

State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 63-34206

Priority: March 22, 2016

Maximum Diversion Rate: 0.03 CFS

This is to certify, that **HAWK STONE**
3921 W CATALPA DR
BOISE ID 83703

has applied for a permit to appropriate water from:

Source: WASTE WATER

Tributary: BOISE 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>
HEATING	01/01 to 12/31	0.03 CFS

LOCATION OF POINT(S) OF DIVERSION:

WASTE WATER	SW1/4NE1/4	Sec. 29,	Twp 04N,	Rge 02E, B.M.	ADA County
WASTE WATER	SW1/4NE1/4	Sec. 29,	Twp 04N,	Rge 02E, B.M.	ADA County
WASTE WATER	SW1/4NE1/4	Sec. 29,	Twp 04N,	Rge 02E, B.M.	ADA 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	
04N	02E	29														X	X		

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **March 01, 2020**.
2. Subject to all prior water rights.
3. Measuring devices of a type acceptable to the department shall be installed at the proposed points of diversion and the proposed discharge from the heating network. The measuring devices shall ensure that the identical quantity of water being diverted is discharging back to the ditch from which it was diverted. The right holder shall record such measurements and report them annually to Water District 63S.
4. Use of water under this right shall be non-consumptive.
5. This right shall be regulated by the Watermaster of Water District 63S. Regulation by the Watermaster includes unannounced inspections and measurement of the ground water diverted under right nos. 63-5195 from which waste water would be generated in the SW1/4NE1/4, Section 29, T4N, R2E (3611 Whitehead) and/or unannounced inspections and measurement of waste water diversion and beneficial use under this right.
6. The department shall issue a notice of violation and an order to show cause why this right should not be cancelled or revoked if the department determines any of the following:
 - (a) The right holder is consumptively using water under this right.
 - (b) Low temperature geothermal water is being delivered to the right holder without prior beneficial use of the low temperature geothermal water diverted under water right 63-5195, or that the beneficial use under 63-5195 is not reasonably efficient.
 - (c) The right holder is diverting or using water not in compliance with the conditions of this water right.

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7. Heating use is for 1 home and an associated greenhouse, agricultural outbuilding and snow melting on driveway.
8. 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 cease wasting water, to change the place of use or manner of wasting it, or to recapture it.
9. This right does not grant any right-of-way or easement across the land of another.
10. The points of diversion for this right shall be constructed as to incorporate an air gap between the discharge of the original appropriator(s) and the delivery system for this right to ensure a physical separation from the wastewater source.
11. The diversion and use of water described in this right may be subject to additional conditions and limitations agreed to by the protestants and the right holder under separate agreements 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 agreements not specifically addressed in other conditions herein. Enforcement of those portions of the agreements not specifically addressed in other conditions shall be the responsibility of the protestants and the water right holder.

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

Signed this 10th day of MARCH, 2017.



Nick Miller

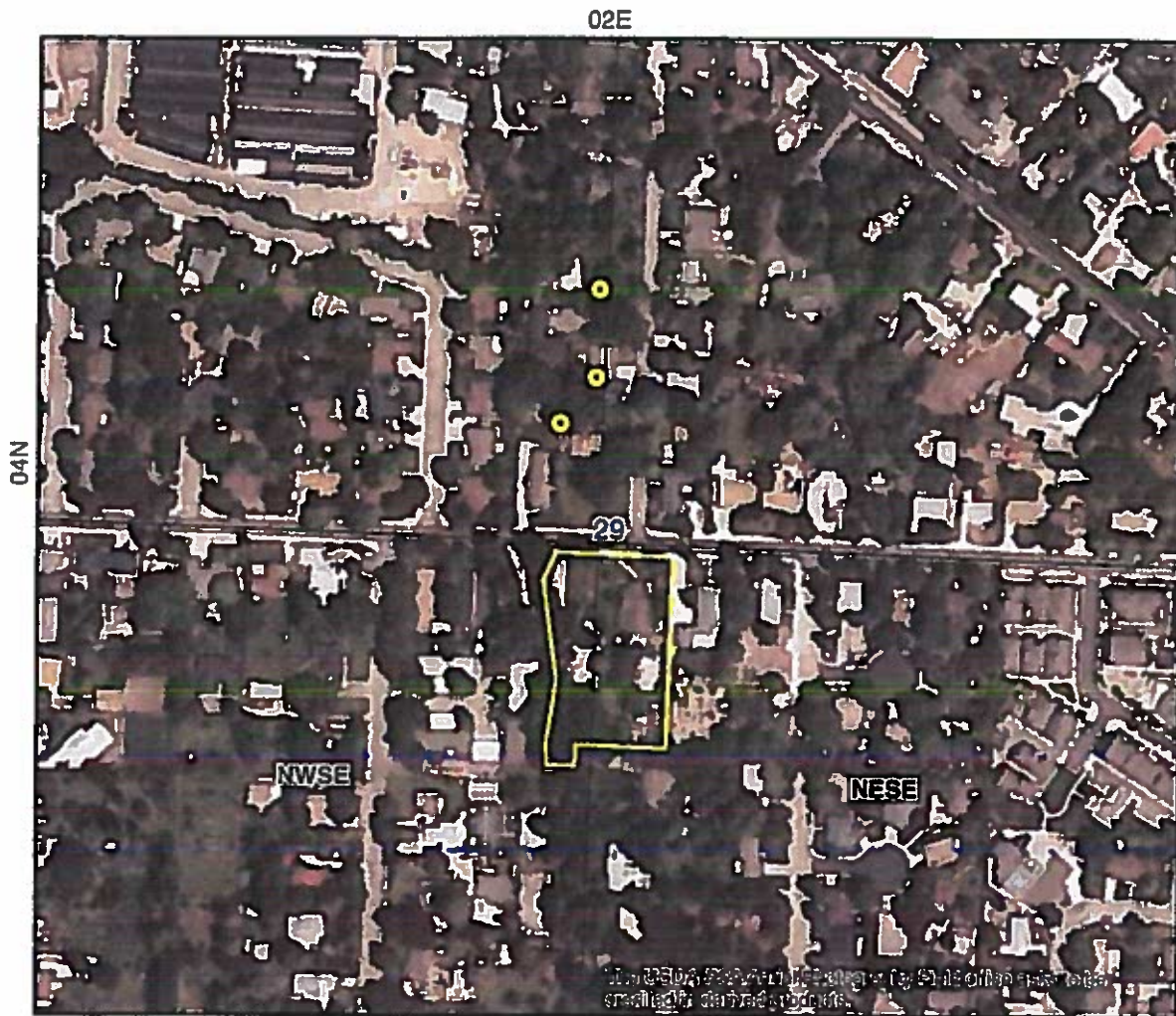
Manager, IDWR Western Region

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

63-34206

This map depicts the HEATING 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.





State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

March 10, 2017

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

HAWK STONE
3921 W CATALPA DR
BOISE ID 83703

RE: Permit No. 63-34206

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.

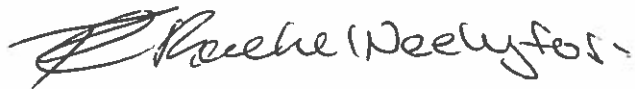
The Department will send you a 'Proof Due Notice' approximately 60 days prior to the above referenced date requesting you to file either a Proof of Beneficial Use form or a Request for Extension of Time form.

Please note that a separate stream channel alteration permit must be obtained from the Department prior to any activity in the stream channel other than construction or maintenance of the diversion structure for your water right(s). Applications for stream channel alteration permits must be filed at least sixty days prior to the commencement of work in the stream.

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 "Nick Miller". The signature is stylized with a large, sweeping initial "N" and "M".

Nick Miller
Western Regional Manager

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on March 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.

63-34206

**HAWK STONE
3921 W CATALPA DR
BOISE ID 83703**

**KEN NEELY
WATERMASTER OF DISTRICT 63S
IDWR STATE OFFICE**



**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.

Miller, Nick

From: Charles Honsinger <honsingerlaw@gmail.com>
Sent: Thursday, March 02, 2017 9:40 PM
To: Miller, Nick
Cc: Dana Hofstetter; Hawkstone1@gmail.com
Subject: Re: 63-34206 - Hawk Stone [IWOV-DMSMSG1.FID796903]

Nick: The draft is acceptable to my client. Thanks.

Charlie

Sent from my iPhone

On Mar 2, 2017, at 6:04 PM, Miller, Nick <Nick.Miller@idwr.idaho.gov> wrote:

Dear parties,

On February 14, 2017 I mailed each of you a copy of a draft approval for Mr. Stone's application 63-34206. On March 1, 2017 I received a fax copy of the attached comments from Ms. Hofstetter. I spoke with her and Mr. Stone and then incorporated the comments into the attached draft approval. Because the changes are very minor and are in line with the stipulations, I expect you all can review the attached draft approval relatively quickly and I can issue a preliminary order approving the application early next week. If I hear back from all three of you and there are no changes, I can issue it as early as Monday, but if I don't hear from you I'll wait until the end of the day on Tuesday for comments and sign it Wednesday morning.

Thanks,

Nick.

From: Dana Hofstetter [<mailto:DHofstetter@hawleytroxell.com>]
Sent: Thursday, March 02, 2017 3:54 PM
To: Miller, Nick <Nick.Miller@idwr.idaho.gov>
Subject: 63-34206 - Hawk Stone [IWOV-DMSMSG1.FID796903]

Nick,

As a follow up to our telephone conversation this morning, Edwards is ok with 3 points of diversion on the Permit along with the air gap requirement.

Thank you,

DANA L. HOFSTETTER
Of Counsel
direct 208.388.4867
fax 208.954.5943
www.HawleyTroxell.com
HAWLEY TROXELL
Attorneys and Counselors

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<63-34206draft approval.pdf>

<Comments.pdf>

Miller, Nick

From: Hawk Stone <hawkstone1@gmail.com>
Sent: Thursday, March 02, 2017 8:36 PM
To: Miller, Nick
Cc: Dana Hofstetter; Charles Honsinger (honsingerlaw@gmail.com)
Subject: Re: 63-34206 - Hawk Stone [IWOV-DMSMSG1.FID796903]

Mr. Miller,

The stipulations are acceptable to me.

Sincerely,

Hawk Stone

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Nick.

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DANA L. HOFSTETTER

Of Counsel

direct [208.388.4867](tel:208.388.4867)

fax [208.954.5943](tel:208.954.5943)

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Attorneys and Counselors

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Miller, Nick

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ATTORNEYS AND COUNSELORS

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DIRECT FAX: 208-954-4867

RECEIVED

MAR 02 2017

WATER RESOURCES
WESTERN REGION

February 28, 2017

Nick Miller
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

VIA U.S. MAIL AND
FACSIMILE (208-334-2348)

Re: *Application for Permit No. 63-34206*

Dear Mr. Miller:

On behalf of Edwards Family LLC, I hereby submit the following comments regarding draft Permit No. 63-34206 that you provided with your letter of February 14, 2017:

1. Three (3) points of diversion are listed on the draft Permit, although I recall Mr. Stone stating that he would only take waste water from the Johnson home, not the other two homes. This reduction to one (1) point of diversion was reflected in the second amended application Mr. Stone submitted to IDWR on June 17, 2016. It is noted that Condition 3 reflects a single point of diversion, referring to "point of diversion," instead of "points of diversion."
3. Condition 10 should be revised to refer to "Protestants," rather than "Protestant."
4. There is no condition addressing the stipulated requirement that "Stone's diversion system shall incorporate an air gap to ensure physical separation from the waste water discharge source." This key condition should be added to the Permit to ensure that the new diversion system is not considered part of the Niznik system.

Thank you for the opportunity to submit these comments. Please contact me if you have any further questions or need further information. Thank you.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY LLP



Dana L. Hofstetter

DH:tas