



State of Idaho

DEPARTMENT OF WATER RESOURCES

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BRAD LITTLE
Governor

GARY SPACKMAN
Director

May 28, 2021

EDEN'S GATE LLC
3150 ECHO RD
NYSSA OR 97913-5022

RE: In The Matter of Applications for Permit No. 63-34832 through 63-34838 and 63-34840 through 63-34846, all in the name Of Eden's Gate LLC

Dear Permit Holder:

The accompanying order is a "**preliminary order**" issued by the department pursuant to Rule 730 of the department's Rules of Procedure (IDAPA 37.01.01). It can and will become a final order without further action of the department unless any party petitions for reconsideration within fourteen (14) days after issuance as described in the enclosed information sheet.

If you have any questions regarding this matter, please call me at 208-287-4947.

Sincerely,

Nick Miller
Manager, IDWR Western Region

Enclosure(s)

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATIONS)	
FOR PERMIT No. 63-34832 THROUGH)	PRELIMINARY ORDER PARTIALLY
63-34838 AND 63-34840 THROUGH)	APPROVING APPLICATIONS
63-34846 ALL IN THE NAME OF)	
EDEN'S GATE LLC)	
_____)	

PROCEDURAL HISTORY

On January 2, 2020, One More Mile, LLC (“OMM”) filed *Applications for Permit to Appropriate Water No. 63-34832 through 63-34838, and 63-34840 through 63-34846* (“Applications”) with the Idaho Department of Water Resources (“Department”). The Department published notice of each of the 14 applications in the Idaho Press-Tribune for two consecutive weeks on January 16 and January 23, 2020. Farmers Co-Operative Ditch Company (“FCDC”) timely protested each of the applications.

On March 19, 2020, the Department held a pre-hearing conference at which OMM and FCDC did not resolve the issues of protest and requested the Department hold a hearing to decide the contested cases. On April 6, 2020, the Department’s hearing officer (“Hearing Officer”) issued the *Order Consolidating Matters for Hearing, Notice of Hearing, and Scheduling Order* (“Consolidation Order”) consolidating the Applications for hearing and establishing a hearing schedule.

On June 15, 2020, the Hearing Officer conducted an administrative hearing for the protested Applications at the Department’s main office in Boise. Attorney Albert Barker represented OMM at the hearing. Attorney Bryce Farris represented FCDC at the hearing.

The Hearing Officer admitted exhibits offered by OMM and FCDC into the administrative record.¹ The Hearing Officer also took official notice of the Applications and associated documents identified in the Consolidation Order, past Department orders and decisions, reports, measurements, stream flow records, and well driller reports, all from the Department’s records pursuant to IDAPA 37.01.01.602. Craig Froerer (OMM member), Alan Mills and Matt Wilke (Mills & Co. Realty, Inc.), Lori Graves (SPF Water Engineering, LLC), Tom Johnston (FCDC Board Member), and Rod Nielson (FCDC President) testified at the hearing.

On July 28, 2020, OMM filed *Notice of Assignment of Application* (“Assignment”) and submitted the appropriate Department form assigning all 14 applications to Eden’s Gate LLC (“EG”). With the Assignment, OMM filed *Declaration of Madison Richards* (“EG Declaration”). Madison Richards is an original governor of EG. *EG Declaration* at 1. Also on

¹ The following exhibits were admitted into the record: 1-11, 13-14, 16, 19, 24, 26, 28, 29, 103, 105, 107, 109, 112-118, and 121.

July 28, 2020, FCDC filed *Protestant Farmers Co-Operative Ditch Company's Response to Notice of Assignment of Applications* ("FCDC Assignment Response").

On July 29, 2020, OMM filed *One More Mile LLC's Response to Farmer's Co-Op's Objection to Notice of Assignment of Application for Permit*.

Although the Hearing Officer closed the administrative record at the conclusion of the hearing, the Department's Water Appropriation Rules require OMM to notify the Department of the assignment and include evidence that the application was not filed for speculative purposes. See IDAPA 37.03.08.035.02.d and 37.03.08.035.04.f. Both OMM and FCDC have submitted responses to the Assignment. The Assignment and associated documents conveyed all interest in the Applications and ownership of the land to EG, and demonstrate EG has similar intentions as those demonstrated by OMM. OMM was the owner at the time of hearing and participated in the hearing to develop a record for decision. Although EG is now the applicant, the decision is based on the information in the record provided by OMM. However, the assignment of the applications and the change in ownership of the Applications' place of use cannot be disregarded by the Hearing Officer as these transactions may change the analysis of facts already in the record. The Hearing Officer considered the impact of the Assignment, as appropriate, in evaluation of the criteria in this decision.

After carefully considering the evidence in the record, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. OMM filed 14 Applications to divert ground water for domestic and irrigation purposes on 14 separate land parcels located within River Bluff Development near Fruitland in Canyon County. Exhibit 4 at 4. Table 1 summarizes the Applications.

IDWR Application Number	Proposed Priority Date	Domestic Rate (cfs)	Irrigation Rate (cfs)	Total Rate (cfs)	Proposed Acres	Parcel
63-34832	01/02/2020	0.04	0.07	0.11	2.3	11
63-34833	01/02/2020	0.04	0.05	0.09	1.5	12
63-34834	01/02/2020	0.04	0.07	0.11	2.3	13
63-34835	01/02/2020	0.04	0.05	0.09	1.5	14
63-34836	01/02/2020	0.04	0.06	0.10	1.9	15
63-34837	01/02/2020	0.04	0.04	0.08	1.3	16
63-34838	01/02/2020	0.04	0.05	0.09	1.5	17
63-34840	01/02/2020	0.04	0.05	0.09	1.5	4
63-34841	01/02/2020	0.04	0.06	0.10	2.1	5
63-34842	01/02/2020	0.04	0.05	0.09	1.5	6
63-34843	01/02/2020	0.04	0.07	0.11	2.2	7
63-34844	01/02/2020	0.04	0.05	0.09	1.5	8
63-34845	01/02/2020	0.04	0.07	0.11	2.2	9
63-34846	01/02/2020	0.04	0.05	0.09	1.5	10
Total		0.56	0.79	1.35	24.8	

Table 1: Summary of Applications.

2. The irrigation place of use for each application is the total acreage of the parcel less 0.5 acres for buildings and other hardscape. Exhibit 11 at 6.
3. OMM requests the use of ground water as the sole source of water for irrigation of the proposed places of use and proposes to cease use of surface water. Exhibit 4 at 2.
4. The Applications propose construction of a single, six-inch diameter well, 200 feet (ft) in depth, per parcel. The proposed water bearing zone for each well is 40 to 200 ft below ground surface (bgs). Exhibit 4 at 1-2.
5. OMM hired Adamson Pump & Drilling to construct a domestic well ("Test Well") on Lot 8, Block 1 of the Orchard Tract.² The Test Well is completed to a depth of 154 ft bgs and is screened from 144 ft to 154 ft. The static water level of the well was 45 ft bgs with water first encountered at 35 ft bgs. The pump test conducted by the well driller yielded a discharge of 50+ gallons per minute (gpm) with 75 ft of drawdown. Exhibit 7.
6. Yield from the Test Well is 50+ gpm or 0.11+ cfs, which is greater than the largest total diversion rate proposed under any one of the Applications.
7. There are 37 wells within a half-mile radius of the Applications' proposed points of diversion. Of the 37 wells, 36 were permitted for domestic use, and one was for irrigation use. The well depths range from 27 ft bgs to 208 ft bgs. The static water levels range from 3 ft bgs to 99 ft bgs. The yields range from 15 gpm³ to 100 gpm. Exhibit 8.
8. Hydrographs for four wells in the lower Boise River drainage show stable water levels with no indication of ground water declines. The nearest of these four wells is approximately five miles from the Applications' points of diversion. Exhibit 9.
9. Developing residential use increases Canyon County tax revenues. Testimony of Alan Mills.
10. Road, phone, power, and utility infrastructure is already constructed to allow for residential development of the Applications' proposed points of diversion and places of use. Testimony of Alan Mills.
11. As of June 15, 2020, eight of the 14 parcels proposed for residential development under the Applications were for sale. There are no additional Canyon County approvals necessary to list the remaining parcels for sale. Testimony of Matt Wilke.
12. As of June 15, 2020, one of the parcels was pending sale contingent upon the outcome of the Applications. Testimony of Matt Wilke.
13. OMM intended for the buyer of each parcel to bear the costs of drilling the wells proposed by the Applications. The cost to install a pressurized irrigation system, if required, would initially be borne by the developer, but ultimately passed on to the buyer. Testimony of Alan Mills. Similarly, EG's intent is to "sell the lots with their respective permits." EG Declaration. It is reasonable to conclude EG also intends for

² This location is referred to as Parcel 16 on Application for Permit to Appropriate Water No. 63-34837.

³ Exhibit 8 contains a record of a well for Grant Peterson (Map No. 27) reporting 0 gpm production. Department records suggest this is a typographical error as the well construction report for the well lists a pump test rate of 20 gpm.

the cost of well construction and permit development to ultimately be borne by the buyers.

14. The Applications state the points of diversion and places of use are owned by OMM. Exhibit 4 at 2. As of June 15, 2020, the points of diversion and property underlying the places of use were owned by OMM. Testimony of Craig Froerer. On July 28, 2020, the Department received notification the Applications' points of diversion and the property underlying the places of use were owned by EG. EG Declaration at 1. A deed included with the Assignment shows the property was conveyed to EG on July 22, 2020, approximately one month after the hearing.
15. The Applications' places of use are within the FCDC service area ("FCDC Service Area"). See water right nos. 63-138C, 63-188, 63-189, 63-190, 63-191, 63-296, 63-4851, 63-4852, 65-66, and 65-67.
16. FCDC, a cooperative ditch company, originated in 1902 when settlers purchased water rights and created the company to issue stock to private landowners for the use of those water rights. Exhibit 13 at 7.
17. Article V, Section 3 of *Farmers Coop Amended By-Laws* dictates that FCDC issue shares of the capital stock. These shares entitle the shareholder to "the perpetual and equitable right to the [FCDC's] available water supply, water rights and irrigation system" Exhibit 16 at 5.
18. OMM is the holder of 64 shares of FCDC capital stock. Exhibit 10.
19. The 64 shares of FCDC capital stock entitle OMM to irrigate up to 128 acres of land. Testimony of Tom Johnston.
20. OMM retained ownership of the 64 FCDC shares when it conveyed the Applications' points of diversion and property underlying the places of use to EG. Assignment at 1.
21. As of June 15, 2020, OMM owned 112 acres of land within the FCDC Service Area. OMM has historically diverted water from the FCDC delivery system to irrigate 89 of the 112 acres owned by OMM. OMM does not own any additional land within the FCDC Service Area. Testimony of Craig Froerer.
22. In 2018 and 2019, OMM used water from the FCDC delivery system to drip-irrigate sweet potatoes on the Applications' proposed places of use. In 2020, OMM used water from the FCDC delivery system to irrigate sugar beets on a portion of the Applications' proposed places of use. Testimony of Craig Froerer.
23. On June 1, 2020, OMM and JC Watson Company ("Watson") entered into a *Contract for Purchase and Sale of Water Shares* ("Agreement"). The Agreement states OMM will transfer 14 of its 64 FCDC shares to Watson "upon final approval of the ground water rights [Applications] for the 14 lots [Applications' place of use]." Exhibit 29 at 1.
24. As a FCDC shareholder, OMM is subject to the FCDC Amended By-Laws. Testimony of Craig Froerer.
25. Article II, Section 2, paragraph d. of *Farmers Coop Amended By-Laws* states the FCDC board of directors can adopt rules and regulations for the conduct and business affairs of FCDC. Exhibit 16 at 2.

26. Article VI of *Farmers Coop Amended By-Laws* states the transfer of FCDC shares is subject to the approval of the FCDC board of directors. Exhibit 16 at 5. Testimony of Tom Johnston.
27. Article VII, Section 5 of the *Farmers Coop Amended By-Laws* states:
- If any shareholder shall divide . . . any portion of his land and who shall sell shares in the Company to persons acquiring any such lands then such shareholder dividing said land shall provide for a ditch distribution system, easements and weirs for the division and distribution of water to the property so divided. Any division or system described above must be approved by the Board of Directors. All costs of ditch, weirs, and any other equipment or irrigation devices necessitated by such land division shall be paid entirely by the shareholders selling or subdividing such land.
- Exhibit 16 at 6.
28. A resolution adopted August 13, 2003, by FCDC states that any shareholder who subdivides land into three or more parcels shall transfer ownership of the associated FCDC shares to one designated person or entity. Exhibit 16 at 6.
29. The main purpose of the August 13, 2003, resolution is “to keep [FCDC] water rights in agricultural production and the stock certificates as whole as possible . . .” Exhibit 16 at 6 and Exhibit 105 at 31.
30. FCDC desires to avoid having the water it delivers replaced with other water sources, such as ground water or wastewater. Testimony of Tom Johnston. On March 11, 2020, FCDC adopted a resolution stating “all shareholders must use surface water deliveries from the Ditch Company [FCDC] pursuant to the shareholders existing shares, prior to any use of ground water for irrigation purposes. . . .” Exhibit 28. Exhibit 103.
31. FCDC shares are not appurtenant to the land they are associated with and can be transferred for use on other lands within the FCDC Service Area. Testimony of Tom Johnston.
32. As of June 15, 2020, OMM is a shareholder entitled to and capable of receiving water from FCDC to the Applications’ proposed places of use. Testimony Craig Froerer.
33. On November 29, 2007, Canyon County’s Development Services Department authorized the division of eight Orchard Tract lots into 17 parcels. Exhibits 3 and 112. The Applications’ places of use are 14 of the 17 parcels. The parcels were zoned agricultural and the zoning designation was not changed during the division. Testimony of Alan Mills.

EVALUATION CRITERIA / ANALYSIS

Governing Statutes and Rules

Idaho Code § 42-203A(5) states in pertinent part:

In all applications whether protested or not protested, where the proposed use is such: (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho . . . the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

Rule 45 of the Department's Water Appropriation Rules (IDAPA 37.03.08) further interprets the review criteria established in Idaho Code § 42-203A(5).

Rule 50.01 of the Department's Water Appropriation Rules (IDAPA 37.03.08) states that the Director may issue permits with conditions to insure compliance to meet the criteria of Idaho Code § 42-203A.

The applicant bears the burden of proof for elements (a) through (d) in Idaho Code § 42-203A(5). *See* IDAPA 37.03.08.040.04. All parties bear the burden of coming forward with evidence about any factor affecting local public interest of which they are knowledgeable. *Id.* The applicant bears the ultimate burden of persuasion for all of the elements in Idaho Code § 42-203A(5), including the local public interest element. *Id.*

Reduction to Existing Water Rights

Rule 45.01.a of the Department's Water Appropriation Rules (IDAPA 37.03.08) sets forth the criteria for determining whether a proposed use of water will reduce the quantity of water under an existing water right:

A proposed use will be determined to reduce the quantity of water under an existing water right (i.e., injure another water right) if:

- i. The amount of water available under an existing water right will be reduced below the amount recorded by permit, license, decree or valid claim or the historical amount beneficially used by the water right holder under such recorded rights, whichever is less.
- ii. The holder of an existing water right will be forced to an unreasonable effort or expense to divert his existing water right. Protection of existing groundwater rights are subject to reasonable pumping level provisions of Section 42-226, Idaho Code...

IDAPA 37.03.08.045.01.a.

FCDC stipulated that injury to existing water users is not at issue. The Applicant still has the burden to come forward with evidence demonstrating the proposals meet this criterion. IDAPA 37.03.08.040.04. OMM provided a diagram depicting nearby wells and summarized

their depths, static water levels, and yields. FCDC provided no evidence to refute the evidence submitted by OMM. Of the 37 wells within a half-mile radius of the Applications' proposed points of diversion, all but one of these wells is for domestic use. These wells are relatively shallow, with the deepest well depth being 208 ft. These wells are also relatively productive, with all but three of the wells reported as capable of producing in excess of the Department's standard 0.04 cfs (18 gpm) duty of water for domestic use. The quantity of water proposed from all 14 Applications combined is 1.35 cfs, with only 0.56 cfs being for year-round domestic use. Given the relatively high yields at shallow depths, it is not likely the proposed use will reduce the quantity of water under existing ground water rights or uses in the area nor force existing users to an unreasonable expense to continue their ground water use.

The Hearing Officer finds the evidence presented by OMM persuasive. The Applications development of ground water use in the proposed project location will not reduce the quantity of water available to existing water users or force existing water users to an unreasonable effort or expense to continue their ground water uses. The Assignment does not change the facts. The burden is still met.

Sufficiency of Water Supply

Rule 45.01.b of the Department's Water Appropriation Rules (IDAPA 37.03.08) sets forth the criteria for determining whether the water supply is sufficient for a proposed project: "The water supply will be determined to be insufficient for the proposed use if water is not available for an adequate time interval in quantities sufficient to make the project economically feasible . . ." IDAPA 37.03.08.45.01.b.

Rule 45.01.b requires the Department to evaluate whether the aquifer is capable of supplying the proposed rate and volume of diversion. FCDC stipulated that sufficiency of the ground water supply is not at issue. The Applicant still has the burden to come forward with evidence demonstrating the proposals meet this criterion. IDAPA 37.03.08.040.04. OMM provided the well log for the Test Well constructed in Parcel 16. The Test Well yielded over 50 gpm, which is over 0.11 cfs. The maximum amount of water proposed under any one of the Applications is 0.11 cfs. The Applications each propose to construct and use an individual well to supply only one parcel. The 14 proposed wells will be constructed in close proximity to the test well within a single forty-acre tract. Therefore, the Test Well is likely representative of what can be developed for each parcel. It is likely wells can be constructed to supply the quantities proposed in the Applications.

The Hearing Officer finds the evidence presented by OMM persuasive. OMM has met its burden of establishing that the aquifer can supply a sufficient quantity of water for the proposed projects. The Assignment does not change the facts. The burden is still met.

Lack of Good Faith / Speculation

Rule 45.01.c of the Department's Water Appropriation Rules (IDAPA 37.03.08) sets forth criteria for determining whether an application is filed in good faith and not for speculative purposes. FCDC stipulated that good faith and speculation are not at issue. The Applicant still has the burden to come forward with evidence for evaluation of this criteria. IDAPA 37.03.08.040.04.b.i. An applicant must have "legal access to the property necessary to

construct and operate the proposed project.” IDAPA 37.03.08.45.01.c.i. An applicant must also demonstrate that it is “in the process of obtaining other permits needed to construct and operate the project” and that “there are no obvious impediments that prevent the successful completion of the project.” IDAPA 37.03.08.045.01.c.ii-iii.

When the Applications were filed, OMM owned the 14 parcels proposed as the Applications’ points of diversion and places of use. The land proposed for the places of use was first platted in 1910 and later administratively modified in 2007 to create the 14 parcels proposed for development in the Applications. Exhibits 2, 3, and 112. The parcels are currently zoned for agricultural use, and there is no proposal to rezone them. No additional Canyon County approvals are necessary to sell the parcels to prospective home builders.

OMM purchased the parcels where the points of diversion and places of use are proposed with the intent to sell them to prospective home builders. During the hearing, Matt Wilke testified that one of the parcels is already pending purchase contingent upon the outcome of the Applications. Alan Mills testified that the road, power, telephone, and other utility infrastructure is already in place for development of the parcels. Given the development of the other utilities and that one of the parcels was already pending sale when the hearing occurred, there is a high probability that if the Applications are approved, the parcels will be sold and the proposed water use will be developed.

IDAPA 37.03.08.035.02.d requires the assignment of interest in the Applications to include evidence that the Applications were not filed for speculative purposes. In its declaration, EG asserted it does not intend to hold the permits, if approved, for speculative purposes; it intends to sell the parcels and assign the permits to the new parcel owners. OMM also stated the intent of filing the Applications is to sell the parcels for residential development. Testimony of Craig Froerer. OMM’s assignment of the Applications to EG, which intends to sell the lots for residential development is consistent with OMM’s original intent. EG has not amended the Applications to show any other intent.

OMM has legal access to the property necessary to construct and operate the proposed project. No obvious impediments exist to successful completion of the project. The Assignment included evidence that EG is now the owner of the parcels. EG has legal access to the property necessary to construct and operate the proposed development or to sell the parcels to prospective home builders.

Therefore, OMM met its burden to demonstrate the Applications were made in good faith and not for speculative purposes. The Assignment and associated documents conveyed all interest in the Applications and ownership of the land to EG, and demonstrate EG has similar intentions as those demonstrated by OMM, so the Assignment of the Applications to EG does not materially affect this analysis.

Sufficient Financial Resources

Rule 45.01.d of the Department’s Water Appropriation Rules (IDAPA 37.03.08) sets forth the criteria for determining whether an applicant has sufficient financial resources to complete a project. “An applicant will be found to have sufficient financial resources upon a showing that it is reasonably probable that funding is or will be available for project

construction or upon a financial commitment letter acceptable to the Director.” IDAPA 37.03.08.045.01.d.i.

FCDC stipulated that the sufficiency of the Applicant’s financial resources is not at issue. The Applicant still has the burden to come forward with evidence demonstrating the proposals meet this criterion. IDAPA 37.03.08.040.04. The costs of developing the water uses proposed in the Applications will ultimately be borne by the buyers of the parcels. The cost of drilling each well proposed under the Applications will be borne by the buyer of the parcel where the well is drilled. If installation of a pressurized irrigation system is necessary to distribute surface water for irrigation purposes, OMM (or EG) will initially bear the cost, but ultimately the cost will be passed on to the buyers of the parcels in the form of higher lot prices. Neither OMM nor EG proposes to bear the cost of well construction or the cost of installing a pressurized irrigation system. Other utility infrastructure is already in place to allow for development of the residences and irrigation uses proposed.

In *Shokal v Dunn*, the Idaho Supreme Court held, in pertinent part:

The water resources of this state [Idaho] are not so limited that they must be safeguarded with permits issued *only* when the applicant has secured all necessary financing prior to the water appropriation permit application. At the same time, the applicant must make a showing that it is reasonably probable he or she will obtain the necessary financing within five years.

Shokal v. Dunn, 109 Idaho 330, 337,707 P.2d 441, 448 (1985) (emphasis in original).

Given OMM’s and EG’s ability to purchase the land and that the water infrastructure costs will ultimately be borne by the buyers of the parcels, it is reasonably probable financial resources will be available to develop the project. Based on the premise that EG’s intentions for development are similar to OMM’s, the Assignment does not change the conclusion that it is reasonably probable financing will be available. OMM (EG) has met its burden of establishing sufficient financial resources are available to complete the project.

Local Public Interest

The local public interest analysis under Idaho Code § 42-203A(5)(e) is meant to be separate and distinct from the injury analysis under § 42-203A(5)(a). Local public interest is defined as “the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource.” Idaho Code § 42-202B(3).

The burden of coming forward with evidence to evaluate local public interest factors is shared by both the protestant and applicant. The applicant must come forward with evidence as to any factor affecting the local public interest of which he is knowledgeable or reasonably can be expected to be knowledgeable, and the protestant must come forward with evidence as to any factor of which the protestant can reasonably be expected to be more cognizant than the applicant. *See* IDAPA 37.03.08.040.04. The applicant bears the ultimate burden of persuasion for all of the elements in Idaho Code § 42-203A(5), including the local public interest element. *Id.*

The local public interest issues relevant to the Applications extend beyond the impact the diversion and use of ground water for irrigation and domestic purposes will have on the ground water supply. The Department's role under the local public interest inquiry includes consideration of all locally important factors affecting the public water resources.⁴

Central to this contested case is whether it is inconsistent with the local public interest to cease using surface water to irrigate the parcels and instead use ground water as the sole source of irrigation water. The Applications each propose to irrigate the places of use solely with ground water. At the time the Applications were filed, OMM owned the land and owned shares in FCDC. At the time of the hearing and historically, the FCDC delivery system has been used to supply water (pursuant to the FCDC shares) to irrigate the places of use for the Applications. Each application included a letter signed by representatives of OMM stating the surface water authorized by the shares would be "used elsewhere in the irrigation district" or the shares would be sold. OMM proposed selling 14 of its FCDC shares to Watson for use on Watson's land.

OMM's intent to irrigate the parcels solely with ground water is unambiguous. OMM states irrigating with surface water would be inconvenient for the residents of the development, and the quality of the surface water (silt, seed, and pesticide content), may not be compatible with the desires of the residents or the types of irrigation systems likely to be used. Testimony of Mills, Testimony of Wilke.

FCDC asserts OMM's proposal to discontinue the use of surface water is inconsistent both with Idaho Code § 67-6537⁵ and the FCDC bylaws. On the other hand, OMM asserts Idaho Code § 67-6537 is not applicable and that the bylaws of FCDC do not prevent OMM from transferring use of water pursuant to OMM's shares to another water user or property.

Idaho Code § 67-6537 and the Local Public Interest

A threshold question is to what extent must the Department enforce the provisions of Idaho Code § 67-6537. Idaho Code § 67-6537 states:

(1) The intent of this section is to encourage the use of surface water for irrigation. All applicants proposing to make land use changes shall be required to use surface water, where reasonably available, as the primary water source for irrigation. Surface water shall be deemed reasonably available if:

⁴ See legislative intent for HB 284, the 2003 bill that enacted the current definition of "local public interest" at Idaho Code § 42-202B(3):

Water Resources role under the "local public interest" is to ensure that proposed water uses are consistent with securing "the greatest possible benefit from [the public waters] for the public." Thus, within the confines of this legislation, Water Resources should consider all locally important factors affecting the public water resources, including but not limited to fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, transportation, navigation, water quality and the effect of such use on the availability of water for alternative uses of water that might be made within a reasonable time.

⁵ The Idaho Legislature has expressed a strong public policy in favor of irrigating with surface water, where available, and preserving ground water for supplemental irrigation uses. This policy is expressly articulated in Idaho Code § 67-6537.

- (a) A surface water right is, or reasonably can be made, appurtenant to the land;
 - (b) The land is entitled to distribution of surface water from an irrigation district, canal company, ditch users association, or other irrigation delivery entity, and the entity's distribution system is capable of delivering the water to the land; or
 - (c) An irrigation district, canal company, or other irrigation delivery entity has sufficient available surface water rights to apportion or allocate to the land and has a distribution system capable of delivering the water to the land.
- (2) Consistent with sections 42-108 and 42-222, Idaho Code, any change in the nature of use of surface water provided by an irrigation delivery entity must be authorized by the entity holding the water right(s) for the available surface water. Nothing in this section shall alter the authority and discretion of irrigation delivery entities to apportion, allocate and distribute surface water, or for municipalities, counties, or water and sewer districts to pass ordinances or regulations to promote the use of surface water for irrigation.
- (3) Nothing in this section shall be construed to override or amend any provision of title 42 or 43, Idaho Code, or impair any rights acquired thereunder.
- (4) When considering amending, repealing or adopting a comprehensive plan, the local governing board shall consider the effect the proposed amendment, repeal or adoption of the comprehensive plan would have on the source, quantity and quality of ground water in the area.

Idaho Code § 67-6537 is in the land use planning chapter of the Idaho Code. The provisions of Idaho Code § 67-6537 are operative only when there is a "land use change", not a water right change, even if the proposed water right change is a change in the character of the use of water on the land. Idaho Code § 67-6537 is a directive to local governments that are responsible for local land use planning and are considering a change in the use of land. As a result, Idaho Code § 67-6537 does not mandate that the Department require the use of surface water, if available to a property, when considering an application to appropriate water. Nevertheless, Idaho Code § 67-6537 expresses the intent of the State of Idaho to encourage the use of surface water for irrigation. It is appropriate for the Department to consider this intent among other local public interest factors when evaluating an application to appropriate water.

In general, the use of available surface water rather than ground water for irrigation can have substantial benefits, including the following:

- It conserves ground water for uses that depend on the (typically) better water quality of ground water compared to surface water.

- It maintains the surface water distribution system as a source of ground water recharge.⁶
- It helps to preserve the economic viability of the surface water delivery entities.

The Department must evaluate these benefits appropriately against all other relevant elements of the local public interest and their relative weights based on local needs, circumstances, and interests.⁷

The facts established at hearing lead to a conclusion that surface water was reasonably available to OMM. Neither OMM nor FCDC presented evidence about conserving the ground water for other uses or about maintaining surface water deliveries to accomplish ground water recharge. Consequently, the Hearing Officer concludes that these general benefits remain consistent with the local public interest.

As for FCDC's economic viability, it is largely a matter of its own internal affairs. Nevertheless, the impact a proposed change in water delivery within the FCDC service area has on the long-term viability of the organization is a significant element of local public interest and will be discussed elsewhere in this decision.

FCDC's Role

The local public interest concern most at issue in this contested matter is whether the proposal to irrigate primarily with ground water and to cease using FCDC surface water will result in an overall reduction in use of FCDC surface water and a consequent reduction in the benefits of that use. As discussed above, continued use of surface water and the benefits associated with the use of surface water are in the local public interest. In other words, evaluating the local public interest includes an evaluation of what is to become of the shares historically used to supply irrigation water to the proposed places of use. If the Department approves the Applications as proposed, the FCDC shares will not be used to continue to irrigate what is now EG's property. If those shares are not put to beneficial use on other lands, then the ground water use under the Applications will simply be replacing the current surface water use.

OMM proposed selling 14 of its FCDC shares to Watson for use on Watson's land. This sale of shares would require approval by the FCDC Board of Directors. Exhibit 26. The change in place of use may also require the consent of FCDC pursuant to Title 42, Idaho Code.⁸

⁶ The Idaho Legislature recognized incidental recharge as in the public interest. Idaho Code § 42-234(5) states, in pertinent part, "Incidental recharge of aquifers which occurs as a result of water diversion and use that does not exceed the vested water right of water right holders is in the public interest. The values of such incidental recharge shall be considered in the management of the state's water resources."

⁷ Idaho Code § 42-203A "places upon the Director [of the Department] the affirmative duty to assess and protect the public interest." *Shokal v. Dunn*, 109 Idaho 330, 337, 707 P.2d 441, 448 (1985). "The relevant elements [of the local public interest] and their relative weights will vary with local needs, circumstances, and interests." *Dunn*, 109 Idaho at 339, 707 P.2d at 450. "The determination of what elements of the public interest are impacted, and what the public interest requires, is committed to [the Department's] sound discretion." *Id.*

⁸ The specific acres irrigated within a generally described place of use can be changed without a transfer pursuant to Idaho Code § 42-222, subject to other governing law. *See* Idaho Code § 42-219. The other governing law includes Idaho Code § 42-108. Idaho Code § 42-108 states, in part: The person entitled to the use of water or

FCDC has a process for reviewing for approval or denial transfers of ownership of shares and changes in the location of delivery and use of water pursuant to those shares. It is reasonable to assume that any decision arising from FCDC's review process would consider the impacts on FCDC's economic viability and would support FCDC's interests in continued beneficial use of its water by its shareholders. FCDC's interests in these matters are consistent with the local public interest as discussed above. FCDC's decision regarding OMM's proposal to sell its shares to Watson or OMM's proposal in general to change the location of delivery to other lands would, therefore, be a determining factor in evaluating this aspect of the local public interest. FCDC has protested the Applications and has not reviewed or approved of OMM's proposal to sell the 14 shares to Watson. In the absence of FCDC's review and consent, the Hearing officer cannot conclude approving the use of ground water as a primary source of irrigation water will not adversely impact the local public interest in maintaining the use of surface water and the viability of FCDC. In other words, without the review by FCDC, the continued beneficial use of the 14 shares is uncertain. This uncertainty calls into question whether the Applications will simply replace existing surface water use with ground water.

Post-Hearing and Conclusion

Subsequent to the hearing, OMM assigned the lands and interest in the Applications to EG, but withheld ownership of its FCDC shares. Since EG is not a FCDC shareholder, EG is not entitled to surface water delivery from FCDC. Surface water is not reasonably available to EG to irrigate the proposed places of use.

Because OMM did not demonstrate it is in the local public interest to cease using existing surface water on the proposed places of use, and because surface water is not available to EG, the hearing officer concludes the irrigation uses proposed in the Applications cannot be approved.

The domestic portion of the Applications, including up to ½ acre of irrigation, is not inconsistent with the local public interest and is approved.

Conservation of Water Resources

Consideration of whether a proposed use is contrary to conservation of water resources within the State of Idaho is required by Idaho Code § 42-203A(5)(f). The conservation of water resources review is separate and distinct from the local public interest review under Idaho Code § 42-203A(5)(e). The conservation of water resources review is an evaluation of the efficiency of the proposed water use.⁹

The Applications propose using 0.03 cfs per acre for irrigation. This is consistent with Department standards of efficiency for irrigation of small (< 5 acre) parcels. The proposal to

owning any land to which water has been made appurtenant . . . may change the point of diversion, period of use, or nature of use, and/or may voluntarily abandon the use of such water in whole or in part on the land which is receiving the benefit of the same and transfer the same to other lands . . . provided; if the right to the use of such water, or the use of the diversion works or irrigation system is represented by shares of stock in a corporation or if such works or system is owned and/or managed by an irrigation district, no change in the . . . place of use . . . of such water shall be made or allowed without the consent of such corporation or irrigation district.

⁹ The efficiency conservation review is distinct from the local public interest review that can consider whether the water source should be appropriated for a given purpose or "conserved" (held in reserve) for other uses.

divert up to 0.04 cfs for Domestic use is also consistent with Department standard appropriations.

The proposals are not inconsistent with the conservation of water resources in Idaho.


CONCLUSIONS OF LAW

The burden of proof for all of the elements of review set forth in Idaho Code § 42-203A(5) is satisfied to the extent a partial approval may be granted.

ORDER

IT IS HEREBY ORDERED that Applications for Permit to Appropriate Water No. 63-34832 through 63-34838 and 63-34840 through 63-34846 are PARTIALLY APPROVED as shown in the accompanying approval documents.

Dated this 28th day of May 2021.



Nick Miller
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of May 2021, I served a true and correct copy of the following documents on the following by the method(s) indicated below:

- Preliminary Order Partially Approving Applications In The Matter of Applications for Permit No. 63-34832 Through 63-34838 and 63-34840 Through 63-34846, All In The Name Of Eden's Gate LLC

Eden's Gate LLC
3150 Echo Rd
Nyssa OR 97913-5022
541.121.1204
Applicant


- ☐ U.S. Mail, Certified, postage prepaid
- ☒ U.S. Mail, postage prepaid
- ☐ Overnight Mail
- ☐ Facsimile
- ☐ Email

S. Bryce Farris
Sawtooth Law Offices PLLC
PO Box 7985
Boise ID 83707
208.629.7447
bryce@sawtoothlaw.com
Attorney for:
Farmers' Co-operative Ditch Company
Protestant

- ☐ U.S. Mail, Certified, postage prepaid
- ☒ U.S. Mail, postage prepaid
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

Barker Rosholt & Simpson LLP
C/O Albert Barker
1010 W Jefferson St Ste 102
PO Box 2139
Boise ID 83701-2139
208.336.0700
apb@idahowaters.com
Attorney for One More Mile, LLC

- ☐ U.S. Mail, Certified, postage prepaid
- ☒ U.S. Mail, postage prepaid
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email



Nick Miller
Manager, IDWR Western Region

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was held)

The accompanying order is a **Preliminary Order** issued by the Idaho Department of Water Resources (Department) pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and brief as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The hearing officer 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 to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

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, request 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 Rules of Procedure 302 and 303.

FINAL ORDER

The Department 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.

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 63-34844

Priority: January 02, 2020

Maximum Diversion Rate: 0.04 CFS

This is to certify that

EDEN'S GATE LLC 3150 ECHO RD NYSSA OR 97913-5022

has applied for a permit to appropriate water from:

Source : GROUND WATER

and a permit is APPROVED for development of water as follows:

Beneficial Use

DOMESTIC

Period of Use

01/01 to 12/31

Rate of Diversion

0.04 CFS

Location of Point(s) of Diversion

GROUND WATER SE¼ NE¼, Sec. 18, Twp 06N, Rge 05W, B.M. CANYON County

Place of Use: DOMESTIC

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06N	05W	18				X													

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **June 01, 2026**.
2. Subject to all prior water rights.
3. This right does not grant any right-of-way or easement across the land of another.
4. Right holder shall comply with the drilling permit requirements of Idaho Code § 42-235 and applicable Well Construction Rules of the Department.
5. Point of diversion and place of use are located within Parcel A of Lot 4, Block 1, Orchard Tracts of the Oregon Idaho Orchard Company.
6. The irrigation occurring under this domestic use shall not exceed 1/2 acre.
7. Domestic use is for 1 home.

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

Signed this 28th day of May, 2021.








NICK MILLER

Western Regional Manager

State of Idaho
Department of Water Resources
Attachment to Permit to Appropriate Water
63-34844

This map depicts the DOMESTIC 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
-  Quarter Quarters
-  Taxlots

0 0.035 0.07 0.14 Miles



State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 63-34845

Priority: January 02, 2020

Maximum Diversion Rate: 0.04 CFS

This is to certify that

EDEN'S GATE LLC 3150 ECHO RD NYSSA OR 97913-5022

has applied for a permit to appropriate water from:

Source : GROUND WATER

and a permit is APPROVED for development of water as follows:

Beneficial Use

DOMESTIC

Period of Use

01/01 to 12/31

Rate of Diversion

0.04 CFS

Location of Point(s) of Diversion

GROUND WATER SE¼ NE¼, Sec. 18, Twp 06N, Rge 05W, B.M. CANYON County

Place of Use: DOMESTIC

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06N	05W	18				X													

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **June 01, 2026**.
2. Subject to all prior water rights.
3. This right does not grant any right-of-way or easement across the land of another.
4. Point of diversion and place of use are located within Parcel B of Lot 4, Block 1, Orchard Tracts of the Oregon Idaho Orchard Company.
5. Right holder shall comply with the drilling permit requirements of Idaho Code § 42-235 and applicable Well Construction Rules of the Department.
6. The irrigation occurring under this domestic use shall not exceed 1/2 acre.
7. Domestic use is for 1 home.

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

Signed this 28th day of May, 2021.

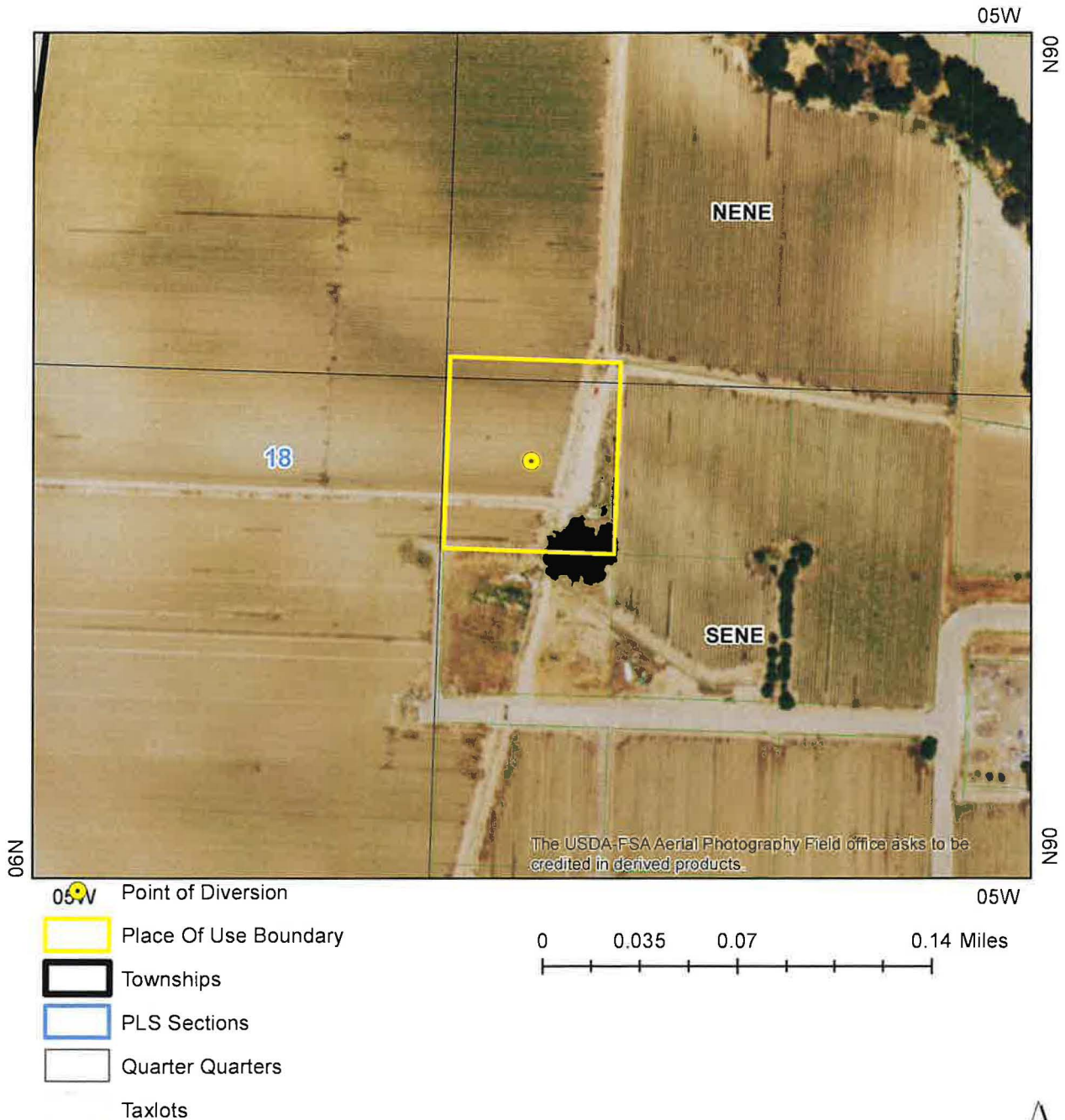

NICK MILLER

Western Regional Manager

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water
63-34845

This map depicts the DOMESTIC 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
Permit to Appropriate Water
No. 63-34846

Priority: January 02, 2020

Maximum Diversion Rate: 0.04 CFS

This is to certify that

EDEN'S GATE LLC 3150 ECHO RD NYSSA OR 97913-5022

has applied for a permit to appropriate water from:

Source : GROUND WATER

and a permit is APPROVED for development of water as follows:

Beneficial Use

DOMESTIC

Period of Use

01/01 to 12/31

Rate of Diversion

0.04 CFS

Location of Point(s) of Diversion

GROUND WATER SE¼ NE¼, Sec. 18, Twp 06N, Rge 05W, B.M. CANYON County

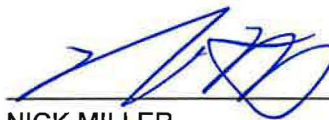
Place of Use: DOMESTIC

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06N	05W	18				X													

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **June 01, 2026**.
2. Subject to all prior water rights.
3. This right does not grant any right-of-way or easement across the land of another.
4. Right holder shall comply with the drilling permit requirements of Idaho Code § 42-235 and applicable Well Construction Rules of the Department.
5. Point of diversion and place of use are located within Parcel A of Lot 5, Block 1, Orchard Tracts of the Oregon Idaho Orchard Company.
6. The irrigation occurring under this domestic use shall not exceed 1/2 acre.
7. Domestic use is for 1 home.

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

Signed this 28th day of May, 2021.


NICK MILLER

Western Regional Manager

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

63-34846

This map depicts the DOMESTIC 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
- Quarter Quarters
- Taxlots

0 0.035 0.07 0.14 Miles



State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 63-34832

Priority: January 02, 2020

Maximum Diversion Rate: 0.04 CFS

This is to certify that

EDEN'S GATE LLC 3150 ECHO RD NYSSA OR 97913-5022

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>
DOMESTIC	01/01 to 12/31	0.04 CFS

Location of Point(s) of Diversion

GROUND WATER SE¼ NE¼, Sec. 18, Twp 06N, Rge 05W, B.M. CANYON County

Place of Use: DOMESTIC

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06N	05W	18				X													

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **June 01, 2026**.
2. Subject to all prior water rights.
3. This right does not grant any right-of-way or easement across the land of another.
4. Right holder shall comply with the drilling permit requirements of Idaho Code § 42-235 and applicable Well Construction Rules of the Department.
5. Point of diversion and place of use are located within Parcel B of Lot 5, Block 1, Orchard Tracts of the Oregon Idaho Orchard Company.
6. The irrigation occurring under this domestic use shall not exceed 1/2 acre.
7. Domestic use is for 1 home.

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

Signed this 28th day of May, 2021.



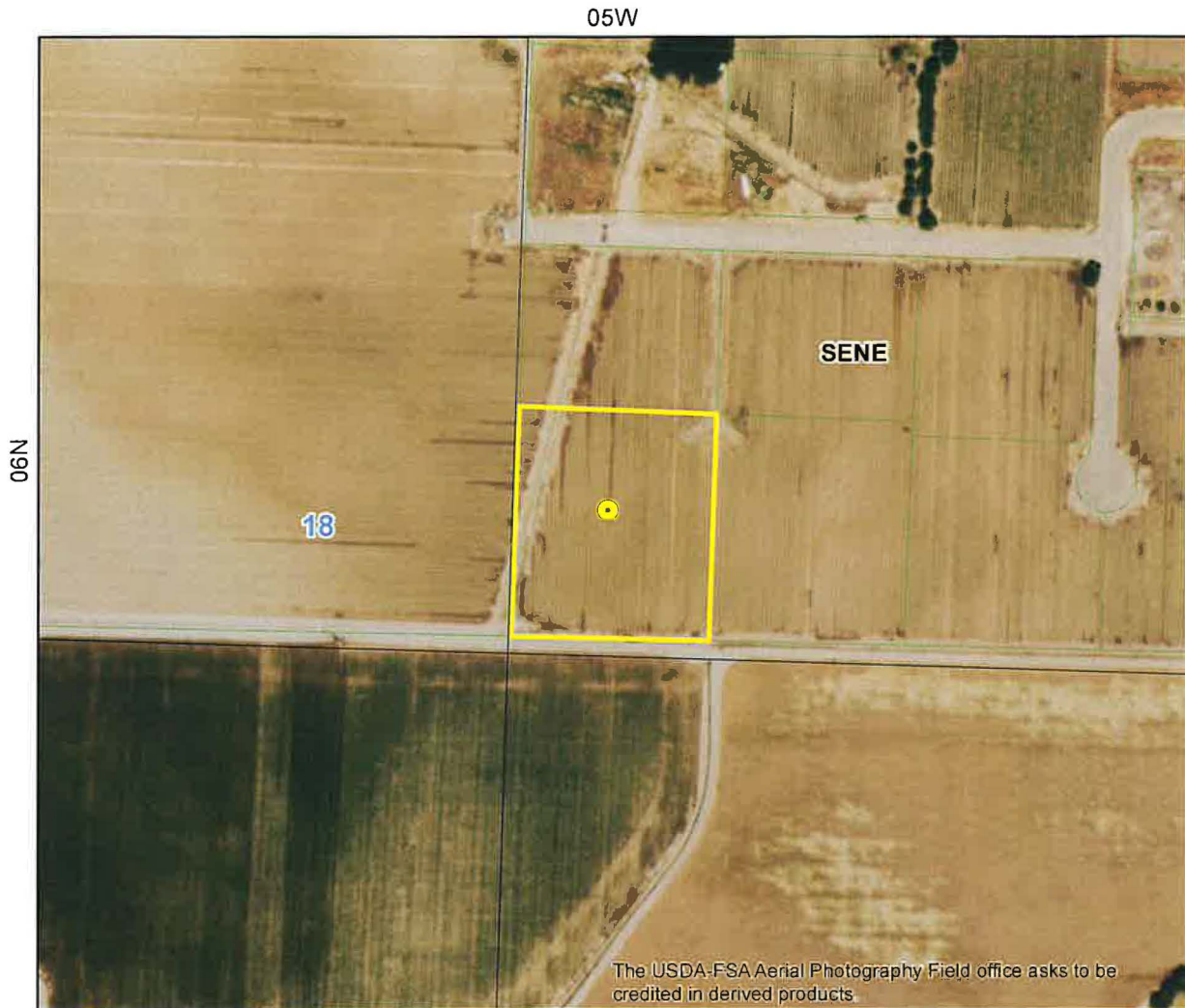
NICK MILLER
Western Regional Manager







State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

63-34832

This map depicts the DOMESTIC 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
-  Quarter Quarters
-  Taxlots

0 0.035 0.07 0.14 Miles



State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 63-34833

Priority: January 02, 2020

Maximum Diversion Rate: 0.04 CFS

This is to certify that

EDEN'S GATE LLC 3150 ECHO RD NYSSA OR 97913-5022

has applied for a permit to appropriate water from:

Source : GROUND WATER

and a permit is APPROVED for development of water as follows:

Beneficial Use

DOMESTIC

Period of Use

01/01 to 12/31

Rate of Diversion

0.04 CFS

Location of Point(s) of Diversion

GROUND WATER SE¼ NE¼, Sec. 18, Twp 06N, Rge 05W, B.M. CANYON County

Place of Use: DOMESTIC

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06N	05W	18				X													

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **June 01, 2026**.
2. Subject to all prior water rights.
3. This right does not grant any right-of-way or easement across the land of another.
4. Right holder shall comply with the drilling permit requirements of Idaho Code § 42-235 and applicable Well Construction Rules of the Department.
5. Point of diversion and place of use are located within Parcel A of Lot 6, Block 1, Orchard Tracts of the Oregon Idaho Orchard Company.
6. The irrigation occurring under this domestic use shall not exceed 1/2 acre.
7. Domestic use is for 1 home.

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

Signed this 28th day of May, 2021.


NICK MILLER

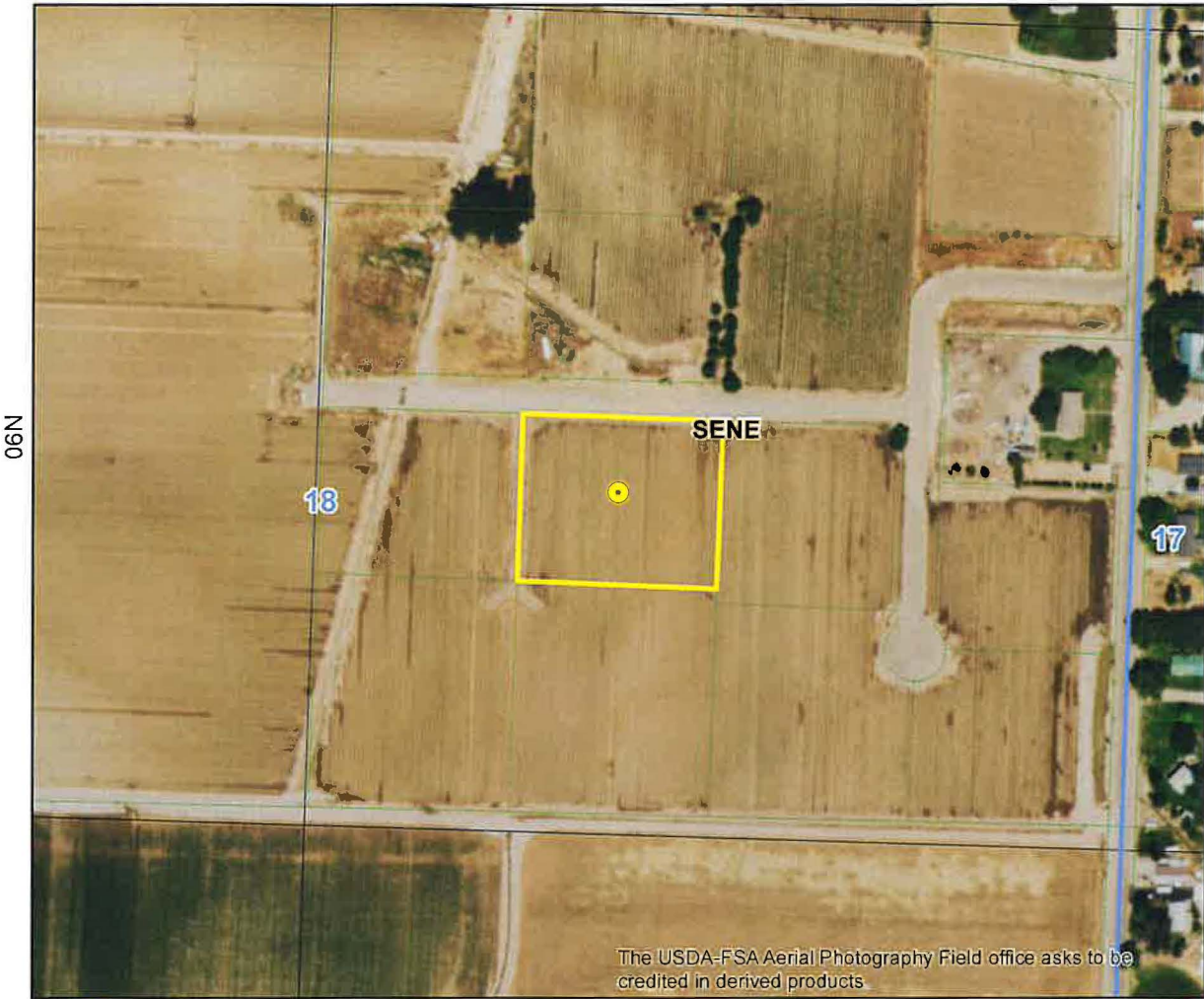
Western Regional Manager







State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water
63-34833

This map depicts the DOMESTIC 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.

05W



-  Point of Diversion
-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters
-  Taxlots

0 0.035 0.07 0.14 Miles



State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 63-34834

Priority: January 02, 2020

Maximum Diversion Rate: 0.04 CFS

This is to certify that

EDEN'S GATE LLC 3150 ECHO RD NYSSA OR 97913-5022

has applied for a permit to appropriate water from:

Source : GROUND WATER

and a permit is APPROVED for development of water as follows:

Beneficial Use

DOMESTIC

Period of Use

01/01 to 12/31

Rate of Diversion

0.04 CFS

Location of Point(s) of Diversion

GROUND WATER SE¼ NE¼, Sec. 18, Twp 06N, Rge 05W, B.M. CANYON County

Place of Use: DOMESTIC

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06N	05W	18				X													

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **June 01, 2026**.
2. Subject to all prior water rights.
3. This right does not grant any right-of-way or easement across the land of another.
4. Point of diversion and place of use are located within Parcel B of Lot 6, Block 1, Orchard Tracts of the Oregon Idaho Orchard Company.
5. Right holder shall comply with the drilling permit requirements of Idaho Code § 42-235 and applicable Well Construction Rules of the Department.
6. The irrigation occurring under this domestic use shall not exceed 1/2 acre.
7. Domestic use is for 1 home.

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

Signed this 28th day of May, 2021.

NICK MILLER

Western Regional Manager

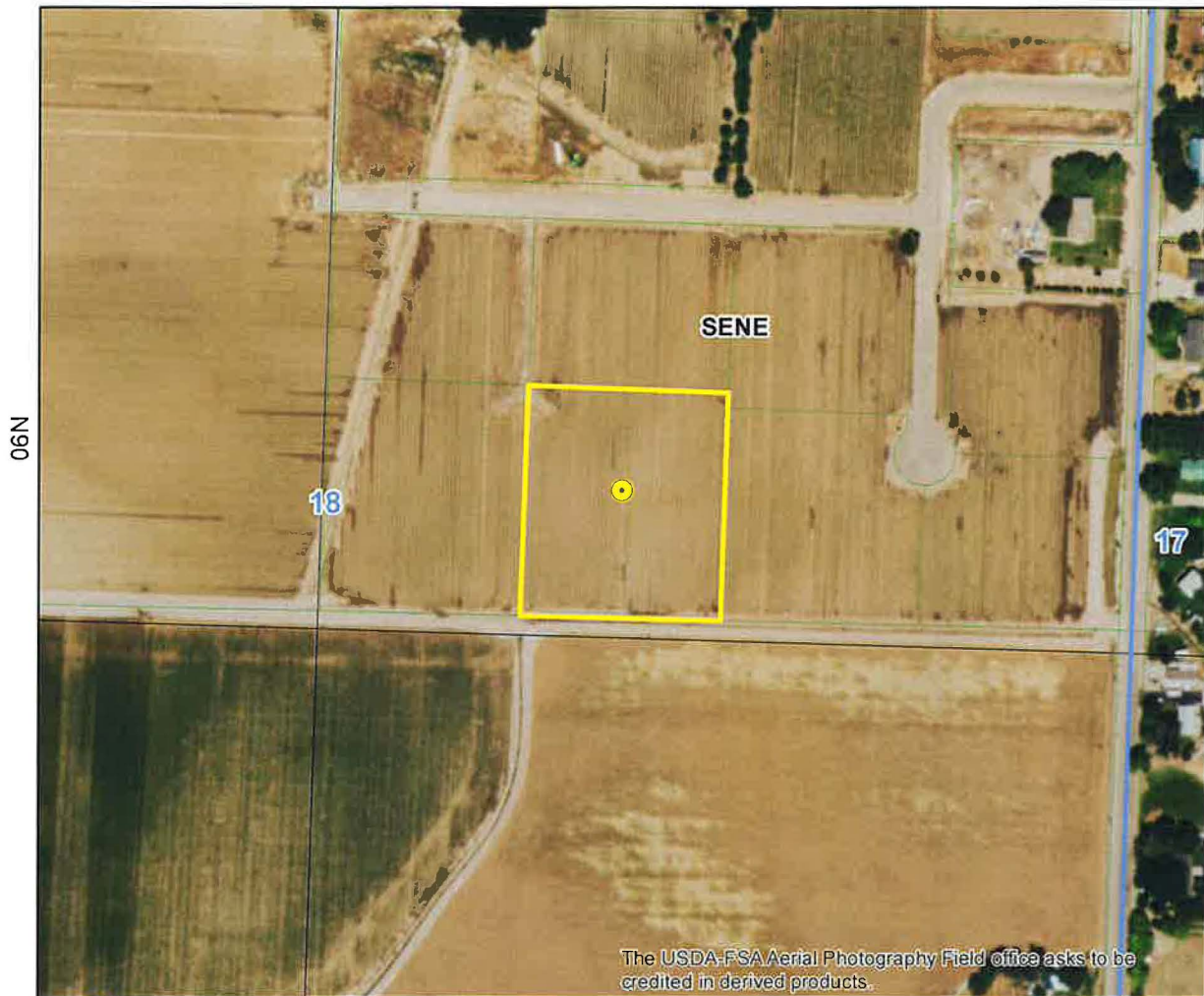
State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

63-34834

This map depicts the DOMESTIC 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.

05W



● Point of Diversion

Place Of Use Boundary

Townships

PLS Sections

Quarter Quarters

Taxlots

0 0.035 0.07 0.14 Miles



State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 63-34835

Priority: January 02, 2020

Maximum Diversion Rate: 0.04 CFS

This is to certify that

EDEN'S GATE LLC 3150 ECHO RD NYSSA OR 97913-5022

has applied for a permit to appropriate water from:

Source : GROUND WATER

and a permit is APPROVED for development of water as follows:

Beneficial Use

DOMESTIC

Period of Use

01/01 to 12/31

Rate of Diversion

0.04 CFS

Location of Point(s) of Diversion

GROUND WATER SE¼ NE¼, Sec. 18, Twp 06N, Rge 05W, B.M. CANYON County

Place of Use: DOMESTIC

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06N	05W	18				X													

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **June 01, 2026**.
2. Subject to all prior water rights.
3. This right does not grant any right-of-way or easement across the land of another.
4. Right holder shall comply with the drilling permit requirements of Idaho Code § 42-235 and applicable Well Construction Rules of the Department.
5. Point of diversion and place of use are located within Parcel A of Lot 7, Block 1, Orchard Tracts of the Oregon Idaho Orchard Company.
6. The irrigation occurring under this domestic use shall not exceed 1/2 acre.
7. Domestic use is for 1 home.

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

Signed this 20th day of May, 2021.


NICK MILLER

Western Regional Manager

State of Idaho
Department of Water Resources
Attachment to Permit to Appropriate Water
63-34835

This map depicts the DOMESTIC 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.

05W



● Point of Diversion

Place Of Use Boundary

Townships

PLS Sections

Quarter Quarters

Taxlots

0 0.035 0.07 0.14 Miles



State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 63-34836

Priority: January 02, 2020

Maximum Diversion Rate: 0.04 CFS

This is to certify that

EDEN'S GATE LLC 3150 ECHO RD NYSSA OR 97913-5022

has applied for a permit to appropriate water from:

Source : GROUND WATER

and a permit is APPROVED for development of water as follows:

Beneficial Use

DOMESTIC

Period of Use

01/01 to 12/31

Rate of Diversion

0.04 CFS

Location of Point(s) of Diversion

GROUND WATER SE¼ NE¼, Sec. 18, Twp 06N, Rge 05W, B.M. CANYON County

Place of Use: DOMESTIC

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06N	05W	18				X													

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **June 01, 2026**.
2. Subject to all prior water rights.
3. This right does not grant any right-of-way or easement across the land of another.
4. Right holder shall comply with the drilling permit requirements of Idaho Code § 42-235 and applicable Well Construction Rules of the Department.
5. Point of diversion and place of use are located within Parcel B of Lot 7, Block 1, Orchard Tracts of the Oregon Idaho Orchard Company.
6. The irrigation occurring under this domestic use shall not exceed 1/2 acre.
7. Domestic use is for 1 home.

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

Signed this 28th day of May, 2021.


NICK MILLER

Western Regional Manager

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

63-34836

This map depicts the DOMESTIC 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.

05W



● Point of Diversion

□ Place Of Use Boundary

□ Townships

□ PLS Sections

□ Quarter Quarters

Taxlots

0 0.035 0.07 0.14 Miles



State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 63-34837

Priority: January 02, 2020

Maximum Diversion Rate: 0.04 CFS

This is to certify that

EDEN'S GATE LLC 3150 ECHO RD NYSSA OR 97913-5022

has applied for a permit to appropriate water from:

Source : GROUND WATER

and a permit is APPROVED for development of water as follows:

Beneficial Use

DOMESTIC

Period of Use

01/01 to 12/31

Rate of Diversion

0.04 CFS

Location of Point(s) of Diversion

GROUND WATER SE¼ NE¼, Sec. 18, Twp 06N, Rge 05W, B.M. CANYON County

Place of Use: DOMESTIC

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06N	05W	18				X													

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **June 01, 2026**.
2. Subject to all prior water rights.
3. This right does not grant any right-of-way or easement across the land of another.
4. Right holder shall comply with the drilling permit requirements of Idaho Code § 42-235 and applicable Well Construction Rules of the Department.
5. Point of diversion and place of use are located within Parcel A of Lot 8, Block 1, Orchard Tracts of the Oregon Idaho Orchard Company.
6. The irrigation occurring under this domestic use shall not exceed 1/2 acre.
7. Domestic use is for 1 home.

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

Signed this 28th day of May, 2021.

NICK MILLER

Western Regional Manager

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

63-34837

This map depicts the DOMESTIC 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.

05W



● Point of Diversion

□ Place Of Use Boundary

□ Townships

□ PLS Sections

□ Quarter Quarters

□ Taxlots

0 0.035 0.07 0.14 Miles



State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 63-34838

Priority: January 02, 2020

Maximum Diversion Rate: 0.04 CFS

This is to certify that

EDEN'S GATE LLC 3150 ECHO RD NYSSA OR 97913-5022

has applied for a permit to appropriate water from:

Source : GROUND WATER

and a permit is APPROVED for development of water as follows:

Beneficial Use

DOMESTIC

Period of Use

01/01 to 12/31

Rate of Diversion

0.04 CFS

Location of Point(s) of Diversion

GROUND WATER SE¼ NE¼, Sec. 18, Twp 06N, Rge 05W, B.M. CANYON County

Place of Use: DOMESTIC

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06N	05W	18				X													

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **June 01, 2026**.
2. Subject to all prior water rights.
3. This right does not grant any right-of-way or easement across the land of another.
4. Right holder shall comply with the drilling permit requirements of Idaho Code § 42-235 and applicable Well Construction Rules of the Department.
5. Point of diversion and place of use are located within Parcel B of Lot 8, Block 1, Orchard Tracts of the Oregon Idaho Orchard Company.
6. The irrigation occurring under this domestic use shall not exceed 1/2 acre.
7. Domestic use is for 1 home.

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

Signed this 20th day of May, 2021.

NICK MILLER

Western Regional Manager







State of Idaho
Department of Water Resources

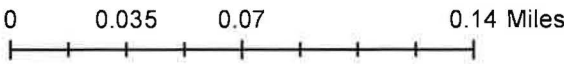
Attachment to Permit to Appropriate Water
63-34838

This map depicts the DOMESTIC 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.

05W



-  Point of Diversion
-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters
-  Taxlots



State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 63-34840

Priority: January 02, 2020

Maximum Diversion Rate: 0.04 CFS

This is to certify that

EDEN'S GATE LLC 3150 ECHO RD NYSSA OR 97913-5022

has applied for a permit to appropriate water from:

Source : GROUND WATER

and a permit is APPROVED for development of water as follows:

Beneficial Use

DOMESTIC

Period of Use

01/01 to 12/31

Rate of Diversion

0.04 CFS

Location of Point(s) of Diversion

GROUND WATER SE¼ NE¼, Sec. 18, Twp 06N, Rge 05W, B.M. CANYON County

Place of Use: DOMESTIC

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06N	05W	18				X													

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **June 01, 2026**.
2. Subject to all prior water rights.
3. This right does not grant any right-of-way or easement across the land of another.
4. Right holder shall comply with the drilling permit requirements of Idaho Code § 42-235 and applicable Well Construction Rules of the Department.
5. Point of diversion and place of use are located within Parcel A of Lot 2, Block 1, Orchard Tracts of the Oregon Idaho Orchard Company.
6. The irrigation occurring under this domestic use shall not exceed 1/2 acre.
7. Domestic use is for 1 home.

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

Signed this 20th day of May, 2021.


NICK MILLER

Western Regional Manager

State of Idaho
Department of Water Resources







Attachment to Permit to Appropriate Water

63-34840

This map depicts the DOMESTIC 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.

05W



-  Point of Diversion
-  Place Of Use Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters
-  Taxlots

0 0.035 0.07 0.14 Miles



State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 63-34841

Priority: January 02, 2020

Maximum Diversion Rate: 0.04 CFS

This is to certify that

EDEN'S GATE LLC 3150 ECHO RD NYSSA OR 97913-5022

has applied for a permit to appropriate water from:

Source : GROUND WATER

and a permit is APPROVED for development of water as follows:

Beneficial Use

DOMESTIC

Period of Use

01/01 to 12/31

Rate of Diversion

0.04 CFS

Location of Point(s) of Diversion

GROUND WATER SE¼ NE¼, Sec. 18, Twp 06N, Rge 05W, B.M. CANYON County

Place of Use: DOMESTIC

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06N	05W	18				X													

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **June 01, 2026**.
2. Subject to all prior water rights.
3. This right does not grant any right-of-way or easement across the land of another.
4. Right holder shall comply with the drilling permit requirements of Idaho Code § 42-235 and applicable Well Construction Rules of the Department.
5. Point of diversion and place of use are located within Parcel B of Lot 2, Block 1, Orchard Tracts of the Oregon Idaho Orchard Company.
6. The irrigation occurring under this domestic use shall not exceed 1/2 acre.
7. Domestic use is for 1 home.

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

Signed this 20th day of May, 2021.


NICK MILLER

Western Regional Manager

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

63-34841

This map depicts the DOMESTIC 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

□ Quarter Quarters

Taxlots

0 0.035 0.07 0.14 Miles



State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 63-34842

Priority: January 02, 2020

Maximum Diversion Rate: 0.04 CFS

This is to certify that

EDEN'S GATE LLC 3150 ECHO RD NYSSA OR 97913-5022

has applied for a permit to appropriate water from:

Source : GROUND WATER

and a permit is APPROVED for development of water as follows:

Beneficial Use

DOMESTIC

Period of Use

01/01 to 12/31

Rate of Diversion

0.04 CFS

Location of Point(s) of Diversion

GROUND WATER SE¼ NE¼, Sec. 18, Twp 06N, Rge 05W, B.M. CANYON County

Place of Use: DOMESTIC

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06N	05W	18				X													

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **June 01, 2026**.
2. Subject to all prior water rights.
3. This right does not grant any right-of-way or easement across the land of another.
4. Right holder shall comply with the drilling permit requirements of Idaho Code § 42-235 and applicable Well Construction Rules of the Department.
5. Point of diversion and place of use are located within Parcel A of Lot 3, Block 1, Orchard Tracts of the Oregon Idaho Orchard Company.
6. The irrigation occurring under this domestic use shall not exceed 1/2 acre.
7. Domestic use is for 1 home.

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

Signed this 28th day of May, 2021.


NICK MILLER

Western Regional Manager

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

63-34842

This map depicts the DOMESTIC 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.

05W



● Point of Diversion

□ Place Of Use Boundary

□ Townships

□ PLS Sections

□ Quarter Quarters

□ Taxlots

0 0.035 0.07 0.14 Miles



State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 63-34843

Priority: January 02, 2020

Maximum Diversion Rate: 0.04 CFS

This is to certify that

EDEN'S GATE LLC 3150 ECHO RD NYSSA OR 97913-5022

has applied for a permit to appropriate water from:

Source : GROUND WATER

and a permit is APPROVED for development of water as follows:

Beneficial Use

DOMESTIC

Period of Use

01/01 to 12/31

Rate of Diversion

0.04 CFS

Location of Point(s) of Diversion

GROUND WATER SE¼ NE¼, Sec. 18, Twp 06N, Rge 05W, B.M. CANYON County

Place of Use: DOMESTIC

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
06N	05W	18				X													

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **June 01, 2026**.
2. Subject to all prior water rights.
3. This right does not grant any right-of-way or easement across the land of another.
4. Right holder shall comply with the drilling permit requirements of Idaho Code § 42-235 and applicable Well Construction Rules of the Department.
5. Point of diversion and place of use are located within Parcel B of Lot 3, Block 1, Orchard Tracts of the Oregon Idaho Orchard Company.
6. The irrigation occurring under this domestic use shall not exceed 1/2 acre.
7. Domestic use is for 1 home.

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

Signed this 28th day of May, 2021.

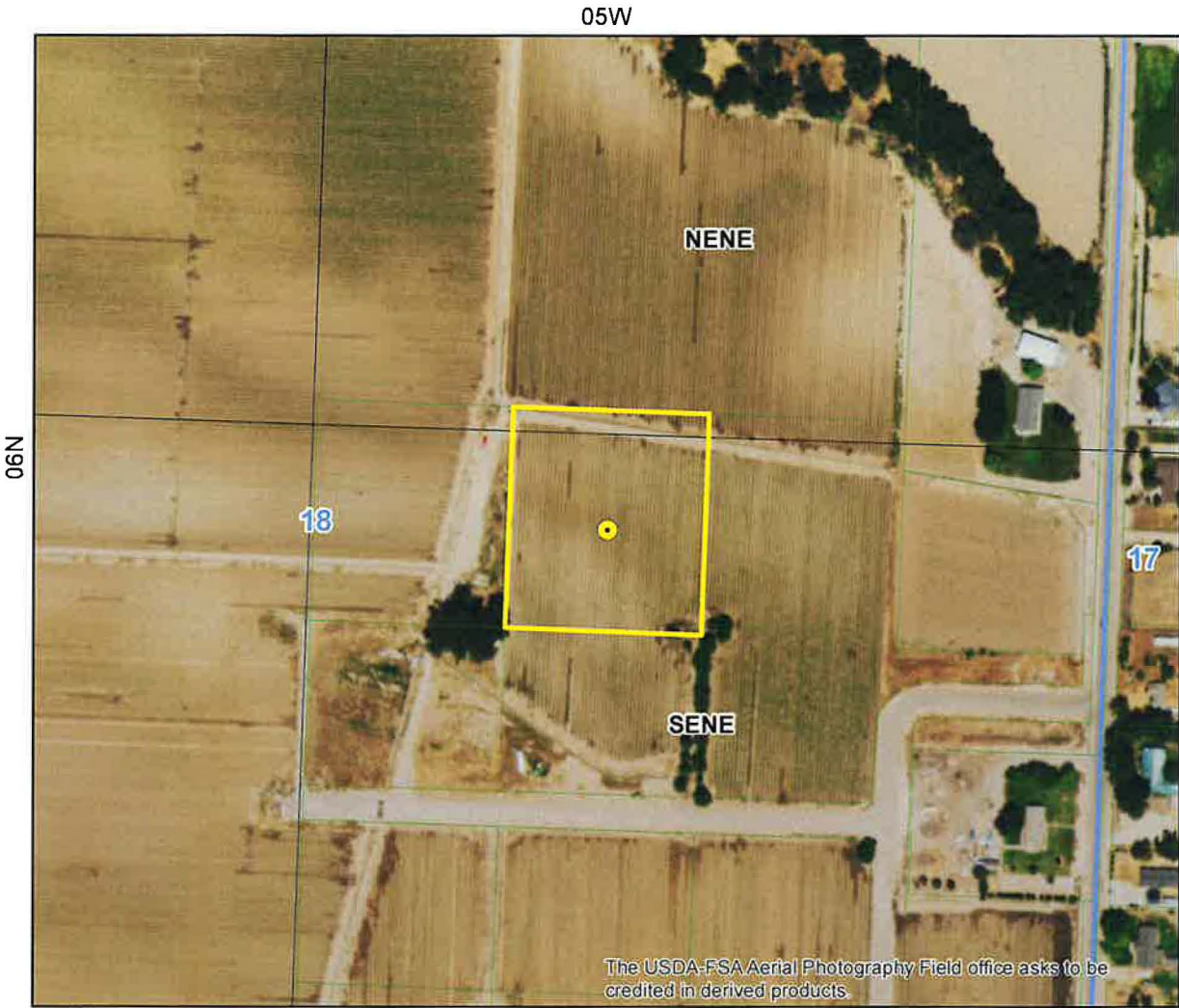

NICK MILLER







Western Regional Manager

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water
63-34843

This map depicts the DOMESTIC 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
-  Quarter Quarters
-  Taxlots

0 0.035 0.07 0.14 Miles

