

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 63-33745

PRIORITY: February 15, 2013

Maximum Diversion Rate: 1.60 CFS
Maximum Diversion Volume: 360.0 AF

It is hereby certified that:

LITTLE ENTERPRISES LLLP PO BOX 488 EMMETT ID 83617

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated February 15, 2013, and has submitted Proof of Beneficial Use on July 27, 2016. An examination confirms water is diverted from:

SOURCE:
GROUND WATER

TRIBUTARY:

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
IRRIGATION	03/01 to 11/15	1.60 CFS	360.0 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER NE¼SW¼ Sec. 19, Twp 05N, Rge 01W, B.M. ADA County
GROUND WATER NE¼NW¼ Sec. 19, Twp 05N, Rge 01W, B.M. ADA County
GROUND WATER NE¼NW¼ Sec. 25, Twp 05N, Rge 02W, B.M. CANYON 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	01W	17				36.0					37.0	37.0	6.0	11.0	34.0	34.0	24.0	29.0	248.0
05N	01W	18													7.0		9.0	12.0	28.0
05N	01W	19	4.0	17.0															21.0
05N	02W	24											3.0	23.0					26.0
05N	02W	25					22.0	37.0											59.0
05N	02W	26				39.0									39.0				78.0

Total Acres: 460

CONDITIONS OF APPROVAL

1. This right is limited to the irrigation of 80 acres within the authorized place of use in a single irrigation season.
2. Rights 63-33481, 63-33745 and 63-33885 when combined shall not exceed a total irrigation of 460 acres.
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

State of Idaho
Department of Water Resources
Water Right License
WATER RIGHT NO. 63-33745

of water diverted and shall annually report the information to the Department.

5. This right does not grant any right-of-way or easement across the land of another.
6. When ordered by the Director, the right holder shall provide mitigation acceptable to the Director to offset depletion of lower Snake River flows needed for migrating anadromous fish. The amount of water required for mitigation, which is to be released into the Snake River or a tributary for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this right. Any order of the Director issued in accordance with this paragraph shall be in conformance with applicable rules allowing the right holder due process as the need for mitigation and the amount of mitigation are determined.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed this 23rd day of November, 2016.


Nick Miller
Manager, IDWR Western Region



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

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

November 23, 2016

LITTLE ENTERPRISES LLLP
PO BOX 488
EMMETT ID 83617

RE: License No. 63-33745

Amended Issuance of License

Dear Water Right Holder(s):

The Department of Water Resources has issued the enclosed Amended Water Right License confirming that a water right has been established in accordance with your permit. Please be sure to thoroughly review the conditions of approval and remarks listed on your license.

The license 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.

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,

 Rachel Neely for:

Nick Miller

Western Regional Manager

Enclosure(s)

cc: ERO RESOURCES CORP

CERTIFICATE OF SERVICE

I hereby certify that on November 23, 2016 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(AMENDED Approved License) to the person(s) listed below:

RE: WATER RIGHT NO.

63-33745

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

**LITTLE ENTERPRISES LLLP
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

TO: Water right file 63-33481, 63-33745 & 63-33885
FROM: Patrick Kelly, Water Resource Agent
DATE: November 23, 2016
SUBJECT: Amended License and Field Exam Review

On November 7, 2016 licenses were issued for the above-referenced water right permits. After receiving a copy of the licenses, Dave Shaw called the IDWR Western Regional office with a concern over the licensed amounts. After discussing the field exam with Mr. Shaw, it became apparent the field exam was incorrectly interpreted by reviewing staff. The licenses were issued for a lesser amount than appropriate based on the incorrect interpretation. Amended licenses were issued today.

The original review memo, dated August 26, 2016 incorrectly states the measurement by Mr. Shaw of 9.47 cfs represents the total system capacity. In fact, that measurement only represents the capacity of the two new wells since neither the third well nor the backup irrigation well were measured during the field exam. The measured "four points" referenced in the memo were all measuring rate from two wells and did not represent measurement of four wells. These updates are incorporated in the remaining portion of this memorandum and this memorandum replaces that dated August 26, 2016.

Revised Review Memo:

On July 27, 2016 the department received Proof of BU, Assignment of Permit, Licensing Amendments, a field exam report for water permits 63-33481, 63-33745 & 63-33885 and a POD transfer for 63-3173, 63-7140 & 63-18509. The field exam on July 19, 2016 and applications were completed by David Shaw of ERO Resources Corp.

I have reviewed the field exam that was submitted and find it to be complete and free of errors. The field exam recommended a diversion rate of 8.68 cfs and 2,070 af on 460 acres for irrigation use. My review of the field exam is as follows:

Current County taxlot data shows property ownership in the name of Current Owners Little Enterprises LLLP and Highland Livestock & Land Co LTD. The Assignment of Permit form was received to Little Enterprises LLLP for 63-33481. No further action is required and all three permits will be licensed in the name of Little Enterprises LLLP.

The 3 permits combined authorize the irrigation of 460.5 acres. ArcMap measuring tools were used to confirm a 460 acre POU exists. A place of use overlap review finds 7.2 acres of irrigation use in the SESW Sec 24, Twn 5 N Rge 2 W for active ground water rights 63-7140, 63-3173 & 63-18509. The licensing amendment describing the POU for the 3 permits recommends a 23 acre POU in the QQ described above. Looking at the digital imagery, comparing POU boundaries and county taxlot data review, it is found that the 23 acres recommended by the field exam is NOT an overlap of the existing 7.2 acres. 7.2 acres covers a pivot on the east side of the SESW QQ, and is not a part of the field exam's recommended POU boundary.

The diversions were measured at two wells labeled 'new 1' and 'new 2' using a Polysonics flow meter. A third irrigation well is maintained on the system and has historically delivered water

rights 63-3173, 63-7140 & 63-18509. The field exam measured 4 points on the two 'new' wells totaling 4,248 gpm or 9.47 cfs. The field examiner suggested a diversion rate of 8.68 cfs to reflect the sum of maximum diversion rates of all 3 permits. This recommendation lies within the standard rate per acre limit. Annual volume was calculated at 2,070 afa using the standard V_{IR} formula. The math was double checked for accuracy and no errors were found.

Review of 63-3173, 63-7140 & 63-18509 water records finds a combined use limit of 3.28 cfs, 1,134 af and 252 acres. The 3.28 cfs limit was measured in 1974 during a field exam for 63-7140. The third well is connected to the system but was not measured by Dave Shaw during his examination of the system. The department can assume that the third well is still capable of delivering the existing water rights, and that the 9.46 cfs measured from the two new wells are more than capable to produce the limits of the three permits totaling 8.68 cfs.

Permits 63-33481, 63-33745 & 63-33885	8.68 cfs
B.U. Standard Allowance	9.20 cfs
B. U. Proof Fee	\$0 → Not required
Measurement or Theoretical Rate	9.47 cfs
License Recommendation	8.68 cfs

63-33481:

Volume: $111 \text{ ac} * 4.5 \text{ af/ac} = 499.5 \text{ af}$ < $2.23 \text{ cfs} * 260 \text{ d} * 1.9835 = 1,150 \text{ af}$

63-33745:

Volume: $80 \text{ ac} * 4.5 \text{ af/ac} = 360 \text{ af}$ < $1.60 \text{ cfs} * 260 \text{ d} * 1.9835 = 825.1 \text{ af}$

63-33885:

Volume: $269 \text{ ac} * 4.5 \text{ af/ac} = 1,210.5 \text{ af}$ < $4.85 \text{ cfs} * 260 \text{ d} * 1.9835 = 2,501.2 \text{ af}$

Volume Recommendation	2,070 af
-----------------------	----------

Total diversion = 8.68 cfs, 2,070 af, 460 ac

A licensing amendment was submitted to reflect a 460 acre PPU for all three of the rights. This creates an acre limit for each right, but the sum of which equals all land currently irrigated within the PPU.

Season of use for 63-33885 was applied for and permitted from 3/15 to 11/15. Both at the time the application was permitted and current season of use boundaries for irrigation use within the POU is 3/1 to 11/15. It seems that this was overlooked and signed in error since no information in the backfile can be found to provide any reasoning why 3/15 was issued.

Standard conditions on the permit are being carried over to license. X27 will be added to each right to reflect the acre limit of each right.