



## State of Idaho

# DEPARTMENT OF WATER RESOURCES

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BRAD LITTLE  
Governor

GARY SPACKMAN  
Director

June 23, 2020

JEFF DANCER  
411 E KARCHER RD  
NAMPA ID 83687-3001

CITY OF BOISE  
C/O ABIGAIL GERMAINE  
OFFICE OF THE CITY ATTORNEY  
PO BOX 500  
BOISE ID 83701-0500

RIVERSIDE IRRIGATION DISTRICT  
C/O AL BARKER  
BARKER ROSHOLT & SIMPSON LLP  
PO BOX 2139  
BOISE ID 83701

### **RE: Application for Permit 63-34682 (Jeff Dancer)**

Dear Parties:

The Department of Water Resources acknowledges receipt of two stipulations for withdrawal of protests ("Stipulations") against the above referenced application entered into individually between the applicant Jeff Dancer and the protestants City of Boise and Riverside Irrigation District in this contested matter. The parties have agreed to the protestants' withdrawals if approval of the permit application is conditioned as provided in the Stipulations.

In any conditional withdrawal, the Department must review the agreement to ensure that conditions to be included in an approval are acceptable. Further, the Department may substitute a standard condition of the Department with essentially the same language and intent, or it may modify the conditions as written to fit the approval format, reduce ambiguity, or to otherwise prevent conflicting interpretations. The Stipulations include components that are to be addressed by the Department as conditions on the face of an approval as well as components that are the responsibility of the respective parties to accomplish and enforce.

The enclosed draft permit approval incorporates the Department's standard conditions, as well as conditions pursuant to the Stipulations. The conditions proposed in the Stipulations are referenced below, along with some discussion of any changes the Department has made to the proposed language.

- Both stipulations proposed including a condition identifying the source of water as wastewater. This is the only condition in the Riverside Irrigation District stipulation

proposed to be included on the permit. This condition is identified as Condition 1.a in the City of Boise Stipulation. Both stipulations propose the same language that is similar to a standard Department condition. The attached draft approval includes a standard Department condition in place of the proposed condition language. See Condition #7 on the draft permit approval.

- Condition 1.b in the City of Boise Stipulation proposes subordinating the wildlife and recreation components to the City's downstream water rights. The proposed condition has been included as Condition #8 on the attached draft permit approval. It has been modified to reflect the proposed diversion rate for these uses, which has been reduced from that proposed on the application to be consistent with Department standards. Further, the reference to the diversion volume was removed for clarity.
- Condition 1.c in the City of Boise Stipulation proposes that all flows return to the Dixie Slough and that those return flows be measured. This condition has been edited for clarity and is included as Condition #9.
- Condition 1.d in the City of Boise Stipulation requires a measuring device and controlling works that measures the water diverted under this right independently of other rights diverted through the same system. The Department has included a standard condition requiring measurement and control as Condition #4 on the draft permit approval. The stipulated requirement to individually measure this specific water right is not a requirement the Department will impose on the permit holder and will not include it on the face of the permit. Note that this component is part of the private agreement between the applicant and protestant and the standard condition does not prevent the applicant from meeting his obligations under that private agreement.
- The conditions on the draft approval do not address all actions or responsibilities agreed to by the parties as some of these are outside the scope of the Department's authority to impose or enforce. Condition #12 is included on the draft permit as a reference to those actions and responsibilities.

Please review the draft approval carefully. If you think the draft approval is not substantially in conformance with your settlement, please contact the Department within 14 days of the date of this letter with your concerns. The application has no remaining protests; therefore, if we do not hear from you, the Department will take the steps necessary to bring the application to final resolution. Note that you may file a petition for reconsideration within 14 days after the Department issues a preliminary order approving the permit.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely,



Nick Miller  
Regional Manager

Enclosure

State of Idaho  
Department of Water Resources  
**Permit to Appropriate Water**  
No. 63-34682

DRAFT

**Priority:** February 22, 2019

**Maximum Diversion Rate:** 1.35 CFS

This is to certify that

JEFF DANCER 411 E KARCHER RD NAMPA ID 83687-3001

has applied for a permit to appropriate water from:

**Source :** DIXIE SLOUGH

**Tributary:** BOISE RIVER

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

| <u>Beneficial Use</u> | <u>Period of Use</u> | <u>Rate of Diversion</u> | <u>Annual Volume</u> |
|-----------------------|----------------------|--------------------------|----------------------|
| IRRIGATION            | 03/01 to 11/15       | 0.18 CFS                 |                      |
| WILDLIFE              | 09/01 to 02/28       | 1.35 CFS                 |                      |
| WILDLIFE STORAGE      | 09/01 to 02/28       |                          | 330.0 AF             |
| RECREATION            | 09/01 to 02/28       | 1.35 CFS                 |                      |
| RECREATION STORAGE    | 09/01 to 02/28       |                          | 330.0 AF             |
| DIVERSION TO STORAGE  | 09/01 to 02/28       | 1.35 CFS                 |                      |

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

DIXIE SLOUGH SE¼ NE¼, Sec. 1, Twp 04N, Rge 05W, B.M. CANYON County

**Place of Use:** IRRIGATION

| Twp | Rng | Sec | NE |    |    |    | NW |    |    |    | SW |    |    |     | SE |    |    |    | Totals |
|-----|-----|-----|----|----|----|----|----|----|----|----|----|----|----|-----|----|----|----|----|--------|
|     |     |     | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE  | NE | NW | SW | SE |        |
| 05N | 05W | 36  |    |    |    |    |    |    |    |    |    |    |    | 9.0 |    |    |    |    | 9.0    |

Total Acres: 9.0

**Place of Use:** WILDLIFE, WILDLIFE STORAGE, RECREATION, RECREATION STORAGE

| Twp | Rng | Sec | NE |    |    |    | NW |    |    |    | SW |    |    |    | SE |    |    |    | Totals |
|-----|-----|-----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--------|
|     |     |     | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE |        |
| 05N | 05W | 36  |    |    |    |    |    |    |    |    |    |    |    | X  |    |    |    |    |        |

**Conditions of Approval**

1. Proof of application of water to beneficial use shall be submitted on or before **July 01, 2021**.
2. Subject to all prior water rights.
3. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the place of use.
4. Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.
5. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 63.

**State of Idaho**  
**Department of Water Resources**  
**Permit to Appropriate Water**  
**No. 63-34682**

6. Wildlife and recreation use is for flow through and seepage water associated with wildlife and recreation storage for waterfowl habitat and hunting.
7. The waste water diverted under this right is subject to the right of the original appropriator, in good faith and in compliance with state laws governing changes in use and/or expansion of water rights, to cease wasting water, to change the place of use or manner of wasting it, or to recapture it.
8. The wildlife, recreation, and diversion to storage uses of this right, equaling 1.35 cfs, shall be junior and subordinate to water right nos, 63-33467 and 63-34318.
9. Water diverted under the wildlife and recreation components of this water right shall be returned to the Dixie Slough, either directly or through seepage associated with the storage components of this right.
10. This right authorizes a total annual storage volume of 330 acre-feet, 11.7 acre-feet to be used for the initial filling or carryover storage of the ponds and 318.3 acre-feet for the replacement of losses caused by seepage.
11. The three (3) ponds established by the storage of water under this right shall not exceed a total capacity of 11.7 acre-feet or a total surface area of 8.9 acres.
12. The diversion and use of water described in this right 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.
13. This right does not grant any right-of-way or easement across the land of another.
14. 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 \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**DRAFT**

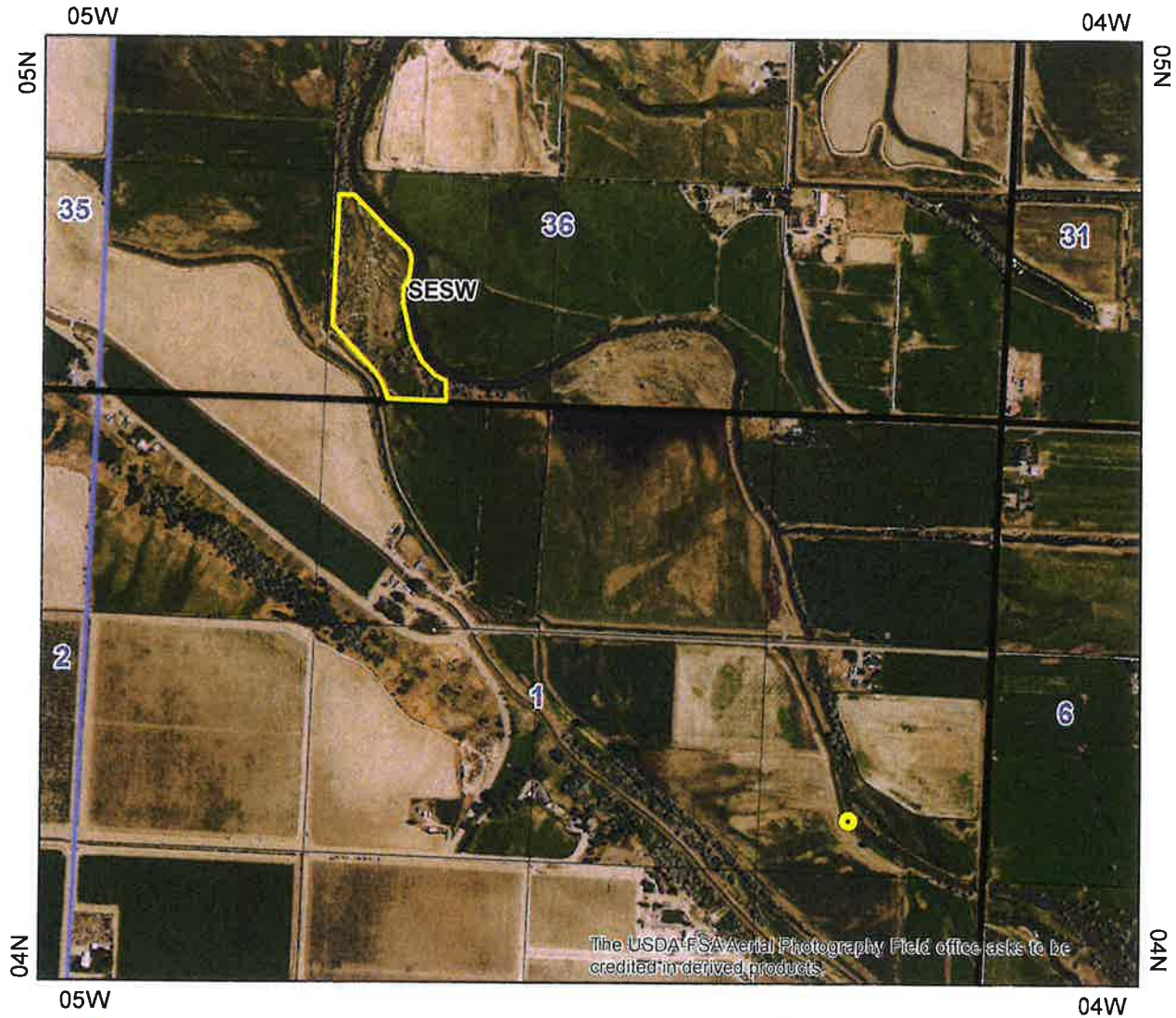
\_\_\_\_\_  
NICK MILLER  
Western Regional Manager

State of Idaho  
Department of Water Resources

Attachment to Permit to Appropriate Water  
63-34682

DRAFT

This map depicts the 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 0.125 0.25 0.5 Miles

