Kaiser, Anna

From: Kaiser, Anna
Sent: Wednesday, October 14, 2020 11:19 AM
To: 'Dylan Lawrence'
Cc: Scott Campbell; Barker, Albert (IWRB Member); Miller, Nick
Subject: RE: Application for Permit 63-34891 (Boise Project)

Dylan,

Thank you for your response. At this time the Department will hold your "Objection to Proposed Permit No. 63-34891" on file for later review.

After the Department receives the requested Rule 40 information from Boise Project Board of Control, we will continue evaluating application no. 63-34891. If the Department deems the application approvable, we will take your concerns regarding the approval conditions into consideration before circulating an updated draft approval for final comments.

Please do not hesitate to contact the Department with any further concerns.

Thank you,
Anna

Anna Kaiser | Water Resource Agent
IDWR-Western Region
2735 W Airport Way, Boise ID 83705
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From: Dylan Lawrence [mailto:dylanlawrence@varinwardwell.com]
Sent: Monday, October 12, 2020 2:10 PM
To: Kaiser, Anna <Anna.Kaiser@idwr.idaho.gov>
Cc: Scott Campbell <scott@slclexh2o.com>; Barker, Albert (IWRB Member) <apb@idahowaters.com>
Subject: Application for Permit 63-34891 (Boise Project)

Anna, I hope you've been well since we last spoke. Please find the attached response to your Oct. 5 letter in the above-referenced matter. If you have any questions or issues with the attachment, please let me know.

Thank you,
Dylan

Dylan Lawrence
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ATTORNEYS AT LAW

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DYLAN B. LAWRENCE
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October 12, 2020

VIA EMAIL

Anna Kaiser
Water Resource Agent
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082
anna.kaiser@idwr.idaho.gov

Re: Objection to Proposed Permit No. 63-34891 (Boise Project Board of Control)

Dear Anna:

I am writing on behalf of Elmore County. Elmore County hereby objects to some of the proposed Conditions of Approval included on the proposed permit enclosed with your letter of October 5, 2020 ("Proposed Permit"), as follows:

Condition No. 2: Elmore County objects to the omission of the "including permits that become licensed" language that both parties agreed to in Paragraph 2 of their Stipulated Conditional Withdrawal of Elmore County's Protest, filed with IDWR September 23, 2020 (the "Stipulation"). While the County acknowledges the explanation in your letter that IDWR considers the existing language sufficient to include existing permits that become licensed later, that explanation does not provide the County with sufficient assurance on this issue. As you likely know, it is not uncommon for the court system to reject an agency's position on a particular issue or its interpretation of relevant language. Even if IDWR, the Boise Project, and Elmore County agree among themselves regarding the interpretation of Condition 2, that does not prevent a different interpretation of the same language by the courts in a different matter in the future. The parties specifically agreed to this language in their Stipulation, and Elmore County is not aware of any legal or practical reason it should not be adopted in Condition 2 of the Proposed Permit.

Condition No. 4: This condition appears to be the analog to Condition No. 2 in License No. 63-12040 (the "Prior License"). Pursuant to Paragraph 1 of the Stipulation, Conditions 1 through 9 of the Prior License are to be incorporated into the Proposed Permit. While Condition 2 of

the Prior License includes a reference to "lockable controlling works," Condition 4 of the Proposed Permit does not include such a reference, and IDWR has not explained why it has omitted that language.

Condition Nos. 8, 9: Conditions 6 and 7 of the Prior License and most of the conditions of the Proposed Permit refer to the Boise Project's permit or license as "this right" or "this water right." However, Conditions 8 and 9 of the Proposed Permit contain references to "this permit." Elmore County believes those references should be revised to conform to Conditions 6 and 7 of the Prior License, as Paragraph 1 of the Stipulation contemplates, or to include the same "or subsequent water right license" qualifier that is used multiple times elsewhere within Condition 8 of the Proposed Permit.

If you have any questions regarding these objections or if you need anything else from Elmore County, please do not hesitate to contact me. Thank you for your attention to this matter.

Sincerely,

VARIN WARDWELL, LLC

Dylan B. Lawrence

cc: Scott Campbell (*via email*)
Al Barker (*via email*)