

## Miller, Nick

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**From:** Miller, Nick  
**Sent:** Friday, January 24, 2020 3:52 PM  
**To:** 'Lori Graves'; 'Andy Waldera'  
**Cc:** 'pcharlton@vallivue.org'; 'Dion Zimmerman'; 'Jason Thompson'; 'Debby Long'; 'Mark Zirschky (mark@pioneerirrigation.com)'  
**Subject:** RE: FW: Vallivue School District Application for Permit No. 63-34800 (Pioneer Irrigation District Protest)

...Also, with this email message, I am cancelling the prehearing conference that was scheduled to be held in this matter on February 19. I will not send a separate notice of cancellation by mail.

Please let me know if you have further questions in this matter.

Nick.

**From:** Miller, Nick  
**Sent:** Friday, January 24, 2020 3:48 PM  
**To:** 'Lori Graves' <LGraves@spfwater.com>; Andy Waldera <andy@sawtoothlaw.com>  
**Cc:** 'pcharlton@vallivue.org' <pcharlton@vallivue.org>; 'Dion Zimmerman' <dzimmerman@designwestid.com>; 'Jason Thompson' <JThompson@spfwater.com>; 'Debby Long' <debby@sawtoothlaw.com>; 'Mark Zirschky (mark@pioneerirrigation.com)' <mark@pioneerirrigation.com>  
**Subject:** RE: FW: Vallivue School District Application for Permit No. 63-34800 (Pioneer Irrigation District Protest)

Thank you, Lori.

I will place this email string in the file and continue processing the application. I will forward a draft of any approval to the parties to provide an opportunity to ensure the conditions included on the draft are acceptable to the parties before issuing an approval.

Nick.

**From:** Lori Graves [<mailto:LGraves@spfwater.com>]  
**Sent:** Friday, January 24, 2020 3:32 PM  
**To:** Miller, Nick <[Nick.Miller@idwr.idaho.gov](mailto:Nick.Miller@idwr.idaho.gov)>; Andy Waldera <[andy@sawtoothlaw.com](mailto:andy@sawtoothlaw.com)>  
**Subject:** FW: FW: Vallivue School District Application for Permit No. 63-34800 (Pioneer Irrigation District Protest)

Nick and Andy,

Below is the Superintendent's email agreement.

**From:** Pat Charlton <[pat.charlton@vallivue.org](mailto:pat.charlton@vallivue.org)>  
**Sent:** Friday, January 24, 2020 1:37 PM  
**To:** Lori Graves <[LGraves@spfwater.com](mailto:LGraves@spfwater.com)>  
**Cc:** Andy Waldera <[andy@sawtoothlaw.com](mailto:andy@sawtoothlaw.com)>  
**Subject:** Re: FW: Vallivue School District Application for Permit No. 63-34800 (Pioneer Irrigation District Protest)

Hi Lori,

Yes, I have read through the email chain and the standard conditions listed in the email comments are acceptable. I agree that these will serve as protest settlement and allow permit processing to proceed.

Thanks,  
Pat

On Fri, Jan 24, 2020 at 12:38 PM Lori Graves <[LGraves@spfwater.com](mailto:LGraves@spfwater.com)> wrote:

Hi Pat,

Please read the email string below. Sounds like your email response to me indicating the standard conditions listed below are acceptable will serve as protest settlement and allow permit processing to proceed. I will then forward to Andy and IDWR. Thanks Pat.

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

**Sent:** Thursday, January 23, 2020 3:25 PM

**To:** Andy Waldera <[andy@sawtoothlaw.com](mailto:andy@sawtoothlaw.com)>

**Cc:** Lori Graves <[LGraves@spfwater.com](mailto:LGraves@spfwater.com)>; **Subject:** RE: Vallivue School District Application for Permit No. 63-34800 (Pioneer Irrigation District Protest)

Andy,

You did not misspeak... I just didn't read thoroughly!

I am OK with putting this email chain in the file to document the settlement.

Nick.

**From:** Andy Waldera [<mailto:andy@sawtoothlaw.com>]

**Sent:** Thursday, January 23, 2020 2:29 PM

**To:** Miller, Nick <[Nick.Miller@idwr.idaho.gov](mailto:Nick.Miller@idwr.idaho.gov)>

**Cc:** Lori Graves <[LGraves@spfwater.com](mailto:LGraves@spfwater.com)>; 'Mark Zirschky ([mark@pioneerirrigation.com](mailto:mark@pioneerirrigation.com))' <[mark@pioneerirrigation.com](mailto:mark@pioneerirrigation.com)>; Debby Long <[debby@sawtoothlaw.com](mailto:debby@sawtoothlaw.com)>

**Subject:** RE: Vallivue School District Application for Permit No. 63-34800 (Pioneer Irrigation District Protest)

Hi Nick.

Sorry if I misspoke; my intention was that you use my last email as the "settlement," because I presume that the requested water right conditions can be included on the face of the water right itself absent of a separate settlement agreement.

Thus, I am hoping that if Lori chimes in with Vallivue's "approval" via email, our respective emails will be good enough for your purposes.

Please let me know.

Thanks,

Andy

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**From:** Miller, Nick [<mailto:Nick.Miller@idwr.idaho.gov>]  
**Sent:** Thursday, January 23, 2020 2:22 PM  
**To:** Andy Waldera  
**Cc:** Lori Graves; 'Mark Zirschky' ([mark@pioneerirrigation.com](mailto:mark@pioneerirrigation.com)); Debby Long  
**Subject:** RE: Vallivue School District Application for Permit No. 63-34800 (Pioneer Irrigation District Protest)

Hi Andy,

Thanks for the update. I agree the proposed settlement is pretty standard and I don't see us handling this differently than in other recent situations. I will await receipt of a settlement and then I'll plan to cancel the prehearing.

Nick.

**From:** Andy Waldera [<mailto:andy@sawtoothlaw.com>]  
**Sent:** Thursday, January 23, 2020 1:40 PM  
**To:** Miller, Nick <[Nick.Miller@idwr.idaho.gov](mailto:Nick.Miller@idwr.idaho.gov)>  
**Cc:** Lori Graves <[LGraves@spfwater.com](mailto:LGraves@spfwater.com)>; 'Mark Zirschky' ([mark@pioneerirrigation.com](mailto:mark@pioneerirrigation.com))'

<mark@pioneerirrigation.com>; Debby Long <debby@sawtoothlaw.com>

**Subject:** Vallivue School District Application for Permit No. 63-34800 (Pioneer Irrigation District Protest)

Good afternoon, Nick.

As you likely know, the above-referenced matter is currently set for pre-hearing conference on February 19. In an effort to avoid that exercise, Pioneer and Vallivue have reached an agreement whereby Pioneer will conditionally withdraw its pending protest in exchange for the following two water right conditions/remarks:

1. The Department's typical "shoulder season" / supplemental use condition:

The primary surface irrigation water for the place of use authorized under this water right is delivered by Pioneer Irrigation District. The right holder shall make full beneficial use of all surface water available to the right holder for irrigation of lands within the authorized place of use for this right. The right holder may divert ground water under this right to irrigate land with appurtenant surface water rights only when the surface water supply is not reasonably sufficient to irrigate the place of use for this water right or is not available due to drought, curtailment by priority, or the seasonal startup and shutoff or maintenance schedule of Pioneer Irrigation District. The right holder shall not divert ground water for irrigation purposes under this right if use of the surface water supply is not deliverable due to non-payment of annual assessments without an approved transfer pursuant to Idaho Code § 42-222 or other Department approval.

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And

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2. The following rate-related remark owing to the school district's higher-than-typical instantaneous diversion rate request:

The groundwater diversion rate for this right shall not exceed 2.22 cfs; provided further that this right when combined with all other rights shall provide no more than 0.02 cfs (one miner's inch) per acre irrigated averaged over a twenty-four (24) hour period. Should the place of use of this right ever cease to be a school, park, cemetery or golf course recognized by the Department as eligible for an instantaneous diversion rate exceeding 0.02 cfs (one miner's inch) per

acre during a portion of any twenty-four (24) hour period, then this right when combined with all other rights shall provide no more than 0.02 cfs (one miner's inch) per acre at the field headgate for irrigation of the place of use.

As noted above, the first proposed remark/condition is already a standard IDWR remark (save the reference specifically to Pioneer Irrigation District). Thus, I doubt it will cause IDWR much grief.

Regarding the second proposed remark/condition, while not necessarily "standard," my understanding is that the remark has been accepted by IDWR in the context of other school district applications that SPF has worked on in other parts of Ada and Canyon Counties where a higher than typical diversion rate has likewise been requested.

Unless the Department disagrees, it seems that the Pioneer-requested remarks/conditions are items that IDWR can administer and enforce (i.e., the remarks/conditions are not items that need be included in a separate settlement stipulation/contract that correspondingly is referred to in another condition of approval). If the Department disagrees with inclusion of the remarks/conditions on the face of the water right, please let me know and I will prepare a separate settlement stipulation for Vallivue and Pioneer signature. But, I am hoping to avoid this step if possible in favor of simply letting the water right conditions dispose of the matter.

Regards,

Andy

*Andrew J. Waldera*

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***Dr. Patrick Charlton, Superintendent  
Vallivue School District #139***

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