

State of Idaho  
Department of Water Resources  
**Permit to Appropriate Water**

NO. 65-23703

Priority: June 01, 2017

Maximum Diversion Volume: 80.3 AF

This is to certify, that BOGUS BASIN RECREATIONAL ASSN INC  
C/O BRAD WILSON  
2600 BOGUS BASIN RD  
BOISE ID 83702

has applied for a permit to appropriate water from:

**Source:** BOGUS CREEK**Tributary:** SHAFER CREEK

and a permit is APPROVED for development of water as follows:

| <u>BENEFICIAL USE</u>   | <u>PERIOD OF USE</u> | <u>ANNUAL VOLUME</u> |
|-------------------------|----------------------|----------------------|
| COMMERCIAL STORAGE      | 01/01 to 12/31       | 80.3 AF              |
| COMMERCIAL FROM STORAGE | 11/01 to 03/31       | 80.3 AF              |
| FIRE PROTECTION STORAGE | 01/01 to 12/31       | 47.3 AF              |
| AESTHETIC STORAGE       | 01/01 to 12/31       | 47.3 AF              |
| RECREATION STORAGE      | 01/01 to 12/31       | 47.3 AF              |

**LOCATION OF POINT(S) OF DIVERSION:**

BOGUS CREEK SW¼ SW¼ Sec. 16, Twp 05N, Rge 03E, B.M. BOISE County

**PLACE OF USE:** COMMERCIAL STORAGE, FIRE PROTECTION STORAGE, AESTHETIC STORAGE and 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 03E 16  |    |    |    |    |    |    |    |    |    |    | X  |    |    |    |    |    |        |

**PLACE OF USE:** COMMERCIAL FROM 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 03E 15  |    |    |    |    |    |    |    |    | X  | X  |    |    |    |    |    |    |        |
| 05N 03E 16  |    |    | X  | X  |    |    |    |    | X  |    |    | X  | X  | X  | X  | X  |        |
| 05N 03E 21  | X  | X  | X  | X  | X  |    |    |    |    |    |    |    | X  | X  |    |    |        |
| 05N 03E 22  |    |    |    |    |    | X  | X  |    | X  |    |    |    |    |    |    |    |        |

**CONDITIONS OF APPROVAL**

1. Proof of application of water to beneficial use shall be submitted on or before **May 01, 2023**.
2. Subject to all prior water rights.
3. Right 65-23703 authorizes the storage of an annual total of 80.3 acre-feet, comprised of 42.0 acre-feet to be used for the initial filling or carryover storage of the reservoir, an estimated 5.3 acre-feet for the replacement of losses due to evaporation, and up to 33.0 acre-feet for additional refills for commercial from storage use.

State of Idaho  
Department of Water Resources  
**Permit to Appropriate Water**

NO. 65-23703

4. The one (1) reservoir established by the storage of water under this right shall not exceed a total capacity of 42 acre-feet or a total surface area of 3.0 acres.
5. 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.
6. Water may be diverted into storage under this right from November 16 through March 14 each year. Further, from March 15 through May 31, water may be diverted into storage under this right only to the extent that the remaining flow in Bogus Creek at the point of diversion is not reduced below 2.0 cfs. No water may be diverted into storage under this right from June 1 through November 15 each year.
7. The permit holder shall record the volume of water diverted from the pond using a totalizing flowmeter on a monthly basis and shall record the starting and ending pond level for the same period, and report quarterly to the protestant with a copy to the Idaho Department of Water Resources (Department) for the first five (5) years that storage occurs under this right. Thereafter, the permit holder will continue measuring and maintaining records for inspection by the Department.
8. 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.
9. 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.
10. The right holder shall install and maintain an impermeable liner in the reservoir.
11. Commercial storage use and commercial from storage use is for snowmaking purposes at Bogus Basin Ski Resort.
12. Water shall not be diverted from fire protection storage except to fight or repel an existing fire.
13. Prior to diversion and use of water under this approval, the right holder shall obtain Forest Service authorization necessary to access the point of diversion or place of use or to convey water across federal land.
14. This right does not grant any right-of-way or easement across the land of another.
15. 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.
16. 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 Section 42-204, Idaho Code.

Signed this 24<sup>th</sup> day of April, 2018.

  
Nick Miller

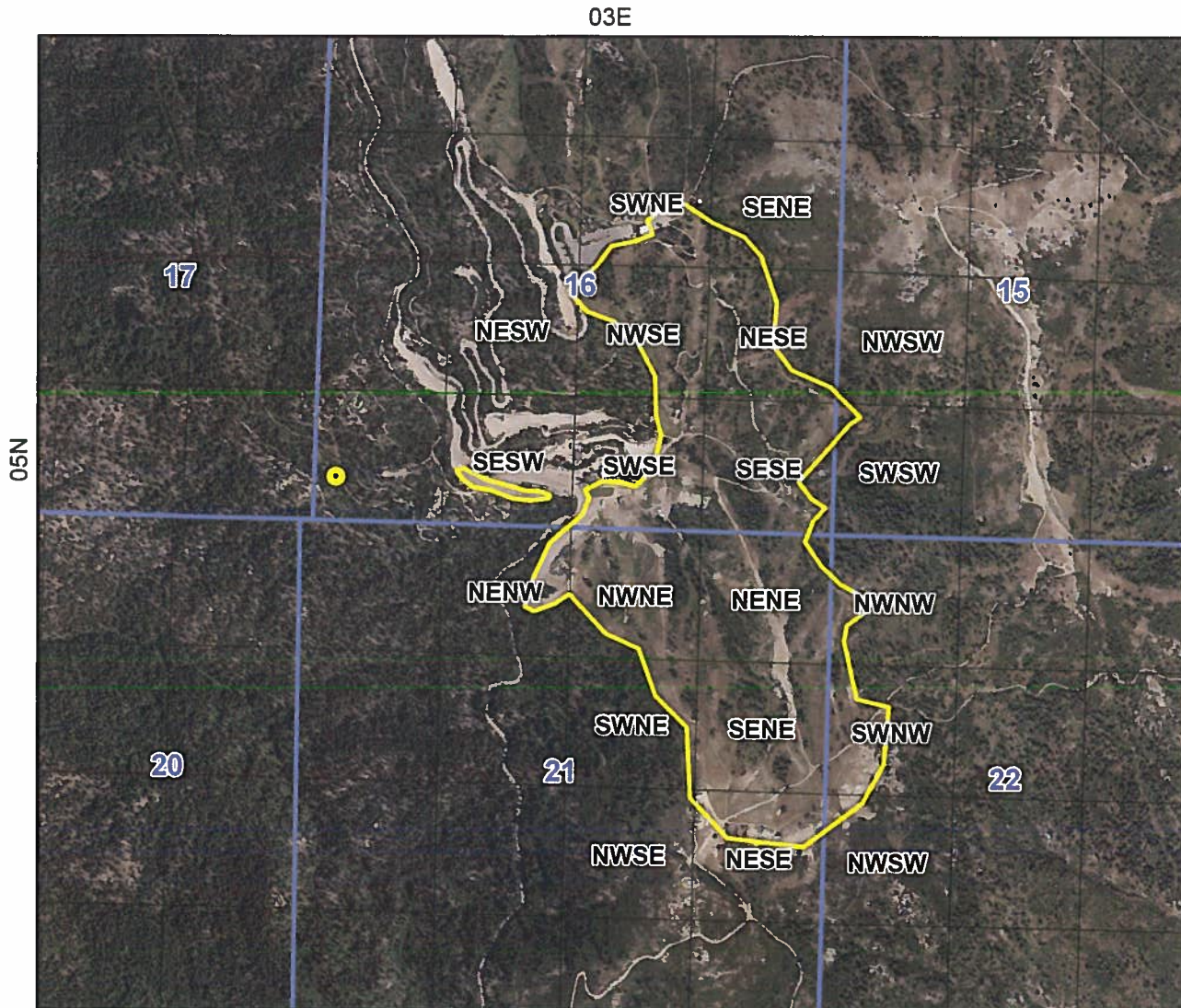
Manager, IDWR Western Region

State of Idaho  
Department of Water Resources

# Attachment to Permit to Appropriate Water

65-23703

This map depicts the COMMERCIAL 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.



0 0.225 0.45 0.9 Miles

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



State of Idaho  
Department of Water Resources

# Attachment to Permit to Appropriate Water

65-23703

This map depicts the AESTHETIC STORAGE, RECREATION STORAGE, COMMERCIAL STORAGE, AND FIRE PROTECTION 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.

03E



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

0 0.035 0.07 0.14 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

April 24, 2018

BOGUS BASIN RECREATIONAL ASSN INC  
C/O BRAD WILSON  
2600 BOGUS BASIN RD  
BOISE ID 83702

RE: Permit No. 65-23703

### 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,

 Rachel Neely for:

Nick Miller  
Regional Manager

Enclosure(s)

## CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2018, I served a true and correct copy of Permit to Appropriate Water No. 65-23703 by U.S. Mail, postage prepaid, to the following:

BOGUS BASIN RECREATIONAL ASSN INC (Current Owner)  
C/O BRAD WILSON  
2600 BOGUS BASIN RD  
BOISE ID 83702

CHRIS M BROMLEY (Representative)  
MC HUGH BROMLEY PLLC  
380 S 4TH ST STE 103  
BOISE ID 83702

WILLIAM D COLLINS (Protestant)  
WESTBERG & COLLINS CTD  
1520 W WASHINGTON ST  
PO BOX 2836  
BOISE ID 83701-2836

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



---

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.