

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 65-23741

Priority: January 29, 2018

Maximum Diversion Rate: 150.00 CFS
Maximum Diversion Volume: 200.0 AF

This is to certify that

BIG WILLOW RANCH LLC 1 DIXIE LN PAYETTE ID 83661

has applied for a permit to appropriate water from:

Source : DRY CREEK

Tributary: BIG WILLOW CREEK

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>
DIVERSION TO STORAGE	10/01 to 06/15	150.00 CFS	
IRRIGATION FROM STORAGE	03/01 to 11/15		200.0 AF
IRRIGATION STORAGE	01/01 to 12/31		200.0 AF

Location of Point(s) of Diversion

DRY CREEK NE¼ SE¼, Sec. 27, Twp 09N, Rge 02W, B.M. PAYETTE County

Place of Use: IRRIGATION FROM 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	
08N	02W	3				12.0		4.0 L4			15.0		32.0	36.0	33.0	37.0	24.0	8.0	201.0
08N	02W	4			2.0	24.0					22.0	23.0	38.0	38.0	32.0	23.0	21.0	27.0	250.0
08N	02W	5											18.0	21.0			27.0	36.0	102.0
08N	02W	7	19.0		18.0	25.0					10.0	1.0 L3	3.0 L4	2.0	6.0	25.0			109.0
08N	02W	8	23.0	29.0	16.0	19.0	18.0	30.0	27.0	39.0	13.0	2.0				1.0			217.0
08N	02W	9	14.0	14.0	16.0	7.0	29.0	24.0	13.0	3.0									120.0
08N	02W	10		24.0	2.0		25.0	30.0	19.0	24.0									124.0
08N	03W	11									1.0		29.0	38.0	2.0	1.0	34.0	40.0	145.0
08N	03W	12									14.0	10.0	40.0	39.0	2.0	19.0	30.0	3.0	157.0
08N	03W	13					1.0	14.0											15.0
08N	03W	14	19.0	16.0			9.0												44.0
09N	02W	34							12.0			14.0	10.0						36.0

Total Acres: 1,520.0

Place of Use: IRRIGATION 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	
09N	02W	26							X			X							
09N	02W	27													X	X			

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **February 01, 2021**.
2. Subject to all prior water rights.

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No. 65-23741

3. This right when combined with all other rights shall provide no more than 5.0 afa per acre for irrigation storage and irrigation from storage for the place of use.
4. This right does not authorize the irrigation of land not previously irrigated.
5. The reservoir established by the storage of water under this right shall not exceed a total capacity of 200 acre-feet or a total surface area of 7.8 acres.
6. 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. 65.
7. Prior to diversion of water under this right, the right holder shall install a lockable device, subject to the approval of the Department, in a manner that will provide the watermaster suitable control of the diversion.
8. Prior to diversion of water under this right, the right holder shall provide a means acceptable to the department to measure the amount of water entering the reservoir and the amount of water released from the reservoir.
9. The impoundment of water under this right is contingent upon the issuance of a certificate of approval per the dam safety provisions of Idaho Code and subsequent written authorization by the dam safety program administered by the Department.
10. The right holder shall contact the watermaster by June 15 each year for authorization to continue diverting and using water. The right holder shall not divert water after June 15 each year unless the watermaster authorizes continued diversion and use of water under this water right. When the watermaster informs the right holder that water is not available to fill this right, the right holder shall cease diversion, shall rent water from the Payette River Rental Pool, or shall otherwise mitigate for the depletion of water caused by this water use. The department may amend the contact date listed in this administrative provision to more closely coincide with the date when water is not available to fill this water right.
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.

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

Signed this 29th day of January, 2020.


NICK MILLER

Western Regional Manager

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

65-23741

This map depicts the IRRIGATION FROM STORAGE 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 0.75 1.5 3 Miles



State of Idaho
Department of Water Resources

02W



-
- A horizontal number line representing distance in miles. It starts at 0 on the left and ends at 0.2 on the right. There are major tick marks labeled 0, 0.05, 0.1, and 0.2. Between each major tick mark, there are four smaller tick marks, dividing each 0.05-mile segment into five 0.01-mile segments. The label "0.2 Miles" is placed at the far right end of the line.





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: www.idwr.idaho.gov

Brad Little
Governor

Gary Spackman
Director

January 29, 2020

BIG WILLOW RANCH LLC
1 DIXIE LN
PAYETTE ID 83661

RE: Permit No. 65-23741

Permit Approval Notice

Dear Permit Holders:

The Department of Water Resources Western 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. The conditions include requirements that you must accomplish, such as timely submittal of proof of beneficial use or installation of a measuring device, as well as information about how your water use may be administered, such as regulation by a watermaster in a water district. 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.

The final step in the water right process is issuance of a water right license. To receive a water right license, you must divert and use water to the full extent intended and submit a *Statement of Completion for Submitting Proof of Beneficial Use* ("Proof") by the date shown in condition no. 1 of your permit. The Department will send you a *Proof Due Notice* approximately 60 days prior to the date listed in condition no. 1 of your permit. If you have already diverted and used water to the full extent intended, you may complete and submit the enclosed Proof form immediately.

You may also require approvals from other Department programs, such as Ground Water Protection, Safety of Dams, or Stream Channel Protection, to accomplish your proposed development. Please call or visit any Department office or see the Department's website at idwr.idaho.gov for more information about these programs.

Also, please note that permit holders are required to report any change of ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Forms to assign ownership or update your address are available from any office of the Department or on the Department's website.

If you have any questions concerning the enclosed information, please contact me at (208) 334-2190.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kensie Thorneycroft', written in a cursive style.

Kensie Thorneycroft
Administrative Assistant

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2020, I served a true and correct copy of Permit to Appropriate Water No. 65-23741 by U.S. Mail, postage prepaid, to the following:

BIG WILLOW RANCH LLC
1 DIXIE LN
PAYETTE ID 83661

NOTHWEST FARM CREDIT SERVICES FLCA
C/O STEPHEN PARROTT
16034 EQUINE DR
NAMPA ID 83687

A.L. CATTLE INC
C/O TRAVIS L THOMPSON & JONAS REAGAN
BARKER ROSHOLT & SIMPSON LLP
163 2ND AVE W
PO BOX 63
TWIN FALLS ID 83303-0063

WATER DISTRICT #65
RON SHURTLEFF
102 N MAIN ST
PAYETTE ID 83661


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.

RECEIVED

MAY 04 2018

WATER RESOURCES
WESTERN REGION

State of Idaho
Department of Water Resources

Application for Permit

RECOMMENDATION FORM

Application No.: 65-23741

Applicant's Name: Big Willow Ranch LLC & NWFC FLCA

Recommendation:

- a) ☒ I do not oppose approval of this application.
b) ☐ I do not oppose approval of this application if it is conditioned as follows:

- c) ☐ I oppose approval of this application for the following reasons:

- d) ☒ Additional comments:

The existing canal structure associated with 65-23741 may be regulated by Dam Safety Program if it is ultimately determined that it does not meet exclusion described in Section 42-1711, Idaho Code.

Dated this 4th day of May, 2018

Idaho Dept of Water Resources



Signature

Erik T. Boe

Printed Name

MEMORANDUM

DATE: 11/29/2018

TO: Application No. 65-23741

FROM: Phill Hummer

RE: Large Diversion Information

c. Information relative to the effect on existing water rights, Section 42-203A(5)(a), Idaho Code, shall be submitted as follows:

i. For applications appropriating springs or surface streams with five (5) or fewer existing users, either the identification number, or the name and address of the user, and the location of the point of diversion and nature of use for each existing water right shall be submitted.

The POD for this application is the existing diversion structure Big Willow Ranch LLC uses to divert water from Dry Creek into a storage reservoir. There are 4 water right POD's below that diversion and above the confluence of Dry Creek and Big Willow Creek. Water right no. 65-22738 is authorizes 0.02 cfs for stockwater and is owned by A L Cattle INC. Right nos. 65-2204, 65-3247 and 65-3248 are owned by Big Willow Ranch LLC and are for irrigation.

The application seeks to authorize a use that is already occurring and has been since the construction of the reservoir and the canal. All the effects of the diversion and the storage of water in the canal and behind the dam in Dry Creek itself have been felt by downstream users. A L Cattle INC submitted a protest to this application but withdrew that protest without requesting any additional conditions or agreements, they had no concerns about this application. There are no concerns about the proposed use impacting other water rights owned by Big Willow Ranch LLC.

iii. Information shall be submitted concerning any design, construction, or operation techniques which will be employed to eliminate or reduce the impact on other water rights.

The diversion structure is a cement lined canal that has a place where boards can be inserted to block flow into the reservoir. Blocking the diversion of water in this manner would allow the Dry Creek water to flow past the reservoir and continue to downstream users on Dry Creek and Big Willow Creek. It should be regulated by the watermaster of the district so that Dry Creek water can pass through the reservoir once Big Willow Ranch LLC's water rights are satisfied.

d. Information relative to sufficiency of water supply, Section 42-203A(5)(b), Idaho Code, shall be submitted as follows:

i. Information shall be submitted on the water requirements of the proposed project, including, but not limited to, the required diversion rate during the peak use period and the

average use period, the volume to be diverted per year, the period of year that water is required, and the volume of water that will be consumptively used per year.

There are no water requirements for the proposed project in the traditional sense in that the diversion and storage of water in Dry Creek and in the canal isn't part of planned project but already occurs because of the way the reservoir system was designed. The diversion rate on the application was based on the maximum rate that the canal is capable of passing. The volume on the application was estimated from the surface area of the reservoir on Dry Creek and the capacity of canal. The purpose of the reservoir is to store water during the beginning of the irrigation season and during the non-irrigation season to be used for irrigation during the irrigation season, so the season of use is 10/1 – 6/15.

ii. Information shall be submitted on the quantity of water available from the source applied for, including, but not limited to, information concerning flow rates for surface water sources available during periods of peak and average project water demand, information concerning the properties of the aquifers that water is to be taken from for groundwater sources, and information on other sources of supply that may be used to supplement the applied for water source.

It is my understanding that this diversion has not been regulated by the watermaster of district 65 and that a waiver is going to be approved for the condition that requires a measuring device on permit nos. 65-22979 and 65-23479. Comments from the watermaster were solicited at the time this application was advertised but none were submitted. Since the use of water on the application is an existing use and not a proposed development of new water a more rigorous evaluation of the quantity of available water is not necessary. For these reasons it is assumed there are no concerns about the quantity of available water at this time.

e. Information relative to good faith, delay, or speculative purposes of the applicant, Section 42-203A(5)(c), Idaho Code, shall be submitted as follows:

i. The applicant shall submit copies of deeds, leases, easements or applications for rights-of-way from federal or state agencies documenting a possessory interest in the lands necessary for all project facilities and the place of use or if such interest can be obtained by eminent domain proceedings the applicant must show that appropriate actions are being taken to obtain the interest. Applicants for hydropower uses shall also submit information required to demonstrate compliance with Sections 42-205 and 42-206, Idaho Code.

The applicant has submitted a copy of a Idaho Department of Lands assignment of easement (easement no. 4675). The applicant told me that this is the easement that authorizes Big Willow Ranch LLC to access and maintain the point of diversion and diversions works as well as to store water in the reservoir on State owned land.

ii. The applicant shall submit copies of applications for other needed permits, licenses and approvals, and must keep the department apprised of the status of the applications and any subsequent approvals or denials.

The applicant is not required to submit an application for construction or enlargement of a new or existing dam because there are no changes to existing structures proposed.

f. Information Relative to Financial Resources, Section 42-203A(5)(d), Idaho Code, shall be submitted as follows:

i. The applicant shall submit a current financial statement certified to show the accuracy of the information contained therein, or a financial commitment letter along with the financial statement of the lender or other evidence to show that it is reasonably probable that financing will be available to appropriate the water and apply it to the beneficial use proposed.

Big Willow Ranch LLC was originally a co-applicant along with Northwest Farm Credit Services FLCA. The bank has since dismissed themselves from the application so that they did not have to participate in the contested case process. It is assumed Big Willow Ranch LLC and the bank have an agreement in place regarding the necessary funds to construct and complete the proposed project.

ii. The applicant shall submit plans and specifications along with estimated construction costs for the project works. The plans shall be definite enough to allow for determination of project impacts and implications.

The applicant does not propose any modifications or additional construction associated with this application for permit.

g. Information Relative to Conflict with the Local Public Interest, Section 42-203A(5)(e), Idaho Code, shall be submitted as follows:

The applicant shall seek comment and shall submit all letters of comment on the effects of the construction and operation of the proposed project from the governing body of the city and/or county and tribal reservation within which the point of diversion and place of use are located, the Idaho Department of Fish and Game, the Idaho Department of Environmental Quality, and any irrigation district or canal company within which the proposed project is located and from other entities as determined by the director.

Notification of the pending application was sent to Water District 65, IDFG, US BLM, IDL, and the dam safety personal at western region. IWDR did not receive any comments or protests from these entities. Additional comments were not submitted and are not necessary per current processing practice.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

11/29/2019

BIG WILLOW RANCH LLC
C/O JG SCHWARZ
1 DIXIE LN
PAYETTE ID 83661

Re: Application Nos. 65-23731 and 65-23741 – Acknowledgement of Stipulation to Resolve Protests

Dear Parties,

The Department has received a copy of the signed stipulation to resolve the protests. The document specified the language of a condition that when included on application no. 65-23731 would resolve A L Cattle INC's protest of that application. The Department intends to include this condition on any permit approval that may be issued. In addition, A L Cattle INC has withdrawn their protest filed against application no. 65-23741.

These applications do not have any remaining protests so the Department will take the necessary steps to bring these applications to final resolution. Both parties will receive copies of any approvals once issued.

Please contact me if you have any additional questions or concerns in this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'PH' followed by a stylized flourish.

Phill Hummer
Water Resource Agent, Sr.
Idaho Department of Water Resources
Phone: (208) 334-2190
Email: phill.hummer@idwr.idaho.gov

Cc: Travis Thompson, Barker Rosholt & Simpson LLP