

State of Idaho  
Department of Water Resources  
**Permit to Appropriate Water**  
No. 51-13127

Priority: June 29, 2018

Maximum Diversion Rate: 2.26 CFS

This is to certify that

ACE BLACK RANCHES 28892 HOT SPRINGS RD BRUNEAU ID 83604-5007

has applied for a permit to appropriate water from:

Source : WASTE WATER  
Source : UNNAMED DRAIN  
Source : WASTE WATER

Tributary: UNNAMED DRAIN  
Tributary: BRUNEAU RIVER  
Tributary: BRUNEAU RIVER

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

| <u>Beneficial Use</u> | <u>Period of Use</u> | <u>Rate of Diversion</u> |
|-----------------------|----------------------|--------------------------|
| IRRIGATION            | 03/01 to 11/15       | 2.26 CFS                 |

**Location of Point(s) of Diversion**

|               |                |                                 |               |
|---------------|----------------|---------------------------------|---------------|
| WASTE WATER   | NW¼ NE¼,       | Sec. 31, Twp 06S, Rge 06E, B.M. | OWYHEE County |
| WASTE WATER   | NE¼ NW¼,       | Sec. 31, Twp 06S, Rge 06E, B.M. | OWYHEE County |
| WASTE WATER   | NE¼ NW¼,       | Sec. 31, Twp 06S, Rge 06E, B.M. | OWYHEE County |
| WASTE WATER   | NE¼ NW¼,       | Sec. 31, Twp 06S, Rge 06E, B.M. | OWYHEE County |
| WASTE WATER   | L1 ( NW¼ NW¼), | Sec. 31, Twp 06S, Rge 06E, B.M. | OWYHEE County |
| UNNAMED DRAIN | SW¼ SE¼,       | Sec. 30, Twp 06S, Rge 06E, B.M. | OWYHEE County |
| UNNAMED DRAIN | SE¼ SE¼,       | Sec. 30, Twp 06S, Rge 06E, B.M. | OWYHEE County |
| WASTE WATER   | L4 ( SW¼ SW¼), | Sec. 30, Twp 06S, Rge 06E, B.M. | OWYHEE County |
| UNNAMED DRAIN | L4 ( SW¼ SW¼), | Sec. 30, Twp 06S, Rge 06E, B.M. | OWYHEE County |

**Place of Use: IRRIGATION**

| Twp | Rng | Sec | NE |     |    |    | NW |     |    |    | SW |    |     |    | SE |    |    |    | Totals |
|-----|-----|-----|----|-----|----|----|----|-----|----|----|----|----|-----|----|----|----|----|----|--------|
|     |     |     | NE | NW  | SW | SE | NE | NW  | SW | SE | NE | NW | SW  | SE | NE | NW | SW | SE |        |
| 06S | 05E | 25  |    |     |    |    |    |     |    |    |    |    |     |    | 28 |    |    | 11 | 39     |
| 06S | 06E | 30  |    |     |    |    |    |     |    |    | 15 | 26 | 7.0 |    |    |    |    |    | 48     |
| 06S | 06E | 31  |    | 1.0 |    |    | 19 | 6.0 |    |    |    |    |     |    |    |    |    |    | 26     |

Total Acres: 113

**Conditions of Approval**

1. Proof of application of water to beneficial use shall be submitted on or before **July 01, 2024**.
2. Subject to all prior water rights.
3. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
4. The waste water diverted under this right is subject to the right of the original appropriator, in good faith and in compliance with state laws governing changes in use and/or expansion of water rights, to

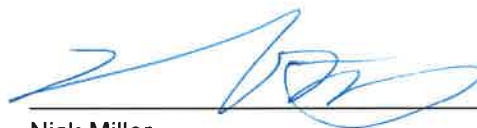
State of Idaho  
Department of Water Resources  
**Permit to Appropriate Water**  
No. 51-13127

cease wasting water, to change the place of use or manner of wasting it, or to recapture it.

5. This right is for the use of trust water, and it is subject to review 5 years after its initial approval (date of permit approval) to re-evaluate the availability of trust water for the authorized use and to re-evaluate the public interest criteria for reallocating trust water.
6. When the minimum stream flow water rights in the Snake River at Murphy Gage are not being satisfied, the right holder shall cease diverting water for the consumptive uses authorized by this right. The minimum stream flow water rights are for 3,900 cfs from April 1 through October 31 and 5,600 cfs from November 1 through March 31 consistent with IDAPA 37.03.08.030.
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 use power records to determine the amount of water diverted and shall annually report the information to the Department.
8. The points of diversion described above in the SWSE and SESE of Section 30, T06S, R06E divert from an Unnamed Drain that is locally known as the Jones Waste Ditch.
9. The diversion and use of water described in this right may be subject to additional conditions and limitations agreed to by the protestant and the right holder under a separate agreement to which the Department is not a party. Because the Department is not a party, the Department is not responsible for enforcement of any aspect of the agreement not specifically addressed in other conditions herein. Enforcement of those portions of the agreement not specifically addressed in other conditions shall be the responsibility of the protestant and the water right holder.
10. 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.
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.

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

Signed this 24<sup>th</sup> day of June, 2019.



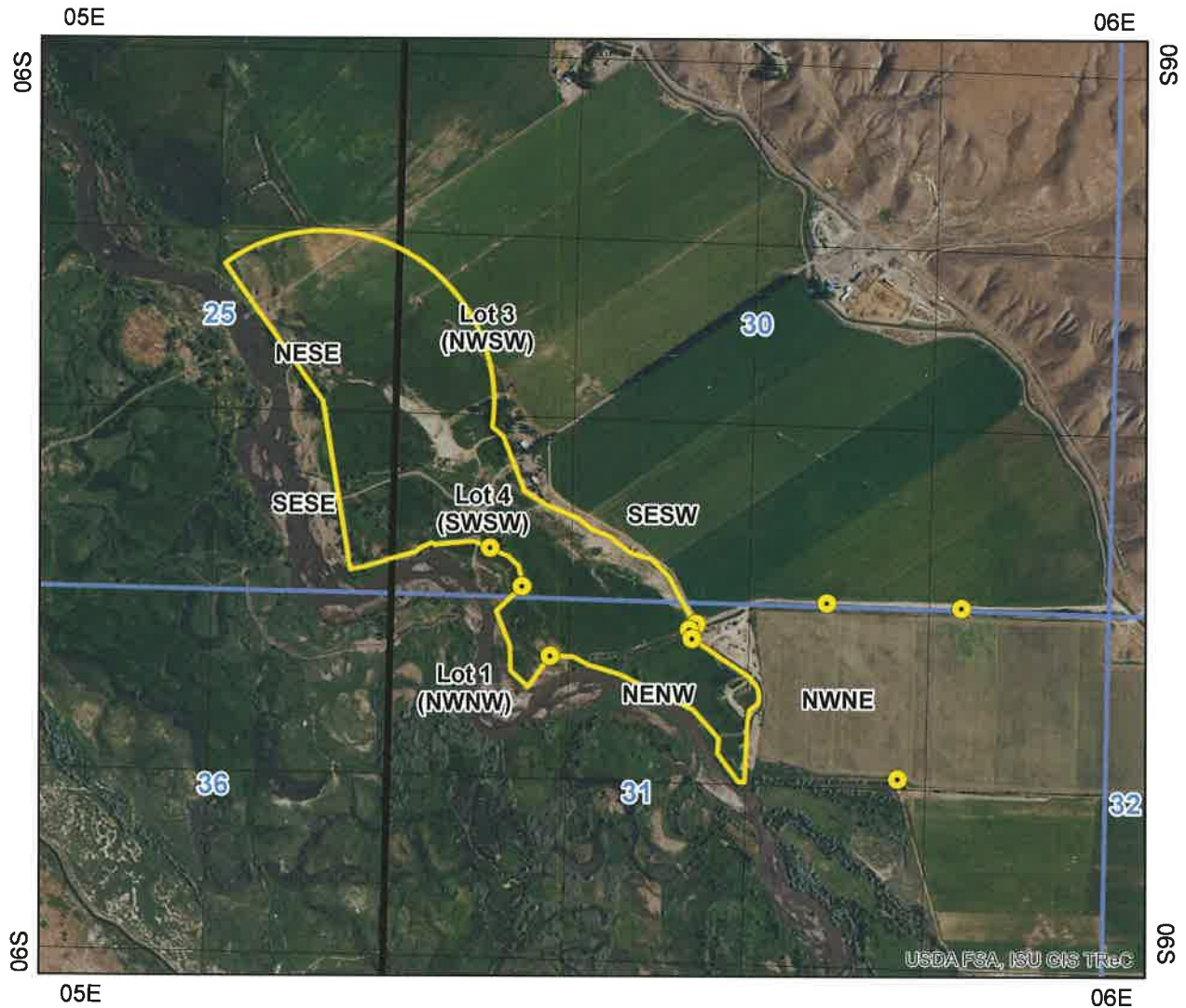
Nick Miller  
Manager, IDWR Western Region

State of Idaho  
Department of Water Resources

# Attachment to Permit to Appropriate Water

51-13127

This map depicts the IRRIGATION 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 0.15 0.3 0.6 Miles





**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](http://www.idwr.idaho.gov)

Brad Little  
Governor

Gary Spackman  
Director

June 24, 2019

ACE BLACK RANCHES  
28892 HOT SPRINGS RD  
BRUNEAU ID 83604-5007

RE: Permit No. 51-13127

**Permit Approval Notice**

Dear Permit Holder:

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](http://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 June 24, 2019, I served a true and correct copy of Permit to Appropriate Water No. 51-13127 by U.S. Mail, postage prepaid, to the following:

ACE BLACK RANCHES (Current Owner)  
28892 HOT SPRINGS RD  
BRUNEAU ID 83604-5007

CHARLES L HONSINGER (Protestant)  
PO BOX 517  
BOISE ID 83701-0517



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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.