

State of Idaho
Department of Water Resources

Permit to Appropriate Water

No. 63-34924

Priority: May 21, 2020

Maximum Diversion Rate: 0.27 CFS

This is to certify that

FRYSLAN DAIRY LLC 8222 DESERT DR MARSING ID 83639-8264

has applied for a permit to appropriate water from:

Source : GROUND WATER

and a permit is APPROVED for development of water as follows:

<u>Beneficial Use</u>	<u>Period of Use</u>	<u>Rate of Diversion</u>
COMMERCIAL	01/01 to 12/31	0.27 CFS

Location of Point(s) of Diversion

GROUND WATER L4 (SW $\frac{1}{4}$ SW $\frac{1}{4}$), Sec. 30, Twp 02N, Rge 01W, B.M.	CANYON County
GROUND WATER L4 (SW $\frac{1}{4}$ SW $\frac{1}{4}$), Sec. 30, Twp 02N, Rge 01W, B.M.	CANYON County
GROUND WATER L4 (SW $\frac{1}{4}$ SW $\frac{1}{4}$), Sec. 30, Twp 02N, Rge 01W, B.M.	CANYON County
GROUND WATER L4 (SW $\frac{1}{4}$ SW $\frac{1}{4}$), Sec. 30, Twp 02N, Rge 01W, B.M.	CANYON County
GROUND WATER SE $\frac{1}{4}$ SE $\frac{1}{4}$, Sec. 25, Twp 02N, Rge 02W, B.M.	CANYON County

Place of Use: COMMERCIAL

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
02N	01W	30											X L4	X					
02N	02W	25																X	

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **September 01, 2025**.
2. Subject to all prior water rights.
3. Commercial use is for 1000 dairy cattle.
4. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable water quality monitoring and/or permitting requirements administered by the Department of Environmental Quality or the Department of Agriculture.
5. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.

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6. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.
7. Right holder shall comply with the drilling permit requirements of Idaho Code § 42-235 and applicable Well Construction Rules of the Department.

This permit is issued pursuant to the provisions of Idaho Code § 42-204.

Signed this 14 day of September, 2020.



PATRICK KELLY
Water Rights Supervisor








State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

63-34924

This map depicts the COMMERCIAL place of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.



-  Point of Diversion
-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters

0 0.1 0.2 0.4 Miles





Brad Little
Governor

State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 W AIRPORT WAY • BOISE, ID 83705-5082

Phone: (208)334-2190 • Fax: (208)334-2348 • Website: www.idwr.idaho.gov

Gary Spackman
Director

September 14, 2020

FRYSLAN DAIRY LLC
8222 DESERT DR
MARSING ID 83639-8264

RE: Permit No. 63-34924

Permit Approval Notice

Dear Permit Holder(s):

The Department of Water Resources ("Department") has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review all the conditions of approval listed on your permit. The conditions include requirements that you must accomplish, such as timely submittal of proof of beneficial use or installation of a measuring device, as well as information about how your water use may be administered, such as regulation by a watermaster in a water district. Failure to comply with the conditions of approval may result in your permit lapsing or being canceled.

The permit is a PRELIMINARY ORDER issued pursuant to Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730). It can and will become a final order without further action by the Department unless a party petitions for reconsideration, files exceptions, or requests a hearing as described in the enclosed information sheet.

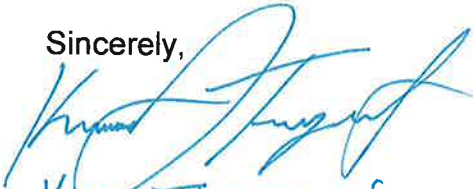
The final step in the water right process is issuance of a water right license. To receive a water right license, you must first commence the excavation or construction of your diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is complete. In addition, you must divert and use water to the full extent intended and submit a *Statement of Completion for Submitting Proof of Beneficial Use* by the date shown in condition no. 1 of your permit. The Department will send you a *Proof Due Notice* approximately 60 days prior to the date listed in condition no. 1 of your permit.

You may also require approvals from other Department programs, such as Ground Water Protection, Safety of Dams, or Stream Channel Protection, to accomplish your proposed development. Please call or visit any Department office or see the Department's website at idwr.idaho.gov for more information about these programs.

Also, please note that permit holders are required to report any change of ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Forms to assign ownership or update your address are available from any office of the Department or on the Department's website.

If you have any questions concerning the enclosed information, please contact me at (208) 334-2190.

Sincerely,


For: Patrick Kelly
Water Rights Supervisor

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2020, I served a true and correct copy of Permit to Appropriate Water No. 63-34924 by U.S. Mail, postage prepaid, to the following:

FRYSLAN DAIRY LLC
8222 DESERT DR
MARSING ID 83639-8264

RABO AGRIFINANCE LLC
C/O JOE DEIBNER
5680 E FRANKLIN RD
NAMPA ID 83687-9054

SPF WATER ENGINEERING LLC
C/O LORI GRAVES
300 E MALLARD DR STE 350
BOISE ID 83706-6660

WATER DISTRICT #63
REX BARRIE
PO BOX 767
STAR ID 83669-0767



Kensie Thorneycroft
Administrative Assistant 1

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date 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.

RECEIVED

SEP 03 2020

WATER RESOURCES
WESTERN REGION

AFFIDAVIT OF PUBLICATION
STATE OF IDAHO

County of Canyon and Ada

23100 22932

1 IDWR - WESTERN REGION

2735 AIRPORT WAY 2735 AIRPORT WAY
BOISE, ID 83705

SHARON JESSEN

of the State of Idaho, being of first duly sworn, deposes
and says:

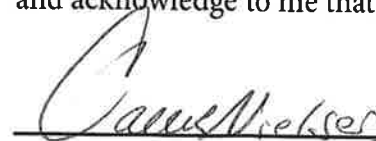
1. That I am a citizen of the United States, and at all times hereinafter mentioned was over the age of eighteen years, and not a party to the above entitled action.
2. That I am the Principle Clerk of the Idaho Press-Tribune, a daily newspaper published in the Counties of Canyon and Ada, State of Idaho; that the said newspaper is in general circulation in the said counties of Canyon and Ada, and in the vicinity of Nampa, Caldwell, and Boise, and has been uninterruptedly published in said Counties during a period of seventy -eight consecutive weeks prior to the first publication of this notice, a copy of which is hereto attached.
3. That the notice, of which the annexed is a printed copy, was published in said newspaper 2 times(s) in the regular and entire issue of said paper, and was printed in the newspaper proper, and not in a supplement

That said notice was published the following: 08/06/2020,
08/13/2020



SHARON JESSEN
STATE OF IDAHO
County of Canyon and Ada

On this 19th day of August, in the year of 2020 before me a Notary Public, personally appeared. SHARON JESSEN, known or identified to me to be the person whose name is subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledge to me that he/she executed the same.



Notary Public of Idaho
My commission expires

6/28/23



LEGAL NOTICE

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

63-34924

FRYSLAN DAIRY LLC

8222 DESERT DR MARSING, ID 83639-8264

(4) Point of Diversion L4(SWSW) S30 T02N R01W CANYON County Source GROUND WATER

Point of Diversion SESE S25 T02N R02W CANYON County Source GROUND WATER

Use: COMMERCIAL 01/01 to 12/31 0.27 CFS

Total Diversion: 0.27 CFS Date Filed: 05-21-2020

Place Of Use: COMMERCIAL

T02N R01W S30 L4(SWSW),SESW

T02N R02W S25 SESE

Water bearing zone to be appropriated is from 101 to 210 feet.

63-34933

DANIEL SMITH

JUDITH SMITH

11224 HUNT AVE NAMPA, ID 83651-8036

Point of Diversion NESE S7 T03N R02W CANYON County Source GROUND WATER

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

Total Diversion: 0.04 CFS

Date Filed: 07-15-2020

Place Of Use: DOMESTIC

T03N R02W S7 NESE

Water bearing zone to be appropriated is from 50 to 100 feet.

Permits will be subject to all prior water rights. For additional information concerning the property location, contact the Western office at (208)334-2190; or for a full description of the right(s), please see <https://idwr.idaho.gov/apps/ExtSearch/WRAApplicationResults/>. Protests may be submitted based on the criteria of Idaho Code § 42-203A. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resources, Western Region, 2735 W AIRPORT WAY, BOISE ID 83705-5082 together with a protest fee of \$25.00 for each application on or before 8/24/2020. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

August 6, 13, 2020

22932