

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 63-34429

Priority: August 10, 2017

Maximum Diversion Rate: 2.76 CFS

This is to certify, that HIGHLAND LIVESTOCK & LAND CO LTD
PO BOX 488
EMMETT ID 83617

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>
IRRIGATION	03/01 to 11/15	2.76 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER L4 (NW¼NW¼) Sec. 2, Twp 05N, Rge 04W, B.M. PAYETTE County

PLACE OF USE: IRRIGATION

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 04W 2					33.0	32.0			36.0	18.0							119.0
					L 4												
05N 04W 3	19.0																19.0
	L 1																

Total Acres: 138

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **October 01, 2022**.
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 4.5 afa per acre at the field headgate for irrigation of the place of use.
4. 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.
5. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
6. This right does not grant any right-of-way or easement across the land of another.
7. 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.

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8. 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 Section 42-204, Idaho Code.

Signed this 10 day of OCTOBER, 2017.

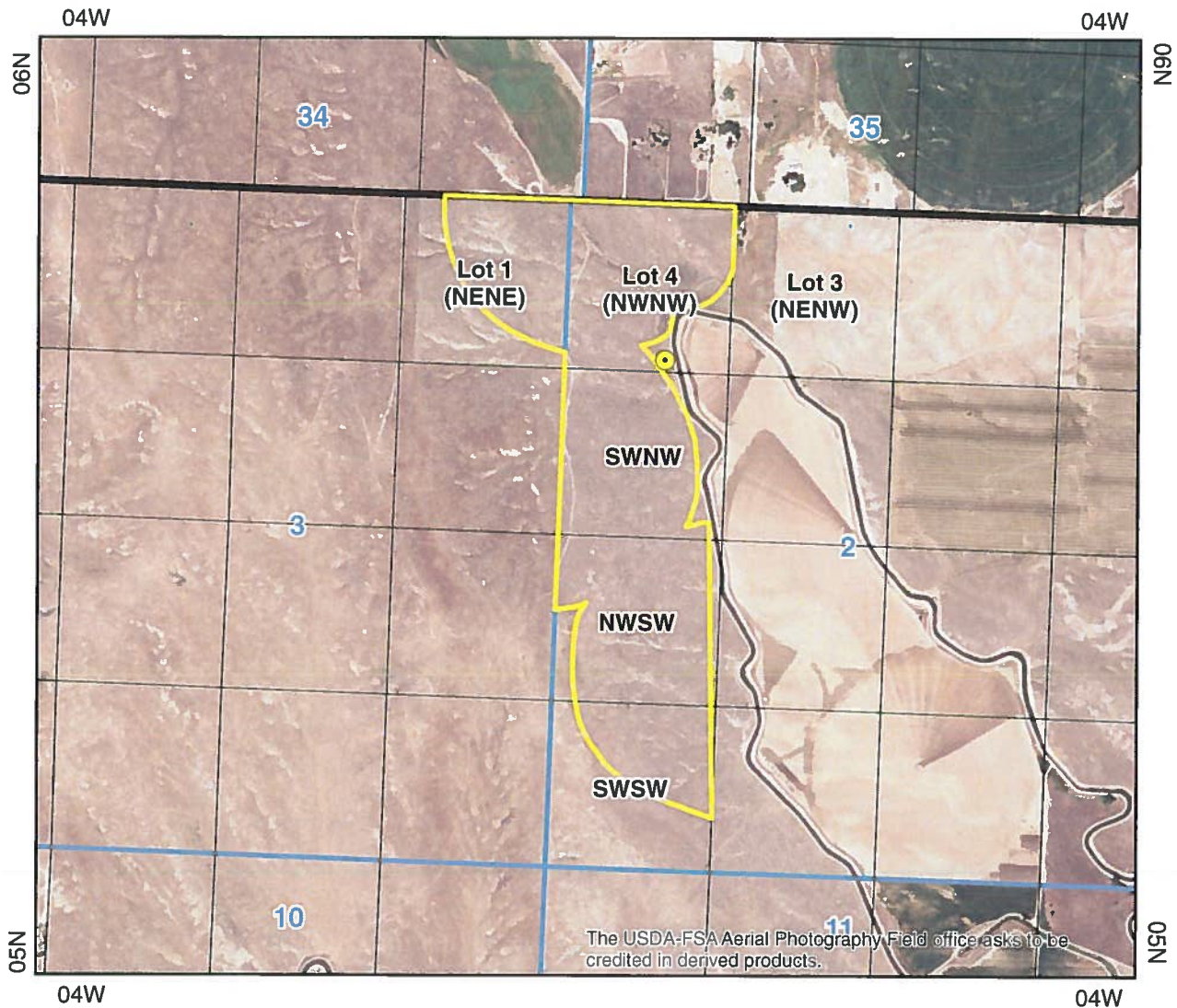

Angela M. Grimm
Water Rights Supervisor

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

63-34429

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.



0 0.15 0.3 0.6 Miles

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





State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

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

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

October 10, 2017

HIGHLAND LIVESTOCK & LAND CO LTD
PO BOX 488
EMMETT ID 83617

RE: Permit No.63-34429

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources 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 the Department pursuant to Section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date 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 water right permit were drilled or deepened after July 1, 1987, a separate drilling permit must be obtained from this Department. Please contact the Ground Water 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 mailing address to the Department within 120 days of the change. Failure 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 forms and instructions.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Rachel Neely for:", is written over a horizontal line.

Nick Miller
Western Regional Manager

Enclosure(s)

cc: ERO RESOURCES CORP

CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2017 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO.

63-34429

**ERO RESOURCES CORP
C/O DAVID SHAW
4001 E MAIN ST
EMMETT ID 83617**

**HIGHLAND LIVESTOCK & LAND CO LTD
PO BOX 488
EMMETT ID 83617**



**Rachel Neely
Administrative Assistant**

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.

MEMORANDUM

Date: September 27, 2017
To: Water Right File 63-34429
From: cparker
Re: Land Ownership

The applicant is Highland Livestock and Land Co. LTD. David Little, president of Highland Livestock, signed the application. The applicants answer to item 11 of the application suggests that Highland Livestock owns the place of use. However, the NWSW and SWSW of Section 2 are owned by Little Enterprises LTD Partnership. David Little is also a partner of this second entity. Therefore, it appears that the applicant has the authority to include the land in question in the place of use.

The following applications have been filed to appropriate the public waters of the State of Idaho:

63-34422

DON P HELSLEY
2491 TUNNEL RD
CALDWELL, ID 83607
Point of Diversion NWNE S13 T06N R04W
PAYETTE County Source
GROUND WATER

Use:

IRRIGATION 03/01 to 11/15 0.52 CFS

Total Diversion: 0.52 CFS

Date Filed: 7/21/2017

Place of Use: IRRIGATION

T06N R04W S13 NWNE

Total Acres: 26

Water bearing zone to be appropriated is from 100 to 350 feet.

63-34429

HIGHLAND LIVESTOCK & LAND CO LTD
PO BOX 488
EMMETT, ID 83617
Point of Diversion L4(NWNW) S2 T05N
R04W PAYETTE County Source
GROUND WATER

Use:

IRRIGATION 03/01 to 11/15 2.76 CFS

Total Diversion: 2.76 CFS

Date Filed: 8/10/2017

Place of Use: IRRIGATION

T05N R04W S2 L4(NWNW) SWNW NWSW
SWSW

T05N R04W S3 L1(NENE)

Total Acres: 138

Water bearing zone to be appropriated is from 50 to 500 feet.

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Western Region office at (208) 334-2190; or for a full description of the right(s), please see www.idwr.idaho.gov. Protests may be submitted based on the criteria of Idaho Code § 42-203A. Any protest against the approval of the application(s) must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 9/25/2017. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

Published on 9/6/2017 and 9/13/2017

Legal Number 95413
September 6, 13, 2017

TINA MARIE MARSING
Notary Public
State of Idaho

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO }

County of Payette }

Jone B Hansen

Of Payette, Payette County, Idaho, being

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 party to the above entitled action.
- 2) That I am the representative of the Independent Enterprise, a weekly newspaper published in the County of Payette and State of Idaho; that the said newspaper is in general circulation in the said County of Payette, and has been uninterruptedly published in said County 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 time(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:

September 6, 13, 2017

Legal # 95413

Public Water

Department of Water Resources

2735 Airport Way

Boise, ID 83705

Jone B Hansen

State of Idaho }

County of Payette }

On this 13th day of September in the year 2017
Before me a Notary Public, personally appeared.
Jone B Hansen, 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.

[Signature]

Notary Public for Idaho
Residing at Payette County
My Commission expires

7/24/23