



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

6/12/2018

BID LLC
C/O DOUGLAS K BATES
777 W MAIN ST STE 900
BOISE ID 83702

TOM BASSISTA
IDAHO DEPARTMENT OF
FISH AND GAME
3101 S POWERLINE RD
NAMPA ID 83686

CHARLES HONSINGER
HONSINGER LAW PLLC
PO BOX 517
BOISE ID 83701

Re: Withdrawal of Protests against Application for Permit No. 63-34415 (BID LLC)

Dear Parties:

The Department of Water Resources ("Department") acknowledges receipt of two documents resolving the protests to application for permit 63-34415. Resolution of the two protests is discussed below.

Greg Obendorf Protest

The Department received *Stipulation for Withdrawal of Protest* ("Obendorf Stipulation") on December 21, 2017. The Obendorf Stipulation withdraws the protest filed by Greg Obendorf and records a private agreement between the protestant and the applicant, but does not request the Department include specific conditions on any approval of the application. The Department considers Mr. Obendorf's protest withdrawn, but it has included condition #15 on the draft approval to address the private agreement between Mr. Obendorf and BID LLC.

Idaho Department of Fish and Game ("IDFG") Protest

The Department received *Stipulation for Withdrawal of Protests* ("IDFG agreement") on December 27, 2017. The IDFG agreement conditionally resolves the protest filed by the Idaho Department of Fish and Game. The parties have agreed to the protestant's withdrawal if the Department conditions any approval of the permit application and 63-34414 substantially as provided in the agreement. This letter relates only to 63-34415 and the Department will address application 63-34414 separately.

In any conditional withdrawal, the Department must review the agreement to ensure that conditions to be included in an approval are acceptable. The agreement included components that are to be addressed by the Department as conditions on the face of an approval and may have components that are the responsibility of the parties to accomplish and enforce. The attached draft approval contains the conditions stipulated by the parties as well as other conditions required by the Department.

Please review the draft approval carefully. If you think the draft approval is not substantially in conformance with your stipulations, please contact the Department within 14 days of the date of this letter with your concerns. The application has no remaining protests; therefore, if we do not hear from you, the Department will take the steps necessary to bring the application to final resolution. As always, you may file a petition for reconsideration within 14 days after the preliminary order approving the permit is issued.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely,

Nick Miller
Regional Manager

Enclosure

Cc: Terry Scanlan, SPF Water Engineering LLC

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Maximum Diversion Rate: 24.20 CFS

has applied for a permit to appropriate water from:

Tributary: SNAKE RIVER

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
WILDLIFE	09/01 to 02/28	24.20 CFS	
RECREATION	09/01 to 02/28	24.20 CFS	
WILDLIFE STORAGE	09/01 to 02/28		2,500.0 AF
RECREATION STORAGE	09/01 to 02/28		2,500.0 AF
DIVERSION TO STORAGE	09/01 to 02/28	24.20 CFS	

BOISE RIVER SW¼SE¼ Sec. 26, Twp 05N, Rge 05W, B.M. CANYON County

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	
05N	05W	26							X L 5		X L 7	X L 6	X	X			X		
05N	05W	27		X L 1	X L 2	X L 1													

[illegible]

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 63-34415

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PLACE OF USE: WILDLIFE STORAGE

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05N 05W 26							X		X	X	X	X			X		
							L 5		L 7	L 6							
05N 05W 27	X	X		X													
	L 1	L 2		L 1													

PLACE OF USE: RECREATION STORAGE

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05N 05W 26							X		X	X	X	X			X		
							L 5		L 7	L 6							
05N 05W 27	X	X		X													
	L 1	L 2		L 1													

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **July 01, 2023**.
2. Subject to all prior water rights.
3. Rights 63-34415, 63-201, 63-5179, and 63-33855 when combined shall not exceed a total diversion rate of 24.2 cfs.
4. 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.
5. Right(s) 63-34415 authorizes total annual storage volume of 2500 acre-feet, 80.5 acre-feet to be used for the initial field flooding and 2419.5 acre-feet for the replacement of losses caused by seepage and evaporation.
6. This right shall be junior and subordinate to future water rights authorizing the diversion and use of water from the Boise River and its tributaries, including ground water, for consumptive uses, except that this right shall not be subordinate to future water rights for similar wildlife, recreation and/or aesthetic uses.
7. This right shall be junior and subordinate to future minimum in-stream flow water rights that may be established for the Boise River and its tributaries.
8. 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.
9. Any obstruction in the Boise River channel for diversion of water under this right must provide for watercraft and fish passage. The right holder must bypass sufficient flows in the Boise River at the point of diversion to accommodate watercraft navigation and fisheries values in the Boise River downstream of the diversion. The quantity of the bypass flow may be established in the future by the filing of a petition with the Department to establish the bypass flows and subsequent proceedings as described in the Department's Rules of Procedure.
10. 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.

State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 63-34415

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11. 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.
12. 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.
13. Recreation and recreation storage 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.
14. This right does not grant any right-of-way or easement across the land of another.
15. 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.
16. 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.
17. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code.

Signed this _____ day of _____, 20_____.

Nick Miller
Manager, IDWR Western Region

State of Idaho
Department of Water Resources
Attachment to Permit to Appropriate Water
63-34415

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This map depicts the WILDLIFE, RECREATION, WILDLIFE STORAGE, and RECREATION STORAGE place of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.



-  Point of Diversion
-  Place Of Use Boundary
-  Townships
-  PLS Sections

0 0.15 0.3 0.6 Miles

