



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

February 21, 2020

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

RE: Conditional Protest Withdrawal 65-23750 (Tamarack Homeowners Acquisition Co. LLC)

Dear Parties:

On November 29, 2019, the Idaho Department of Water Resources ("Department") sent a letter acknowledging the conditional protest withdrawal and outlining the Department's understanding of the process for implementing the conditional withdrawal agreement. The letter included a draft permit approval for application number 65-23750 for review. The draft approval omitted the proposed municipal storage and municipal from storage uses proposed on the application form. The applicant subsequently contacted the Department with comments on both the substance of the draft approval and the process for implementing the conditional withdrawal agreement. The department received no comments from the protestant.

Accordingly, the department has now prepared the attached second draft approval for the application. This draft now includes 500 acre-feet¹ of municipal storage and municipal from storage uses. This draft also corrects a typographic error in the place of use description and incorporates an overall volume limitation that had been omitted from the previous draft.

The parties have, through the *Stipulation and Joint Motion to Withdraw Protest and Issue Permit* ("Stipulation"), agreed to a course of action to resolve the contested case.

Through the Stipulation, the Idaho Department of Lands (IDOL) has agreed to withdraw their protest provided 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 Tamarack

¹ The application proposed 520 acre-feet of storage, but the applicant subsequently proposed reducing the volume to 500 acre-feet, partly in recognition of uses already developed under existing rights on the property.

Mountain Operations LLC ("TMO") and IDOL, rather than by the applicant Tamarack Homeowners Acquisition Company LLC ("TMA").


The Department has completed its review of the application and the Stipulation. The Department is prepared to approve the application as shown on the enclosed draft permit approval. Note that the Department intends to process the two signed assignment forms that were included as Attachments B and C to the Stipulation just prior to issuing a preliminary order approving the application, so the permit will be issued in the name of TMO. No additional fee is necessary to process an Assignment of Application for Permit.

The Stipulation contemplates the Department will process the assignment form included 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 after 42 days² following issuance of the preliminary order approving the permit. Note that an Assignment of Permit requires a \$25 fee. This fee must be submitted before the Department will process the assignment. As this assignment is a condition of the protest withdrawal, the fee must be received before the Department will issue a preliminary order approving the application.

Please review the draft approval carefully. If you think the draft approval or the process outlined above are not substantially in conformance with your Stipulation, please contact the department within 14 days of the date of this letter with your concerns. If the Department receives the \$25 fee, but otherwise hears no concerns, the Department will take the steps necessary to bring the application to final resolution as outlined above. As always, you may file a petition for reconsideration within 14 days after the preliminary order approving the application is issued.

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

Sincerely,



Nick Miller
Manager, IDWR Western Region

Enclosure

Cc: Tamarack Mountain Operations LLC c/o Al Barker – Barker Rosholt & Simpson LLP

² The Department's November 29, 2019 letter incorrectly stated a 56-day period, rather than 42 days.

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

DRAFT

Priority: December 29, 2017

Maximum Diversion Rate: 4.30 CFS
Maximum Diversion Volume: 1,248.0 AF

This is to certify that ~~TAMARACK HOMEOWNERS ACQUISITION CO LLC~~
~~311 VILLAGE DR~~
~~TAMARACK ID 83615-5014~~ TMO

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	1,248.0 AF
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	NE $\frac{1}{4}$ SW $\frac{1}{4}$,	Sec. 32, Twp 16N, Rge 03E, B.M.	VALLEY County
GROUND WATER	NE $\frac{1}{4}$ SE $\frac{1}{4}$,	Sec. 5, Twp 15N, Rge 03E, B.M.	VALLEY County
GROUND WATER	SE $\frac{1}{4}$ NE $\frac{1}{4}$,	Sec. 8, Twp 15N, Rge 03E, B.M.	VALLEY County
GROUND WATER	L1 (NE $\frac{1}{4}$ NE $\frac{1}{4}$),	Sec. 5, Twp 15N, Rge 03E, B.M.	VALLEY County
GROUND WATER	SW $\frac{1}{4}$ NE $\frac{1}{4}$,	Sec. 5, Twp 15N, Rge 03E, B.M.	VALLEY County
GROUND WATER	L3 (NE $\frac{1}{4}$ NW $\frac{1}{4}$),	Sec. 5, Twp 15N, Rge 03E, B.M.	VALLEY County
GROUND WATER	SE $\frac{1}{4}$ NW $\frac{1}{4}$,	Sec. 5, Twp 15N, Rge 03E, B.M.	VALLEY County
GROUND WATER	NE $\frac{1}{4}$ SW $\frac{1}{4}$,	Sec. 5, Twp 15N, Rge 03E, B.M.	VALLEY County
GROUND WATER	L3 (NE $\frac{1}{4}$ NW $\frac{1}{4}$),	Sec. 5, Twp 15N, Rge 03E, B.M.	VALLEY County
GROUND WATER	NE $\frac{1}{4}$ NW $\frac{1}{4}$,	Sec. 8, Twp 15N, Rge 03E, B.M.	VALLEY County
GROUND WATER	NE $\frac{1}{4}$ NW $\frac{1}{4}$,	Sec. 8, Twp 15N, Rge 03E, B.M.	VALLEY County
GROUND WATER	NE $\frac{1}{4}$ SW $\frac{1}{4}$,	Sec. 8, Twp 15N, Rge 03E, B.M.	VALLEY County
GROUND WATER	SE $\frac{1}{4}$ NE $\frac{1}{4}$,	Sec. 36, Twp 16N, Rge 02E, B.M.	VALLEY County
GROUND WATER	SE $\frac{1}{4}$ NE $\frac{1}{4}$,	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 **March 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 total diversion rate of 8.6 cfs and a total annual maximum diversion volume of 1248 acre-feet.

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

6. The volume of the storage reservoirs shall not exceed 135 acre-feet. Diversions to and from storage 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 _____ day of _____, 20____

DRAFT

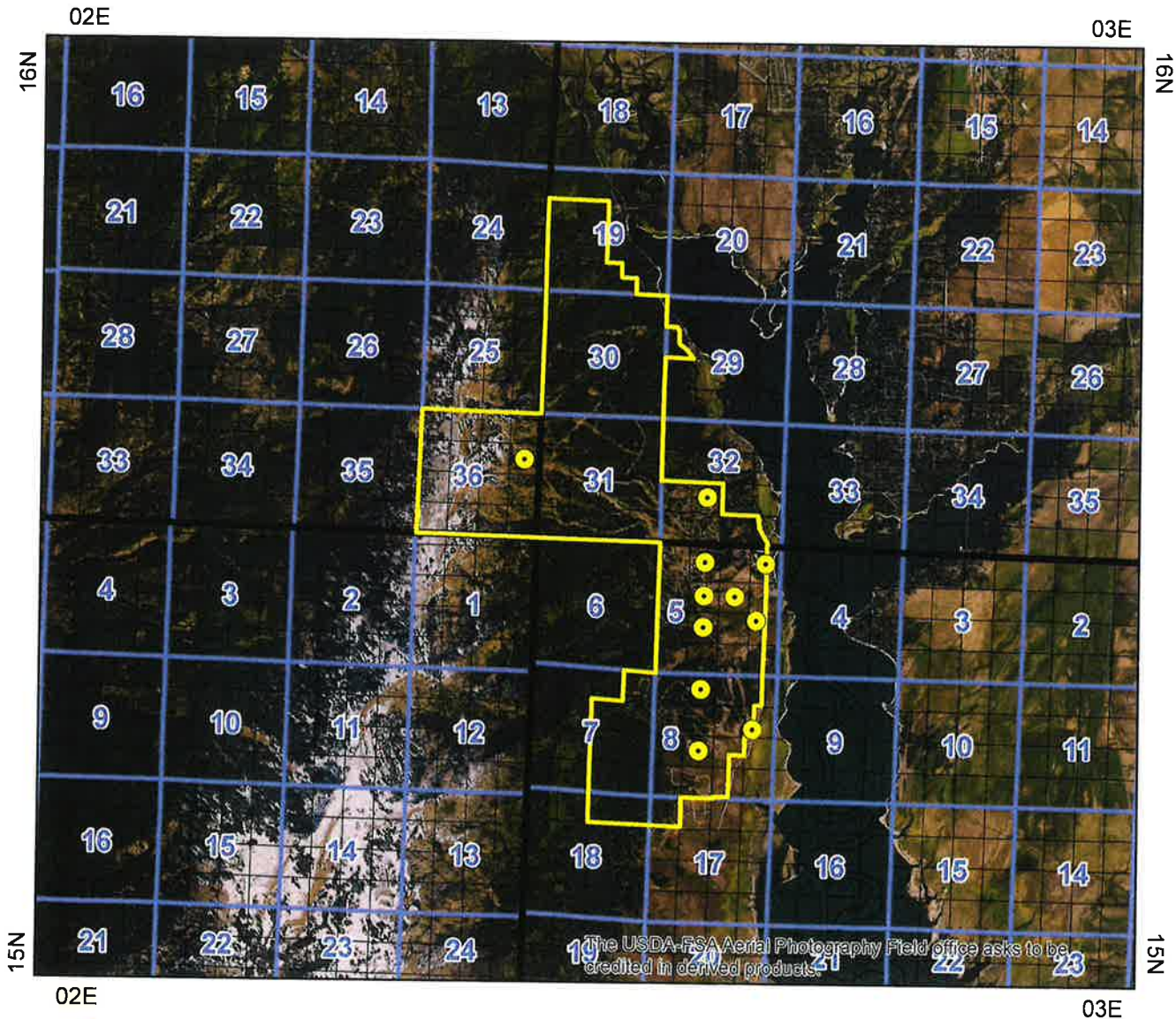
Nick Miller
Manager, IDWR Western Region

DRAFT

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.



02E

03E

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

0 0.75 1.5 3 Miles

