

## Cefalo, James

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**From:** Cefalo, James  
**Sent:** Thursday, September 17, 2020 11:35 AM  
**To:** 'Sarah Klahn'; Charles Brockway; 'Kenny Dudunakis'  
**Cc:** 'Bybee, Kirk'; Mansfield, Jeffrey; Allen, Skyler; 'Armstrong, Justin'  
**Subject:** RE: Application for Permit 29-14315 (344 North 15 LLC)

Dear Parties:

I have just reviewed the revised Stipulation. Thank you for your efforts in making the changes. I don't have any concerns with the revised stipulation, but I do have a question about the timing of events moving forward. The stipulation states that "the City will withdraw its protest in the captioned matter upon the Applicant satisfying the terms of this stipulation." This language suggests that the City's protest will be withdrawn at some point in the future, after the well has been constructed and after the irrigation system has been disconnected from the City water line. Permit 29-14315 cannot be issued until the protest is withdrawn. While project construction usually cannot commence without a permit, this case is unique. The applicant can proceed with construction of the new well under its original transfer approval (water right 29-14300). In other words, developing the new point of diversion is not contingent on approval of Permit 29-14315. However, Permit 29-14315 should be approved prior to diverting ground water for irrigation. Please let me know if I understand the timing of events correctly.

I have no concerns with changing the annual diversion volume to 11.5 acre-feet. There are a couple of ways to evaluate the historical diversion volume associated with the mitigation right. The calculations prepared by Chuck Brockway are acceptable.

James Cefalo

**From:** Sarah Klahn [mailto:sklahn@somachlaw.com]  
**Sent:** Wednesday, September 16, 2020 3:21 PM  
**To:** Charles Brockway <charles.g.brockway@brockwayeng.com>; Cefalo, James <James.Cefalo@idwr.idaho.gov>  
**Cc:** 'Kenny Dudunakis' <Kenny.Dudunakis@berkadia.com>; 'Bybee, Kirk' <kibybee@pocatello.us>; Mansfield, Jeffrey <jmansfield@pocatello.us>; Allen, Skyler <sallen@pocatello.us>; 'Armstrong, Justin' <jarmstrong@pocatello.us>  
**Subject:** Re: Application for Permit 29-14315 (344 North 15 LLC)

James and all,

I've attached the revised stipulation. I believe this addresses the concerns outlined in the Hearing Officer's email of September 2 about the original stipulation to resolve Pocatello's protest. If the stipulation still does not meet the Department's requirements, please let me know.

On Chuck Brockway's email below (dated September 4), and subject obviously to the Department's determinations on this point, the City does not object to using the 2007 irrigation year data to arrive at 11.5 af of total volume associated with permit 29-14315.

If there are additional issues the City needs to address on this, don't hesitate to reach out.

thanks--

Sarah

**Sarah A. Klahn**

*Attorney*

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**From:** Charles Brockway <[charles.g.brockway@brockwayeng.com](mailto:charles.g.brockway@brockwayeng.com)>

**Sent:** Friday, September 4, 2020 11:51 AM

**To:** 'James Cefalo' <[james.cefalo@idwr.idaho.gov](mailto:james.cefalo@idwr.idaho.gov)>

**Cc:** Sarah Klahn <[sklahn@somachlaw.com](mailto:sklahn@somachlaw.com)>; 'Kenny Dudunakis' <[Kenny.Dudunakis@berkadia.com](mailto:Kenny.Dudunakis@berkadia.com)>; 'Bybee, Kirk' <[kibybee@pocatello.us](mailto:kibybee@pocatello.us)>

**Subject:** FW: Application for Permit 29-14315 (344 North 15 LLC)

All,

This looks good to me from a technical standpoint but I just wanted to chime in on the annual volume limit on the draft permit. The limit is equal to the volumetric "worth" of the base mitigating water right, which is equal to the per-acre historical volumetric usage with one caveat: no credit can be given for over-pumping in terms of the diversion rate.

Annual volumetric pump-out data for the base right is included on the WMIS database (WMIS #200113). However, the Department measured a diversion rate of 3,382 gpm or 7.54 cfs during its site inspection in 2015. Since this exceeds the allowable diversion rate, the correct volume was calculated by determining the days of operation, equal to the total kWh used divided by the average kW demand, then multiplying the days by the allowable diversion rate. The two high years in recent past are 2018 and 2007. James used the 2018 data for the draft permit.

2018:

1,576,920 kWh / 800 kW average demand = 82 days

82 days x 6.71 cfs allowable = 1,091 ac-ft/year

1,091 / 507.2 acres = 2.15 af/ac/year

2.15 x 5.0 acres to Pocatello Heights = 10.8 ac-ft/year

\*Note the draft permit has 10.0 ac-ft

2007:

1,875,600 kWh / 800 kW average demand = 97 days

97 days x 7.18 cfs allowable (this was the original base right before all transfers) = 1,381 ac-ft/year

1,381 / 600 acres (allowable acres on original base right) = 2.30 ac-ft/ac/yr

2.30 x 5.0 acres to Pocatello Heights = 11.5 ac-ft/year

Based on these analyses I would suggest a volume limit on permit 29-14315 of 11.5 ac-ft/year.

Let me know your thoughts, and James please chime in on this methodology if needed.

Thanks,  
Chuck

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**Charles G. Brockway, Ph.D., P.E.**

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*All information, calculations, maps, drawings, or other documents transmitted via e-mail are preliminary unless explicitly stated in the e-mail text or in the documents themselves.*

**From:** Cefalo, James <[James.Cefalo@idwr.idaho.gov](mailto:James.Cefalo@idwr.idaho.gov)>

**Sent:** Wednesday, September 2, 2020 1:30 PM

**To:** Sarah Klahn <[sklahn@somachlaw.com](mailto:sklahn@somachlaw.com)>; Kenny Dudunakis <[Kenny.Dudunakis@berkadia.com](mailto:Kenny.Dudunakis@berkadia.com)>; 'Bybee, Kirk' <[kibybee@pocatello.us](mailto:kibybee@pocatello.us)>; 'Greg Sullivan' <[greg.sullivan@brockwayeng.com](mailto:greg.sullivan@brockwayeng.com)>

**Subject:** Application for Permit 29-14315 (344 North 15 LLC)

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**[EXTERNAL EMAIL]**

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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  
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IDWR Eastern Region  
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