

## CATEGORICAL EXCLUSION

**CE Number:** DOI-BLM-ID-I010-2013-0038-CX

**Title of Action:** Osterkamp Land Use Permit Renewal

**Project/Case File Number:** ID-28133

**Preparer:** Becky Lazdauskas, Realty Specialist

**Date of Preparation:** July 1, 2013

### **DESCRIPTION OF PROPOSED ACTION:**

A.H. Osterkamp filed a Land Use Application and Permit (Form 2920-1) to request a renewal of land use permit IDI-28133. The permit which allowed the use of public land for storage and agricultural purposes expired on December 31, 2000.

The original land use permit (LUP) was issued on August 27, 1991, in order to resolve a trespass that had been occurring on approximately 31 acres of public land in Bonneville County. The permit was issued with the expectation that an exchange would occur and the parcels would be transferred out of federal ownership. The exchange was never finalized. Currently, the Upper Snake Field Office is negotiating a sale and donation with Mr. Osterkamp which would resolve the unauthorized use of public land.

A land use permit should be authorized and in place until a resolution is reached. The permit would allow for the continued use of approximately 41.05 acres for storage, roads and agricultural purposes, see Exhibit A. The United States through the Bureau of Land Management (BLM) would continue to hold the water rights on the parcels that are being watered and cultivated. No further development or disturbance is authorized with this renewal.

The renewal may be processed under authority of Public Law 94-579 and current Bureau regulations found at 43 CFR 2920. Rent would be collected according to regulations found at 43 CFR 2920.8.

### **FINDING:**

The proposed action is categorically excluded as outlined in 516 DM 11.9, Appendix 4 E (9) and none of the extraordinary circumstances described in 516 DM 2, Appendix 2 apply. This exclusion states that renewals and assignments of leases, permits or rights-of-way where no additional rights are conveyed beyond those granted by the original authorizations may be excluded from further environmental review.

### **RECOMMENDATION:**

I recommend that the land use permit be renewed, retroactive to January 1, 2001. The permit would be issued through December 31, 2016. If the land sale and donation have not been finalized by this date, the permit could be renewed. If Mr. Osterkamp is no longer willing to purchase the property and donate a parcel of his private land, the permit may be



## Extraordinary Circumstances Requiring Preparation of an EA or EIS

The action described in categorical exclusion **DOI-BLM-ID-I010-2013-0038-CX (IDI-28133)** has been reviewed to determine if any of the following extraordinary circumstances listed below apply, as listed in the Departmental NEPA regulations (43 CFR 46.215).

### Extraordinary Circumstance

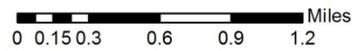
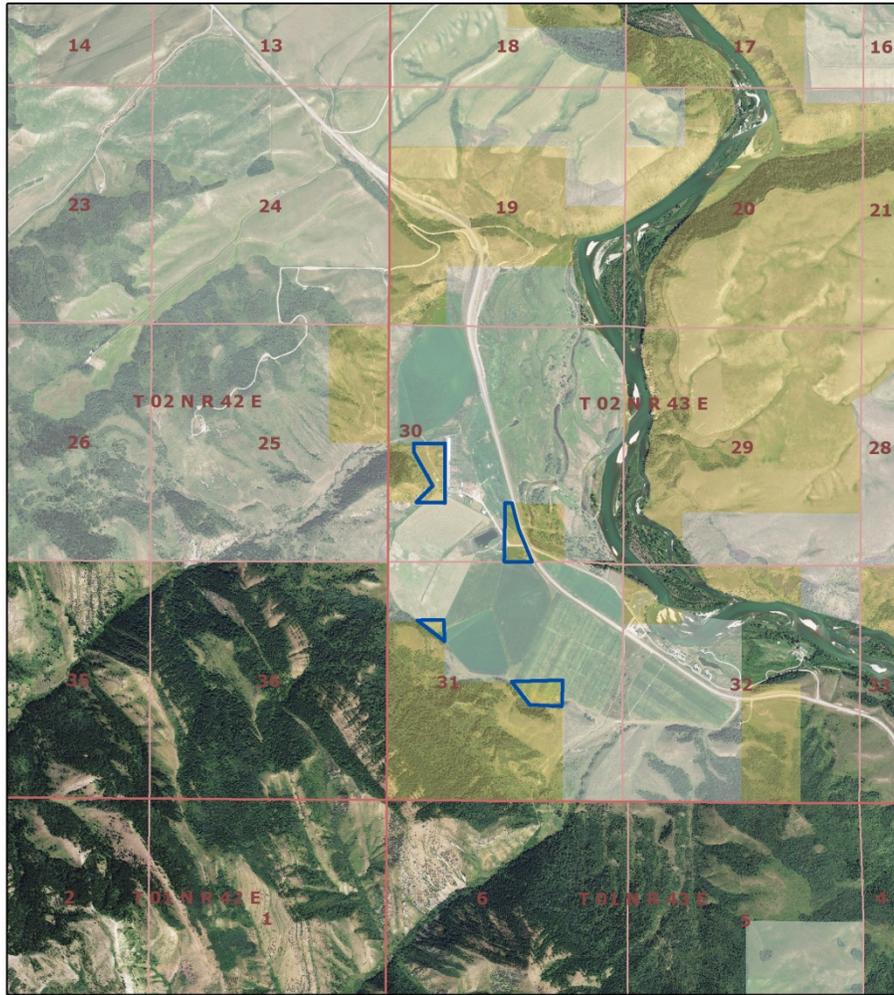
1. Have significant impacts on public health or safety.
2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.
3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA section 102(2)(E)].
4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.
5. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.
6. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.
7. Have significant impacts on properties listed or eligible for listing on the National Register of Historic Places as determined by either the bureau or office.
8. Have significant impacts on species listed or proposed to be listed on the List of Endangered or Threatened Species, or have significant impacts on designated critical habitat for these species.
9. Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.
10. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).
11. Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).
12. Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).

# IDI-28133

## Osterkamp Land Use Permit

### Permitted Parcels Outlined in Blue

**Exhibit A**  
 E1/2 of lot 3 and lot 9 of sec. 30  
 Lots 7 and 8 of sec. 31  
 T. 2 N., 43 E., B.M., Idaho  
 June 28, 2013



**Legend**

**Surface Management Agency (Idaho)**

- Bureau of Land Management
- Private



No warranty is made by the Bureau of Land Management for use of the data for purposes not intended by BLM.

**DRAFT**



**EXHIBIT B**  
**ID-28133**  
**STIPULATIONS**

1. The permittee shall maintain title to water associated with this Land Use Permit solely in the name of the United States during the term of the permit and subsequent renewals.
2. Upon expiration, non-renewal, or cancellation of Land Use Permit IDI-25887, BLM agrees to allow water rights associated with this permit to be transferred off of Federal Land and to confer title of said water rights to the permittee of record. All costs incurred for seeking such transfer shall be borne by the permittee. Any water rights or portions of water rights not transferred off of Federal land shall be forfeited. The United States shall be released and held harmless from any loss, injury, damage and/or reduction in value to the applicable water rights should this permit expire, be cancelled for non-compliance, not be renewed, or the State IDWR elects not to allow transfer if any portion of the water rights resulting in rights being forfeited.
3. The holder shall be responsible for weed control on disturbed areas within the limits of the lease area. The holder is responsible for consultation with the authorized officer and/or local authorities for acceptable weed control methods (within limits imposed in the grant stipulations).
4. Upon relinquishment, expiration, or other termination of this land use permit, permittee shall seed all disturbed areas using an agreed upon method suitable for the location. Seeding shall be repeated if a satisfactory stand is not obtained as determined by the authorized officer upon evaluation after the first growing season.
5. The permit is issued solely for the existing use. Any change in land use or increase in amount of public lands used without the express consent of the authorized officer will result in immediate cancellation of the permit.
6. Notification is required for a change in crops. The holder shall not receive any type of government subsidy on public land.
7. Administrative access to this public land will not be denied by the holder.
8. Use of pesticides shall comply with the applicable Federal and state laws. Pesticides shall be used only in accordance with their registered uses and within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides, the holder shall obtain from the authorized officer written approval of a plan showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers, and any other information deemed necessary by the authorized officer. Emergency use of pesticides shall be approved in writing by the authorized officer prior to such use.

9. The holder agrees to indemnify the United States against any liability arising from the release of any hazardous substance or hazardous waste (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, (42 U.S.C. 9601, et seq. or the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et seq.) on the right-of-way (unless the release or threatened release is wholly unrelated to the right-of-way holder's activity on the right-of-way). This agreement applies without regard to whether a release is caused by the holder, its agent, or unrelated third parties.
10. Any cultural and/or paleontological resource (historic or prehistoric site or object, or fossil) discovered by the holder, or any persons working on his behalf on public or Federal land shall be immediately reported to the authorized officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and mitigation, and any decision as to proper avoidance, protection or mitigation measures will be made by the authorized officer after consulting with the holder and others under Section 106 of the National Historic Preservation Act.
11. Pursuant to 43 CFR 10.4(g), the holder of this authorization must immediately notify the authorized officer, by telephone, with written confirmation, immediately upon the discovery of human remains, funerary items, sacred objects, or objects of cultural patrimony. Further, pursuant to 43 CFR 10.4 (c) and (d), the holder must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the authorized officer. The BLM Authorized Officer will determine avoidance, protection or mitigation measures in consultation with the Holder, SHPO, and affected Tribes. Costs associated with the discovery, evaluation, protection or mitigation of the discovery shall be the responsibility of the holder.
12. The holder shall protect all survey monuments found within the permitted area. Survey monuments include, but are not limited to, General Land Office and Bureau of Land Management Cadastral Survey Corners, reference corners, witness points, U.S. Coastal and Geodetic benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. In the event of obliteration or disturbance of any of the above, the holder shall immediately report the incident, in writing, to the authorized officer and the respective installing authority if known. Where General Land Office or Bureau of Land Management right-of-way monuments or references are obliterated during operations, the holder shall secure the services of a registered land surveyor or a Bureau cadastral surveyor to restore the disturbed monuments and references using surveying procedures found in the Manual of Surveying Instructions of the Survey of the Public Lands of the United States, latest edition. The holder shall record such survey in the appropriate county and send a copy to the authorized officer. If

the Bureau cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monument, the holder shall be responsible for the survey cost.

14. If a sale is not completed on the public land parcels, the permittee must notify BLM within sixty (60) days prior to termination or abandonment of the lands authorized for use under this permit, the permittee shall contact the authorized officer to arrange a joint inspection of the subject lands. The inspection will be held to agree on an acceptable abandonment and rehabilitation plan. The authorized officer must approve the plan in writing prior to the permittee commencing any abandonment and/or rehabilitation activities. The plan may include removal of drainage structures or surface material, recontouring, replacement of topsoil, reseeding, mulching, fencing or other actions deemed necessary by the authorized officer.