

**Maximum Diversion Rate:** 13.1 CFS

has applied for a permit to appropriate water from:

**Tributary:** SNAKE 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> |
|-----------------------|----------------------|--------------------------|----------------------|
| WILDLIFE              | 09/30 to 02/28       | 13.1 CFS                 |                      |
| RECREATION            | 09/30 to 02/28       | 13.1 CFS                 |                      |
| WILDLIFE STORAGE      | 09/30 to 02/28       |                          | 1,620 AF             |
| RECREATION STORAGE    | 09/30 to 02/28       |                          | 1,620 AF             |
| DIVERSION TO STORAGE  | 09/30 to 02/28       | 13.1 CFS                 |                      |

## BOISE RIVER SW¼SE¼ Sec. 16, Twp 05N, Rge 05W, B.M. CANYON County

**PLACE OF USE:** WILDLIFE

| Twp | Rge | Sec | NE        |           |           |           | NW        |           |           |           | SW        |           |           |           | SE        |           |           |           | Totals |
|-----|-----|-----|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|--------|
|     |     |     | <u>NE</u> | <u>NW</u> | <u>SW</u> | <u>SE</u> | <u>NE</u> | <u>NW</u> | <u>SW</u> | <u>SE</u> | <u>NE</u> | <u>NW</u> | <u>SW</u> | <u>SE</u> | <u>NE</u> | <u>NW</u> | <u>SW</u> | <u>SE</u> |        |
| 05N | 05W | 17  |           |           |           |           | X         | X         | X         | X         |           |           |           |           |           |           |           |           |        |
|     |     |     |           |           |           |           |           |           | L4        | L3        |           |           |           |           |           |           |           |           |        |

**PLACE OF USE:** RECREATION

[illegible]

State of Idaho  
Department of Water Resources  
**Permit to Appropriate Water**  
NO. 63-34334

**PLACE OF USE:** WILDLIFE STORAGE

| Twp Rge Sec | NE |    |    |    | NW |    |     |     | SW |    |    |    | SE |    |    |    | Totals |
|-------------|----|----|----|----|----|----|-----|-----|----|----|----|----|----|----|----|----|--------|
|             | NE | NW | SW | SE | NE | NW | SW  | SE  | NE | NW | SW | SE | NE | NW | SW | SE |        |
| 05N 05W 17  |    |    |    |    | X  | X  | X   | X   |    |    |    |    |    |    |    |    |        |
|             |    |    |    |    |    |    | L 4 | L 3 |    |    |    |    |    |    |    |    |        |

**PLACE OF USE:** RECREATION STORAGE

| Twp Rge Sec | NE |    |    |    | NW |    |     |     | SW |    |    |    | SE |    |    |    | Totals |
|-------------|----|----|----|----|----|----|-----|-----|----|----|----|----|----|----|----|----|--------|
|             | NE | NW | SW | SE | NE | NW | SW  | SE  | NE | NW | SW | SE | NE | NW | SW | SE |        |
| 05N 05W 17  |    |    |    |    | X  | X  | X   | X   |    |    |    |    |    |    |    |    |        |
|             |    |    |    |    |    |    | L 4 | L 3 |    |    |    |    |    |    |    |    |        |

**CONDITIONS OF APPROVAL**

1. Proof of application of water to beneficial use shall be submitted on or before **August 01, 2023**.
2. Subject to all prior water rights.
3. Right 63-34334 authorizes total annual storage volume of 1620 acre-feet, 44 acre-feet to be used for the initial filling or carryover storage of the field flooding and 1576 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 44 acre-feet or a total surface area of 87 acre(s).
5. Water diverted under the wildlife and recreation flow components of this water right, minus evaporation and seepage losses, shall be returned to the Boise River.
6. This right does not authorize the diversion and use of water released from Lucky Peak Reservoir for stream flow maintenance purposes in connection with Water Right 63-3618.
7. Rights 63-34333 and 63-34334 when combined shall not exceed a total diversion rate of 13.1 cfs.
8. Diversions under water right 63-34334 will not exceed 13.1 cfs in combination with diversion of irrigation water rights appurtenant to the 63-34334 place of use.
9. Any obstruction in the Boise River channel for diversion of water under this right must provide for watercraft and fish passage. The right holder must bypass sufficient flows in the Boise River at the point of diversion to accommodate watercraft navigation and fisheries values in the Boise River downstream of the diversion. The quantity of the bypass flow may be established in the future by the filing of a petition with the Department to establish the bypass flows and subsequent proceedings as described in the Department's Rules of Procedure.
10. This right shall be junior and subordinate to future water rights authorizing the diversion and use of water from the Boise River 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.

State of Idaho  
Department of Water Resources  
**Permit to Appropriate Water**  
NO. 63-34334

11. This right shall be junior and subordinate to future minimum in-stream flow water rights that may be established for the Boise River and its tributaries.
12. 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.
13. 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.
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.
15. 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.
16. 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.
17. Wildlife and wildlife storage use is to create shallow water and moist soil wildlife habitats. These habitats are intended to provide resting, roosting, and refuge areas for waterfowl.
18. Recreation and recreation storage use is for waterfowl hunting and wildlife viewing. Recreation use under this right is for flow-through water and return-flow water associated with recreation storage.

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

Signed this 1<sup>st</sup> day of August, 20 18.



Nick Miller

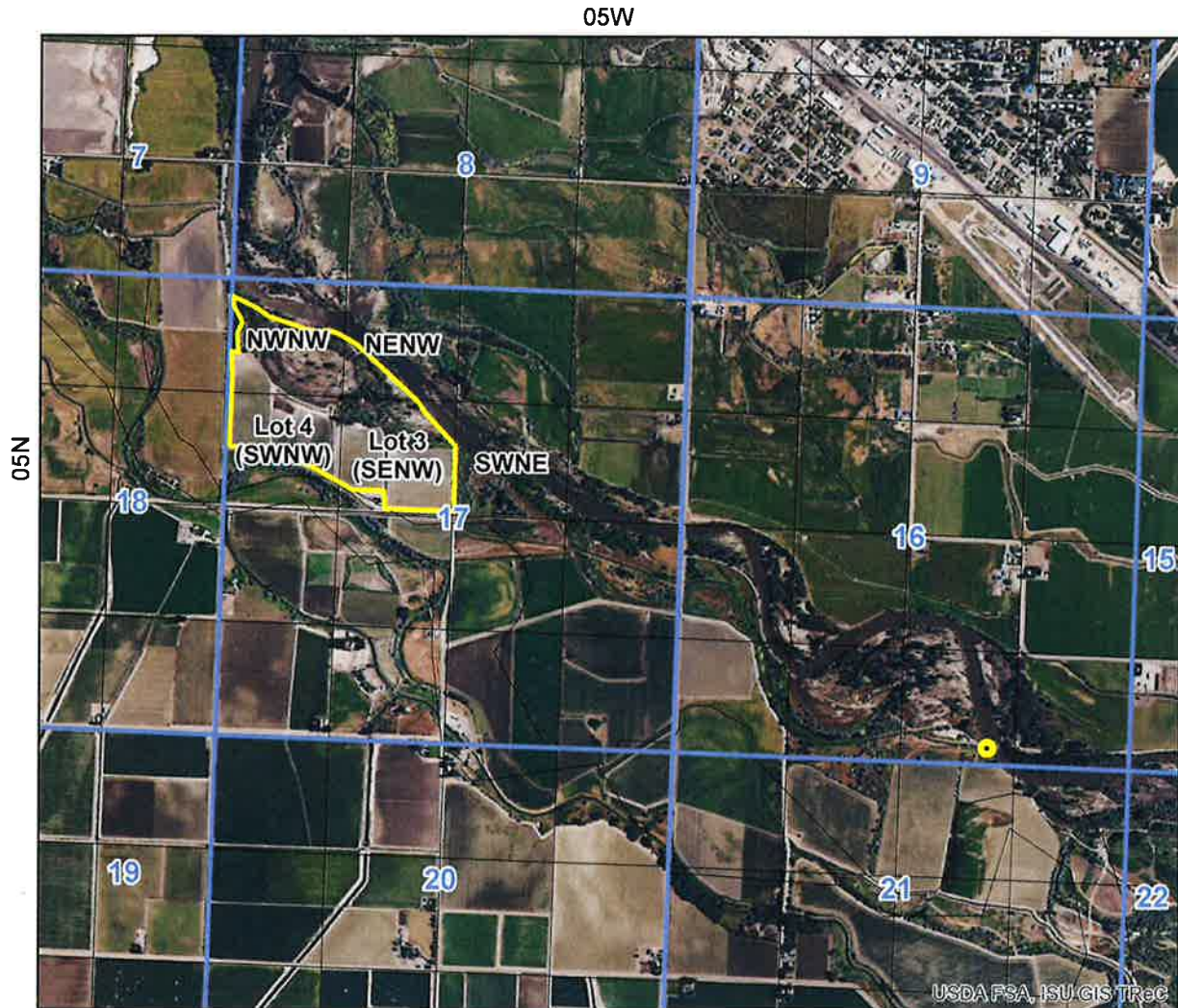
Manager, IDWR Western Region

State of Idaho  
Department of Water Resources

# Attachment to Permit to Appropriate Water

63-34334

This map depicts the WILDLIFE, WILDLIFE STORAGE, RECREATION, 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 0.25 0.5 1 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)

C.L. "Butch" Otter  
Governor

Gary Spackman  
Director

August 01, 2018

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

RE: Permit No. 63-34334

### 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](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,

 *Nick Miller for*

Nick Miller  
Regional Manager

Enclosure(s)

## CERTIFICATE OF SERVICE

I hereby certify that on August 01, 2018, I served a true and correct copy of Permit to Appropriate Water No. 63-34334 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

TOM BASSISTA (Protestant)  
IDAHO DEPARTMENT OF FISH AND GAME  
3101 S POWERLINE RD  
NAMPA ID 83686

ALBERT P BARKER (Protestant)  
BARKER ROSHOLT & SIMPSON LLP  
1010 W JEFFERSON ST STE 102  
PO BOX 2139  
BOISE ID 83702-2139

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



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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.