

State of Idaho
Department of Water Resources

Permit to Appropriate Water

No. 63-34497

Priority: January 11, 2018

Maximum Diversion Volume: 2,060.0 AF

This is to certify that

HARRY L BETTIS PO BOX 7 EMMETT ID 83617

has applied for a permit to appropriate water from:

Source : SOUTH FORK WILLOW CREEK

Tributary: WILLOW CREEK

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

Beneficial Use

Period of Use

Annual Volume

RECREATION STORAGE

01/01 to 12/31

2,060.0 AF

AESTHETIC STORAGE

01/01 to 12/31

2,060.0 AF

Location of Point(s) of Diversion

SOUTH FORK WILLOW CREEK SW¼ NE¼, Sec. 31, Twp 06N, Rge 01E, B.M. GEM County

Place of Use: RECREATION STORAGE and AESTHETIC STORAGE

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06N	01E	31			X	X									X	X		X	
06N	01E	32									X	X	X	X					

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **June 01, 2024**.
2. Subject to all prior water rights.
3. Rights 63-12361, 63-34497 and 63-34498 when combined shall not exceed a total annual maximum diversion volume of 2,060 af for storage purposes.
4. This right authorizes a total annual storage volume of 2,060 acre-feet, 2,010 acre-feet to be used for the initial filling or carryover storage of the reservoir and 50 acre-feet for the replacement of losses caused by evaporation.
5. Prior to diversion of water under this right, the right holder shall provide a means acceptable to the department to measure the amount of water entering the reservoir and the amount of water released from the reservoir.
6. Prior to diversion of water under this right, the right holder shall install a lockable device, subject to the approval of the Department, in a manner that will provide the watermaster suitable control of the diversion.
7. Prior to diversion of water under this right, the right holder shall permanently install and maintain a staff gage acceptable to the Department to provide a means to measure the reservoir level on a constant basis.
8. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 63.

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 63-34497

9. This right is subordinate to the capture and retention of water in existing on-stream storage reservoirs operated for storage and flood control purposes during and following flood control operations until the date of allocation.
10. The impoundment of water under this right is contingent upon the issuance of a certificate of approval per the dam safety provisions of Idaho Code and subsequent written authorization by the dam safety program administered by the Department.
11. 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.
12. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.

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

Signed this 1st day of July, 20 19.



NICK MILLER
Engineer, Manager 2



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

July 1, 2019

HARRY L BETTIS
PO BOX 7
EMMETT ID 83617

RE: Permit No. 63-34497

Amended Permit Approval Notice

Dear Permit Holder:

On June 20, 2019, The Department of Water Resources ("Department") issued a permit authorizing you to establish a new water right. A petition for reconsideration was filed within fourteen (14) days after issuance. On June 26, 2019 Department issued an amended permit authorizing you to establish a new water right. The Department discovered an error within Condition No. 3 under the "Conditions of Approval" section. The Department corrected the error, and issued the enclosed, amended permit authorizing you to establish a new water right. Please note, the enclosed amended permit will supersede all previously issued permits. Please be sure to thoroughly review all the conditions of approval listed on your amended 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,



Anna Kaiser

For

Nick Miller
Engineer, Manager 2

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2019, I served a true and correct copy of Permit to Appropriate Water No. 63-34497 by U.S. Mail, postage prepaid, to the following:

HARRY L BETTIS (Current Owner)
PO BOX 7
EMMETT ID 83617

ERO RESOURCES CORP (Representative)
C/O DAVID SHAW
4001 E MAIN ST
EMMETT ID 83617

BILL BOSWORTH (Protestant)
ENVIRONMENTAL STAFF BIOLOGIST
SOUTHWEST REGION
IDAHO DEPARTMENT OF FISH AND GAME
3101 S POWERLINE DR
NAMPA ID 83686

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



Anna Kaiser
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.