

Cefalo, James

From: Jirak, Jeremy M <jeremy_jirak@fws.gov>
Sent: Wednesday, February 9, 2022 10:27 AM
To: Cefalo, James
Cc: Ball, Gary; Esralew, Rachel; Pilson, Stephen; Jeletic, Michael P; Wilson, Frank S; hank.povey@gmail.com; TJ Budge; Rob Harris
Subject: Re: [EXTERNAL] Revised Draft Permit
Attachments: Draft_Permit_13-8081_Item4_7_FWS_Edits.docx

James,

Thanks for giving us the opportunity to review and provide feedback on the second draft of the permit. Attached you will find an edited version of the draft language showing our markups and changes. A lot of the changes were to clarify the stipulations that you laid out. However, some of changes reflect our need for operational flexibility when managing this wetland complex, while still meeting our obligations to downstream senior water right holders. To help you and the group to better understand why we have made these changes, we have provided you with a write-up below that explains our rational regarding the suggested changes and edits.

We are agreeable to the terms outlined in Conditions 1- 3 and don't have any edits or suggestions to these Conditions. Therefore we did not include these sections in our edited version of the draft permit language. Our responses cover Conditions 4-7. These revisions are largely aimed at maintaining flexibility in our management practices that would not cause injury to other diverters, clarifying mitigation procedures when reservoir water levels do not reach elevation 4745.5ft, and refining details for hydrologic monitoring at the reservoir that are more workable.

With regards to Condition 4, you'll notice several minor suggestions. In addition to these changes, we would like to maintain the wording in the second sentence; *"The right holder may capture and store water..."* because it allows us to maintain maximum flexibility in the wetland management practices in the non-irrigation season. All though we may fill the reservoir to the 4745.5ft in most years, we may not want to fill the reservoir to that level every year. This is so we can manage the vegetation in the wetland to meet wildlife objectives. For example, ever so often we need to let the marsh dry out so we can conduct a prescribed burn to reduce residual vegetation which improves nesting habitat. Since the hydrology would closely mimic pre-project conditions we would not be causing injury downstream to divers. This is the reason for why we would not want to change the wording from *"may capture and store water"* to *"shall capture and store water"*.

Related to Condition 5 we have suggested a slight modification to the mitigation procedure that is practical both in years when the water level in the reservoir may not reach a maximum elevation of 4745.5 ft. as stated in the previous paragraph, but also in years when max water level can not be reached because lack of snowpack or rainfall. The modification focuses on the removal of a pressure board to drop the water level six inches at the time a call is made during the irrigation season regardless of the elevation. This way when we are storing water we are always able to provide a source of mitigation water no matter what the water elevation is. The modified procedure is still consistent with the mitigation strategy we presented at pervious meetings. We would still remove six inch boards at the two structures, it just isn't tied to absolute elevation under the new language we provided. This should be better assurance to the downstream diverters when an elevation of 4745.5ft is not meet.

For Conditions 6 and 7 we wanted to clarify that if the IDWR notifies us to monitor releases from the reservoir, the optimal place to do this is at the water control structures. This would be the same location where we would install a staff gage and deploy a water level data logger.

I hope this clarifies our suggested edits to the 2nd draft permit document. After you have reviewed the edited document please let us know if you have any questions or need clarification on any items. We appreciate your time and effort as we work through this second draft and look forward to getting closer to final draft.

Sincerely,

Jeremy Jirak
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From: Cefalo, James <James.Cefalo@idwr.idaho.gov>
Sent: Tuesday, January 25, 2022 3:12 PM
To: Wilson, Frank S <Frank.Wilson@sol.doi.gov>; TJ Budge <tj@racineolson.com>; Rob Harris <rharris@holdenlegal.com>
Cc: hank.povey@gmail.com <hank.povey@gmail.com>; Ball, Gary <gary_ball@fws.gov>; Esralew, Rachel <Rachel_Esralew@fws.gov>; Jirak, Jeremy M <jeremy_jirak@fws.gov>; Wallis, Joanne V <joanne_wallis@fws.gov>; Pilson, Stephen <stephen_pilson@fws.gov>; Jeletic, Michael P <michael_jeletic@fws.gov>
Subject: [EXTERNAL] Revised Draft Permit

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Attached is a revised draft permit, incorporating the changes we discussed during the status conference last week. I moved the language about the non-irrigation season into a separate condition and shifted it ahead of the irrigation season condition. I incorporated much of the language proposed by Rob Harris but made some revisions. I also changed the irrigation season condition to refer to water flowing over the diversion dam rather than water flowing through the emergency spillway.

Please review the revised draft and respond to this email with any questions, comments, or edits. Let's set a deadline of February 11th for emailing comments or edits. Based on the feedback from the group, I will decide whether we need to pull together another status conference.

 IDAHO DEPARTMENT OF
WATER RESOURCES
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Recommended Edits from U.S. Fish and Wildlife Service for Draft Permit to Appropriate Water No. 13-8081, Conditions 4 – 7.

Draft date: 2/3/2022

4. To prevent injury to the downstream storage water rights during the non-irrigation season (October 1 through April 19), in years when water will be stored under this right during the non-irrigation season, the right holder shall adhere to the following plan of operations: The right holder may capture and store water in the reservoir authorized by this right up to a maximum elevation of 4745.5 feet above sea level. If the holder of the senior a-downstream storage right on Deep Creek, Water Right Number 13-7481, notifies the right holder of an intent to divert water for storage, and there is insufficient water in the creek to exercise that right, the right holder shall document the water surface elevation on the day of the notice and provide the elevation reading to the holder of Water Right Number 13-7481~~the downstream storage right holder~~. The right holder may maintain the reservoir at the documented water surface elevation but shall adjust the diversion structure(s) to allow water in excess of such water elevation to flow downstream into Deep Creek. Upon notice that the ~~downstream storage right~~ holder of Water Right Number 13-7481 is no longer diverting water to storage or on May 1, whichever is earlier, the right holder may resume storing water under this right. At any time during the non-irrigation season, even after notice is provided by the holder of Water Right Number 13-7481, a downstream storage right holder, the right holder may store any water in excess of the quantity of water needed to satisfy the downstream storage rights on Deep Creek.

5. To prevent injury to downstream water rights during the irrigation season (4/20—9/30~~April 20 through September 30~~), the right holder shall adhere to the following plan of operations: The right holder may capture and store water in the reservoir authorized by this right up to a maximum elevation of 4745.5 feet above sea level. If storage is paused pursuant to notice from the senior downstream storage right on Deep Creek, Water Right Number 13-7481, as described in Condition 4, the water right holder may resume storing water under this right during the irrigation season upon notice that the holder of Water Right Number 13-7481 is no longer diverting water to storage or on May 1, whichever is earlier. Each year that water is being actively stored into the irrigation season above the lowest level of the water control structures and spillway (i.e. boards are in place to retain water), at the time irrigation rights are curtailed on the Bear River in the state of Idaho or when a call for water is made by the holder of a senior irrigation right on Deep Creek, but not earlier than April 20th, the right holder shall remove boards, if necessary, to one or two 4-foot by 6-inch pressure boards from the dike, allowing the reservoir to empty slowly to an elevation six inches less than the maximum storage level reached that year. ~~of 4745.0 feet above sea level.~~ The removal of the top pressure boards is based solely on the first day of curtailment of irrigation rights on the Bear River or a call for irrigation water on Deep Creek and is not contingent on zero flow past the diversion dam. There may be years when the top pressure boards are removed at the same time water is already flowing over the diversion dam water control structures and spillway. Once the reservoir reaches equilibrium at an elevation equivalent to the maximum storage level for a given year minus six inches~~of 4745.0 feet above sea level~~, the natural channel below the reservoir dike will dry up and the reservoir will eventually become disconnected from Deep Creek, thereby reflecting the natural hydrologic conditions in mid- to late-summer.

6. After specific notification by the Department, the right holder shall make and record periodic flow measurements to quantify the amount of water ~~install a suitable measuring device on the Oxford Slough channel below the diversion dam to quantify the amount of water~~ released from the reservoir authorized by this right.

7. Prior to diversion of water under this right, the right holder shall permanently install and maintain a staff gage, ~~measuring device,~~ and water level data logger near the diversion dam which can be used to measure and record the water surface elevation of the water stored behind the dam.