



State of Idaho

DEPARTMENT OF WATER RESOURCES

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BRAD LITTLE
Governor

GARY SPACKMAN
Director

May 25, 2021

GORDON FULTON
5907 HWY 93
MACKAY ID 83251

Notice of Intent to Void Permit

RE: Water Appropriation Permit No. 34-14339

Dear Permit Holder:

The Department of Water Resources (Department) is reviewing the above referenced permit so we can issue a license for the uses developed. On March 4, 2020, the Department received the proof of beneficial use documentation stating the development of permit 34-14339 ("Permit") was completed.

On April 29, 2021, Department staff visited the site to perform a field examination to determine the extent of development and to confirm that all of the conditions of the Permit had been met. The permit had the following condition:

When diverting water for power purposes under this right, the right holder shall maintain an instantaneous bypass flow of at least 0.2 cfs past the point of diversion on Rock Creek, located in the SESWSE of Section 34, T10N, R22E. The right holder shall cease diverting water under this right if the bypass flow in Rock Creek is less than 0.2 cfs.

When the application for this permit was advertised, it was protested by United States Department of Interior, Bureau of Land Management (BLM) and the Idaho Department of Fish and Game (IDFG). In order for the processing of the application for permit to continue, you agreed to the above condition being placed on the Permit. The Department cannot ignore the requirements set forth in the conditions of this Permit. Pursuant to Idaho Code § 42-219(8), if the conditions of approval on a permit are not complied with, IDWR may issue an order voiding the permit or issue a license for only that portion of the authorized use developed in accordance with the permit.

At the time the field examination, we measured a flow rate of 0.07 cfs flowing past the dam through the 1 foot weir you installed below the dam. Upon further inspection of the dam, there didn't appear to be any means to allow you to increase the flow of water past the dam to ensure the 0.20 cfs bypass flow was being met.

During the field examination, you explained that you had not changed or altered the dam from the time that the original measurement of 0.20 cfs was made in March of 2013. The Department doesn't dispute the fact that the dam and the operation of the point of diversion hasn't changed. Due to freezing ground, snow melt, and other factors, leakage through the dam can change throughout the year. In the settlement agreement with the BLM and IDFG, you agreed to maintain a minimum of 0.20 cfs flowing past the dam, so it is your responsibility to ensure that bypass flow is maintained.

The Department has determined that we will give you some additional time to provide proof that you have made the needed adjustments to the dam to ensure that 0.20 cfs of water is bypassing the dam while this permit is being utilized as required in the permit conditions.

In order to provide proof that the condition has been met, you will need to provide photos of the alterations made to the dam that show you can adjust the water bypassing the dam to meet the minimum of 0.20 cfs flowing over the weir. In order to provide 0.20 cfs to flow over the weir, a minimum of 0.16 feet of water will need to be flowing over the 1 foot weir that you have installed below the dam. You can provide photos showing the staff gauge for this weir, or have the local watermaster or a certified water right examiner confirm the flow over the weir to address this condition.

If I do not receive the requested information from you within thirty (30) days or by June 28, 2021, I will take action to **VOID** your permit under the provision of Section 42-219(8) of the Idaho Code. If you decide that you are no longer interested in pursuing this permit, you can shorten the voiding process by completing the enclosed relinquishment form and returning it to Department.

You have stated in our previous conversations that you will be out of the state for most of the summer. If you need additional time to remedy this situation, you can request additional time to make the necessary changes to the dam and provide proof that you are complying with the conditions of the permit. In order to request additional time, you will need to provide me with a specific date (month/day/year) that you can complete the necessary alterations and provide the proof needed to move forward with the processing of the permit. The time request must be reasonable and not extended a significant amount of time.

If you have any questions in regard to this matter, please do not hesitate to contact me.

Sincerely,



Daniel A. Nelson
Staff Hydrologist
Idaho Department of Water Resources
Telephone # (208) 287-4856
Fax (208) 287-6700 (C/O Dan Nelson)
Email dan.nelson@idwr.idaho.gov

Enclosure: Relinquishment of Permit Form

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
RELINQUISHMENT OF PERMIT

I, _____, hereby relinquish to the State of Idaho,
all my right, title and interest in and to Permit to Appropriate the Public Waters of the
State of Idaho, No. ____ - ____.

Signed this _____ day of _____, 20 _____.

Permit Holder(s)

Nelson, Dan

From: Nelson, Dan
Sent: Tuesday, May 25, 2021 10:12 AM
To: 'gordon fulton'
Subject: Notice of Intent to Void Permit
Attachments: Notice of Intent to Void.pdf

Dear Mr. Fulton;

I have reviewed your file with my supervisors and it was determined that we cannot license this permit until there is a mechanism in place to maintain a minimum of 0.20 cfs is flowing over the 1 foot weir below the dam. I have attached a copy of the Notice of Intent to Void (Notice) I sent to you today. Per our previous conversations, you stated that you are in Alaska working, and that you would be able to receive emails. I am sending this email to ensure receive the Notice and can address the issues before the 30 day deadline.

Respectfully,

Daniel Nelson
Water Right Analyst 3
Idaho Department of Water Resources
Telephone (208) 287-4856
Fax (208) 287-6700 (attn: Dan Nelson)