



## State of Idaho

### DEPARTMENT OF WATER RESOURCES

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BRAD LITTLE  
Governor

GARY SPACKMAN  
Director

May 2, 2019

ALBERT P. BARKER  
BARKER ROSHOLT & SIMPSON LLP  
1010 W. JEFFERSON ST. STE 102  
BOISE ID 83702

#### **RE: Contested Application for Permit No. 2-10573 – Fautt**

Dear Mr. Barker:

The Department of Water Resources received your letter of April 29, 2019 regarding the subject application for permit filed by Mr. Fautt. In your letter, you propose withdrawing Wilder Irrigation District's protest against the application if the Department agrees that, if approved, the permit would contain a condition that the proposed Snake River use is supplemental to the existing water supply. The Department is not opposed to such a condition and proposes the following language:

The primary irrigation water for the place of use authorized under this right is surface water delivered by Wilder Irrigation District. The right holder shall make full beneficial use of said primary surface water rights available to the right holder for irrigation of lands within the authorized place of use for this right. The right holder may divert water under this right to irrigate land with appurtenant primary surface water rights when the primary 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 for canal company deliveries. The right holder shall not divert water for irrigation purposes under this right if use of the primary surface water rights is intentionally discontinued or reduced (for example abandoned, forfeited, sold, disallowed by court decree, or leased to the Water Supply Bank), or is not deliverable due to non-payment of annual assessments, without an approved transfer pursuant to Idaho Code §42-222 or other Department approval.

If this condition is acceptable to you, please sign the attached conditional withdrawal of protest form on behalf of Wilder Irrigation District and the Department will consider the protest conditionally withdrawn. Alternatively, you and Mr. Fautt may submit a stipulation to withdraw your protest conditionally upon the Department including the proposed condition or a condition of substantially similar language and intent.

Please feel free to contact me if you have questions or concerns about this process.

Sincerely,



Nick Miller  
Manager, IDWR Western Region

Enclosure

Cc: Michael & Mary Beth Fautt