



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

5/29/2018

PARAMOUNT OWNERS ASSOC INC
12601 W EXPLORER DR, STE 200
BOISE ID 83713

S. BRYCE FARRIS
SAWTOOTH LAW OFFICES, PLLC
1101 W RIVER ST, STE 110
PO BOX 7985
BOISE ID 83707

Re: Protest Withdrawal – Application for Permit No. 63-34263 (Paramount Owners Association Inc)

Dear Parties:

The Department of Water Resources ("Department") acknowledges receipt of your April 16, 2018 *Stipulation to Resolve Protest* ("agreement") regarding the above referenced application. The parties have agreed to the protestant's withdrawal if the Department conditions any approval of the application as provided in the agreement.

In any conditional withdrawal, the Department must review the agreement to ensure that conditions to be included in an approval are acceptable and may substitute standard Department conditions with substantially similar intent. The Department has reviewed the four conditions proposed in the agreement. Comments are as shown below.

Conditions a and b in the agreement are based on previous versions of standard conditions of the Department. If an approval is issued, the Department would agree to include the following, current, standard condition that conveys the substance of proposed conditions a and b:

"The primary surface irrigation water for the place of use authorized under this right is delivered by Settlers Irrigation District. 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 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 for canal company deliveries. The right holder shall not divert ground water for irrigation purposes under this right if use of the surface water supply 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 Section 42-222, Idaho Code, or other Department approval."

Condition c in the agreement is a standard condition and would be included on any approval issued pursuant to this application.

Condition d proposed in the agreement contemplates issues that are essentially private property access issues between the parties that are not within the Department's jurisdiction to enforce. Condition d is not appropriate to include as a condition on the face of the approval. Rather, these terms should be recorded in a private agreement between the parties. The Department proposes to include the condition shown below if the parties resolve these issues through a private agreement.

"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."

The agreement withdraws the protest only if the Department conditions any approval as described. The Department does not agree to condition any approval with the language in Condition d, so the Department will continue to view the protest as active. I ask the parties to contact the Department within 14 days of the date of this letter to discuss how to proceed.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Nick Miller', written over a light blue horizontal line.

Nick Miller
Manager, IDWR Western Region