

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 37-23099

Priority: February 08, 2018

Maximum Diversion Rate: 0.17 CFS

This is to certify, that HARTLEY ROGERS
610 FIFTH AVE STE 401
NEW YORK NY 10020

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>
HEATING	01/01 to 12/31	0.17 CFS
COOLING	01/01 to 12/31	0.17 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER SW1/4NW1/4NE1/4 Sec. 23, Twp 05N, Rge 17E, B.M.
BLAINE County

PLACE OF USE: HEATING

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05N	17E	23		X															

PLACE OF USE: COOLING

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05N	17E	23		X															

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **April 01, 2023**.
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 the permit holder had no control.
4. Use of water under this right shall be non-consumptive.

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 37-23099

5. 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.37.
6. Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.
7. Return flow discharged to a subsurface system must be authorized by a separate injection well permit.
8. 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.
9. Use of water pursuant to this right is either nonconsumptive or the right holder is required to provide ongoing mitigation to offset the depletion of water resulting from the use of this right. Regulation of this right to satisfy the minimum stream flow water rights in the Snake River at Murphy Gage shall not be required.
10. Point of diversion and place of use are located within Tax Lot 4401 in Homestead Entry Survey (HES) no. 128, a location situated in Sections 23 and 24 of Township 5 North, Range 17 East, B.M. On the date of permit approval, the POD and POU are projected as located in the NWNE of Section 23 using the current version of GCDB.
11. Place of use does not include federal public lands.

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

Signed this 3rd day of April, 2018.

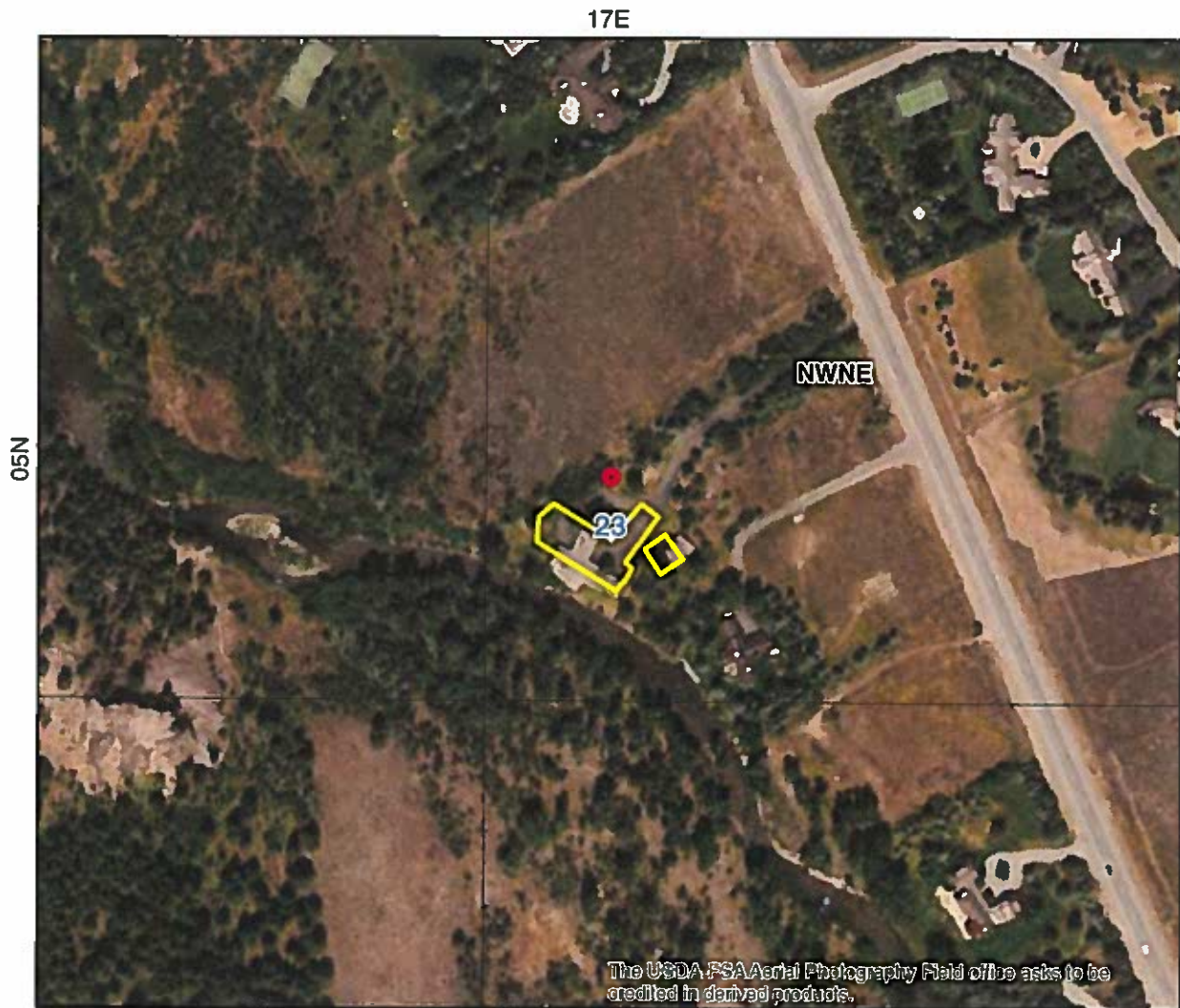

COREY SKINNER, Southern Region Manager

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

37-23099

This map depicts the HEATING & COOLING 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

0 0.035 0.07 0.14 Miles





State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region • 650 ADDISON AVE W STE 500 • TWIN FALLS, ID 83301-5858
Phone: (208)736-3033 • Fax: (208)736-3037 • Website: www.idwr.idaho.gov

C.L. "Butch" Otter
Governor

Gary Spackman
Director

April 04, 2018

HARTLEY ROGERS
610 FIFTH AVE STE 401
NEW YORK NY 10020

RE: Permit No. 37-23099

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 water master 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) 736-3033.

Sincerely,

A handwritten signature in black ink, appearing to read "Corey Skinner". The signature is fluid and cursive, with the first name "Corey" being more prominent than the last name "Skinner".

Corey Skinner
Southern Regional Manager

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on April 04, 2018, I served a true and correct copy of Permit to Appropriate Water No. 37-23099 by U.S. Mail, postage prepaid, to the following:

HARTLEY ROGERS (Current Owner)
610 FIFTH AVE STE 401
NEW YORK NY 10020

BROCKWAY ENGINEERING PLLC (Representative)
C/O ZACH LATHAM
2016 N WASHINGTON ST STE 4
TWIN FALLS ID 83301

WATER DISTRICT #37 *via e-mail*
KEVIN D LAKEY (Water master)
107 W 1ST
SHOSHONE ID 83352



Denise Maline
Administrative Assistant I

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.

Skinner, Corey

From: Jessica Witt <jlw@idahowaters.com>
Sent: Monday, March 26, 2018 3:10 PM
To: Skinner, Corey
Cc: 'Zach Latham'; John Simpson
Subject: Application for Permit No. 37-23099, Hartley Rogers
Attachments: 20180326 JKS ltr to IDWR re informal comments_37-23099.pdf

Dear Mr. Skinner,

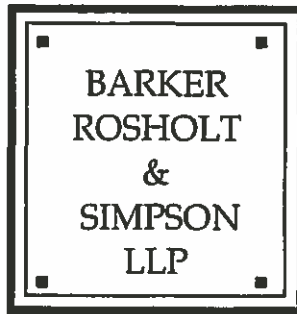
Please find attached correspondence from John Simpson regarding the above referenced application for permit.

Sincerely,
Jessica

Jessica L. Witt
Legal Assistant to John K. Simpson
Barker Rosholt & Simpson LLP
1010 W. Jefferson, Suite 102
P.O. Box 2139
Boise, Idaho 83701-2139
Phone: 208.336.0700
Fax: 208.344.6034
www.idahowaters.com

CONFIDENTIALITY NOTICE: This e-mail and its attachments are confidential and may be privileged. If you believe this e-mail has been sent to you in error, please notify the sender immediately and delete this email. Do not deliver, distribute or copy this transmission.

ALBERT P. BARKER
JOHN A. ROSHOLT
JOHN K. SIMPSON
TRAVIS L. THOMPSON
SHELLEY M. DAVIS
SCOTT A. MAGNUSON
JONAS A. REAGAN



1010 W. Jefferson, Suite 102
Post Office Box 2139
Boise, ID 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

163 Second Avenue West
Post Office Box 63
Twin Falls, ID 83301-0063
(208) 733-0700 telephone
(208) 735-2444 facsimile

John K. Simpson
jks@idahowaters.com

March 26, 2018

RECEIVED

MAR 26 2018

DEPT OF WATER RESOURCES
SOUTHERN REGION

VIA E-MAIL ONLY

Mr. Corey Skinner
Idaho Department of Water Resources
Southern Regional Office
650 Addison Ave. W., Ste. 500
Twin Falls, ID 83301-5858

Re: *Application for Permit No. 37-23099, Hartley Rogers*

Dear Mr. Skinner,

On behalf of Idaho Power Company, please find the following comments concerning the above referenced application for permit.

Idaho Power Company continues to review new applications for water rights in the vicinity to Swan Falls dam to ensure that such applications which propose to divert water tributary to the Snake River above Swan Falls are appropriately recognized and reviewed in accordance with the 1984 Swan Falls Settlement. The proposed application proposes to divert water from the Snake River above Swan Falls dam. Idaho Power believes that it continues to be the State's responsibility to manage water use to ensure that the terms of the Settlement are recognized and that new appropriations do not impair the existing uses inside the trustwater area.

While Idaho Power does not formally protest application no. 37-23099, the Director should condition the application to require the right holder to provide mitigation necessary to offset the use of water pursuant to this permit, if needed, to ensure flows do not violate the terms of the Settlement. Idaho Power has consistently provided IDWR with proposed Trustwater language for inclusion into any approved permit and would offer the following language for inclusion by IDWR:

"This right is for the use of trust water which is identified and defined in the 1984 Swan Falls Agreement and subsequent Settlement. The right shall be 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. This right shall remain subject to review by the Director consistent with the terms and limits imposed upon trust water rights issued by the State and arising out of the 1984 Swan Falls Settlement.

Further, this right is within a moratorium area requiring 100% mitigation as provided below. Regulation of this right to satisfy the minimum flows of 3,900 cfs from April 1 through October 31 and 5,600 cfs from November 1 through March 31 at the Murphy gage shall not be required so long as mitigation is satisfied. The right holder shall submit annual diversion records to IDWR associated with this right and the mitigation right to confirm that the mitigation requirement is satisfied.

With respect to this application no mitigation is required as the applicant is proposing to return the groundwater diverted to the source, hence, said diversion is considered non-consumptive. If the applicant fails to return the water diverted to the groundwater source, said diversion shall be considered a fully consumptive industrial use to the source, thus requiring mitigation."

Thank you for your consideration on this matter. Please contact me if you have any questions.

Very truly yours,
BARKER ROSHOLT & SIMPSON LLP



John K. Simpson

JKS/jlw

cc: Zack Latham – Brockway Engineering (via email)
Hartley Rogers (via U.S. mail)

RECEIVED

MAR 19 2018

AFFIDAVIT of PUBLICATION

State of Idaho
County of BlaineDEPT OF WATER RESOURCES
SOUTHERN REGION

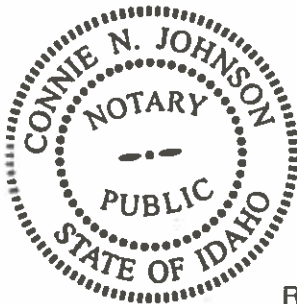
COPY OF NOTICE

Pam Morris, being the first duly sworn, deposes and says that she is the printer (publisher) of the Idaho Mountain Express, a newspaper published every week in Ketchum, County of Blaine, State of Idaho; that said newspaper has been continuously and uninterruptedly published for a period of seventy-eight consecutive weeks prior the first publication of the annexed notice, and is a newspaper qualified to publish legal notices as provided by act of the 1919 session of the legislature of the State of Idaho, known as House Bill 145; that the annexed advertisement was published once

each week for 2 consecutive issues in said newspaper proper and not in a supplement; that the date of the first

publication of said advertisement was on the 7th day of March, 20 18, and the date of the last publication was on the 14th day of March, 20 18

Subscribed and sworn to before me this 14 day of March, 20 18.



Connie N. Johnson
NOTARY PUBLIC

RESIDING AT HAILEY, IDAHO
MY COMMISSION EXPIRES ON 7/10/2018

IDAHO MOUNTAIN EXPRESS
P.O. Box 1013
Ketchum, Idaho 83340
COST OF PUBLICATION

Number of Picas per Line 11.5
Number of Lines in Notice 93
Number of Insertions 2

_____	Lines tabular at	_____	9.0 cents/pica
<u>93</u>	Lines straight at	<u>\$85.56</u>	8.0 cents/pica
<u>93</u>	Subsequent lines at	<u>\$24.87</u>	7.0 cents/pica
TOTAL COST		<u>\$160.43</u>	

Legal Notice
TITLE OF NOTICE

PLAINTIFF ATTORNEY

DEFENDANT

PLAINTIFF

IDWR

BILL TO

LEGAL NOTICE

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

37-23099

HARTLEY ROGERS

610 FIFTH AVE STE 401

NEW YORK, NY 10020

Point of Diversion SWNWNE S23

T05N R17E BLAINE County Source

GROUND WATER Tributary

Use: COOLING 01/01 to 12/31 0.17

CFS

Use: HEATING 01/01 to 12/31 0.17

CFS

Total Diversion: 0.17 CFS

Date Filed: 2/8/2018

Place Of Use: HEATING, COOLING

T05N R17E S23 NWNE

Application proposes to appropriate up to 0.17 cfs of ground water for heating and cooling purposes associated with a private residence. Water will be diverted from an existing well, used and reinjected at the site. The point of diversion and place of use are located approximately 5 miles north and 1.5 miles west of the intersection of Hwy 75 and Sun Valley Rd in Ketchum.

✓ OK dm 3/27/2018

71-10985

UNITED STATES OF AMERICA
ACTING THROUGH USDA FOREST
SERVICE

2647 KIMBERLY RD
TWIN FALLS, ID 83301

Point of Diversion L7(NWSW) S31
T08N R14E BLAINE County Source
GROUND WATER Tributary

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

Total Diversion: 0.04 CFS

Date Filed: 1/8/2018

Place Of Use: DOMESTIC

T08N R14E S31 NWSW

Application for permit proposes to divert 0.04 cfs ground water from a proposed well for domestic purposes for an existing recreational summer home. Proposed point of diversion and place of use is located approximately 2.6 miles east and 17.1 miles south of the highway 21 & 75 intersection in Stanley. This application proposes the diversion and use of water tributary to a federally designated Wild & Scenic River. The decreed minimum stream flow rights for the federal Wild & Scenic Rivers are subordinate to certain categories of water use and to specific amounts of water use established after the minimum stream flow. The water use proposed in this application will benefit from the subordination provision because it is for domestic purposes.

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Southern Region office at (208) 736-3033; or for a full description of the right(s), please see www.idwr.idaho.gov/WaterManagement/WaterRights/#NewListings. 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, Southern Region, 650 ADDISON AVE W STE 500, TWIN FALLS ID 83301-5858 together with a protest fee of \$25.00 for each application on or before March 26, 2018. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

PUBLISH
IDAHO MOUNTAIN EXPRESS
MARCH 7 & 14, 2018



✓ OK *Am* 3/27/2018

Mills, William

From: Spencer, Steven M -FS <sspencer@fs.fed.us>
Sent: Tuesday, March 13, 2018 1:58 PM
To: Mills, William
Subject: Application for Permit 37-23099 Rogers
Attachments: Blaine County Assessor Images.pdf; BLM MTP.pdf; USGS Map.pdf

RECEIVED

MAR 13 2018

DEPT OF WATER RESOURCES
SOUTHERN REGION

Bill,

I called to talk with you about this matter and found you were out of the office. I reviewed the Application for Permit filed by Hartley Rogers today and see that it is intended to be completely on his lot that is in HES 128. There are some unique circumstances pertaining to the Public Land Survey in this area – mainly that it isn't surveyed. The sections, township and range we have are merely projections. The only actual recorded legal surveys are the homestead entry surveys. I would encourage that HES 128 to appear prominently in the legal description – that the water right is entirely on HES 128.

The attachments are various visual representations of where the Rogers property is located and how the PLSS quarter-quarter shifts depending on the map or image being used. I did not include the image available from IDWR's site because you already have it. Because of the uncertainty of the PLSS location and considering that all the land outside of the private homestead entry survey land along the Wood River I am requesting that the water right permit and subsequent license include that the water right does not include any federal land.

This is how we've come to handle these situations. It provides additional information beyond the norm because of the special circumstances discussed above and results in a more precise legal description. This will hopefully reduce uncertainty and misunderstanding in the future.

If you have any questions about this matter please contact me.

Steve



Steven M. Spencer
Water Use Specialist
Idaho Water Right Coordinator

Forest Service
Intermountain & Northern Regions

p: 208-365-7055

sspencer@fs.fed.us

1805 Hwy 16 Rm 5
Emmett, ID 83617

www.fs.usda.gov

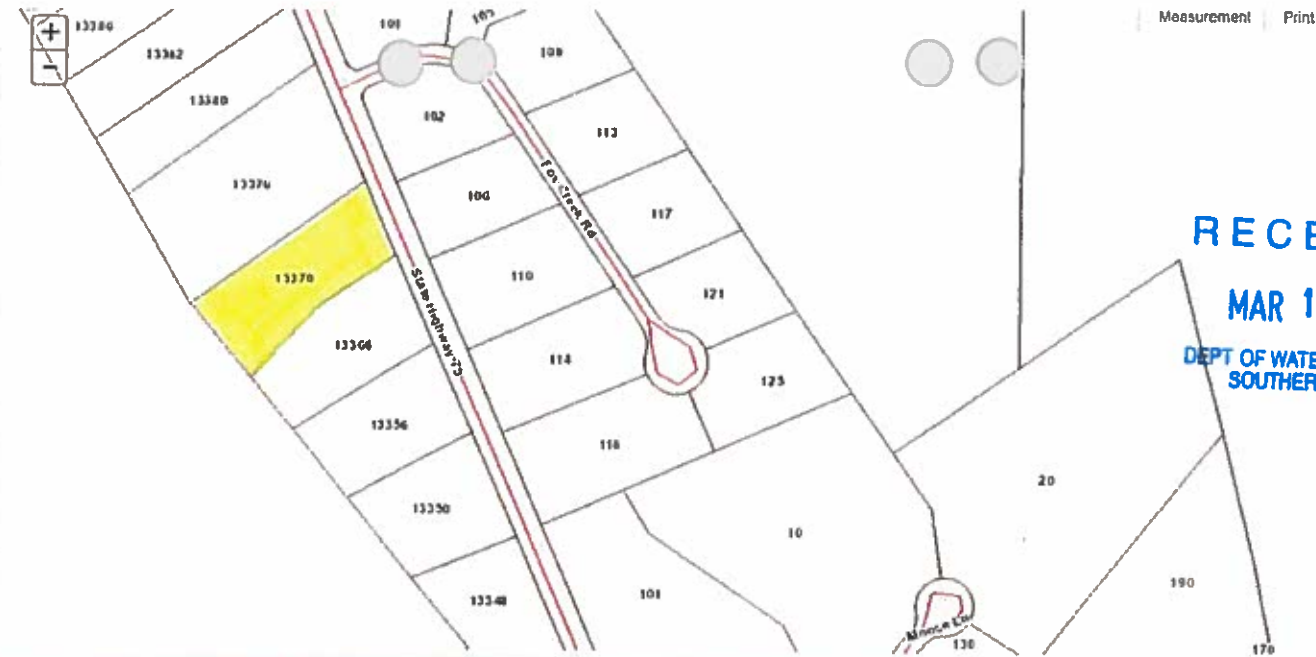


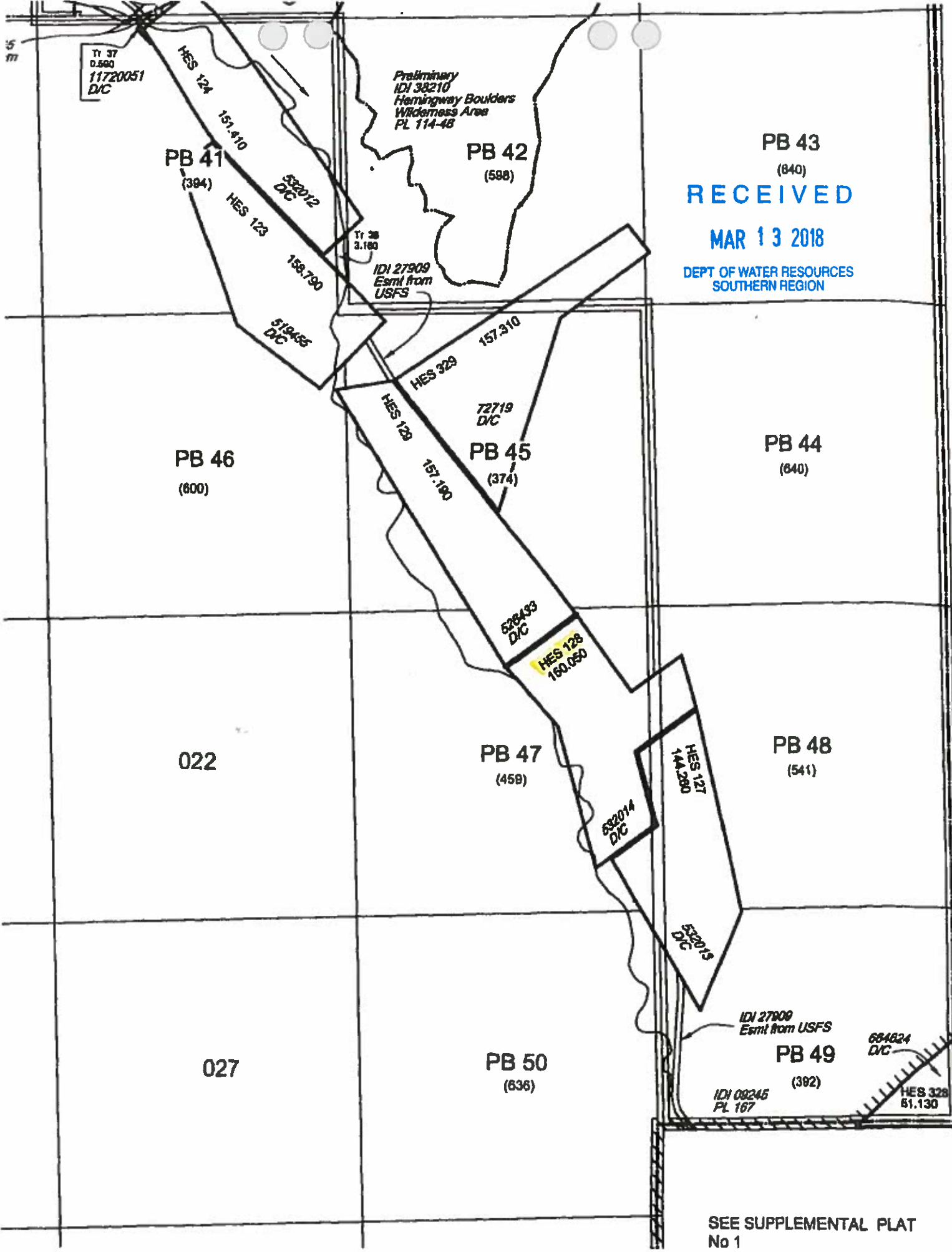
Caring for the land and serving people

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MAR 13 2018

DEPT OF WATER RESOURCES
SOUTHERN REGION



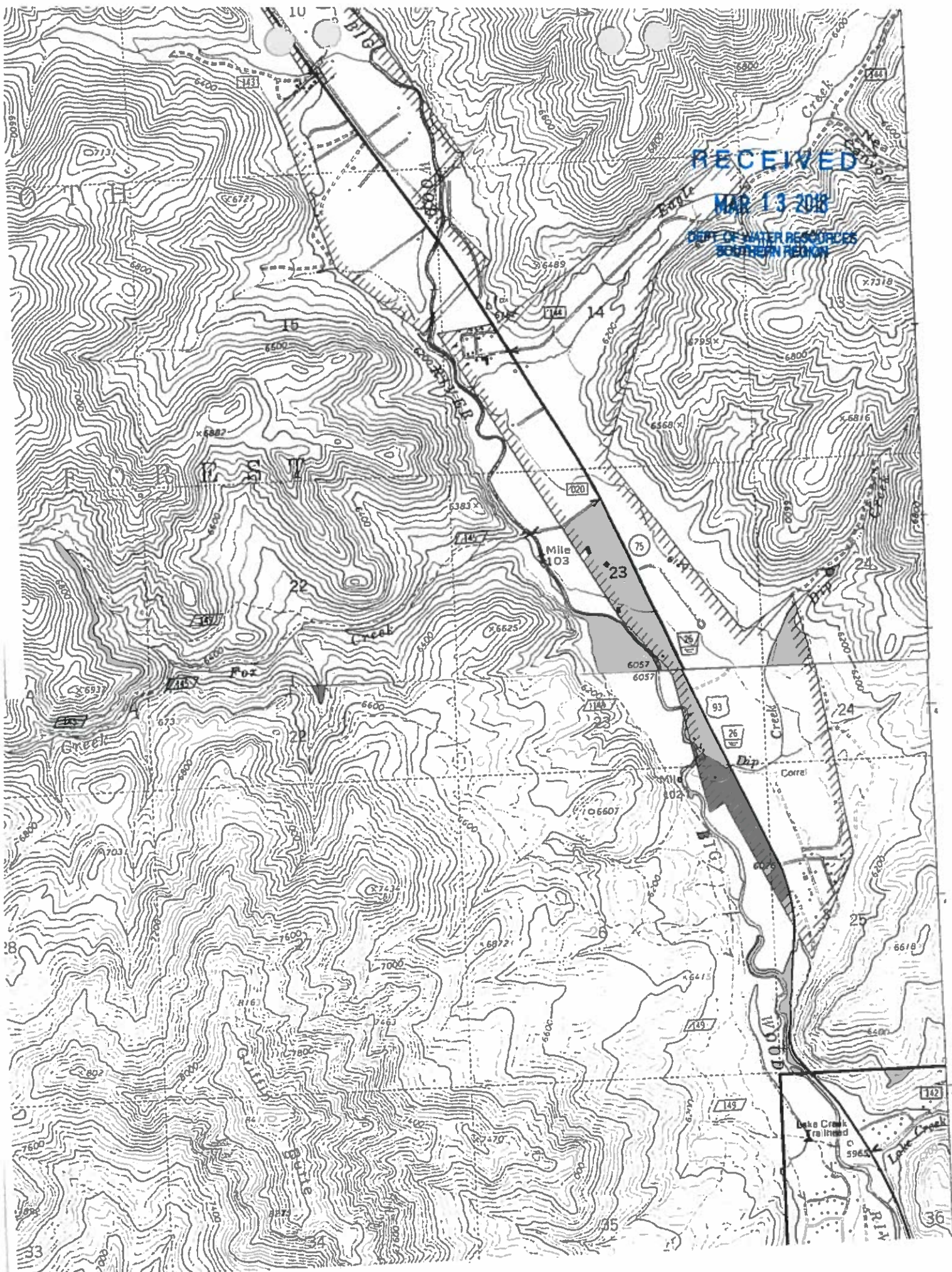


SEE SUPPLEMENTAL PLAT
No 1

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MAR 13 2018

DEPT OF WATER RESOURCES
SOUTHERN REGION



State of Idaho
Department of Water Resources
Application for Permit
RECOMMENDATION FORM

RECEIVED

MAR 05 2018

DEPT OF WATER RESOURCES
SOUTHERN REGION

Via E-mail

Application No.: 37-23099

Applicant's Name: HARTLEY ROGERS
610 FIFTH AVE STE 401
NEW YORK, NY 10020

Water Master's Recommendation:

a) _____ I do not oppose approval of this application.

b) X I do not oppose approval of this application if it is conditioned as follows:

Irrigation system is still not metered. Irrigation system will need to be metered separately from heating and cooling system, so 2 meters will need to be installed.

c) _____ I oppose approval of this application for the following reasons:

d) _____ Additional comments:

Dated this 5th day of ~~May~~ March, 2018

Water District No. 37

Kevin Lakey

Water Master's Signature

Kevin Lakey

Printed Name