

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 63-32966

Priority: January 29, 2008

Maximum Diversion Volume: 74.1 AF

This is to certify, that HARRIS FAMILY LTD PARTNERSHIP
4940 E MILL STATION RD
BOISE ID 83716

has applied for a permit to appropriate water from:

Source: GROUND 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>	<u>ANNUAL VOLUME</u>
AESTHETIC STORAGE	01/01 to 12/31		74.1 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	L4 (NE1/4SW1/4)	Sec. 19, Twp 03N, Rge 03E, B.M., ADA County
GROUND WATER	SW1/4SE1/4	Sec. 19, Twp 03N, Rge 03E, B.M., ADA County
GROUND WATER	SW1/4SE1/4	Sec. 19, Twp 03N, Rge 03E, B.M., ADA County

PLACE OF USE: AESTHETIC STORAGE

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
03N	03E	19																	

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **June 01, 2014**.
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. Water bearing zone to be appropriated is from 1 to 25 feet.
5. The ponds established by the storage of water under this right shall not exceed a total capacity of 74.1 af or a total surface area of 5.6 acres.

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6. Use of water under this right will 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. 63, Boise, River.
7. To mitigate for the depletion of water resulting from the use of water under this right and to prevent injury to senior water right holders, the right holder shall cease diverting and using water as authorized by the following water rights for the purposes and amounts specified below. Moreover, the official record for the following water right will be changed to show that diversion and use of water is not authorized because the rights, or portion thereof, are being dedicated to mitigation purposes.

Right No.	Use Changed to Mitigation	Mitigation Rate (cfs)	Mitigation Volume (AF)	Mitigation Acres
63-365	Irrigation	0.11	25.2	5.6
63-2973	Irrigation	0.10	25.2	5.6

The land that will no longer be irrigated under this right is located within Government Lot 4 (NESW) and SWSE, Section 19, township 03N, Range 03E, B.M.

If the specified mitigation right, or portion thereof, is sold, transferred, leased, used on any place of use, or is not deliverable due to a shortage of water or a priority call, then the amount of water authorized for diversion under this permit approval shall be reduced by the same proportion as the reduction to the mitigation rights.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 9th day of June, 20 09.


for JOHN WESTRA, Western Regional Manager



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

DAVID R. TUTHILL, JR.
Director

June 10, 2009

HARRIS FAMILY LTD PARTNERSHIP
4940 E MILL STATION RD
BOISE ID 83716

RE: Permit No. 63-32966
Transfer No.: 74506
Water Right No(s): 63-2973 63-7103

Permit and Transfer Approval Notice

Dear Permit Holder, Water Right Holder and other Interested Persons:

The Department of Water Resources has issued the enclosed permit authorizing you to establish a new water right and an approved Transfer. Please be sure to thoroughly review the conditions of approval and remarks listed on the approved document.

The permit and transfer are PRELIMINARY ORDERS 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 or the APPLICANT, in the case of the transfer, 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.

ANY PERSON aggrieved by any decision, determination, order or action of the Department on this transfer 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 Department and requesting a hearing shall be filed within fifteen (15) day after receipt of the denial or conditional approval of transfer.

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 on Permit No. 63-32966 is the date when the project must be completed.

The Department will send you a 'Proof Due Notice' approximately 60 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 on the permit.

The right to drill a well is not a part of the 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.

Permit No. 63-32966 is based on a mitigation plan that has been incorporated into approval of Transfer 74506. The transfer authorizes non-mitigation changes to rights 63-2973 and 63-7103. The mitigation plan further changes right 63-2973 and also changes associated right 63-365. Additionally, associated right 63-8627 is affected by changes to 63-365. Collectively, the transfer and mitigation plan affect rights 63-365, 63-2973, 63-7103 and 63-8627.

It would be confusing to approve the transfer followed by a separate approval of the mitigation plans. Instead, changes to the mitigation rights have been listed in the transfer approval to create a single approval document affecting all four of the older rights.

Please note that water right owners are required to report and 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 www.idwr.idaho.gov to obtain the proper forms and instructions.

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

Sincerely,



for John Westra
Western Regional Manager

Enclosure

Cc: ERO RESOURCES CORP

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2009 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER (Approved Permit) and TRANSFER APPROVAL to the person (s) listed below:

RE: WATER RIGHT NO.	63-32966
TRANSFER NO.	74506
WATER RIGHT NOS.	63-2973, 63-7103

**HARRIS FAMILY LTD PARTNERSHIP
4940 E MILL STATION RD
BOISE ID 83716**

**ERO RESOURCES CORP
C/O STEVE HANNULA
3314 GRACE ST
BOISE ID 83703**



**Jean Hersley
Office Specialist II**

Statement of Available Procedures and Applicable Time Limits

RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES (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 issuance 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.

Idaho Statesman

RECEIVED

P.O. BOX 40, BOISE, ID 83707-0040

FEB 13 2009

LEGAL PROOF OF PUBLICATION

Account #	DTI#	Identification	Amount:
47626	420936	LEGAL NOTICE HARRIS FAMILY LTD PARTNERSHIP	\$165.00
Attention:	P.O. #	Run Dates	
DENISE BUFFINGTON		FEBRUARY 5, 12, 2009	
IDAHO DEPARTMENT OF WATER RESOURCES WEST 2735 AIRPORT WAY BOISE, ID 83705		Number of Lines	
		2 X 40	
		Affidavit	Legal #
		1	

WATER RESOURCES
WESTERN REGION

JANICE HILDRETH, being duly sworn, deposes and says: That she is the Principal Clerk of *The Idaho Statesman*, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in *The Idaho Statesman*, in conformity with Section 60-108, Idaho Code, as amended, for:

TWO

☒ X	consecutive weekly	☐	single
☐	consecutive daily	☐	odd skip
insertion(s)			
beginning issue of:		FEBRUARY	5, 2009
ending issue of:		FEBRUARY	12, 2009

Janice Hildreth

STATE OF IDAHO)
 .ss
COUNTY OF ADA)

On this 12 day of FEBRUARY in the year of 2009
before me, a Notary Public, personally appeared before me
Janice Hildreth known or identified to me to be the person
whose name subscribed to the within instrument, and being
by me first duly sworn, declared that the statements therein
are true, and acknowledged to me that she executed the same

Notary Public for Idaho
Residing at: Boise, Idaho
My Commission expires

Janice Hildreth

5/23/10

✓ OK

LEGAL NOTICE

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

63-32966

HARRIS FAMILY LTD PARTNERSHIP

4940 E MILL STATION RD

BOISE ID 83716

Point(s) of Diversion L4 (NESW) S19 T03N R03E

ADA County Source GROUND WATER

Tributary To BOISE RIVER

Point(s) of Diversion SWSE S19 T03N R03E ADA County

Source GROUND WATER

Tributary To BOISE RIVER

Point(s) of Diversion SWSE S19 T03N R03E

ADA County Source GROUND WATER

Tributary To BOISE RIVER

Use: AESTHETIC STORAGE 01/01 To 12/31 74.1 AFA

Total Diversion: 74.1 AFA

Date Filed: 01/29/2008

Place Of Use: AESTHETIC STORAGE

T03N R03E S19 NESW Lot 4 SWSE

Remark: Excavation of shallow ground water tributary to the Boise River is proposed for 3 small ponds between Warm Springs Avenue and the river near the new Parkcenter Blvd. bridge site. Water bearing zone to be appropriated is from about 1 to 25 feet. Mitigation to protect senior river water rights is proposed for evaporation losses from the ponds by retiring about 6 acres of irrigation under a 1953 water right from the Golden Dawn Well (ponds will replace irrigation on proposed site). The well is about 3 miles east of the proposed site. The shallow well is also considered tributary to the river.

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code.

Any protest against the approval of this application must be filed with the Director, Dept. of Water Resource, Western Region, 2735 Airport Wy, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 02/23/2009. The protestant must also send a copy of the protest to the applicant.

DAVID R. TUTHILL, JR., Director

Pub. Feb. 5, 12, 2009

0000420936-01

✓ OK DB 2/27/09