

State of Idaho  
Department of Water Resources

**AMENDED Permit to Appropriate Water AMENDED**  
**No. 63-34865**

**Priority:** March 06, 2020

**Maximum Diversion Rate:** 3.30 CFS

This is to certify that

FLAMINGO WEST LLC 10906 W VEGA LN STAR ID 83669-5458

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>
COMMERCIAL	01/01 to 12/31	0.56 CFS
DOMESTIC	01/01 to 12/31	0.13 CFS
FIRE PROTECTION	01/01 to 12/31	3.30 CFS

**Location of Point(s) of Diversion**

GROUND WATER NE¼ NE¼, Sec. 26, Twp 04N, Rge 02W, B.M. CANYON County  
GROUND WATER NE¼ NE¼, Sec. 26, Twp 04N, Rge 02W, B.M. CANYON County  
GROUND WATER NE¼ NE¼, Sec. 26, Twp 04N, Rge 02W, B.M. CANYON County

**Place of Use: COMMERCIAL**

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	02W	26	X	X															

**Place of Use: DOMESTIC and FIRE PROTECTION**

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	02W	26	X	X															

**Conditions of Approval**

1. Proof of application of water to beneficial use shall be submitted on or before **September 01, 2025**.
2. Subject to all prior water rights.
3. Commercial use is for a retail nursery and landscape facility.
4. Irrigation occurring under commercial use authorized by this right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the place of use.
5. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.
6. Water shall not be diverted for fire protection use under this right except to fight or repel an existing fire.

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7. The diversion and use of water described in 63-34865 may be subject to additional conditions and limitations agreed to by the protestant and the right holder under a separate agreement to which the Department is not a party. Because the Department is not a party, the Department is not responsible for enforcement of any aspect of the agreement not specifically addressed in other conditions herein. Enforcement of those portions of the agreement not specifically addressed in other conditions shall be the responsibility of the protestant and the water right holder.
8. Right holder shall comply with the drilling permit requirements of Idaho Code § 42-235 and applicable Well Construction Rules of the Department.
9. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.

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

Signed this 19<sup>th</sup> day of October, 2020.

  
for **PATRICK KELLY**  
Water Rights Supervisor






State of Idaho  
Department of Water Resources

# Attachment to Permit to Appropriate Water

63-34865

This map depicts the COMMERCIAL 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

0 0.0425 0.085 0.17 Miles



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

**IN THE MATTER OF APPLICATION )  
FOR PERMIT NO. 63-34865 IN THE )  
NAME OF FLAMINGO WEST LLC )  
\_\_\_\_\_ )**

**ORDER GRANTING PETITION  
FOR RECONSIDERATION**

This matter having come before the Department of Water Resources (Department) as a petition to reconsider the issuance of a permit to appropriate water, the Department finds, concludes, and orders as follows:

**PROCEDURAL HISTORY**

On March 6, 2020, Flamingo West LLC ("Applicant") filed an application to appropriate 3.3 cubic feet per second of ground water for a retail nursery and landscaping facility in Canyon County. The application proposed year round commercial, domestic, and fire protection uses for the proposed 20-acre facility. The Department assigned the Application number 63-34509.

On September 14, 2020, the Department issued a permit ("Permit") for the Application. The Permit authorized a diversion rate of 3.3 cubic feet per second of ground water as proposed in the Application, but included a condition limiting the commercial use of water for irrigation purposes to the non-irrigation season because the Applicant already owned water rights authorizing irrigation of the land during the irrigation season.

The Department received a petition for reconsideration ("Petition") on September 28, 2020. The Petition asks the Department to reconsider the limitation of commercial irrigation to the non-irrigation season and reissue the Permit authorizing commercial irrigation year round, as proposed in the Application.

**FINDINGS OF FACT**

1. The Permit was issued as a preliminary order of the Department pursuant to Idaho Code § 67-5243 and Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730).
2. The Applicant proposed year round uses with a diversion rate of 0.56 cfs for commercial uses, 0.13 cfs for domestic uses, and 3.3 cfs for fire protection uses, with a total not to exceed 3.3 cfs.
3. The proposed commercial use includes watering plants for retail sale onsite, as well as other commercial uses associated with the retail nursery facility.
4. The place of use proposed in the Application is a 20-acre parcel of land in Canyon County.
5. The proposed place of use is currently irrigated agricultural land supplied with water from Applicant's water rights 63-34881 and 63-34882 that authorize 16 acres of irrigation

from ground water. The land is also entitled to delivery of surface water from Pioneer Irrigation District.

6. The Department limited irrigation occurring under the commercial component of the Permit to the non-irrigation season because the land already has a full supply of water to irrigate during the irrigation season so a new appropriation of ground water to irrigate was deemed unnecessary to accomplish the proposed beneficial use.

7. In their Petition, the Applicant described that their proposed use of water for commercial irrigation is not compatible with use of surface water because the potential that water quality issues from the surface water supply would injure the plants. Further, use of their existing ground water rights to irrigate without also using surface water could result in enlargement of the use of the ground water rights that have historically been used in combination with surface water.

### RELEVANT LEGAL PROVISIONS

1. Rule 730.02.a. of the Department's Rules of Procedure (IDAPA 37.01.01.730.02.a.) provides in pertinent part as follows:

Any party may file a petition for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law.

### CONCLUSIONS OF LAW

1. Petition was filed timely.
2. The proposed commercial irrigation use is not compatible with the existing irrigation water supply for the proposed place of use and a new appropriation during the irrigation season is necessary to accomplish the proposed beneficial use.
3. The Petition should be granted.

### ORDER

IT IS HEREBY ORDERED that the petition for reconsideration of the preliminary order approving Application No. 63-3865 is **GRANTED**.

IT IS FURTHER HEREBY ORDERED that an amended Permit for application no. 63-33865 is issued as the accompanying approval document.

Dated this 19<sup>th</sup> day of October, 2020.

  
Nick Miller

Manager, IDWR Western Region

## **EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER**

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

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

### **PETITION FOR RECONSIDERATION**

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

### **EXCEPTIONS AND BRIEFS**

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

### **REQUEST FOR HEARING**

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

### **ORAL ARGUMENT**

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of October 2020, the above and foregoing document was served on each individual or entity listed below. Each individual or entity was served by placing a copy of the above and foregoing document in the United States mail, postage prepaid and properly addressed.

Documents served:

- **Order Granting Petition for Reconsideration in the Matter of Application for Permit No. 63-34865.**



Nick Miller  
Manager, IDWR Western Region

FLAMINGO WEST LLC  
10906 W VEGA LN  
STAR ID 83669-5458

SPF WATER ENGINEERING LLC  
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300 E MALLARD DR STE 350  
BOISE ID 83706-6660

PIONEER IRRIGATION DISTRICT  
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