

Miller, Nick

From: Andy Waldera <andy@sawtoothlaw.com>
Sent: Thursday, December 19, 2019 5:13 PM
To: Miller, Nick; Marsh, Sean
Cc: 'Mark Zirschky (mark@pioneerirrigation.com)'; Kirk Meyers; Debby Long; Tietz, Justin
Subject: RE: Conditional Withdrawal of Protest; Applicaiton for Permit No. 63-34769 (In the name of Knife River Corporation--Mountain West)

Thanks, Nick.

For IDWR purposes, and to keep the ball rolling for the benefit of Knife River, these emails shall suffice for Pioneer vis-à-vis the Department.

As between Pioneer and Knife River and for the sake of completeness, I will put a short one-pager together attaching these emails so that we can have actual signatures on the private settlement (our proposed Condition No. 3, which is being replaced with IDWR's standard condition on the face of the permit).

Once that short one-pager is signed by both Knife River and Pioneer, I will supply that to you for insertion in the file as well.

Thanks,
Andy

From: Miller, Nick [mailto:Nick.Miller@idwr.idaho.gov]
Sent: Thursday, December 19, 2019 3:36 PM
To: Andy Waldera; Marsh, Sean
Cc: 'Mark Zirschky (mark@pioneerirrigation.com)'; Kirk Meyers; Debby Long; Tietz, Justin
Subject: RE: Conditional Withdrawal of Protest; Applicaiton for Permit No. 63-34769 (In the name of Knife River Corporation--Mountain West)

Andy and Sean,

Your proposed settlement lists three conditions to be included on any permit approval it may issue for the application. Condition 1 is a standard condition of the department and is acceptable. Condition 2 is also acceptable, but the department may modify the condition as written for clarity, to prevent ambiguity, or for other reasons, but those changes would maintain the original intent. Condition 3 is essentially a private agreement between the applicant and the protestant. The department would not agree to include that condition on the face of a permit approval and subsequent license. Instead, the department would include a copy of the settlement in its file for the water right, and also place a standard condition on the face of the permit and license that reads as follows:

"The diversion and use of water described in this right may be subject to additional conditions and limitations agreed to by the protestant 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 protestant and the water right holder."

Please respond to this email whether or not this is acceptable to Pioneer and Knife River. If acceptable, let me know if you want to prepare a separate document/agreement for the file or if these emails will suffice.

Thank you,

Nick Miller
Manager, IDWR Western Region

From: Andy Waldera [mailto:andy@sawtoothlaw.com]
Sent: Thursday, December 19, 2019 8:36 AM
To: Marsh, Sean <Sean.Marsh@kniferiver.com>; Miller, Nick <Nick.Miller@idwr.idaho.gov>
Cc: 'Mark Zirschky (mark@pioneerirrigation.com)' <mark@pioneerirrigation.com>; Kirk Meyers <kirk@pioneerirrigation.com>; Debby Long <debby@sawtoothlaw.com>; Tietz, Justin <justin.tietz@kniferiver.com>
Subject: RE: Conditional Withdrawal of Protest; Applicaiton for Permit No. 63-34769 (In the name of Knife River Corporation--Mountain West)

Thanks, Sean.

Have a good day.

Andy

From: Marsh, Sean [mailto:Sean.Marsh@kniferiver.com]
Sent: Thursday, December 19, 2019 8:36 AM
To: Andy Waldera; Miller, Nick
Cc: 'Mark Zirschky (mark@pioneerirrigation.com)' <mark@pioneerirrigation.com>; Kirk Meyers; Debby Long; Tietz, Justin
Subject: RE: Conditional Withdrawal of Protest; Applicaiton for Permit No. 63-34769 (In the name of Knife River Corporation--Mountain West)

Good Morning Nick,

Knife River agrees to the conditions listed below.

Please let me know if you need anything further.

Thanks,

Sean Marsh
Contract and Risk Manager
Knife River Corporation- Mountain West
208.484.7123-Mobile
Sean.marsh@kniferiver.com



From: Andy Waldera <andy@sawtoothlaw.com>
Sent: Wednesday, December 18, 2019 3:31 PM
To: Miller, Nick <Nick.Miller@idwr.idaho.gov>
Cc: 'Mark Zirschky (mark@pioneerirrigation.com)' <mark@pioneerirrigation.com>; Kirk Meyers <kirk@pioneerirrigation.com>; Debby Long <debby@sawtoothlaw.com>; Tietz, Justin <justin.tietz@kniferiver.com>; Marsh, Sean <Sean.Marsh@kniferiver.com>
Subject: Conditional Withdrawal of Protest; Applicaiton for Permit No. 63-34769 (In the name of Knife River Corporation--Mountain West)
Importance: High

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Good afternoon, Nick.

As discussed and foreshadowed during yesterday's Pre-Hearing Conference in the above-referenced water right proceeding, Pioneer Irrigation District (Protestant) and Knife River Corporation—Mountain West (Applicant) were confident that they could craft mutually agreeable proposed water right conditions between them resolving Pioneer's protest. I write to inform you that Pioneer and Knife River have reached such an agreement as outlined below.

Therefore, please treat this email as a Conditional Withdrawal of Protest by Pioneer Irrigation District, whereby Pioneer agrees to withdraw its pending protest provided that IDWR accepts and includes the following conditions/remarks on any permit the agency might issue to Knife River (and carry the same over into any license that might issue post-permit):

1. 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 an irrigation delivery entity. 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.

2. To mitigate for potential injury, the right holder shall drill and case its well to a minimum depth of 200 feet below ground surface.

3. If Pioneer Irrigation District has reason to believe that operation of the right holder's well is interfering with, or diminishing the flow of water through or from a District facility or well, Pioneer shall provide written notice of the alleged interference to the right holder specifying the reasons supporting the interference allegation. Upon delivery of this notice, the right holder and Pioneer shall meet within seven (7) business days in a good faith attempt to determine the existence, cause, and potential resolution of the alleged interference. If the right holder and Pioneer are unable to reach an agreement resolving the issue, Pioneer may pursue all legal remedies available to it and the right holder shall not use the Department's issuance of this right as a defense against any Pioneer claims.

While I am representing to you that Knife River agrees to these water right conditions/remarks, please feel free to reach out to Justin Tietz and/or Sean Marsh of Knife River who are copied on this email. Or, perhaps, Justin and/or Sean can simply respond to this email confirming Knife River's consent and agreement to the same.

As you can see, I have not copied the various intervenors on this email and the protest settlement contained herein given their representations during yesterday's Pre-Hearing Conference that they would not involve themselves in any private agreement reached between Pioneer and Knife River. Instead, the intervenors reserved their right to take action, if any, in response to the Department's issuance of any permit going forward. If your understanding is otherwise, please let us (the parties included on this email) know, and we can proceed accordingly.

Finally, if you require a more formal document than this email to conclude this matter, please let me know and I can prepare a more formal stipulation for Pioneer and Knife River's signature.

Thank you, Nick.

Andy

Andrew J. Waldera

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