

Cefalo, James

From: Cefalo, James
Sent: Wednesday, September 02, 2020 1:30 PM
To: 'Sarah Klahn'; 'Kenny Dudunakis'; 'Bybee, Kirk'; 'Greg Sullivan'
Subject: Application for Permit 29-14315 (344 North 15 LLC)
Attachments: Draft Permit 29-14315.pdf

Dear Parties:

I appreciate your efforts to try to resolve this contested case prior to an administrative hearing. I have received and reviewed the *Stipulation to Resolve City of Pocatello's Protest* and the *Unopposed Motion for Approval of Stipulation to Resolve City of Pocatello Protest and Withdrawal of Protest Corrected* ("Stipulation"). These documents ask the Department to include certain conditions on the permit approval and to incorporate the Stipulation as part of the permit approval. They also ask the hearing officer to issue an order approving the stipulation.

The Stipulation includes some provisions governing the use of water under the proposed permit that can reasonably be addressed through permit conditions. The Stipulation contains other provisions, however, that are outside of the expertise and statutory authorities of the Department. The Department will not incorporate the Stipulation into the permit and will not accept enforcement authority over such provisions.

Attached is a draft permit, which includes the conditions that the Department is able to enforce. The draft permit includes a condition referring to the private agreement between the Applicant and the City, but explains that the Department does not assume enforcement authority for any provision not specifically included on the permit. Because the Stipulation declares that the Department will enforce all of the provisions contained in the Stipulation (including provisions that are outside of the scope of the Department's authority), the hearing officer will not issue an order adopting or approving the Stipulation.

Please review the draft permit and let me know how you would like to proceed with the contested case. If the Department's inability to assume enforcement authority over the entire Stipulation means that the Stipulation is void, then we can continue on the path to hearing. If, on the other hand, the draft permit addresses the issues of protest, the City can withdraw its protest based on the draft permit and the private agreement (Stipulation) with the Applicant. If you choose this path, you may need to rework the Stipulation language to make it effective even though it is not adopted by the Department and is not incorporated into the permit.

James Cefalo
Regional Manager
IDWR Eastern Region
(208) 525-7161

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 29-14315

Priority: April 06, 2020

Maximum Diversion Rate: 0.15 CFS
Maximum Diversion Volume: 10.0 AF

This is to certify that

344 NORTH 15 LLC
344 N 15TH AVE
POCATELLO ID 83201-4023

has applied for a permit to appropriate water from:

Source : GROUND WATER

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

<u>Beneficial Use</u>	<u>Period of Use</u>	<u>Rate of Diversion</u>	<u>Annual Volume</u>
IRRIGATION	04/15 to 10/15	0.15 CFS	10.0 AF

Location of Point(s) of Diversion

GROUND WATER NW¼ NW¼, Sec. 25, Twp 06S, Rge 34E, B.M. BANNOCK 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	
06S	34E	25						5.0											5.0

Total Acres: 5.0

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **October 01, 2021**.
2. Subject to all prior water rights.
3. Rights 29-14300 and 29-14315 when combined shall not exceed a total diversion rate of 0.15 cfs, a total annual maximum diversion volume of 10 af at the field headgate, and the irrigation of 5 acres. Water rights 29-14300 and 29-14315 shall not be diverted at the same time.
4. Water rights 29-14300 and 29-14315, in combination, constitute a full water supply for the authorized place of use. No additional water rights shall be developed at or transferred to the authorized irrigation place of use.
5. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.
6. Prior to diversion of water under this right, the right holder shall physically disconnect its irrigation system at the proposed place of use from the City of Pocatello water supply.
7. The diversion and use of water described in this right may be subject to additional conditions and limitations agreed to by the City of Pocatello 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 City of Pocatello and the water right holder.

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 29-14315

8. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the place of use.
9. To mitigate for the depletion of water resulting from the use of water under this right and to prevent injury to senior water right holders, the right holder shall cease diverting and using water as authorized by the following water rights for the purposes and amounts specified below. Moreover, the official record for the following water right will be changed to show that diversion and use of water is not authorized because the rights, or portion thereof, are being dedicated to mitigation by non-use. The mitigating right may also include a condition stating that the mitigation by non-use is for the benefit of this right.

Right No.	Use Changed to Mitigation by Non-Use Irrigation	Mitigation Rate (cfs)	Mitigation Volume (AF)	Mitigation Acres
29-14300		0.06	20	5.0

If the specified mitigation right, or portion thereof, is sold, transferred, leased, used on any place of use, or is not deliverable due to a shortage of water or a priority call, then the amount of water authorized for diversion under this right approval shall be reduced by the same proportion as the reduction to the mitigation rights.

10. Right holder shall comply with the drilling permit requirements of Idaho Code § 42-235 and applicable Well Construction Rules of the Department. The ground water well authorized by this permit shall be constructed to public drinking water standards. Rule 510, IDAPA 58.01.08.

This permit is issued pursuant to the provisions of Idaho Code § 42-204.

Signed this _____ day of _____, 20_____.

JAMES CEFALO
Eastern Regional Manager