

State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 63-34335

Priority: January 26, 2017

Maximum Diversion Rate: 9.75 CFS

This is to certify, that THORPE FAMILY TRUST
C/O RYAN THORPE
28854 BOULDER RD
PARMA ID 83660

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>
RECREATION STORAGE	09/01 to 02/28		1,820 AF
DIVERSION TO STORAGE	09/01 to 02/28	9.75 CFS	
IRRIGATION	03/01 to 11/15	1.30 CFS	
WILDLIFE	09/01 to 02/28	9.75 CFS	
RECREATION	09/01 to 02/28	9.75 CFS	
WILDLIFE STORAGE	09/01 to 02/28		1,820 AF

LOCATION OF POINT(S) OF DIVERSION:

DIXIE SLOUGH NE¼SE¼ Sec. 1, Twp 04N, Rge 05W, B.M. CANYON County

PLACE OF USE: RECREATION STORAGE

Twp Rge Sec	NE				NW				SW				SE				
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
04N 05W 1			X	X											X		

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
04N 05W 1			24	24											17		65

Total Acres: 65

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PLACE OF USE: WILDLIFE

Twp	Rge	Sec	NE				NW				SW				SE				Totals
04N	05W	1	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
					X	X									X				

PLACE OF USE: RECREATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
04N	05W	1	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
					X	X									X				

PLACE OF USE: WILDLIFE STORAGE

Twp	Rge	Sec	NE				NW				SW				SE				Totals
04N	05W	1	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
					X	X									X				

CONDITIONS OF APPROVAL

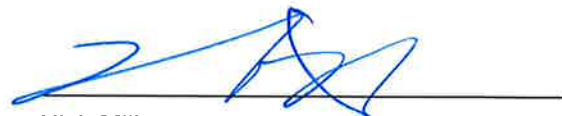
1. Proof of application of water to beneficial use shall be submitted on or before **September 01, 2023**.
2. Subject to all prior water rights.
3. This right authorizes total annual storage volume of 1816.8 acre-feet, 32.5 acre-feet to be used for the initial filling or carryover storage of the flooded fields and 1784.3 acre-feet for the replacement of losses caused by seepage and evaporation.
4. The field flooding established by the storage of water under this right shall not exceed a total capacity of 32.5 acre-feet or a total surface area of 65 acres.
5. 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.
6. The source of this right is wastewater. The wasting of water may be discontinued at any time. This right remains 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 or manner of wasting, or to recapture.
7. The Wildlife, Recreation, Wildlife Storage, Recreation Storage, and Diversion to Storage uses of this right shall be junior and subordinate to water right no. 63-33467 and 63-34318 (if approved), and water right no. 63-33467 and 63-34318 (if approved) shall be junior and subordinate to this right's irrigation use of 1.3 cfs.

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8. 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.
9. 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.
10. 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.
11. 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.
12. 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.
13. To the extent surface return flows result from the diversion of water under this right, the holder shall cause such flows to be returned to the Dixie Slough, and shall not allow any such return flows to be diverted into the Meadows Drain.
14. Wildlife and recreation use is for flow through and seepage water associated with wildlife and recreation storage of 65 acres of field flooding for waterfowl habitat and hunting.
15. The wildlife and recreation components of this right shall be junior and subordinate to future water rights authorizing the diversion and use of water from the Dixie Slough and its tributaries, including ground water, for consumptive uses, except that this right shall not be subordinate to future water rights for similar wildlife, recreation and/or aesthetic uses.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code.
Signed this 13th day of September, 2018.



Nick Miller

Manager, IDWR Western Region

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

63-34335

This map depicts the RECREATION, WILDLIFE, IRRIGATION, WILDLIFE STORAGE, and RECREATION 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

0 0.075 0.15 0.3 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: www.idwr.idaho.gov

C.L. "Butch" Otter
Governor

Gary Spackman
Director

September 13, 2018

THORPE FAMILY TRUST
C/O RYAN THORPE
28854 BOULDER RD
PARMA ID 83660

RE: Permit No. 63-34335

Permit Approval Notice

Dear Permit Holder(s):

The 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. 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 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 dark ink, appearing to read "Nick Miller", with a stylized flourish at the end.

Nick Miller
Regional Manager

Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2018, I served a true and correct copy of Permit to Appropriate Water No. 63-34335 by U.S. Mail, postage prepaid, to the following:

THORPE FAMILY TRUST (Current Owner)
C/O RYAN THORPE
28854 BOULDER RD
PARMA ID 83660

SPF WATER ENGINEERING LLC (Representative)
C/O LORI GRAVES
300 E MALLARD DR STE 350
BOISE ID 83706

MICHAEL P LAWRENCE (Attorney)
GIVENS PURSLEY LLP
601 W BANNOCK ST
PO BOX 2720
BOISE ID 83701-2720

PAUL A TURCKE
MSBT LAW CHTD
950 W BANNOCK ST STE 520
BOISE ID 83702

UNITED STATES OF AMERICA BUREAU OF RECLAMATION
C/O E GAIL MCGARRY
1150 N CURTIS RD STE 100
BOISE ID 83706-1234

CHARLES L HONSINGER
HONSINGER LAW PLLC
PO BOX 517
BOISE ID 83701

ROBERT B FIRPO
OFFICE OF THE SOLICITOR
US DEPARTMENT OF THE INTERIOR
960 BROADWAY AVE STE 400
BOISE ID 83706

RIVERSIDE IRRIGATION DISTRICT
ATTN ALBERT P BARKER
BARKER ROSHOLT & SIMPSON LLP
1010 JEFFERSON ST STE 102
PO BOX 2139
BOISE ID 83701

CITY OF BOISE
C/O ERIKA MALMEN OF PERKINS COIE LLP
1111 W JEFFERSON ST STE 500
BOISE ID 83702

WATER DISTRICT #63
REX BARRIE (Watermaster)
PO BOX 767
STAR ID 83669-0767



Rachel Neely
Administrative Assistant I

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.