

State of Idaho  
Department of Water Resources  
**Permit to Appropriate Water**  
No. 65-23731

Priority: August 21, 2019

Maximum Diversion Rate: 6.00 CFS  
Maximum Diversion Volume: 950.0 AF

This is to certify that

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

has applied for a permit to appropriate water from:

Source : BIG WILLOW CREEK

Tributary: PAYETTE 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 STORAGE	01/01 to 12/31		950.0 AF
DIVERSION TO STORAGE	11/01 to 05/01	6.00 CFS	
IRRIGATION FROM STORAGE	03/01 to 11/15		950.0 AF

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

BIG WILLOW CREEK SE¼ NW¼, Sec. 1, Twp 08N, Rge 02W, B.M. PAYETTE County

**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	
08N	02W	5	X L1	X L2	X	X	X L3		X	X	X	X	X	X	X	X	X	X	

**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

**Conditions of Approval**

1. Proof of application of water to beneficial use shall be submitted on or before **February 01, 2025**.
2. Subject to all prior water rights.

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**Department of Water Resources**  
**Permit to Appropriate Water**  
**No. 65-23731**

3. Rights 65-23617 and 65-23731 when combined shall not exceed a total diversion rate of 6.00 cfs.
4. 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.
5. The reservoir established by the storage of water under this right shall not exceed a total capacity of 950 acre-feet.
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 and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.
8. 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.
9. 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.
10. This right does not grant any right-of-way or easement across the land of another.
11. 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.
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 29<sup>th</sup> day of January, 2020.



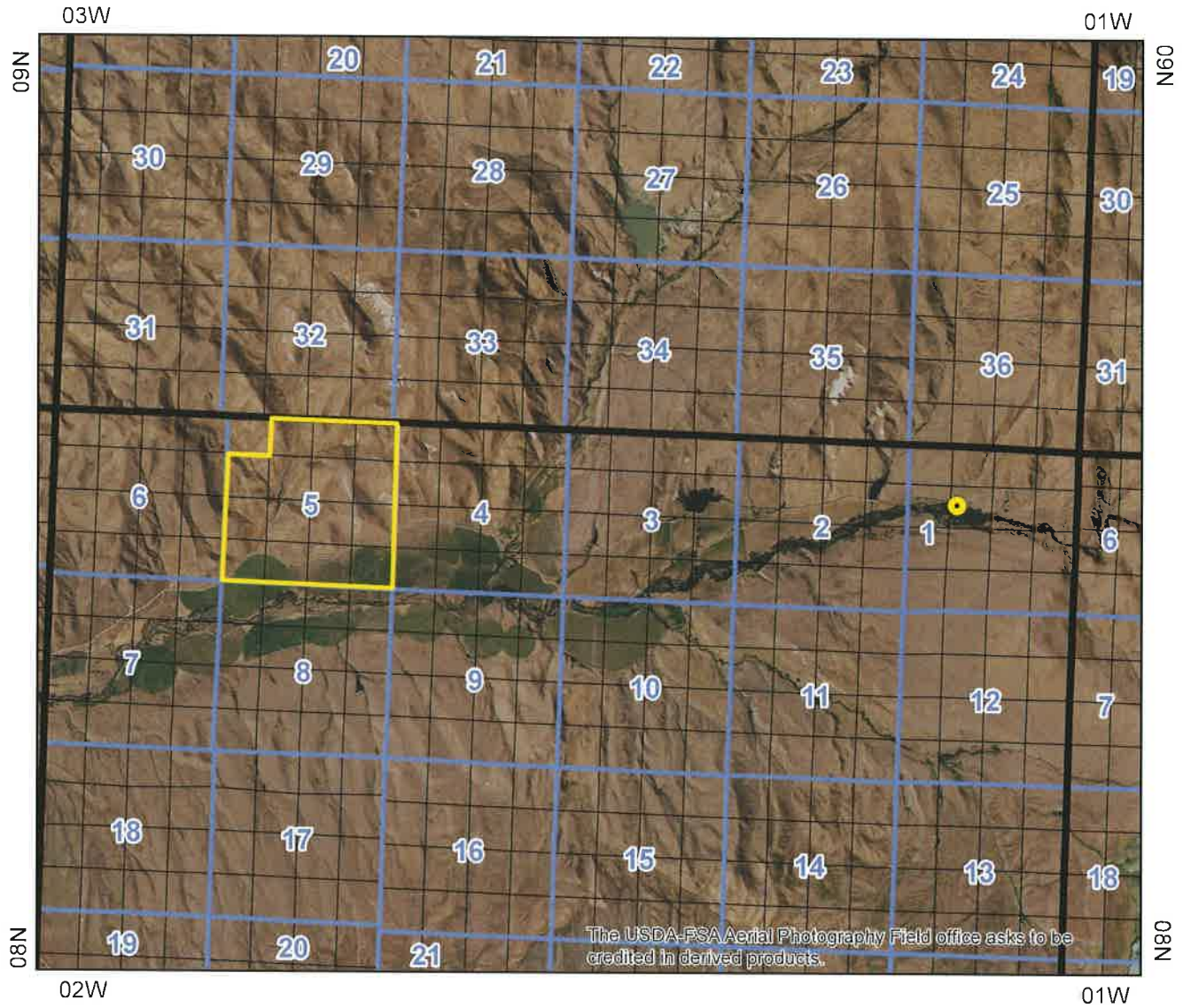
NICK MILLER  
Western Regional Manager

State of Idaho  
Department of Water Resources

# Attachment to Permit to Appropriate Water

65-23731

This map depicts the IRRIGATION 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 0.5 1 2 Miles





State of Idaho  
Department of Water Resources

# Attachment to Permit to Appropriate Water

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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 1 2 4 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: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

Brad Little  
Governor

Gary Spackman  
Director

January 29, 2020

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

RE: Permit No. 65-23731

### 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 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 you a *Proof Due Notice* approximately 60 days prior to the date listed in condition no. 1 of your permit.

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](http://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,



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. 65-23731 by U.S. Mail, postage prepaid, to the following:

BIG WILLOW RANCH LLC  
C/O J G SCHWARZ  
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

USDI BLM IDAHO STATE OFFICE  
1387 S VINNELL WAY  
BOISE ID 83709-1657

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.