

State of Idaho
Department of Water Resources

AMENDED Permit to Appropriate Water

NO. 65-23543

Priority: May 22, 2013

Maximum Diversion Volume: 18.0 AF

This is to certify, that RYAN BALDWIN AND KELSIE BALDWIN
PO BOX 2022
MC CALL ID 83638

have applied for a permit to appropriate water from:

Source: GROUND WATER

Tributary: LAKE FORK 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>
AESTHETIC STORAGE	01/01 to 12/31	12.0 AF
IRRIGATION STORAGE	01/01 to 12/31	6.0 AF
IRRIGATION FROM STORAGE	04/15 to 10/31	6.0 AF

LOCATION OF POINT OF DIVERSION:

GROUND WATER NW1/4NW1/4 Sec. 11, Twp 17N, Rge 03E, B.M., VALLEY County

PLACE OF USE: AESTHETIC 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	
17N 03E 11						X											

PLACE OF USE: IRRIGATION 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	
17N 03E 11						X											

PLACE OF USE: IRRIGATION 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	
17N 03E 11							2.0										2.0

Total Acres: 2

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **April 01, 2020**.
2. Subject to all prior water rights.
3. 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.

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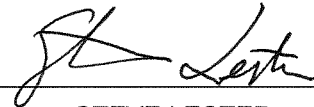
4. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 65K.
5. Prior to diversion of water under this right, the 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.
6. To mitigate for the depletion of water resulting from the use of water under this right and to prevent injury to senior water right holders, the right holder shall cease diverting and using water as authorized by the following water rights for the purposes and amounts specified below. Moreover, the official record for the following water right will be changed to show that diversion and use of water is not authorized because the rights, or portion thereof, are being dedicated to mitigation purposes.

Right No.	Use Changed to Mitigation	Mitigation Volume (AF)
65-2932B	Irrigation Storage	18.0 AF

If the specified mitigation right, or portion thereof, is sold, transferred, leased, used on any place of use, or is not deliverable due to a shortage of water or a priority call, then the amount of water authorized for diversion under this right approval shall be reduced by the same proportion as the reduction to the mitigation rights.

7. The pond established by the storage of water under this right shall not exceed a total capacity of 12 acre-feet or a total surface area of 1.5 acres.
8. Noncompliance with any condition of this right, including the requirement for mitigation, is cause for the director to issue a notice of violation, cancel or revoke the right, or, if the right is included in a water district, request that the watermaster curtail diversion and use of water.
9. 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. Witness the signature of the Director, affixed at Boise, this 27th day of March, 2015.



STEVE LESTER

Interim Western Region Manager



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

March 31, 2015

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

KELSIE BALDWIN
RYAN BALDWIN
PO BOX 2022
MC CALL ID 83638

RE: Permit No.65-23543

Amended Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources has issued the enclosed amended permit authorizing you to establish a new water right. Please be sure to thoroughly review the conditions of approval and remarks listed on your permit.

This approval includes using your portion of right 65-2932B from Browns Pond to mitigate your new permit. Your split portion of the Browns Pond right is identified as 65-23610. Please see the enclosed proof report of 65-23610 confirming the right will not be used for anything other than mitigation. The dam for Browns Pond failed several years ago. If the dam is rebuilt to store water again, the water identified in 65-23610 cannot be stored but must be allowed to naturally flow downstream for the benefit of other water users in the Lake Fork system.

The permit 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 by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

As a permit owner you must commence the excavation or construction of the diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed. The date shown under condition no. 1 is the date when the project must be completed.

The Department will send you a 'Proof Due Notice' approximately 60 days prior to the above referenced date requesting you to file either a Proof of Beneficial Use form or a Request for Extension of Time form.

The right to drill a well is not a part of this permit to appropriate water. Beginning in July of 1987, a statute was enacted which requires a drilling permit for new well construction and deepening of existing wells. If the well(s) proposed for use under this water right permit were drilled or deepened after July 1, 1987, a separate drilling permit must be obtained from this Department. Please contact the Ground Water Protection Section located here at this office or our regional office nearest you.

Also, please note that water right owners are required to report any change of water right 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. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at (208)334-2190.

Sincerely,



For.

Steve Lester
Interim Western Region Manager

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2015 I mailed true and correct copies of the documents described below were served by placing a copy of the same with the United States Postal Service, postage prepaid mail with return receipt requested, and properly addressed to person(s) listed below:

Documents Served: PRELIMINARY ORDER (Approved Permit)
Explanatory Information to Accompany a Preliminary Order
Proof Report for Water Right No. 65-23610

RE: WATER RIGHT NO. 65-23543

**KELSIE BALDWIN
PO BOX 2022
MC CALL ID 83638**

**RYAN BALDWIN
PO BOX 2022
MC CALL ID 83638**

**JOHN LEEDOM
WATER MASTER
370 KNIGHTS RD
MCCALL ID 83638**

**SPF WATER ENGINEERING LLC
C/O TERRY SCANLAN
300 E MALLARD DR STE 350
BOISE ID 83706**



**Rachel Sommer
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.

Lester, Steve

From: Grimm, Angie
Sent: Thursday, March 26, 2015 1:09 PM
To: Lester, Steve
Subject: FW: Baldwin permit 65-23543

From: Ron Shurtleff [<mailto:waterdist65@srvinet.com>]
Sent: Thursday, March 26, 2015 1:02 PM
To: Grimm, Angie
Subject: Baldwin permit 65-23543

Angie,

I have been included in the e-mail conversation between Terry Scanlan and Steve Lester in regard to the Baldwin permit 65-23543. I have also researched the water rights along with the application and the mitigation plan.

The new permit contains the following condition.

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.

Mr. Scanlan has suggested an amended permit approval whereas this condition is deleted and he has stated he does not believe it is necessary since the permit is mitigated with a 1944 creek right.

I do not object to this request. I do not believe the deletion of this condition will have any physical impact on administration in Water District No. 65.

If you need anything further please contact me at 208-642-4465

Ron Shurtleff

Water District No. 65
102 N. Main
Payette, ID 83661
Phone: 208-642-4465
Fax: 208-642-1042
Cell: 208-642-0230

Lester, Steve

From: Lester, Steve
Sent: Wednesday, March 25, 2015 5:10 PM
To: 'Terry Scanlan'
Cc: waterdist65@srvinet.com; Grimm, Angie
Subject: RE: Baldwin permit 65-23543

Terry:

Thanks for your good question. We did not think it thru enough. You are probably right, but there is a story to be noted for the file by this email.

- Lake Fork is a "separate stream" under the Payette Adjudication and as reconfirmed in the SRBA. Means pre 10/1977 priorities for creek are independent of Payette Water District.
- But post 10/1977 creek priorities answer to Lake Fork WD & Payette WD, and changes to pre 10/1977 creek priorities are subject to possible requirements of WD 65, so it gets confusing.
- WD 65 typically requires rental pool or other mitigation to offset impact on 1930s Black Canyon Dam natural flow priorities.
- New permit mitigated in Lake Fork system to extent mitigation right 1944 priority covers that system. When it doesn't, would be curtailed and not affecting WD 65.
- Legally speaking, not clear if new permit mitigated with 1944 creek water mitigates 1930s downstream rights.
- But physical impact on downstream system remains unchanged since no net increase of creek use, regardless of priorities.
- Implies should be managed as if no new creek priority in use, no need to use WD 65 rental pool. Plus this is a minor use.

IDWR should issue an amended permit approval by deleting that condition of approval provided Ron Shurtleff agrees this is not a problem for managing his water district.

Ron: Please reply by email to Angie Grimm, Western Region new Water Rights Supervisor (angie.grimm@idwr.idaho.gov). Your speedy reply will help us avoid a deadline issue with these matters. Thanks for your help.

Terry, Western will follow up with you and your clients.

Steve

From: Terry Scanlan [<mailto:TScanlan@spfwater.com>]
Sent: Tuesday, March 24, 2015 4:02 PM
To: Lester, Steve; Walker, Kay
Subject: RE: Baldwin permit 65-23543

Steve or Kay

I noticed that the water right report for this permit lists the following condition.

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.

Since this water right is already mitigated by the 1944 storage right, is this condition necessary?

Terry

From: Lester, Steve [<mailto:Steve.Lester@idwr.idaho.gov>]

Sent: Thursday, March 19, 2015 3:16 PM

To: Terry Scanlan

Subject: Baldwin permit 65-23543

Terry:

I just signed approval on this one, yeah! Copy heading your way under normal method.

Nice work you did for Baldwins.

Steve