

Miller, Nick

RECEIVED

DEC 27 2017

From: Terry Scanlan <TScanlan@spfwater.com>
Sent: Wednesday, December 27, 2017 8:34 AM
To: Miller, Nick
Cc: Doug Bates (Doug@clearwateranalytics.com); Bassista, Tom
Subject: Protest Withdrawal - 63-34414 and 63-34415
Attachments: Scanned from a Xerox Multifunction Printer.pdf; Re BID Applications 2017-12-01.pdf

WATER RESOURCES
WESTERN REGION

Nick -

Attached is a stipulation for withdrawal of IDF&G protests to applications 63-34414 and 63-34415. Included at the request of IDF&G is a narrative letter describing the intent of the applications. Please let me know if you need anything else to complete the protest withdrawal process for these applications. Thanks.

Terry

-----Original Message-----

From: Bassista, Tom [mailto:thomas.bassista@idfg.idaho.gov]
Sent: Friday, December 22, 2017 3:33 PM
To: Terry Scanlan <TScanlan@spfwater.com>; Doug Bates <Doug@clearwateranalytics.com>
Subject: Fwd: signed application/Stipulation 2 Boise R water rights

Here is a signed copy by IDFG. When you file this with IDWR please also file the narrative. We spent quality time on that narrative and I want to be sure it is archived with these water right files.

I'll be off for the next week but always checking emails.

Thanks for your patience working through our review and process.

Tom Bassista
IDFG
208.610.4032

Begin forwarded message:

From: "Compton,Brad" <brad.compton@idfg.idaho.gov<mailto:brad.compton@idfg.idaho.gov>>
Date: December 22, 2017 at 12:13:31 PM MST
To: "Bassista, Tom" <thomas.bassista@idfg.idaho.gov<mailto:thomas.bassista@idfg.idaho.gov>>
Cc: "Mattulat, Teri" <teri.mattulat@idfg.idaho.gov<mailto:teri.mattulat@idfg.idaho.gov>>
Subject: RE: signed application/Stipulation 2 Boise R water rights

Signed version attached. Assuming you will forward it to the proper recipient. See you tonight.

Copied Teri so she can file it appropriately.

Bradley B. Compton
Southwest Regional Supervisor
3101 S. Powerline Road
Nampa, Idaho 83686
208.465.8465 Ext. 1034300

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WATER RESOURCES
WESTERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR
PERMIT NOS. 63-34414 AND 63-34415
IN THE NAME OF BID, LLC

STIPULATION FOR
WITHDRAWAL OF PROTESTS

THIS STIPULATION FOR WITHDRAWAL OF PROTESTS (this "Stipulation") is made and entered into as of the 12 day of December, 2017, by and between BID, LLC (hereinafter, "BID"), and the Idaho Department of Fish and Game ("IDF&G"). BID and IDF&G may hereinafter collectively be referred to as the "Parties."

RECITALS:

A. Applications for Permit No. 63-34414 and 63-34415 (hereinafter, simply "63-34414 and 63-34415") seek water rights from the Idaho Department of Water Resources ("IDWR") for 24.3 cfs and 24.2 cfs, respectively, each with a priority date of July 3rd, 2017 for wildlife, recreation and diversion to storage purposes in Canyon County, Idaho.

B. After 63-34414 and 63-34415 were advertised pursuant to Idaho law, the applications were protested on various grounds by the IDF&G.

C. The Parties desire to avoid administrative hearings concerning 63-34414 and 63-34415. Upon the terms of this Stipulation being met, as set forth in detail below, IDF&G will withdraw its protests to the issuance of permits for development of 63-34414 and 63-34415.

NOW THEREFORE, in consideration of the above recitals, which are incorporated herein by this reference, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT:

I. **Conditions To Be Included On Permits 63-34414 and 63-34415.** IDWR shall include the following conditions, in addition to any others that may be included by IDWR or otherwise agreed to with the other protestants (provided they do not conflict with the following conditions) in the final orders issuing Permit Nos. 63-34414 and 63-34415:

- a. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.

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- b. Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.
- c. Use of water under this right may be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 63.
- d. Wildlife and wildlife storage use is to create shallow water and moist soil wildlife habitats. These habitats are intended to provide resting, roosting, and refuge areas for waterfowl.
- e. Recreation and recreation storage use is for waterfowl hunting and wildlife viewing. Recreation use under this right is for flow-through water and return-flow water associated with recreation storage.
- f. This right does not authorize the diversion and use of water released from Lucky Peak Reservoir for stream flow maintenance purposes in connection with Water Right 63-3618.
- g. Water diverted under the wildlife and recreation flow components of this water right, minus evaporation and seepage losses, shall be returned to the Boise River.
- h. Water rights 63-34414, 63-174, 63-175, and 63-5181 in combination shall be limited to a diversion rate of 24.3 cfs.
- i. Water rights 63-34415, 63-201, 63-5179, and 63-33855 in combination shall be limited to a diversion rate of 24.2 cfs.

2. **Return Flow Analysis.** BID agrees to conduct a return flow analysis during the first year of operation. The analysis shall consist of spot measurements of diversion rates at the points of diversion authorized under the water rights, and spot measurements of return rates to the river at various discharge points. It is anticipated that the work will require no more than 10 measurements per event with one event each in December and January. Measurements will be made with weirs or current meters where practical; some locations may require that flow be estimated based on cross sectional area and velocity calculations. Measurements will be summarized in a brief report prepared by a professional engineer registered in the State of Idaho. The report will include a map showing measurement locations. The report will be delivered to IDF&G no later than March 1 of the first full season of operation.

3. **Issuance of Proposed Order and Subsequent Withdrawal of Protests.** The Parties shall instruct IDWR to issue a proposed order including the conditions set forth in Paragraph 1 as set forth herein. The Parties shall have fourteen (14) days thereafter to object to the language in the proposed order by filing notice of such objection with IDWR if the conditions set forth in Paragraph 1 are not included. If no objections are received within the fourteen (14) day time period, IDF&G's protests shall be deemed withdrawn, and IDWR shall thereafter issue a final order approving 63-34414 and 63-4415 consistent

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with this Agreement. IDF&G may submit a copy of this executed Stipulation to IDWR and notify IDWR of this procedure and withdrawal of its protests. If IDWR does not include the conditions agreed to in Paragraph 1, this stipulation shall be deemed null and void and the Parties will retain their respective rights in this contested case, unless the Parties otherwise agree to IDWR's conditions.

4. **Reservation of Rights.** The Parties agree and acknowledge that this Stipulation only resolves the protests to 63-34414 and 63-34415, and that IDF&G reserves all rights to protest other applications for permits, transfers, and any other proceedings. The Parties shall not use this Stipulation in any other administrative or judicial proceedings for any purpose, other than an action to enforce its terms as provided in paragraph 8 below.

5. **Reliance Upon Statements/Integration and Merger.** The Parties hereto specifically acknowledge that they agree that other than as is set forth herein, they have executed this Stipulation without relying upon any statements or representations written or oral, as to any statement of law or fact made by any other party or attorney. The Parties to this Stipulation have read and understand the Stipulation, and warrant and represent that this Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any party. This Agreement represents the sole entire and integrated Stipulation by and between the parties hereto, and supersedes any and all prior understandings or agreements whether written or oral except as specifically provided herein.

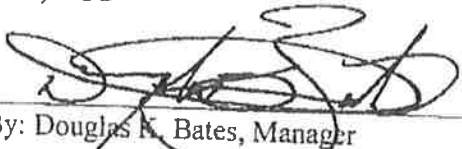
6. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of each Parties' officers, directors, shareholders, heirs, successors and assigns, and shall be specifically enforceable.

7. **Waiver and Modification.** No provision of this Agreement may be waived, modified, or amended except by written agreement executed by all parties hereto.

8. **Enforcement and Interpretation.** This Stipulation is a valid and binding obligation of the parties, and their successors and assigns. It shall be admissible and enforceable according to its terms, and venue in any subsequent action shall rest within the State of Idaho. This Stipulation is subject to interpretation in accordance with the laws of the State of Idaho.

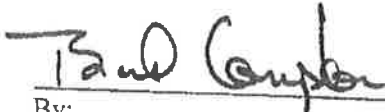
9. **Counterparts.** This Stipulation may be executed in counterparts, each of which is deemed an original but all of which constitutes one and the same instrument. The signature pages may be detached from each counterpart and combined into one instrument.

BID, LLC


By: Douglas M. Bates, Manager

171221
Date

IDAHO DEPARTMENT OF FISH AND GAME


By:

12-22-17
Date

STIPULATION AND WITHDRAWAL OF PROTESTS