

Kelly, Patrick

From: Bassista, Tom <thomas.bassista@idfg.idaho.gov>
Sent: Monday, April 27, 2020 10:36 AM
To: Kelly, Patrick
Subject: FW: IDF&G Previously Accepted Offer-Variety Excursions

Patrick, FYI. here is my most recent email correspondence with the applicant.

From: Bassista, Tom
Sent: Friday, March 20, 2020 4:19 PM
To: 'Shane Andrews'
Cc: Eddy Chapman
Subject: RE: IDF&G Previously Accepted Offer

Shane,

My apologies for the delayed response.

IDFG still maintains our original decision as outlined below.

Please let me know if you need further discussion.

Sincerely,

Tom Bassista
Resident Fisheries and Access Program Coordinator
Idaho Department of Fish and Game
Headquarters Office
P.O. Box 25
600 South Walnut St.
Boise, Idaho 83707
208-287-2773
208-610-4032 cell



<https://idfg.idaho.gov>

From: Shane Andrews [mailto:shaneandrews@idahoconstructionlawyers.com]
Sent: Wednesday, February 19, 2020 11:02 AM
To: Bassista, Tom
Cc: Eddy Chapman
Subject: IDF&G Previously Accepted Offer

Tom,

Attached is a PDF of the email correspondence between you, Ms. Sommers, and my client wherein IDF&G offered, and my client accepted certain terms. It is Variety Excursions' position that the offer and acceptance is still viable and as a result, there should not be a deviation from this agreement.

- An intake screen of ¼ in or smaller mesh shall be maintained at the point of diversion. The right holder must ensure the intake screen remains operational at all times and shall be responsible for maintenance, repair, and replacement costs associated with the intake screen. In the event the screen fails to operate properly, the right holder shall take time steps to repair, replace, or otherwise maintain the intake screen to restore it to a functioning state. The right holder shall consult with IDF&G prior to replacing the screen.
- The right holder shall not divert water at a rate exceeding ½ the total flow of Bear Creek, tributary to the Salmon River.

As you can see, this offer was previously made by IDF&G on April 3, 2018. My client accepted the offer on April 13, 2018. Subsequently, you sent the terms of the accepted offer to Ms. Rachel Sommer on April 13, 2018.

Please review this email and the attachments. Once you have done so, please let me know of IDF&G's position.

Thank you,

Shane Andrews

Blewett Muhlitz Hally, LLP

Lewiston, Idaho

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Kelly, Patrick

From: Kelly, Patrick
Sent: Thursday, April 23, 2020 2:53 PM
To: 'thomas.bassista@idfg.idaho.gov'; 'williamw.riddlejr@yahoo.com'; 'shaneandrews@idahoconstructionlawyers.com'
Cc: Miller, Nick
Subject: RE: Variety Excursions LLC App for Permit 77-14325

As a follow-up, I do not intend the term "agreement" to be anything more formal than simple written communication. E-mail is fine. We just need something in the file that documents the applicant and IDFG both agreed with the bypass amount so we are sure the applicant complied with the terms of the conditional withdrawal.
Stay well,

Patrick Kelly

Water Rights Supervisor
Emergency Agency Coordinator
2735 Airport Way
Boise, Idaho 83705
o: 208.334.2190
patrick.kelly@idwr.idaho.gov

From: Kelly, Patrick
Sent: Thursday, April 23, 2020 11:34 AM
To: 'thomas.bassista@idfg.idaho.gov' <thomas.bassista@idfg.idaho.gov>; 'williamw.riddlejr@yahoo.com' <williamw.riddlejr@yahoo.com>; 'shaneandrews@idahoconstructionlawyers.com' <shaneandrews@idahoconstructionlawyers.com>
Cc: Miller, Nick <Nick.Miller@idwr.idaho.gov>
Subject: Variety Excursions LLC App for Permit 77-14325

Hello All,

I have dug deep into Application for Permit 77-14325 to prepare a draft permit approval. Conditions of Approval will include bypass flow. In an attempt to document the process, review of the file has found the following:

In December 2017, Daniel Stewart of IDEQ wrote that withdrawal of 80% of the creek flow should not reduce the flow in Bear Creek below 1 cfs. In January of 2018 Tom Bassista of IDFG wrote the department that they plan to work with the applicant to devise a bypass flow that we can include in the water right conditions. Mr. Bassista followed up in April 2017 stating the right holder shall not divert water at a rate exceeding half of the total flow of Bear Creek.

The permit application went to advertising August 2018 to which BLM protested. Through pre-hearing conferences, BLM proposed a diversion limit of 50% of available flow up to 5.5 cfs (2,000AFY) in application and 1 cfs minimum bypass flow. Variety Excursions counter offered with diversion of all flows except a constant 0.75 cfs to be left in stream and 0.5 cfs minimum bypass flow. Mr. Bassista supported BLM's offer, further stating that minimum stream flows of 0.5-0.75 would likely have negative effects on the aquatic biota of the stream segment proposed for flow alteration. Seasonal flow variation is needed to help maintain stream health, especially during the high flow run-off period.

In January of this year, a settlement agreement was received. Stipulation for conditions included that "the applicant will work with the Idaho Department of Fish and Game to negotiate a bypass flow for maintenance of fish, wildlife, riparian and aquatic habitat."

The Department is requiring that a bypass flow be specified to resolve all negotiations prior to permit approval. Once IDWR receives a bypass flow agreement, a draft permit approval may be circulated to all parties. Thank you for your attention to this matter. Please to do not hesitate to contact me with any questions.

Sincerely,

Patrick Kelly

Water Rights Supervisor
Emergency Agency Coordinator
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