

Cefalo, James

From: Rob Harris <rharris@holdenlegal.com>
Sent: Friday, March 08, 2019 3:32 PM
To: Cefalo, James
Cc: ann.vonde@ag.idaho.gov; Gray, Jacob
Subject: RE: Application 21-13262 (Henrys Lake Overlook POA)

James:

In reviewing your letter, I think my letter could have been worded better. As you know from the discussions at prehearing conferences, and explained in the cover letter, HLPOA looked at the "possibility of retrofitting the well consistent with the agreed-to parameters and to attempt to negotiate other resolution possibilities with the Idaho Department of Fish and Game." The retrofitting we looked was complying with the "intake field" condition of the permit, and as I described in the letter, "it does not appear that retrofitting the well is an economically viable option and we have not been able to negotiate a separate resolution on this matter with the Idaho Department of Fish and Game." As further described in the letter, "For that reason, we are submitting this new *Application for Water Right Permit* to seek approval of the well as it is currently constructed." The application itself, at paragraph 12, states "Applicant's predecessor did not comply with the well construction conditions of Permit No. 21-12038. Despite efforts to resolve the well construction issues with IDFG, no resolution has been reached, and it is not possible to retrofit the drilled well to address those issues."

Accordingly, we do not intend for the new application for permit to be subject to the "intake field" requirement. The "intake field" requirement was originally included in the recorded agreement for the conditions included in 21-13038, and it is from this agreement that it made it into the conditions for the permit. Condition 13 references this agreement, and that is why I indicated in the letter that we did not want the new application subject to Condition 13 that references that agreement (including the "intake field" provision"). However, as later stated in the letter the measuring device recording and reporting requirement (Condition No. 6) and volumetric limitations (Condition 5) are limitations that HLPOA would agree to in the new application.

Let me know if you have further questions.



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From: Cefalo, James <James.Cefalo@idwr.idaho.gov>
Sent: Friday, March 8, 2019 9:44 AM
To: Rob Harris <rharris@holdenlegal.com>

Cc: ann.vonde@ag.idaho.gov; Gray, Jacob <jacob.gray@idfg.idaho.gov>

Subject: Application 21-13262 (Henry's Lake Overlook POA)

Rob,

In December 2015, I issued an order voiding Permit 21-13038 for failure to comply with certain permit conditions, specifically Conditions 6 and 9 from the original permit. Here are the conditions:

6. A measuring device and data recorder sufficient to monitor and record the rate of diversion and quantity of use shall be installed and maintained at or near the point of diversion for this right. Measurements are to be taken and recorded at least once every 24 hours. All measurement data shall be provided to IDWR and IDFG on at least a bi-annual basis on January 1 and July 1 each year.

9. The intake field of the well used as the point of diversion for this right shall begin no shallower than 100 feet below the elevation of IDFG's spring box on Sherwood Spring.

Your cover letter for Application 21-13262 states: "The applicant is willing to and hereby provides notice that it is requesting the same conditions originally included in Permit No. 21-13038 (except for condition number 13 in the new application)." Condition 13 from Permit 21-13038 states:

13. The diversion and use of water described in this right is subject to additional conditions and limitations agreed to by the right holder and the Idaho Department of Fish and Game under separate agreement dated February 9, 2007 to which the Idaho Department of Water Resources is not a party and which may be enforceable by a court of law. Any modification or termination to the separate agreement by the right holder and the Idaho Department of Fish and Game dated February 9, 2007 shall be in writing signed by an authorized representative of both parties. If a modification or termination to the separate agreement by the right holder and the Idaho Department of Fish and Game dated February 9, 2007 is made, the right holder shall provide a copy thereof to the Idaho Department of Water Resources.

Your cover letter notes that a measuring device has been installed on the HLO Well. I assume HLO is also prepared to comply with the monitoring and reporting requirements set forth in Condition 6.

Please explain how HLO will comply with Condition 9 if it is included on a permit for Application 21-13262.

James Cefalo
Water Resources Program Manager
IDWR Eastern Region
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