



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: idwr.idaho.gov • Email: westerninfo@idwr.idaho.gov

RECEIVED

JAN 25 2021

WATER RESOURCES
WESTERN REGION

BRAD LITTLE
Governor

GARY SPACKMAN
Director

01/13/2021

LINNAH NEIDEL
PO BOX 666
ARROYO HONDO, NM 87513-066

EMMETT IRRIGATION DISTRICT
C/O NEIL SHIPPY
222 E PARK ST
EMMETT, ID 83617

RE: Withdrawal of Protest - Application for Permit No. 65-23918 (Linnah Neidel)

Dear Parties:

The Department of Water Resources acknowledges receipt of your *Water Right Application for Permit Protest Settlement Agreement* ("Agreement") regarding the above-referenced application. The parties have agreed that the protestant will withdraw its protest if approval of the application contains two conditions substantially as provided in the Agreement.

In any conditional withdrawal, the department must review the proposed conditions to ensure that conditions to be included in an approval are acceptable. Further, the department may modify the conditions as written to fit the approval format or may substitute a standard condition of the department with essentially the same language and intent. The enclosed draft permit approval incorporates the department's standard conditions, including condition numbers 7, and 8 that are standard department conditions that represent the substance of the conditions proposed in the Stipulation.

Please review the draft approval carefully. If you think the draft approval is not substantially in conformance with your stipulated conditions, please contact the department within 14 days of the date of this letter with your concerns. The application has no remaining protests; therefore, if we do not hear from you, the department will take the steps necessary to bring the application to final resolution. As always, you may file a petition for reconsideration within 14 days after the preliminary order approving the permit is issued.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely,

Nick Miller
Manager, IDWR Western Region

Enclosure

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 65-23918

DRAFT

Priority: April 13, 2020

Maximum Diversion Rate: 0.01 CFS

This is to certify that

LINNAH NEIDEL PO BOX 666 ARROYO HONDO NM 87513-0666

has applied for a permit to appropriate water from:

Source : SOUTH FORK PAYETTE RIVER

Tributary: PAYETTE RIVER

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

Beneficial Use

IRRIGATION

Period of Use

03/15 to 10/31

Rate of Diversion

0.01 CFS

Location of Point(s) of Diversion

SOUTH FORK PAYETTE RIVER L6 (NE $\frac{1}{4}$ SW $\frac{1}{4}$), Sec. 10, Twp 08N, Rge 05E, B.M. BOISE County

Place of Use: IRRIGATION

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
08N	05E	10									0.5 L6								0.5

Total Acres: 0.5

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **February 01, 2022**.
2. Subject to all prior water rights.
3. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the place of use.
4. 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.
5. When notified by the Department, the right holder shall install and maintain a measuring device of a type acceptable to the Department as part of the diverting works.
6. 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.
7. This right is subordinate to the capture and retention of water in existing on-stream storage reservoirs operated for storage and flood control purposes during and following flood control operations until the date of allocation.
8. The diversion and use of water described in this right may be subject to additional conditions and limitations agreed to by the protestant and the right holder under a separate agreement to which the Department is not a party. Because the Department is not a party, the Department is not responsible for enforcement of any aspect of the agreement not specifically addressed in other conditions herein. Enforcement of those portions of the agreement not specifically addressed in other conditions shall be the responsibility of the protestant and the water right holder.

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 65-23918

9. 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.
10. New diversions for irrigation and other specified purposes shall be limited to pump installations that do not create an obstruction in the river.
11. 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 Idaho Code § 42-204.

Signed this _____ day of _____, 20_____.

NICK MILLER
Western Regional Manager

**WATER RIGHT APPLICATION FOR PERMIT
PROTEST SETTLEMENT AGREEMENT**

RECEIVED

JAN 06 2021

**WATER RESOURCES
WESTERN REGION**

This Water Right Application for Permit Protest Settlement Agreement ("Agreement") is made this 27th day of November, 2020, by and between EMMETT IRRIGATION DISTRICT, whose address is 222 E Park st, Emmett, Idaho 83617 ("EMMETT" or "District"), and LINNAH NEIDEL, whose address is P.O. BOX 666, Arroyo Hondo, New Mexico 87513-0666 ("Neidel").

WITNESSETH:

A. WHEREAS, Neidel filed water right Application for Permit No. 65-23918 ("Application") with the Idaho Department of Water Resources ("IDWR") on April 13, 2020; B. WHEREAS, the Application seeks to appropriate 0.01 cfs of surface water from the Payette River for irrigation purposes on property owned by Neidel;

C. WHEREAS, Emmett filed a Notice of Protest ("Protest") on September 16, 2020, against the Application raising concerns over the Application's potential impacts on the physical filling of Cascade and Deadwood Reservoirs during federal flood control operations in flood control/release years (i.e., any future permit or license's potential to divert water and call upon flows otherwise tributary to Cascade and Deadwood Reservoirs thereby implicating and potentially interfering with the physical filling of the reservoirs during flood control operations); and

D. WHEREAS, the parties have reached a settlement whereby Emmett will conditionally withdraw its Protest to the Application in exchange for the water right use condition(s) stated herein, including IDWR water right conditioning referring to this Agreement on the face of any permit and subsequent license ultimately issued by the agency;

E. NOW, THEREFORE, in consideration of the foregoing Recitals, which are contractual, and the promises, mutual benefits, representations, covenants, undertakings, and agreements hereinafter contained and for good and valuable consideration received by the parties, which consideration and the sufficiency thereof is hereby acknowledged by the parties hereto, Emmett and Neidel represent, covenant, undertake, and agree as follows: **AGREEMENTS:**

1. Water Right Conditions. The parties shall request that IDWR include on the face of any permit and subsequent license that may issue under the Application the following condition (or one materially similar to the same) referring to this Agreement:

(a) "The diversion and use of water described in this right may be subject to additional conditions and limitations agreed to by the protestant and the right holder under a separate agreement to which the Department is not a party. Because the Department is not a party, the Department is not responsible for enforcement of any aspect of the agreement not specifically addressed in other conditions herein. Enforcement of those portions of the agreement not specifically addressed in other conditions herein shall be the responsibility of the protestant and the water right holder."

The parties further agree to the following condition governing Neidel's diversion and use of water under any permit and subsequent license that issues under the Application: (b) The source of this right does not include, and cannot call on, natural flow tributary to Cascade or Deadwood Reservoirs.

2. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter of this Agreement. Amendments to this Agreement shall be made only by written instrument executed by each of the parties hereto.

Each of the parties has been duly authorized to do so, and is fully vested with the authority to bind that party in all respects.

IN WITNESS WHEREOF, the parties have hereunto caused their names to be subscribed to this Agreement of the date first set forth above.

LINNAH NEIDEL.

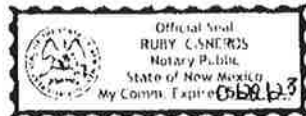
By LINNAH NEIDEL (print name)
Its [Signature]

STATE OF New Mexico

County of Taos) ss.

On this 14 day of 2020, before me, the undersigned Notary Public in and for said state, personally appeared known or identified to me to be the of LINNAH NEIDEL, the person who executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



NOTARY PUBLIC FOR Ruby Cisneros
Residing at Taos, New Mexico
My Commission Expires May 22, 2023

EMMETT IRRIGATION DISTRICT

By [Signature]
Korth Elliott, Chairman
of its Board of Directors

Attest: [Signature]

Sandeania L Moats, Secretary/Treasurer

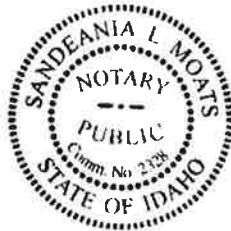
STATE OF IDAHO)

) ss.

County of Gem)

On this 17th day of December, 2020, before me, the undersigned Notary Public in and for said state, personally appeared Korth Elliott, known or identified to me to be the Chairman of the Board of Directors of EMMETT IRRIGATION DISTRICT, the person who executed the instrument on behalf of the EMMETT IRRIGATION DISTRICT, and acknowledged to me that EMMETT IRRIGATION DISTRICT executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



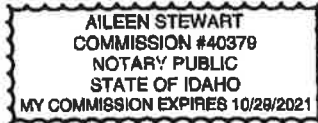
[Signature]
NOTARY PUBLIC FOR IDAHO
Residing at Emmett, Idaho
My Commission Expires 2-15-24

STATE OF IDAHO)

County of Bear) ss.
Canyon)

On this 17 day of December, 2020, before me, the undersigned Notary Public in and for said state, personally appeared SANDEAN L MOATS, known or identified to me to be the Secretary-Treasurer of EMMETT IRRIGATION DISTRICT, the person who executed the instrument on behalf of the EMMETT IRRIGATION DISTRICT, and acknowledged to me that EMMETT IRRIGATION DISTRICT executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Aileen Stewart
NOTARY PUBLIC FOR IDAHO
Residing at Emmett Idaho
My Commission Expires 10/29/21

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
WITHDRAWAL OF PROTEST

Application for ☐ Transfer ☒ Permit ☐ Amendment of Permit No. 65-23918

In the Name of Linnah Neidel

Applicant

Manager of Applicant: Emmett Irrigation District

Representative: Nail Shippey

I, Linnah Neidel, withdraw my protest to the above referenced matter. All of my issues of protest have been addressed and/or resolved.

☒ My withdrawal is not conditional.

☐ My withdrawal is conditioned on the following:

☒ THAT AS the parties have reached a settlement whereby Emmett will conditionally
withdraw its Application in exchange for the water right use condition(s) stated on the
settlement agreement between Emmett Irrigation District and Linnah Neidel, including IDWR water right
condition(s) set forth in the attached Agreement, on the face of any permit and subsequent license
issued by the agency.

Nail Shippey
Signature of Protestor or Representative

Manager
Title

12/02/20
Date

WATER RIGHT APPLICATION FOR PERMIT PROTEST SETTLEMENT AGREEMENT

This Water Right Application for Permit Protest Settlement Agreement (“Agreement”) is made this ____ day of _____, 202__, by and between EMMETT IRRIGATION DISTRICT, whose address is 222 E Park st, Emmett, Idaho 83617 (“EMMETT” or “District”), and LINNAH NEIDEL, whose address is P.O. BOX 666, Arroyo Hondo, New Mexico 87513-0666 (“Neidel”).

WITNESSETH:

A. WHEREAS, Neidel filed water right Application for Permit No. 65-23918 (“Application”) with the Idaho Department of Water Resources (“IDWR”) on April 13, 2020; B. WHEREAS, the Application seeks to appropriate 0.01 cfs of surface water from the Payette River for irrigation purposes on property owned by Neidel;

C. WHEREAS, Emmett filed a Notice of Protest (“Protest”) on September 16, 2020, against the Application raising concerns over the Application’s potential impacts on the physical filling of Cascade and Deadwood Reservoirs during federal flood control operations in flood control/release years (*i.e.*, any future permit or license’s potential to divert water and call upon flows otherwise tributary to Cascade and Deadwood Reservoirs thereby implicating and potentially interfering with the physical filling of the reservoirs during flood control operations); and

D. WHEREAS, the parties have reached a settlement whereby Emmett will conditionally withdraw its Protest to the Application in exchange for the water right use condition(s) stated herein, including IDWR water right conditioning referring to this Agreement on the face of any permit and subsequent license ultimately issued by the agency;

E. NOW, THEREFORE, in consideration of the foregoing Recitals, which are contractual, and the promises, mutual benefits, representations, covenants, undertakings, and agreements hereinafter contained and for good and valuable consideration received by the parties, which consideration and the sufficiency thereof is hereby acknowledged by the parties hereto, Emmett and Neidel represent, covenant, undertake, and agree as follows: **AGREEMENTS:**

1. **Water Right Conditions.** The parties shall request that IDWR include on the face of any permit and subsequent license that may issue under the Application the following condition (or one materially similar to the same) referring to this Agreement:

(a) “The diversion and use of water described in this right may be subject to additional conditions and limitations agreed to by the protestant and the right holder under a separate agreement to which the Department is not a party. Because the Department is not a party, the Department is not responsible for enforcement of any aspect of the agreement not specifically addressed in other conditions herein. Enforcement of those portions of the agreement not specifically addressed in other conditions herein shall be the responsibility of the protestant and the water right holder.”

The parties further agree to the following condition governing Neidel’s diversion and use of water under any permit and subsequent license that issues under the Application: (b) The source of this right does not include, and cannot call on, natural flow tributary to Cascade or Deadwood Reservoirs.

2. **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the subject matter of this Agreement. Amendments to this Agreement shall be made only by written instrument executed by each of the parties hereto.

3. Binding Effect. This Agreement shall bind the parties hereto and their respective heirs, successors, and assigns concerning the exercise and use of any water right permit or subsequent license issued by IDWR under the Application.

4. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

5. No Waiver. The failure of a party to insist on the strict performance of any provision of this Agreement or to exercise any right or remedy upon a breach hereof shall not constitute a waiver of any provision of this Agreement or limit such party's right to enforce any provision or exercise any right.

6. Governing Law. This Agreement shall be construed under and governed by the laws of the State of Idaho.

7. Costs and Fees. In the event any party hereto shall bring any action to enforce a breach of this Agreement, the prevailing party shall be entitled to recover reasonable costs and attorney fees from the non-prevailing party, including any costs and attorney fees on appeal.

8. Maintenance in IDWR's File. This Agreement shall be submitted to IDWR and kept in the agency's file for any water right permit and subsequent license issued under water right Application for Permit No. 65-23918 and any subsequent, future progeny thereof.

9. Authorization. The parties represent and warrant that the person signing this Agreement on behalf of each party has been duly authorized to do so, and is fully vested with the authority to bind that party in all respects.

IN WITNESS WHEREOF, the parties have hereunto caused their names to be subscribed to this Agreement of the date first set forth above.

LINNAH NEIDEL.

By

Its

(print name)

STATE OF)

) ss.

County of)

On this _____ day of , 202____, before me, the undersigned Notary Public in and for said state, personally appeared
known or identified to me to be the of LINNAH NEIDEL, the person who executed the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

NOTARY PUBLIC FOR
Residing at
My Commission Expires

EMMETT IRRIGATION DISTRICT

By

Korth Elliott, Chairman
of its Board of Directors

Attest:

Sandeania L Moats, Secretary/Treasurer

STATE OF IDAHO)

) ss.

County of Gem)

On this ____ day of _____, 202__, before me, the undersigned Notary Public in and for said state, personally appeared Korth Elliott, known or identified to me to be the Chairman of the Board of Directors of EMMETT IRRIGATION DISTRICT, the person who executed the instrument on behalf of the EMMETT IRRIGATION DISTRICT, and acknowledged to me that EMMETT IRRIGATION DISTRICT executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

NOTARY PUBLIC FOR IDAHO
Residing at
My Commission Expires

STATE OF IDAHO)

) ss.

County of Canyon)

On this _____ day of _____, 202____, before me, the undersigned Notary Public in and for said state, personally appeared SANDEANIA L MOATS, known or identified to me to be the Secretary/Treasurer of EMMETT IRRIGATION DISTRICT, the person who executed the instrument on behalf of the EMMETT IRRIGATION DISTRICT, and acknowledged to me that EMMETT IRRIGATION DISTRICT executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

NOTARY PUBLIC FOR IDAHO
Residing at
My Commission Expires