

State of Idaho
Department of Water Resources

Permit to Appropriate Water

No. 65-23750

Priority: December 29, 2017

Maximum Diversion Rate: 4.30 CFS

Maximum Diversion Volume: 1,248.0 AF

This is to certify that

TAMARACK MOUNTAIN OPERATIONS, LLC
8211 WEST BROWARD BLVD. STE 230
PLANTATION, FL 33324

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>	<u>Annual Volume</u>
MUNICIPAL	01/01 to 12/31	4.30 CFS	1,248.0 AF
DIVERSION TO STORAGE	01/01 to 12/31	4.30 CFS	
MUNICIPAL FROM STORAGE	01/01 to 12/31		500.0 AF
MUNICIPAL STORAGE	01/01 to 12/31		500.0 AF

Location of Point(s) of Diversion

GROUND WATER	NE¼ SW¼,	Sec. 32, Twp 16N, Rge 03E, B.M.	VALLEY County
GROUND WATER	NE¼ SE¼,	Sec. 5, Twp 15N, Rge 03E, B.M.	VALLEY County
GROUND WATER	SE¼ NE¼,	Sec. 8, Twp 15N, Rge 03E, B.M.	VALLEY County
GROUND WATER	L1 (NE¼ NE¼),	Sec. 5, Twp 15N, Rge 03E, B.M.	VALLEY County
GROUND WATER	SW¼ NE¼,	Sec. 5, Twp 15N, Rge 03E, B.M.	VALLEY County
GROUND WATER	L3 (NE¼ NW¼),	Sec. 5, Twp 15N, Rge 03E, B.M.	VALLEY County
GROUND WATER	SE¼ NW¼,	Sec. 5, Twp 15N, Rge 03E, B.M.	VALLEY County
GROUND WATER	NE¼ SW¼,	Sec. 5, Twp 15N, Rge 03E, B.M.	VALLEY County
GROUND WATER	L3 (NE¼ NW¼),	Sec. 5, Twp 15N, Rge 03E, B.M.	VALLEY County
GROUND WATER	NE¼ NW¼,	Sec. 8, Twp 15N, Rge 03E, B.M.	VALLEY County
GROUND WATER	NE¼ NW¼,	Sec. 8, Twp 15N, Rge 03E, B.M.	VALLEY County
GROUND WATER	NE¼ SW¼,	Sec. 8, Twp 15N, Rge 03E, B.M.	VALLEY County
GROUND WATER	SE¼ NE¼,	Sec. 36, Twp 16N, Rge 02E, B.M.	VALLEY County
GROUND WATER	SE¼ NE¼,	Sec. 36, Twp 16N, Rge 02E, B.M.	VALLEY County

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **April 01, 2025**.
2. Subject to all prior water rights.
3. Place of use is within the area served by the right holder's public water supply system. The place of use is generally located within Section 36, Township 16 North, Range 02 East, Sections 19, 29, 30, 31, and 32, Township 16 North, Range 03 East, and Sections 5, 7, 8, 17, and 18, Township 15 North, Range 03 East.
4. A map generally depicting the service area for this water right at the time of this approval is attached to this document for illustrative purposes.
5. Rights 65-23811, 65-23812, 65-23813, 65-23814, and 65-23750 when combined shall not exceed a

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 65-23750

total diversion rate of 8.6 cfs and a total annual maximum diversion volume of 1248 acre-feet.

6. The volume of the storage ponds shall not exceed 135 acre-feet. Diversions to and from storage in the ponds shall not exceed 500 acre-feet per year.
7. 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.
8. In connection with the proof of beneficial use submitted for this permit, the permit holder shall also submit a report showing the total annual volume, the maximum daily volume, and the maximum instantaneous rate of flow diverted from the point of diversion authorized for this permit during the development period. The report shall also show the maximum instantaneous rate of diversion, either measured or reasonably estimated by a qualified professional engineer, geologist, or certified water rights examiner, for the entire municipal water system. The report shall also describe and explain how water diverted under this permit provides an additional increment of beneficial use of water for the municipal water system as opposed to an alternative point of diversion for prior water rights already held and used by the right holder for its municipal water system.
9. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
10. Right holder shall comply with the drilling permit requirements of Idaho Code § 42-235 and applicable Well Construction Rules of the Department.
11. This right does not grant any right-of-way or easement across the land of another.
12. 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.
13. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable water quality monitoring and/or permitting requirements administered by the Department of Environmental Quality or the Department of Agriculture.
14. 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.

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

Signed this 14th day of April, 2020.

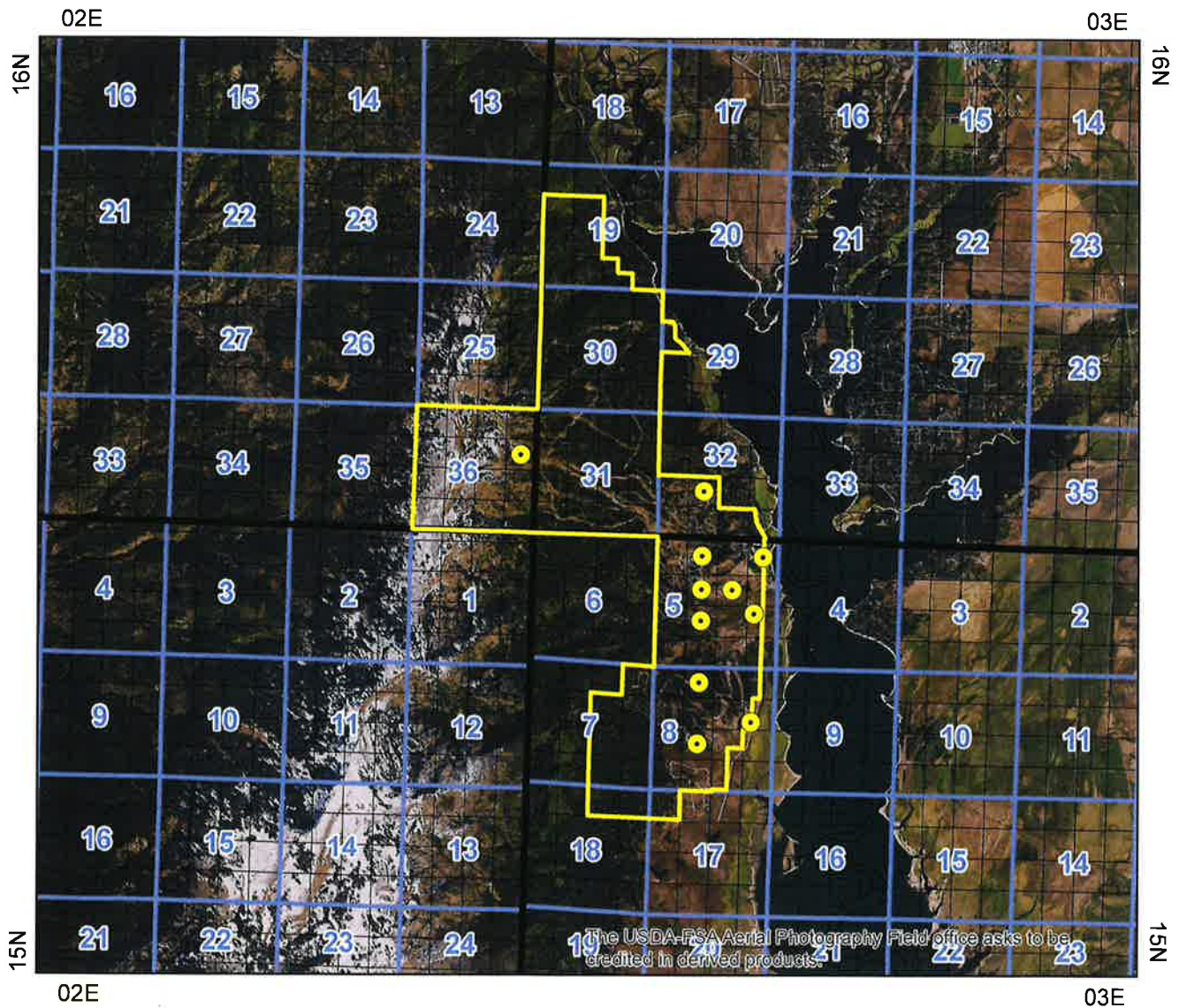


Nick Miller
Manager, IDWR Western Region

Attachment to Permit to Appropriate Water

65-23750

This map depicts the MUNICIPAL, MUNICIPAL STORAGE, and MUNICIPAL FROM STORAGE place of use boundaries for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.



- Point of Diversion
- Water Service Area Boundary
- Townships
- PLS Sections
- Quarter Quarters

0 0.75 1.5 3 Miles





State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 W Airport Way • Boise ID 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348

Website: idwr.idaho.gov • Email: westerninfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

April 14, 2020

TAMARACK MOUNTAIN OPERATIONS, LLC
8211 WEST BROWARD BLVD. STE 230
PLANTATION, FL 33324

RE: Permit No. 65-23750

Dear Permit Holder:

The Idaho Department of Water Resources ("Department") has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review all the conditions of approval listed on your permit. Failure to comply with the conditions of approval may result in your permit lapsing or being canceled.

The permit is a PRELIMINARY ORDER issued pursuant to Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730). It can and will become a final order without further action by the Department unless a party petitions for reconsideration, files exceptions, or requests a hearing as described in the enclosed information sheet.

On February 21, 2020, the Department sent a letter outlining the Department's understanding of the process for implementing the May 31, 2019 *Stipulation and Joint Motion to Withdraw Protest and issue Permit*, ("Stipulation"). The letter included a draft permit approval for application number 65-23750 for review. The applicant subsequently contacted the Department with comments on the draft approval. The Department received no comments from the protestant Idaho Department of Lands ("IDOL"). The Department made minor revisions to the draft approval based on the comments from the applicant and circulated the draft approval to the parties via email on April 3, 2020. On April 10, 2020 the Department received a letter from the applicant requesting the Department issue the permit consistent with the April 3, 2020 draft. On April 13, the Department received an email from a representative of IDOL that did not express concerns with the April 3, 2020 draft. Consistent with the terms of the Stipulation, the Department then processed the assignments of application for permit and is now issuing the permit in the name of Tamarack Mountain Operations, LLC ("TMO"). The permit is identical to the April 3, 2020 draft with the single exception of a correction to the name at the top of the map attachment. The approved permit lists TMO on the map attachment whereas the draft incorrectly listed Tamarack Homeowners Acquisition Co LLC.

The Stipulation contemplates that any permit that results from an approval of the Application that includes points of diversion or places of use on IDOL lands will ultimately be jointly owned by TMO and IDOL. The Department will process the assignment form included with the

Stipulation as Attachment D, "after a permit issued under the application becomes final and non-appealable." The Department will interpret this statement to refer to the time before which appeals to the district court must be filed pursuant to IDAPA 37.01.01.791. In other words, in the absence of challenges to the order, the Department will process the assignment of permit in Attachment D of the Stipulation on or about May 26, 2020, as this is after 42 days following the service date of the attached preliminary order approving the permit.

The final step in the water right process is issuance of a water right license. To receive a water right license, you must first commence the excavation or construction of your diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is complete. In addition, you must divert and use water to the full extent intended and submit a Statement of Completion for Submitting Proof of Beneficial Use by the date shown in condition no. 1 of your permit. The Department will send a Proof Due Notice to the permit holder(s) approximately 60 days prior to the date listed in condition no. 1 of your permit.

Sincerely,



Nick Miller
Manager, IDWR Western Region

Enclosures

Cc: See attached Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that on April 14th, 2020 I served a true and correct copy of Permit to Appropriate Water No. 65-23750 by U.S. Mail, postage prepaid, to the following:

TAMARACK MOUNTAIN OPERATIONS, LLC
8211 WEST BROWARD BLVD. STE 230
PLANTATION, FL 33324

TAMARACK MOUNTAIN OPERATIONS, LLC
C/O ALBERT BARKER
BARKER ROSHOLT & SIMPSON LLP
1010 W JEFFERSON ST STE 102
PO BOX 2139
BOISE ID 83701-2139

TAMARACK HOMEOWNERS ACQUISITION COMPANY LLC
C/O MICHAEL P. LAWRENCE
GIVENS PURSLEY LLP
601 W BANNOCK ST
PO BOX 2720
BOISE, ID 83701-2720

IDAHO DEPARTMENT OF LANDS
C/O MICHELE ANDERSON
3284 W INDUSTRIAL LOOP
COEUR D'ALENE, ID 83815

TAMARACK MUNICIPAL ASSN INC
311 VILLAGE DR
PMB 3003
TAMARACK, ID 83615

ANN VONDE OR ANGELA SHAER KAUFMAN
DEPUTY ATTORNEY GENERAL
NATURAL RESOURCES DIVISION
OFFICE OF ATTORNEY GENERAL
PO BOX 83720
BOISE ID 83720-0010


Kensie Thorneycroft
Administrative Assistant 1

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

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its 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.