bill:

Enclosed please find a fully executed original copy of the Water Right Purchase Agreement for your files.

I am notifying Mr. Scanlan to proceed with the transfer procedure.

If you have any questions, do not hesitate to contact me.

GREEN LAW OFFICES

Cumer L. Green

CLG:df

cc: Tom Bauwens w/enc.
Terry Scanlan w/enc.

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MAY 24 2000

ORIGINAL

WATER RIGHT PURCHASE AGREEMENT

This Water Right Purchase Agreement is made this 5th day of March, 2000, between **L. Darwin McKay**, a single person, hereinafter referred to as "Seller", and **TFCM Associates, LLC**, a Utah limited liability company, **Hermes Associates, Ltd.**, a Utah limited partnership and **Developers Diversified Realty Corp.**, an Ohio corporation, herein collectively referred to as "Buyer".

WHEREAS, Seller owns as his sole and separate property a groundwater right evidenced by license 63-10666 ("Water Right"); and

WHEREAS, Buyer wishes to purchase a portion of the groundwater right, without the associated lands or appurtenances; and

WHEREAS, the parties have reached agreement on the terms and conditions thereof;

NOW, THEREFORE, in and for the consideration hereinafter recited, Seller and Buyer agree as follows:

1. **Sale of Rights**. Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller a 5-acre portion of Water Right that has been used to irrigate the land located in the NE 1/4 of the NW 1/4 of Section 21, T3N, R1E, Ada County, Idaho, according to the terms and conditions hereinafter set forth.

2. **Quantity**. Seller covenants, warrants and agrees that the 5-acre portion of Water Right, if sold to the Buyer, shall include 0.064 cfs and 22.5 acre feet per annum.

3. **State of Title**. Seller warrants that the said Water Right is a valid water right free from all encumbrances or claims, that it is the sole and separate property of Seller and that Seller will warrant and defend the same from any and all lawful claims whatsoever.

4. **Corrective Action and Transfer**. At Buyer's own expense Buyer shall expeditiously undertake to transfer and otherwise change the acquired Water Right so that it may be used as mitigation for Buyer's pending application for permit No. 63-12513 and transferred to Buyer. Seller shall cooperate with Buyer in that transfer or change.

5. **Condition of Transfer**. Seller recognizes and agrees that ~~Buyer has agreed to purchase the water right only on the condition that the parties can successfully transfer or otherwise change the water right so that it may be used as mitigation for Buyer's pending application for permit No. 63-12513.~~

6. **Limitation of Term**. If the Buyer is unsuccessful in gaining approval for the Application For Transfer of the portion of the Water Right being acquired hereunder to Buyer,

AGREEMENT FOR SALE OF WATER RIGHT - 1 (4/14/00)

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APR 24 2000

from the Department of Water Resources within twelve months (12) from the date of this agreement, then this Agreement shall terminate and become void, unless Seller opts to extend for a period of six (6) months. If this Agreement becomes void, Buyer's interest in the Water Right shall be terminated.

7. **Purchase Price and Payment.** Buyer shall pay to Seller as consideration for that portion of the Water Right being acquired under this Agreement the sum of Ten Thousand and no/100ths Dollars (\$10,000) which shall be delivered to the Seller. Buyer will escrow the Ten Thousand Dollars (\$10,000) within fifteen (15) days of the execution of this Agreement by both parties with Cumer L. Green, Green Law Offices, Boise, Idaho.

8. **Entire Agreement.** This Agreement contains the entire understanding of the parties. Any changes or modification to the Agreement must be in writing signed by both parties.

9. **Governing Law.** This Agreement shall be interpreted according to and governed by the laws of the State of Idaho.

10. **Heirs, Successors and Assigns.** This Agreement shall be binding upon the heirs, successors and assigns of the parties hereto.

11. **Notices.** Any notice or demand given under the terms of this Agreement shall be deemed given and delivered on the date when personally delivered or, if mailed, the date the same is deposited in the United States mail, in a sealed envelope, by registered mail or certified mail, return receipt requested, postage prepaid, and properly addressed. Until changed by notice in writing, notices, demands and communications shall be addressed as follows:

"Seller"

L. Darwin McKay
6100 S. Eagle Road
Meridian, ID 83642

"Buyer"

TFCM Associates, LLC, a Utah limited liability company
Hermes Associates, Ltd., a Utah limited partnership
Developers Diversified Realty Corp., an Ohio corporation
3300 Enterprise Parkway
Beachwood, OH 44211

L. DARWIN McKAY

L. Darwin McKay

Date: 05-04-00

~~TECM ASSOCIATES, LLC., a Utah
Limited Liability Company~~

~~HERMES ASSOCIATES, LTD., a Utah
Limited Partnership~~

~~DEVELOPERS DIVERSIFIED
REALTY, CORP., a Utah Corporation~~

~~By _____~~

~~Title _____~~

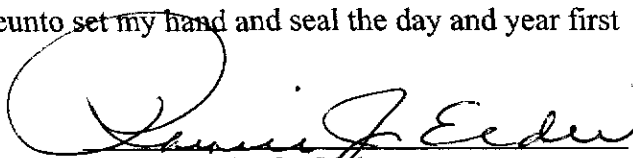
~~Date: _____~~

STATE OF IDAHO)

County of Ada)

On this 4 day of ^{May} ~~February~~, 2000, before me, a notary public for said state,
personally appeared **L. Darwin McKay**, known or identified to me as the person who executed
the within instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first
above written.



Notary Public for Idaho

Residing at ampa Id

My commission expires 07-24-02

AGREEMENT FOR SALE OF WATER RIGHT - 3 (4/14/00)

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NOV 24 2000

STATE OF _____)

County of _____)

On this _____ day of February, 2000, before me, a notary public for said state, personally appeared _____, known or identified to me as the person who executed the within instrument as the _____ on behalf of TFCM Associates, LLC., a Utah limited liability company, Hermes Associates, Ltd., a Utah limited partnership, and Diversified Developers Realty Corp. an Ohio corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

Notary Public for _____
Residing at _____
My commission expires _____

AGREEMENT FOR SALE OF WATER RIGHT - 4 (4/14/00)

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NOV 24 2000

TFCM ASSOCIATES, LLC
a Utah limited liability company
By DDR Family Centers LP
Its Member Manager
By DDR DownREIT LLC
Its General Partner
By Developers Diversified Realty Corporation
Its Managing Member

By: Juan U. Allgood
Juan U. Allgood, Vice President

STATE OF OHIO)
)SS
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public, in and for said County and State, personally appeared Juan U. Allgood,
____ Vice President of Developers Diversified Realty Corporation, Managing Member of DDR DownREIT LLC,
General Partner of DDR Family Centers LP, the Member Manager of TFCM Associates, LLC, the limited liability company
which executed the foregoing instrument, who acknowledged that he/she did execute the foregoing instrument on behalf of said
limited liability company and the same is his/her free and voluntary act and deed as _____ Vice President of Developers
Diversified Realty Corporation, Managing Member of DDR DownREIT LLC, General Partner of DDR Family Centers LP, the
Member Manager of said limited liability company and is the free act and deed of said limited liability company for the uses and
purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Beachwood, Ohio, this 15th day of
May, 2000.

Paula Jones
Notary Public
PAULA JONES, Notary Public
State of Ohio, Cuyahoga County
My Commission Expires Jan. 11, 2004

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MAY 24 2000

HERMES ASSOCIATES, LTD.
a Utah limited partnership
By DDR Family Centers LP
Its General Partner
By DDR DownREIT LLC
Its General Partner
By Developers Diversified Realty Corporation
Its Managing Member

By: Joan U. Allgood
Joan U. Allgood Vice President

STATE OF OHIO)
)SS
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public, in and for said County and State, personally appeared Joan U. Allgood,
____ Vice President of Developers Diversified Realty Corporation, Managing Member of DDR DownREIT LLC,
General Partner of DDR Family Centers LP, the General Partner of Hermes Associates, Ltd., the limited partnership which
executed the foregoing instrument, who acknowledged that he/she did execute the foregoing instrument on behalf of said
corporation and the same is his/her free and voluntary act and deed as _____ Vice President of Developers Diversified
Realty Corporation, Managing Member of DDR DownREIT LLC, General Partner of DDR Family Centers LP, General Partner
of said limited partnership and is the free act and deed of said limited partnership for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Beachwood, Ohio, this 15th day of
May, 2000.

Paula Jones
Notary Public

PAULA JONES, Notary Public
State of Ohio, Cuyahoga County
My Commission Expires Jan. 11, 2004

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MAY 24 2000

DEVELOPERS DIVERSIFIED REALTY CORPORATION
an Ohio corporation

By: Joan U. Allgood
Joan U. Allgood, Vice President

STATE OF OHIO)
)SS:
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, personally appeared Joan U. Allgood, known to me to be the _____ Vice President of Developers Diversified Realty Corporation, the corporation which executed the foregoing instrument, who acknowledged that he/she did sign and seal the foregoing instrument for and on behalf of said corporation being thereunto duly authorized by its Board of Directors that the same is his/her free act and deed as such officer and the free at and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Beachwood, Ohio this 15th day of May, 2000.

Paula Jones
Notary Public
PAULA JONES, Notary Public
State of Ohio, Cuyahoga County
My Commission Expires Jan. 11, 2004

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NOV 24 2000

FAX**Scanlan Engineering**600 East River Park Lane, #105
Boise, Idaho 83706

Date: November 5, 1999

Tel: 208 383-4140
Fax: 208 383-4156

To: Shelley Keen

Fax No: 327-7866

From: Terry Scanlan

Reference:

Subject: 63-12513

No. of Pages: 3
(including cover)

Draft for your review. Please call me with any comments.

Questions discussed with Terry

- ① Is 63-10780 a primary right. application says supplemental to NYID, but Permit and License are silent. Terry says Darwin McKay has power records and affidavits to document that it has always been used as a primary source. Terry will address the question and provide documentation with his mitigation proposal.
- ② Which comes first, the abandonment of 63-10780 B or issuance of permit 63-12513. The change of ownership will be contingent upon approval of the permit because they don't want to buy the right otherwise. I agreed to condition the permit to say no water can be diverted until 63-10780 B is formally abandoned.

S.W. Keen

11-5-99

If you do not receive all pages, or if there are any problems with this transmission, please call at 208 383-4140

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NOV 24 1999

November __, 1999

Shelley Walter Keen
Water Rights Supervisor
Idaho Department of Water Resources
1301 North Orchard Street
P.O. Box 83720
Boise, ID 83720-0098

DRAFT

Subject: Water Appropriation Application No. 63-12513 – Revised Mitigation Plan

Dear Shelley:

On behalf of Developers Diversified Realty (DDR), I am pleased to present the following revised mitigation plan for Water Appropriation Application No. 63-12513.

Application 63-12513 proposes supplemental irrigation of 20 acres with a diversion rate of up to 0.40 cfs from a groundwater source. The supplemental water supply is necessary for irrigation at those times when surface water from the canal system (Nampa & Meridian Irrigation District) is not available. In a normal year, supplemental water is needed from about April 1 through April 15 and October 15 through October 31. Irrigation demands during these periods are normally very low. As a result, the supplemental water requirement is typically less than 10 percent of the annual irrigation diversion requirement (4.5 acre feet per acre maximum), even though the supplemental irrigation season is 15 percent of the total irrigation season. However, in drought years when canal deliveries cease in September, the supplemental supply could be as much as 20 percent of the annual irrigation requirement. In all cases, the annual supplemental irrigation requirement should be 1 acre foot per acre or less. For the 20-acre proposed place of use, the supplemental irrigation requirement should be less than 20 acre feet annually.

We understand that the Department is currently not approving new applications for permit in the Boise River Basin. However, we also understand that the Department can approve new applications during this moratorium if the application includes an acceptable mitigation plan. In order to mitigate for the proposed appropriation under 63-12513, DDR proposes to retire a 5-acre portion of groundwater license 63-10780. This 5-acre water right is authorized to supply up to 22.5 acre feet annually. The water right is currently used for irrigation of lands located approximately 4.5 miles south of the lands proposed for irrigation under 63-12513. Eliminating the diversion of up to 22.5 acre feet annually under 63-10780 shall fully mitigate diversion of up to 22.5 acre feet annually under 63-12513.

A water right change of ownership for the 5-acre portion of water right 63-10780 is enclosed, along with a water right purchase agreement. The five acres of water right will be removed from

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NOV 24 1999

Shelley Walter Keen

-2-

November ____, 1999

the SWSW Section 33, T3N, R1E. The change of ownership will be effective upon approval of 63-12513.

Please contact me with any questions.

Sincerely,

DMAT

Terry M. Scanlan P.E., P.G.
Engineer/Hydrogeologist

Enclosures

Cc: Darwin McKay
Steve Sweet
Tom Bauwens

MICROFILMED
NOV 24 2003

(WATER RIGHT NUMBERS THAT BEGIN WITH AN '*' ARE ADJUDICATION CLAIMS)
(QUARTER-QUARTERS WITH A '?' HAVE DIFFERENT ACREAGE AMOUNTS--CHECK THE DATA BASE RECORDS)

WR-NUMBER	SOURCE	NE				NW				SW				SE				SUM			
		NE		NW		SW		SE		NE		NW		SW		SE					
		Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac				
6310780	T03N R01E S32	GROUNDWATER																			
	:																	10	:	10	
6302388	BOISE RIVE	:																		:	
A6302388	BOISE RIVE	:																		:	
6304169	GROUNDWATE	:						01												:	1
6304584	UNNAMED DR	:						19												:	19
6309669	GROUNDWATE	:						01												:	1
A6309669	GROUNDWATE	:						01												:	1
6309869	GROUNDWATE	:							09											:	9
6310265	GROUNDWATE	:							02											:	2
6310416	GROUNDWATE	:								34	:	05					40	34		:	113
A6310416	GROUNDWATE	:								34	:	05					40	34		:	113
6310998	GROUNDWATE	:							03											:	3
6311026	GROUNDWATE	:						03												:	3
6311506	GROUNDWATE	:										12	23							:	35
A6315603	UNNAMED DR	:						13												:	13
A6316414	TEN MILE C	:								40	:	40					40	40		:	160
A633018120	BOISE RIVE	:			I	I	:			I	:						I	I		:	

6310780	T03N R01E S33	GROUNDWATER																			
	:												34	03	:					:	37
6302054	UNNAMED ST	:			20			20												:	40
6302388	BOISE RIVE	:																		:	
A6302388	BOISE RIVE	:																		:	
6311831	GROUNDWATE	:																40		:	40
M6311831	GROUNDWATE	:																40		:	40
6311874	GROUNDWATE	:											05	31	:					:	36
M6311874	GROUNDWATE	:											05	31	:					:	36
A6318958	GROUNDWATE	:			01															:	1
A633018120	BOISE RIVE	:	I						I	I	I	:	I							:	

MICROFILMED
NOV 24 2000

IDAHO DEPARTMENT OF WATER RESOURCES

WATER RIGHT NO. 63-10780

DARWIN MC KAY
3220 E LAKE HAZEL RD
MERIDIAN ID 83642

Priority Date: 04/05/1989
Stage: LICENSE

Source: GROUNDWATER

Beneficial Use	From:	To:	Diversion	Rate	Volume
IRRIGATION	03-15	11-15		0.79 CFS	211.50 AFA
		Total:		0.79 CFS	211.50 AFA

Point(s) of Diversion:	NESE, Sec. 32, Township 03N, Range 01E
	SWSW, 33, 03N, 01E
	SWSE, 33, 03N, 01E

Place(s) of Use: IRRIGATION

Twp: Rng: Sec:	Tract: Acres:	Tract: Acres:	Tract: Acres:
03N 01E 32	SESE 10.0		
33	SWSW 34.0	SESW 3.0	
	Total Acres:	47.0	

Conditions of Approval and Remarks:

1. The maximum diversion volume is defined as the maximum allowable volume of water that may be diverted annually from the source under this right. The use of water confirmed by this right is limited to the amount that can actually be beneficially used. The maximum diversion volume may be adjusted to more accurately describe the beneficial use or to implement accepted standards of diversion and use efficiency.
2. This water right is appurtenant to the described place of use.
3. This right is subject to all prior water rights and may be forfeited by five years of non-use.
4. Modifications to or variance from this license shall be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho law.
5. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
6. This right when combined with all other rights shall provide no more than .02 cfs per acre nor more than 4.5 afa per acre for irrigation of the lands above.
7. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
8. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.

Dates:	App. Received: 04/05/1989	Proof Due Date: 10/01/1991
	Proof Made Date: 01/24/1990	Exam Made Date: 10/07/1989
	Licensed Date: 10/27/1992	

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NOV 24 2000

FROM S.W. Keen

TO File 63-12513

SUBJECT Hold application

INTER-DEPARTMENT MEMO--1

DATE 9/9/99

Today I told Terry Scanlan that IDWR would discourage him from pursuing a use under §42-228. Instead, I'll hold the application while he pursues a mitigation plan with NMID.

MICROFILMED

NOV 24 2000

Shelly Vatte Keen
SIGNATURE

MEMORANDUM

To: Shelley
From: Glen *ms*
RE: SUPPLEMENTAL IRRIGATION - APPLICATION 63-12513
Date: September 8, 1999

I don't have suggestions to make Terry Scanlan's mitigation proposal acceptable.

In my experience, Section 42-228, I.C. has generally been applied when an irrigation district seeks to improve the usability of land by installing drains to lower the water table. When that happens, the next question that generally arises is who is entitled to the groundwater issuing from the drains. Section 42-228, I.C. then addresses this issue.

It seems that the application may need to be held and processed in time sequence with the other applications being held in Basin 63, once a plan is put in place.

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SEP 14 1999

MEMORANDUM

DATE: September 3, 1999

TO: Glen Saxton

FROM: Shelley W. Keen *SWK*

RE: Supplemental irrigation well for the Family Center at Meridian

Terry Scanlan is seeking a preliminary opinion on his proposal to recover Nampa & Meridian Irrigation District water from a well for supplemental irrigation under the provision of Section 42-228, Idaho Code. You may recall that in July you and I briefly discussed this matter as an alternative to a complicated mitigation plan Terry has proposed for Application 63-12513. We suggested to Terry that he show the applicability of Section 42-228 before applying for a drilling permit. Terry has proceeded along those lines. Meanwhile, I discussed the situation with Tim Luke, and yesterday he gave me a copy of a letter (attached) from Gary Spackman saying that IDWR believes Section 42-228 applies only if the water can be recovered before commingling with the saturated aquifer. Today I shared Gary's letter with Terry, and now Terry is concerned because the saturated aquifer is at 10 feet at the location of his project. In addition, Jeff Peppersack raised a concern that I did not foresee, which is the view that using the recovered water outside the season when NMID water is normally available would be an expansion of the NMID water right.

Terry would appreciate some preliminary thoughts on this subject before he spends additional time and energy pursuing the matter. I told him IDWR would respond as soon as we can. Having little experience with Section 42-228 and how it may have been applied in the past, I am not sure how to respond to Terry. Can you provide some guidance?

MICROFILMED



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866 www.idwr.state.id.us/idwr/idwrhome.htm

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

FAX TRANSMITTAL COVER SHEET

DATE: 9/3/99

TO: Terry Scanlan
Scanlan Engineering
Fax 383-4156

FROM: Shelley Keen
WR Permits Section

DOCUMENT DESCRIPTION: Two-page letter dated 6/16/99

COMMENTS: Terry, here's a letter I found that may
be interesting to you in connection with the Family
Center at Meridian project. (App. for Permit 63-12513).

COVER SHEET + 2 PAGES

PLEASE CONTACT 327-7946
IF YOU DO NOT RECEIVE THIS ENTIRE DOCUMENT

MICROFILMED



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

June 16, 1999

RECEIVED

JUN 18 1999

Department of Water Resources

HIDDEN SPRINGS COMMUNITY LLC
118 S 5TH ST
BOISE ID 83702

Re: Recovery of Ground Water Resulting from Irrigation with Surface Water

Dear Sirs:

In October, 1997, personnel of the Idaho Department of Water Resources (IDWR) investigated a reported illegal use of water by Hidden Springs/Grossman Family Properties. The investigation generated several meetings with Hidden Springs and IDWR staff regarding the "recapture" of ground water added to the aquifer as a result of irrigation by Hidden Springs with surface water diverted from Dry Creek. Hidden Springs analyzed its surface water diversions for 1997 and presented the information to IDWR. After various discussions, IDWR determined that 43 acre feet annually could be diverted from ground water by Hidden Springs, but only if surface water was aggressively diverted and beneficially used on the property where the ground water is withdrawn. IDWR stated in a letter dated July 29, 1998, that the ground water withdrawal should be a fraction of the total surface water applied to the place of use authorized by Hidden Springs water rights.

Hidden Springs representatives stated that Hidden Springs plans to intercept ground water near the Hidden Springs townsite and pump the water back to the east to irrigate Hidden Springs property. The ground water dewatering and irrigation would lower ground water levels near the Hidden Springs townsite, and would also require less or no diversion of surface water from Dry Creek. Hidden Springs representatives stated that a filing with IDWR, probably an application for transfer, would seek approval of the ground water withdrawal. To date, no applications have been filed for this ground water use.

After writing my letter dated July 29, 1998, some surface water users in Eastern Idaho proposed similar recovery of ground water under Idaho Code § 42-228. After reviewing these proposals, IDWR expressed its opinion that a surface water user could only recapture ground water attributable to a surface water beneficial use by capturing the water prior to the water commingling with a public water source. In other words, the ground water would have to be recaptured prior to commingling with the saturated aquifer. This interpretation of Idaho Code § 42-228 is more restrictive than the interpretation allowing Hidden Springs to divert 43 acre feet annually.

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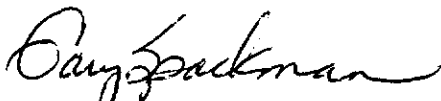
Hidden Springs Community LLC
June 16, 1999
Page -2-

Hidden Springs can drain the ground water underlying its property under Idaho Code § 42-228. It cannot, however, divert water for irrigation except as discussed above.

Neighbors have alleged that Hidden Springs did not divert, or at least did not aggressively apply, surface water from Dry Creek during the 1998 irrigation season. The diversion of water cannot be properly accounted for without measurement. Pursuant to Idaho Code § 42-701, IDWR is contemplating requiring installation of measuring devices at all of Hidden Springs points of diversion from Dry Creek, and installation of measuring devices at all ground water diversions. Unless you can convince IDWR otherwise, an order will be issued requiring installation of the measuring devices as approved by IDWR. IDWR is also contemplating requiring the measurement and reporting of diversions in year 2000.

Please communicate with me about Hidden Springs intentions for authorizing its ground water withdrawal.

Sincerely,


Gary Spackman

GS:st

CC: Kathleen Brady
Shane Bendixsen
Scott Urban
Jeff Fereday
Garrett Brown
Norm Young

MICROFILMED

FEB 24 2000

FAX

Scanlan Engineering600 East River Park Lane, #105
Boise, Idaho 83706**Date:** September 3, 1999**Tel:** 208 383-4140**Fax:** 208 383-4156

To: Shelley Keen**Fax No:** 327-7866**From:** Terry Scanlan**Reference:****Subject:** 63-12513**No. of Pages:** 4
(including cover)

If you do not receive all pages, or if there are any problems with this
transmission, please call at 208 383-4140

MICROFILMED

SEP 7 1999

SCANLAN ENGINEERING*Groundwater and Environmental Engineering*

September 2, 1999

Mr. Darren R. Cochr
Secretary/Treasurer
Nampa & Meridian Irrigation District
1503 First Street South
Nampa, ID 83651-4395

Subject: Supplemental Irrigation Well for the Family Center At Meridian

Dear Darren:

Enclosed for your review and consideration is a July 29, 1999 letter from Mr. Shelley Keen of the Idaho Department of Water Resources. Mr. Keen's letter is a response to my inquiry regarding changing the nature of use of a portion of the District's water right to allow use of the water for groundwater recharge purposes. The proposed recharge would be mitigation for pending application for permit 63-12513 in the name of Developers Diversified Realty (DDR) for the Family Center at Meridian project.

The third paragraph of Mr. Keen's letter discusses as alternative to the application for permit and associated mitigation. He suggests that we consider recovering groundwater from the well using the District's existing water rights, as authorized under Idaho Code 42-228. The District would simply file a drilling permit for a new well with no need for a new water right or a transfer of the District's water right. For the drilling permit to be issued, the District would need to show the connection between the shallow groundwater (to be recovered from the well) and losses from the District's surface water distribution system.

As I have discussed with Charlie Honsinger, the alternative suggested by Mr. Keen would likely be less burdensome for both the District and the Family Center. The District would not have to change the nature of use of their water rights, and the Family Center would not have to operate recharge facilities for mitigation purposes. Therefore, I propose the following steps to obtain approval of a drilling permit and completion of a well.

1. The Family Center would annex it's irrigated lands into the District. The number of acres to be annexed will need to be worked out to the satisfaction of the District. The Family Center property currently has 75.03 rental roll Ridenbaugh acres. Irrigated area at completion of the project is anticipated to total approximately 20 acres. Therefore, the area to be annexed will likely be somewhere in the range of 20 to 75 acres. We welcome your input in determining the proper amount of acres to be annexed.
2. Scanlan Engineering, on behalf of the Family Center and the District, would prepare a study to substantiate the connection between shallow groundwater and losses from the

Mr. Darren R. Connor

-2-

September 2, 1999

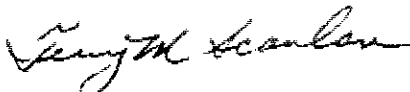
District's surface water distribution system. Pertinent data from the District regarding losses from the Ridenbaugh Canal and laterals would be useful for this purpose.

3. Scanlan Engineering would prepare a drilling permit application for the District's signature. The permit fee would be paid by the Family Center.
4. Upon approval of the drilling permit, the Family Center would contract for drilling and construction of an 8-inch diameter well. Following successful testing of the well, the Family Center would install and operate an irrigation pump to provide water for supplemental irrigation purposes.
5. All costs associated with annexation, permitting, and construction would be paid by the Family Center.

The Family Center proposes to both own and operate the well and well pump system. This arrangement makes sense because the Family Center both owns and operates the associated surface water pump system at the site. However, we are open to discussion of other avenues of ownership and operation that meet the needs and interests of both the District and the Family Center.

Please contact me to discuss this proposal. I understand that your Board meets on Tuesday September 7. I would be pleased to attend the meeting and discuss this proposal with you and the Board at that time.

Sincerely,



Terry M. Scanlan, P.E., P.G.
Engineer/Hydrogeologist

Cc: Steve Sweet - Quadrant Consulting
Tom Bauwens - Family Center

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**State of Idaho****DEPARTMENT OF WATER RESOURCES**

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

July 29, 1999

DIRK KEMPTHORNE
GOVERNORKARL J. DREHER
DIRECTORTERRY SCANLAN
SCANLAN ENGINEERING
600 EAST RIVER PARK LN #105
BOISE ID 83706

RE: Water Appropriation Application 63-12513

Dear Terry:

I am responding to the request from Nampa & Meridian Irrigation District (NMID) that you seek comment from IDWR on the possibility of changing the nature of use of an irrigation water right to groundwater recharge purposes to mitigate the groundwater withdrawals proposed under Water Appropriation Application 63-12513. In general, IDWR cannot predetermine the outcome of a prospective transfer application. The transfer process, described in §42-222, *Idaho Code*, includes the opportunity for the filing of protests and for a technical review and analysis by IDWR. Until the application is filed and advertised, all protests are addressed, and the technical review is conducted, it is not possible to predict the "potential for success" of a particular transfer application. Each application is approved or denied based on its individual merits.

I can think of no reason, however, that IDWR would automatically look with disfavor upon the general concept of changing a water right from irrigation to groundwater recharge. IDWR generally encourages the conservation of Idaho's water resources by limiting groundwater withdrawals and encouraging appropriate groundwater recharge projects, and IDWR is especially intent on limiting the depletion of groundwater throughout the Treasure Valley while the Treasure Valley Hydrologic Project proceeds.

As we discussed on the phone, §42-228, *Idaho Code*, may provide another mechanism for authorizing the use of groundwater for the irrigation project described in Application 63-12513. Under that provision of the code, irrigation districts do not need a separate water right to recover and use groundwater that results from losses within their surface water distribution systems. Documentation showing the connection between NMID water deliveries and the local shallow groundwater would need to be provided to IDWR to show the applicability of §42-228, *Idaho Code*, before a drilling permit would be issued.

If you have any questions, please contact me at 208-327-7946.

Sincerely,

Shelley Walter Keen
Water Rights Supervisor

MICROFILMED



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

July 29, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

TERRY SCANLAN
SCANLAN ENGINEERING
600 EAST RIVER PARK LN #105
BOISE ID 83706

RE: Water Appropriation Application 63-12513

Dear Terry:

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If you have any questions, please contact me at 208-327-7946.

Sincerely,

Shelley Walter Keen
Water Rights Supervisor

MICROFILMED

10-2-99

FAX**Scanlan Engineering**600 East River Park Lane, #105
Boise, Idaho 83706**Date:** July 27 1999**Tel:** 208 383-4140**Fax:** 208 383-4156**To:** Shelley Keen**Fax No:** 327-7866**From:** Terry Scanlan**Reference:****Subject:** 63-12513**No. of Pages:** 3
(including cover)

Attached is a letter I received from Nampa & Meridian Irrigation District. The irrigation district is agreeing to supply water for recharge use, with some specific conditions. The letter asks that I seek "a letter of acceptance from the Department of Water Resources on behalf of your client that essentially indicates a favorable degree of potential for success in processing the application for change in nature of use." Is that something that you can do? Please call me to discuss.

If you do not receive all pages, or if there are any problems with this transmission, please call at 208 383-4140

208 383-4140

COPY

Nampa & Meridian Irrigation District

1503 FIRST STREET SOUTH

NAMPA, IDAHO 83651-4395

FAX # 208-463-0092

Phones: Area Code 208

OFFICE: Nampa 466-7861

SHOP: Nampa 466-0663

21 July 1999

Terry Scanlan
600 E River Park Lane, #105
Boise, ID 83706

RE: Family Center at Meridian - Mitigation Plan for Supplemental Irrigation
Water Right Application 63-12513 (Revised June 8, 1999)

Dear Mr. Scanlan:

At the Board meetings of 06 July and 20 July 1999, the above referenced subject was reviewed and evaluated by the Board of Directors of Nampa & Meridian Irrigation District. As a result of their review the Board concurred that a counter proposal be offered to you on behalf of your client and that is as follows.

1. The delivery by the District must be made at a new delivery point separate from any other waterusers.
2. Return flow must be back to Nampa & Meridian Irrigation District facility.
3. The lands be converted from a rental roll water right status to a District Tax Roll water right status.
4. An application for change in nature of use of a portion of the Districts water right must be filed with the Department of Water Resources, with all costs being paid for by your client.

In follow-up discussions with District's legal counsel, Charlie Honsinger, it was recommended that you seek a letter of acceptance from the Department of Water Resources on behalf of your client that essentially indicates a favorable degree of potential for success in processing the application for change in nature of use. Honsinger also emphasized that the District will need to enter into an agreement with your client to dictate the terms and conditions under which the above mentioned items will be dealt with.

The Irrigation District of course will be the applicant and be responsible for securing the necessary authorizations from the Idaho Department of Water Resources including but not limited to overcoming any protests that may be filed in conjunction with the application. Your client will be responsible for reimbursing the District for all costs associated and also providing where necessary resource or support in the application process.

Page 1 of 2

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APPROXIMATE IRRIGABLE ACRES

RIVER FLOW RIGHTS - 23,000

BOISE PROJECT RIGHTS - 40,000

199 11:30 AM NAMPA & MERIDIAN IRRIG

P.3/3

Page 2 of 2
21 July 1999
Scanlan, Terry

The District believes this proposal is reasonable and will provide your client with the means necessary to accomplish the goal of irrigation and ground water recharge.

I look forward to discussing in detail the items that are summarized above. Please feel to call on me at the office number listed above.

Sincerely,



Daren R. Coon, Secretary/Treasurer
NAMPA & MERIDIAN IRRIGATION DISTRICT

DRC/smc

pc: File
Each Director
Water Superintendent
Attorney - Honsinger

MICROFILMED

7/27/99

JUN 23 1999

Department of Water Resources

RINGERT
 **CLARK**
 CHARTERED
 LAWYERS

June 22, 1999

Mr. Shelley Keen
 Water Rights Supervisor
 Idaho Department of Water Resources
 P.O. Box 83720
 Boise, ID 83720-0098

Laura F. Burn
 Jeffrey R. Christenson
 D. Blair Clark
 Michael J. Doolittle
 S. Bryce Farris
 Patrick D. Furey
 David I. Hammerquist
 Charles L. Honsinger
 Joseph B. Jones
 James P. Kaufman
 Jennifer Reid Mahoney
 James G. Reid
 William F. Ringert
 Daniel V. Stecnson
 Allyn L. Sweeney
 Samuel Kaufman (1921-1986)

Re: Application for Water Right No. 63-12513

Dear Shelley:

I am writing on behalf of my client, Nampa & Meridian Irrigation District (NMID), to inform you of my client's position with respect to the above referenced Application.

The applicant, Developers Diversified Realty, seeks a water right to divert 0.40 cfs from groundwater for irrigation purposes on 20 acres at The Family Center at Meridian. To mitigate for the use of groundwater under this right, the applicant proposes to use NMID rental roll contract water in infiltration basins on the grounds of The Family Center to recharge groundwater. Apparently, the applicant proposes to cease irrigation of a portion of the lands currently irrigated, and use the water that formerly irrigated those lands to fill the infiltration basins.

In your letter of May 28, 1999 to Terry Scanlan, you asked that he provide a statement of approval from NMID stating that the proposed mitigation plan does not conflict with Nampa & Meridian Irrigation District policy or operations. Mr. Scanlan then sent NMID a copy of his June 8, 1999 letter to you addressing the concerns raised in your letter, together with a copy of the application.

If this application for a water right did not propose mitigation using NMID water, NMID would have no position as to whether or not the water right should be granted. However, because the proposed mitigation plan does involve use of NMID water, NMID objects to the granting of the water right as proposed.

The reasons NMID objects are as follows: 1. NMID controls the purposes for which its water rights are used. If portions of the water rights are not to be used for the irrigation purposes for which they were appropriated, NMID will determine whether those portions are available for any other purposes. 2. It is NMID's position that for the applicant to use any portion of NMID irrigation water rights for any purpose other than irrigation will require an approved change in the nature of use of the water right necessarily involving the input and approval of NMID. At this

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time, without further information from, and discussion with, the applicant, NMID does not intend to either apply for a change in the nature of use of its water rights, or to approve a change in the nature of use of its water rights.

Nevertheless, NMID understands the concerns and desires of the applicant. NMID has helped other developers resolve urban irrigation issues in other contexts. NMID may also be able help this applicant realize its goals by discussing options for the irrigation of the proposed area.

By this letter, I am requesting that you send copies of all further correspondence and documents filed in this matter to me. Please contact me should you wish to discuss this matter.

Sincerely,



Charles L. Honsinger

42-11591
Extension 28

cc: Terry Scanlan

MICROFILMED

SEP 2 1988

SCANLAN ENGINEERING

Groundwater and Environmental Engineering

RECEIVED

JUN 09 1999

Department of Water Resources

June 8, 1999

Shelley Walter Keen
Water Rights Supervisor
Idaho Department of Water Resources
1301 North Orchard Street
P.O. Box 83720
Boise, ID 83720-0098

Subject: Water Appropriation Application No. 63-12513 – Revised Mitigation Plan

Dear Shelley:

Thank you for your letter of May 28, 1999 regarding the proposed mitigation plan for application 63-12513. Your letter asked for "means by which IDWR can verify that the mitigation water is being diverted from the Boise River and is being dedicated exclusively to recharging the groundwater." The mitigation plan accompanying the application would not be able to accomplish such a task. Instead, that plan simply provided mitigation water into the hydrologic system downstream from the project site and tributary to Boise River, with the assumption that a portion of the mitigation water would recharge the groundwater.

In order for the mitigation water to be "dedicated exclusively to recharging the groundwater", the mitigation water must be directly recharged into the ground. Attached is a revised mitigation plan that involves direct recharge of mitigation water to offset use of groundwater for supplemental irrigation. Please review the revised plan to determine if it meets your requirements for mitigation purposes. If it does, we request that you proceed with processing of the application and make the revised plan a condition of the permit.

As requested by your letter, I am forwarding a copy of the application, this letter, and your letter to Nampa & Meridian Irrigation District for comment and a statement of approval.

I will be out of the office until June 21. If you have any questions in the meantime, please talk to Steve Sweet at Quadrant Consulting, 342-0091.

Sincerely,



Terry M. Scanlan, P.E., P.G.
Engineer/Hydrogeologist

Enclosure

Cc: Gary Spackman – Western Region IDWR
Steve Sweet – Quadrant
Darren Coon – Nampa & Meridian Irrigation District

MICROFILMED

RECEIVED

JUN 09 1999

Department of Water Resources

**Family Center At Meridian
Mitigation Plan for Supplemental Irrigation Water Right Application 63-12513
(Revised June 8, 1999)**

The Family Center at Meridian is a commercial development located at the intersection of Fairview Avenue and Eagle Road in Meridian. The property has historically been irrigated using water from the Nampa & Meridian Irrigation District (NMID) under a rental roll contract. The source of this water is the Boise River. The commercial development will reduce the irrigated area from approximately 75 acres of crop land to 20 acres or less of landscape. The Family Center will continue to use NMID water as the primary source of irrigation water supply for the property. However, a supplemental irrigation supply is needed to support the landscape at times when canal water is not available (typically early April and late October). The proposed supplemental source is a shallow (i.e., 100 foot +/-) well. The well would be operated early and late in the irrigation season when canal water is not available. The estimated volume pumped from the well will range from approximately 5 to 20 acre feet per year.

The Family Center at Meridian proposes to mitigate for the use of groundwater. Mitigation will be accomplished by annually recharging the shallow aquifer with a volume of water equal to the volume pumped out of the aquifer. Recharge will occur through one or more on-site infiltration basin using excess irrigation water from the Nampa & Meridian Irrigation District. Water will be pumped to the basins through the pressurized irrigation system. An average recharge rate of 15 gpm from May 1 to October 1 will result in 10 acre feet of recharge annually. The volumes recharged and pumped will be metered each year to show that adequate mitigation is being provided.

MICROFILMED

MAY 24 2000



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

May 28, 1999

TERRY M SCANLAN PE
600 EAST RIVER PARK LANE, STE 105
BOISE ID 83706

RE: Water Appropriation Application No. 63-12513

Dear Terry:

I am writing you about the mitigation plan you have proposed for application 63-12513, which was filed by Developers Diversified Realty for the Family Center at Meridian. As you know, in 1996 the Idaho legislature appropriated \$300,000 to initiate a study of ground water availability in the Treasure Valley. The study was conceived in response to concerns by state and local officials about the impacts of population growth and development on water resources in the valley. The Department of Water Resources (IDWR) is working with a number of other local, state, and federal entities to conduct the study, which is expected to take five years to complete. During the study, IDWR is withholding approvals on most consumptive use applications until enough data is available to be reasonably sure that ground water can be appropriated in the Treasure Valley without injury to prior water rights.

IDWR will process an application if it includes a plan to mitigate for the consumption of water and impact to the aquifer that will result from the proposed appropriation. Application 63-12513 was advertised by our Western Region staff because you have offered a mitigation plan that involves asking Nampa & Meridian Irrigation District to deliver water that you are entitled to but will not use. It is the premise of your proposal that the unused water will "reduce the use of groundwater for supplemental irrigation on downstream properties" and that it will recharge the shallow groundwater when it is diverted and used by others downstream from you. After reviewing your mitigation plan, the regional manager expressed skepticism that your plan would compensate for the ground water withdrawn, and he has recommended withholding approval of your application until other Treasure Valley applications are processed. Therefore, if you want your application to receive further consideration at this time, you must provide additional details about your proposed mitigation plan.

First, your mitigation plan needs to incorporate a means by which IDWR can verify that the mitigation water is being diverted from the Boise River and is being dedicated exclusively to recharging the groundwater. For example, other mitigation plans have proposed diverting the

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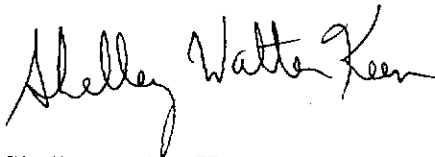
Terry Scanlan
May 28, 1999
Page 2

surface water into a pond, gravel pit, or ditch where it would seep into the ground. This did not appear to be an element of your plan.

Second, IDWR needs assurance that your proposal does not conflict with Nampa & Meridian Irrigation District policy or operations. Once the details of your mitigation plan have been formulated, please ask Nampa & Meridian Irrigation District to provide a statement of approval to IDWR.

I will hold your application until you can supply the requested information or until IDWR implements a plan for processing all the Treasure Valley applications that are being held. If you have any questions, please contact me at 208-327-7946.

Respectfully,



Shelley Walter Keen
Water Rights Supervisor

CC: Gary Spackman, IDWR Western Region

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NOV 2 1999

MAY 26 1999

DEPARTMENT OF WATER RESOURCES

IDAHO DEPARTMENT OF WATER RESOURCES
APPROPRIATION APPLICATION ANALYSIS SHEET

INITIAL REVIEW BY: DAN DATE: 4-9-99 APPLICATION: 63 - 12513

REQUIRED INFORMATION

- ☒ Name: (If applicant is a corporation or partnership, names and addresses for the director, officers, and other partners must be included.)
- ☒ Address:
- ☒ Source: (See USGS Quad for names of water sources)
- ☒ Point of Diversion: (10 acres for spring, lot & block descriptions for Subdivisions, local name)
- ☒ County:
- ☒ Quantity: (flow and/or volume)
- ☒ Period of use:
- ☒ Nature of proposed use: (Include description of use)
- ☒ Description of diverting works:
- ☒ Time required for beneficial use of water:
- ☒ Place of use or acres irrigated:
- ☒ Map: (show T, R, S, QQ &/or QQQ)
- ☒ Subdivision plat: (for > 1 home in restricted area. $\geq$ 5 homes in non-restricted area)
- ☒ Signature: (If applicant is corp., partnership, or municipality, title of signatory is required)
- ☒ Correct fee paid
- Gov't. Lots:
NO P/D
NO P/U

ADDITIONAL INFORMATION

YES ADVERTISE REMARK(S)
(Reviewer identify which remarks)

MIT FLAG CHANGED TO P FLAG

YES NO

- ☐ ☒ Overlapping place of use: (Describe source & relationship to present application on next page.)
- ☐ ☒ Overlapping point of diversion.
- ☐ ☒ Critical groundwater area:
- ☒ ☒ Groundwater management area:
- ☒ ☐ 1992 moratorium:
- ☐ ☒ Surface water source, IDFG letter needed.
- ☐ ☒ Bull trout impact area, IDFG letter needed
- ☐ ☒ E-mail to SCA staff: (perennial stream, non-pump diversion &/or any mining).
- ☐ ☒ E-mail to Dam Safety staff: (for any storage)
- ☒ ☐ Mitigation plan: Check any that apply. Mitigation Plan has been submitted
☐ immediate = acceptable plan required and submitted. Request to process plan
☐ future = open areas, acceptance of condition of approval is in file. NOT REQUIRED.
- ☐ ☒ Send power requirement letter &/or fish farm requirement letter.
- ☐ ☒ Power residency affidavit:
- ☐ ☒ Diversion greater than 5 cfs or 500 af or irrigation greater than 200 acres: (If yes, attach Large Diversion supplementary analysis sheet.)
- ☐ ☐ *REQUEST ADDITIONAL INFORMATION FROM THE APPLICANT

PROCESSING

APP. NO.

63-12513

YES NO

☒ ☐ In form for advertising:
☐ ☒ Statewide advertising: (> 10 cfs &/or 1000 af)
☒ ☐ Fee amount, receipt number and date recorded on application:

SEND COPIES TO: NOTE IF E-MAIL COMMENT LETTER USED.

YES NO

☐ ☒ I.D. Health & Welfare
☐ ☒ I.D. District Health
☐ ☒ I.D. Fish & Game
☐ ☒ I.D. Lands

YES NO

☐ ☒ U.S. BLM
☐ ☒ U.S. Forest Service
☐ ☒ Water Dist. #
☒ ☐ Other Native American Tribes
Director

FINAL REGIONAL PROCESSING REVIEW:

YES NO

☒ ☐ Affidavit of publication received:
☒ ☐ Application published correctly: If not, record action taken.

☒ ☐ Publication dates and paper recorded on application:

☐ ☒ Final date for protest 5-10-99

☐ ☒ Protests received.

☒ ☐ Recommendations attached:

☐ ☒ Measuring device required:

☐ ☒ Water delivered by water master? District #

☒ ☐ Special conditions of approval or cover letter: see attached memo

See below for additional information

Recommended Date or Priority

Recommended by: SaysDate: 5/24/99

Recommend holding:

ADDITIONAL INFORMATION:

MEMORANDUM

TO: File No. 63-12513, in the Name of Developers Diversified Realty

FROM: Gary Spackman 

RE: Recommendations for Disposition of Application

DATE: May 24, 1999

Application for water right no. 63-12513 proposes appropriation of ground water to supplement surface water supplied by Nampa & Meridian Irrigation District. The place of use is a development currently being constructed on the southeast corner of Eagle Road and Chinden named the Family Center at Meridian. The development is a commercial development that will reduce the irrigated area from 75 acres of crop land to 20 acres of landscape.

Terry Scanlan prepared a mitigation plan for the applicants. The plan proposes irrigation of the landscape with Nampa & Meridian surface water during all times that surface water is available. Early and late in the season, however, water is not available in the canal systems, and this application proposes to divert water during periods of surface water nonavailability. The mitigation plan proposes ordering surface water for 35 acres, and passing 15 cfs of water continuously beyond the Family Center site into the south slough. By ordering the extra water, the applicant feels it is compensating for its ground water withdrawal.

While delivery of the additional surface water may help downstream surface water users, the mitigation plan does not mitigate or compensate the ground water for water withdrawn. While we may feel good about approving a new application at this location, the proposed mitigation plan proposed doesn't mitigate anything. Furthermore, it's a delivery of surface water without a beneficial use.

I propose that we withhold approval of this application, and that we consider it in the chronological order of receiving other applications for water rights in the Treasure Valley.

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2000 000000

The Idaho Statesman

P.O. BOX 40, BOISE, IDAHO 83707-0040
LEGAL ADVERTISING INVOICE

RECEIVED
MAY 17 1999
WATER RESOURCES
WESTERN REGION

Identification		Amount:	
NOTICE OF APPLICATION FOR WATER RIGHT DEVELOPERS DIVERSIFIED REALTY		\$87.00	
047628 #33572			
Ordered by:	P.O. Number	Rate	Run Dates:
SUE TAYLOR		TT	MAY 6,13, 1999
IDAHO DEPT. OF WATER RESOURCES WEST 2735 AIRPORT WAY BOISE, IDAHO 83705-5082		Estimated inches	Real inches
		28 X 2 LINES	
		Affidavit:	Legal Number:
		1	3837

JANICE HILDRETH, being duly sworn, deposes and says: That she is the Principal Clerk of The Idaho Statesman, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto; that said notice was published in The Idaho Statesman in conformity with Section 60-108, Idaho Code as amended for TWO

X consecutive weekly _____ single
_____ consecutive daily _____ odd skip

insertion(s) beginning with the issue of: MAY 6, 1999
and ending with the issue of: MAY 13, 1999

STATE OF IDAHO)
COUNTY OF ADA) ss.

Janice Hildreth

On this 14 day of MAY in the year of 1999, before me, a Notary Public, personally appeared Janice Hildreth 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 she executed the same.

Angela M Newland
Notary Public for Idaho
Residing at: Boise, Idaho
My commission expires: 2/12/05

MICROFILMED

RECEIVED

LEGAL NOTICE
APPLICATION FOR WATER RIGHT
The following Application(s) have been filed to appropriate the public waters of the State of Idaho.
DEVELOPERS DIVERSIFIED REALTY 6-12513
435 E 300 S SUITE 400
SALT LAKE CITY, UT 84111
Source: GROUNDWATER
Division Pt: NENW Sec 9 T 03N R 01E in ADA County.
Use: IRRIGATION
Total Diversion: { 0.400 CFS)
Date Filed: 3/20/1999
In: ADA County
T03N R01E S09 NENW NW1/4 SW1/4
20.0 ACRES TOTAL
Mitigation is proposed for consumptive use.
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, West Region, 2735 Airport Way, Boise, Id 83705 together with a protest fee of \$25.00 on or before MAY 10, 1999. The protest must also send a copy of the protest to the applicant.
Karl J. Dreher, Director
Pub. May 6,13, 1999
3837



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190
FAX (208) 334-2348

May 5, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

NAMPA &/ MERIDIAN IRRIG DIST
1503 1ST ST S
NAMPA ID 83651-4395

Re: Application for Water Right No. 63-12513 in the Name of Developers Diversified Realty

Dear Sir:

Enclosed is a copy of the above-referenced application for water right which may be of interest to you.

This office normally completes the processing of an application within a six-week period and is required to take final action shortly thereafter. However, if you desire to file a formal protest against the approval of this application(s), your written protest along with the \$25.00 protest fee must be received in this office by May 24, 1999.

Sincerely,

A handwritten signature in cursive script that reads 'Gary Spackman'.

Gary Spackman

GS:st

Encl.

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APR 14 1999

SCANLAN ENGINEERING

Groundwater and Environmental Engineering

March 29, 1999

Mr. Gary Spackman
Western Region Manager
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705

Subject: Application for Permit and Mitigation Plan for the Family Center At Meridian Project

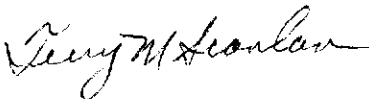
Dear Gary:

Enclosed please find an Application for Permit for supplemental irrigation supply at the Family Center at Meridian. The application is being submitted on behalf of the Developers Diversified Realty. The application seeks 0.40 cfs of groundwater for supplemental irrigation use. Groundwater would be used only during times when surface water is not available. The lands to be irrigated under this permit have a primary irrigation supply from Nampa & Meridian Irrigation District under an existing rental roll contract.

We understand that the Department is currently not processing or approving new applications for permit in the Boise River Basin. However, we also understand that the Department can approve new applications during this moratorium if the application includes an acceptable mitigation plan. The enclosed application includes a mitigation plan as Attachment B. By submitting the mitigation plan, we are requesting an exemption from the current moratorium and request that processing of the application begin immediately.

Please contact me with any questions or comments concerning this Application for Permit. We look forward to your response.

Sincerely,



Terry M. Scanlan, P.E.

MICROFILMED



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

APRIL 15, 1999

Legal Notices Department
THE IDAHO STATESMAN
PO BOX 40
BOISE, ID 83707

Dear Legal Dept.:

Enclosed you will find a legal notice which we wish to have published on the dates indicated (once a week for two consecutive weekly issues) in your newspaper. 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. Your cooperation is appreciated.

Please send the affidavit of publication and publication billing to this office before MAY 10, 1999.

Yours truly,

SUE TAYLOR
Secretary/Office Coordinator

Encl.

MICROFILMED

NOTICE OF APPLICATION FOR WATER RIGHT

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

MICROFILMED

1975 1-4-75

FAX**Scanlan Engineering**600 East River Park Lane, # 105
Boise, Idaho 83706

Date: April 22, 1999

Tel: 208 383-4140
Fax: 208 383-4156

To: Dan Nelson

Fax No: 334-2348

From: Terry Scanlan

Reference:

Subject: Legal Notice for 63-12513

No. of Pages: 1
(including cover)

Dan -

The legal notice for 63-12513 published today in the Idaho Statesman lists an irrigated area of 2 acres. The correct acreage should be 20 acres.

Terry

**LEGAL NOTICE
APPLICATION FOR WATER RIGHT**

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

63-12513

DEVELOPERS DIVERSIFIED REALTY
455 E 500 S SUITE 400
SALT LAKE CITY, UT 84111

Source: GROUNDWATER

Diversion Pt: NENW Sec 9 T 03N R 01E in ADA County.

Use: IRRIGATION (0.400 CFS)
Total Diversion: (0.400 CFS)

Date Filed: 3/30/1999

In: ADA County
T03N R01E S09 NENW NWNW SWNW
2.0 ACRES TOTAL

Mitigation is proposed for consumptive use.

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, West Region, 2735 Airport Way, Boise, Id 83705 together with a protest fee of \$25.00 on or before MAY 10, 1999. The protestant must also send a copy of the protest to the applicant.

Karl J. Dreher, Director

Pub. Apr. 22, 29, 1999

3837

May 6 + 13 prot. 5-24-99

If you do not receive all pages, or if there are any problems with this transmission, please call at 208 383-4140

63-12513

DEVELOPERS DIVERSIFIED REALTY
455 E 500 S SUITE 400
SALT LAKE CITY, UT 84111

Source: GROUNDWATER

Diversion Pt: NENW Sec 9 T 03N R 01E in ADA County.

Use: IRRIGATION (0.400 CFS)
 Total Diversion: (0.400 CFS)

Date Filed: 3/30/1999

In: ADA County
 T03N R01E S09 NENW NWNW SWNW

20.0 ACRES TOTAL

Mitigation is proposed for consumptive use.

MICROFILMED

APR 1 1999

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, Western Region, 2735 Airport Way, Boise, Idaho 83705 together with a protest fee of \$25.00 for each application on or before MAY 10, 1999. The protestant must also send a copy of the protest to the applicant.

KARL J. DREHER, Director

Published: 4/22/1999 & 4/29/1999

MICROFILMED

APR 29 1999