



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

7/13/2018

GARY SPACKMAN

Director

THORPE FAMILY TRUST
C/O MICHAEL P LAWRENCE
GIVENS PURSLEY LLP
PO BOX 2720
BOISE ID 83701-2720

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

MCCONNEL ISLAND DITCH CO LTD
C/O ALBERT P BARKER
BARKER ROSHOLT & SIMPSON LLP
PO BOX 2139
BOISE ID 83701-2139

Re: Protest Withdrawal – Applications for Permit Nos. 63-34333 and 63-34334 (Thorpe Family Trust)

Dear Parties:

The Department of Water Resources ("Department") acknowledges receipt of both a March 6, 2018, and a June 26, 2018 *Stipulation for Withdrawal of Protests and Issuance of Permits* ("Stipulations"). The two documents conditionally resolve protests to applications 63-34433 and 63-34434. The parties have agreed to the protestants' withdrawals if the Department conditions any approvals of the permit applications substantially as provided in the stipulations.

In any conditional withdrawal, the Department must review the agreement to ensure that conditions to be included in an approval are acceptable. The Stipulations included components that are to be addressed by the Department as conditions on the face of the approvals and may have components that are the responsibility of the parties to accomplish and enforce. The attached draft approval contains the conditions stipulated by the parties as well as other conditions required by the Department.

Please review the draft approvals carefully. If you think either of the draft approvals is not substantially in conformance with your stipulated conditions, please contact the Department within 14 days of the date of this letter with your concerns. The application has no remaining protests; therefore, if we do not hear from you, the Department will take the steps necessary to bring the application to final resolution. As always, you may file a petition for reconsideration within 14 days after the preliminary order approving the permit is issued.

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

Sincerely,

Nick Miller
Regional Manager

Enclosures

Cc: Terry Scanlan, SPF Water Engineering LLC

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

[illegible]

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
05N 05W 17	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
					X	X	X	X									
							L 4	L 3									

PLACE OF USE: RECREATION STORAGE

Twp Rge Sec	NE				NW				SW				SE				Totals
05N 05W 17	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
					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, 2022**.
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 _____ day of _____, 20_____.

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.



0 0.25 0.5 1 Miles

- Point of Diversion
- Place Of Use Boundary
- Townships
- PLS Sections



State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 63-34333

Priority: January 26, 2017

Maximum Diversion Rate: 0.90 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: BOISE RIVER**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>
RECREATION	09/01 to 02/28	0.90 CFS	
WILDLIFE	09/01 to 02/28	0.90 CFS	
WILDLIFE STORAGE	09/01 to 02/28		222 AF
RECREATION STORAGE	09/01 to 02/28		222 AF
DIVERSION TO STORAGE	09/01 to 02/28	0.90 CFS	

LOCATION OF POINT(S) OF DIVERSION:

BOISE RIVER L3 (SE¼NW¼) Sec. 17, Twp 05N, Rge 05W, B.M. CANYON County

PLACE OF USE: RECREATION

Twp Rge Sec	NE				NW				SW				SE				
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
05N 05W 17						X											

PLACE OF USE: WILDLIFE

Twp Rge Sec	NE				NW				SW				SE				
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
05N 05W 17						X											

State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 63-34333

PLACE OF USE: WILDLIFE STORAGE

Twp	Rge	Sec	NE				NW				SW				SE				Totals
05N	05W	17	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
								X											

PLACE OF USE: RECREATION STORAGE

Twp	Rge	Sec	NE				NW				SW				SE				Totals
05N	05W	17	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
								X											

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 63-34333 authorizes total annual storage volume of 222 acre-feet, 3.0 acre-feet to be used for the initial filling or carryover storage of the field flooding and 219 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 3.0 acre-feet or a total surface area of 6.0 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. 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.
9. 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.
10. 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.

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 63-34333

11. 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.
12. 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.
13. 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.
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This permit is issued pursuant to the provisions of Section 42-204, Idaho Code.

Signed this _____ day of _____, 20_____.

Nick Miller

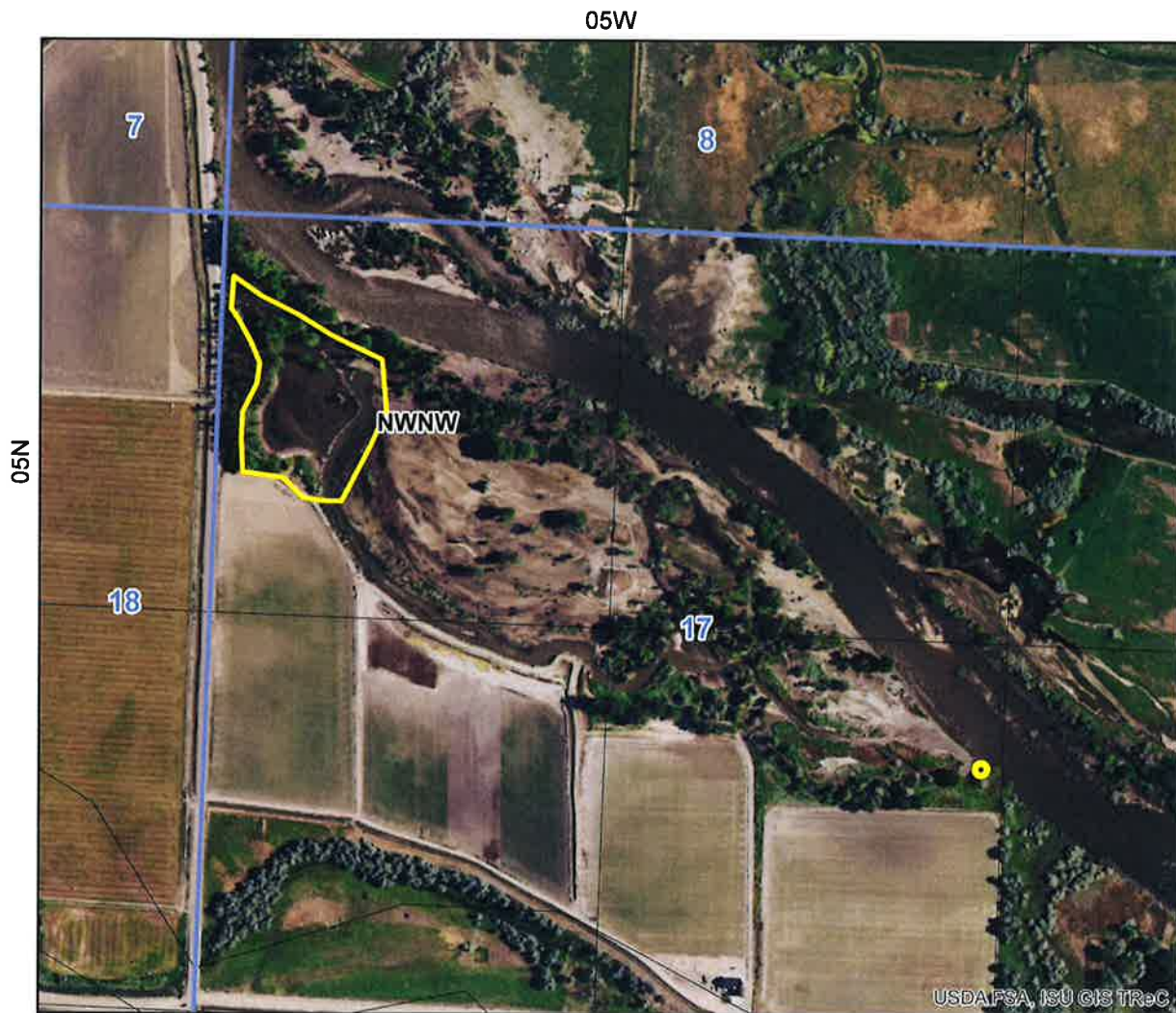
Manager, IDWR Western Region

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

63-34333

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

