

Skinner, Corey

From: James Speck <jim@speckandaanestad.com>
Sent: Thursday, October 28, 2021 12:02 PM
To: Skinner, Corey
Cc: Barker, Albert (IWRB Member); Jonathan Neeley; Charles G. Brockway (charles.g.brockway@brockwayeng.com); Zach Latham (zach.latham@brockwayeng.com)
Subject: Application for Transfer 84873
Attachments: stipulation for withdrawal of protests.v1 - signed.pdf

Corey,

Attached is a Stipulation for Withdrawal of Protests signed by the Applicant and the two Protestants. Is this sufficient for you to move forward with approval of the transfer or do you require the version with original signatures? Please contact me if you have any questions.

Jim

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RECEIVED

OCT 28 2021

DEPT OF WATER RESOURCES
SOUTHERN REGION

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Attorneys for Applicants

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION
FOR TRANSFER NO. 84873 IN THE
NAME OF TRACY DUNLAP AND STEVE
GOWER

STIPULATION FOR WITHDRAWAL
OF PROTESTS

THIS STIPULATION FOR WITHDRAWAL OF PROTESTS (this "Stipulation") is made and entered into as of the day 19th of October, 2021, by and between Tracy Dunlap and Steve Gower (collectively "Applicants"); and Justin Stevenson and Michael Lovas (collectively "Protestants"). Applicants and Protestants may hereinafter be collectively referred to as the "Parties" or individually a "Party."

RECITALS:

- A. Applicants filed Application for Transfer No. 84873 (hereinafter simply "84873") on May 10, 2021 with the Idaho Department of Water Resources ("IDWR" or "Department").
- B. 84873 proposes to move Applicants' water rights to lands owned by Flying Squirrel Productions LLC in Blaine County, Idaho.
- C. Protestants protested 84873.
- D. Instead of participating in administrative hearings contesting 84873 as provided for under Idaho law, the Parties have elected to enter this Stipulation to resolve the protests that have been filed.

AGREEMENTS:

1. **Conditions To Be Included On The Water Right Transfer.** IDWR shall include the following conditions, or conditions substantially in the same form, in the final order approving 84873:
 - a. Right Nos. 37-510A and 37-685D are also used for storage of water in the pond for recreation. The pond used for the storage of water for recreation under 37-510A, 37-685D, 37-21842, 37-21849, 37-21866, 37-21883, 37-21900, and 37-21917 shall not exceed a total capacity of 70.3 acre-feet or a total surface area of 14.9 acres.
 - b. Rights Nos. 37-21842, 37-21849, 37-21866, 37-21883, 37-21900 and 37-21917 authorize the diversion of an annual total of 11.6 acre-feet to be used for the storage of water in the pond to replace losses caused by evaporation from the pond.
 - c. Right Nos. 37-510A, 37-685D, 37-21842, 37-21849, 37-21866, 37-21883, 37-21900, and 37-21917 are limited to a combined diversion rate of 4.40 cfs.
 - d. The right holder shall maintain an earthen liner in the pond to minimize seepage losses.
 - e. The right holder shall make full beneficial use of all surface water rights available to the right holder for the recreational pond. The right holder shall limit the diversion of ground water under Water Right 37-21842 to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to supply the recreation pond authorized under these rights.
 - f. The land that will no longer be irrigated under this right is located within the SWSW Section 7, T01N, R19E, Boise Meridian.
2. **Resolution of Protests.** This Stipulation is intended to resolve the protests filed by Protestants. Resolution of these protests is conditioned upon the Department including the conditions set forth herein. If such conditions are not included, then any Party may terminate this Stipulation by written notice to the other Party within thirty (30) days after the final order approving 82318. The Parties reserve the right to challenge any decision from the Department that does not include the conditions set forth in this Stipulation.
3. **Reservation of Rights.** The Parties agree and acknowledge that this Stipulation only resolves Protestants protests to 84873. The Parties shall not use this Stipulation in any other administrative or judicial proceedings for any purpose, other than an action to enforce its terms as provided in paragraph 7 below.
4. **Reliance Upon Statements/Integration and Merger.** The Parties specifically acknowledge that they have executed this Stipulation without relying upon any statements or representations written or oral, as to any statement of law or fact made by any other person or attorney. The Parties to this Stipulation have read and understand the Stipulation, and warrant and represent that this Stipulation is executed voluntarily and without duress or undue influence on the part of or on behalf of any party. This agreement represents the sole entire and integrated Stipulation by and between the Parties hereto, and supersedes

any and all prior understandings or agreements whether written or oral except as specifically provided herein.

5. **Successors and Assigns.** This Stipulation shall be binding upon and shall inure to the benefit of each Party's officers, directors, shareholders, heirs, successors and assigns, and shall be specifically enforceable.
6. **Waiver and Modification.** No provision of this Stipulation may be waived, modified, or amended except by written agreement executed by all the Parties hereto.
7. **Enforcement and Interpretation.** This Stipulation is a valid and binding obligation of the parties, and their successors or assigns. It shall be admissible and enforceable according to its terms, and venue in any subsequent action shall rest within the State of Idaho. This Stipulation is subject to interpretation in accordance with the laws of the State of Idaho.
8. **Counterparts.** This Stipulation may be executed in counterparts, each of which is deemed an original but all of which constitute one and the same instrument. The signature pages may be detached from each counterpart and combined into one instrument.

Date:

10.19.2021

TRACY DUNLAP

Date:

10/19/2021

STEVE GOWER

Date:

JUSTIN STEVENSON

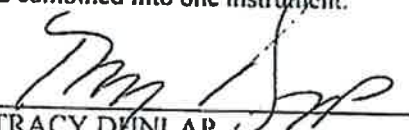
Date:

MICHAEL LOVAS

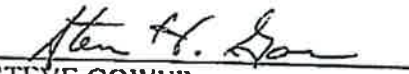
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Date: 10.19.2021


TRACY DUNLAP

Date: 10/19/2021


STEVE GOWER

Date: _____

JUSTIN STEVENSON

Date: 12/29/21


MICHAEL LOVAS

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Date: 10.19.2021


TRACY DUNLAP

Date: 10/19/2021


STEVE GOWER

Date: 10/26/2021


JUSTIN STEVENSON

Date: _____

MICHAEL LOVAS

CERTIFICATE OF SERVICE

I hereby certify that on the 28 day of October, 2021, I served a true and correct copy of the foregoing document on the following persons in the manner designated below:

Corey Skinner Idaho Department of Water Resources Southern Region 650 Addison Ave. W., Suite 500 Twin Falls, ID 8301-5858 corey.skinner@idwr.idaho.gov	☐ United States Mail, Postage Prepaid ☐ Hand Delivery ☐ Facsimile ☒ E-mail
Al Barker BARKER RSHOLT & SIMPSON LLP 1010 W. Jefferson St., Ste. 102 Boise ID 83702 apb@idahowaters.com	☐ United States Mail, Postage Prepaid ☐ Hand Delivery ☐ Facsimile ☒ E-mail


JAMES P. SPECK