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RECEIVED
JAN 12 2018
DEPARTMENT OF
WATER RESOURCES

Attorney for Applicant.

BEFORE THE STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

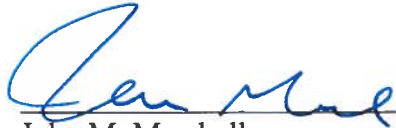
IN THE MATTER OF APPLICATIONS
FOR PERMIT NO. 63-34079 AND 63-
34080

**APPLICANT'S SUBMISSION OF MITIGATION
PROPOSALS**

Pursuant to the Department's December 13, 2017 *Order Authorizing Discovery;*
Scheduling Order; Notice of Hearing, Applicant Chris Emmert submits the attached mitigation
proposals.

Dated this 12th day of January, 2018.

JOHN MARSHALL LAW PLLC

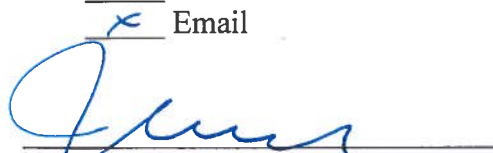

John M. Marshall

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of January, 2018, I caused the original of this document to be filed with the Idaho Department of Water Resources via hand delivery and a true and correct copy of the foregoing to be served by the method indicated below, and addressed to the following.

Shelley M Davis
Barker Rosholt & Simpson LLP
1010 W. Jefferson St Ste 102
PO Box 2139
Boise, ID 83701-2139

☒ U.S. Mail
☐ Overnight Mail
☐ Hand Delivery
☐ Fax
☒ Email


John M. Marshall



January 11, 2018

John Marshall
John Marshall Law PLLC
575 West Bannock Street
Boise, ID 83702

Submitted via email to john@jmarshalllaw.com

Subject: Mitigation Plan for Lake Lowell Depletions Associated with Applications for Permit 63-34079 and 63-34080

Dear John,

The TVHP model shows that pumping proposed under permits 63-34079 and 63-34080 will increase seepage loss from Lake Lowell by 1.3% of the volume pumped. The maximum volume allowed under the two water right permits will be 235 AF per year (Preliminary Order item 9 on page 12 and item 9 on page 13), so that the maximum annual depletion will be 3.1 AF. Average annual depletion will be less, because less than 235 AF (1.7 AF/ac) is anticipated to be pumped during approximately 50% of the years. Therefore, the maximum mitigation requirement is 3.1 AF. The following mitigation methods are proposed, in order of preference.

1. Reduce delivery of water from Boise Kuna Irrigation District. Emmert will forgo delivery of 3.1 AF per year from Boise Kuna Irrigation District to the land authorized for irrigation under the two permits. Under this proposal the 3.1 AF of foregone water will be directed to Lake Lowell to offset depletions of groundwater pumping. No shrink is assumed for this delivery, because the losses for delivery of Boise Kuna Irrigation District (BKID) water to Lake Lowell should be equal to or less than the loss of water to the Emmert place of use. If there is additional shrink from delivery to Lake Lowell, the 3.1 AF volume can be adjusted upward accordingly. There are two options for this delivery reduction.
 - 1.a. Replace delivered water with groundwater pumping (not to exceed 235 AF in total). Although such delivery may increase Emmert groundwater pumping under the two permits by 3.1 AF in some years, the total diversion rate is still limited to 235 AF, for which full mitigation (3.1 AF) is provided. Under this proposal, no additional pumping beyond the 235 AF limit is allowed. The area irrigated by Emmert would not be reduced. This mitigation is easy to administer and permanent.
 - 1.b. Replace delivered water through dry up. Under this alternative Emmert will annually designate for non-irrigation the appropriate area of ground authorized for delivery of BKID water to forego 3.1 AF of surface water delivery. No ground water will be used on this ground.
2. Rent water within the Boise Project. Under this mitigation method, Emmert could annually rent water within Boise Project for delivery to Lake Lowell. The amount rented will be adequate to deliver 3.1 AF to the Lake after accounting for shrink. There are two options for this rental.

- 2.a. Emmert can annually rent water from other users within BKID (or another Boise Project irrigation district) for delivery to Lake Lowell.
 - 2.b. Emmert can annually rent water from BKID (or another Boise Project irrigation district) for delivery to Lake Lowell by paying an excess water charge to the District.
3. Obtain additional water right from Boise Kuna Irrigation District. Emmert will obtain 1 acre of additional water right through Boise Kuna Irrigation District (or another Boise Project irrigation district) for delivery to Lake Lowell. The water will be assessed to non-irrigated Emmert lands, and delivered to Lake Lowell each year for mitigation purposes. The 1-acre assessment can yield an annual delivery of 3.1 AF; excess water charges may be required during water short years.
4. Provide mitigation through annual rental of 7 acre feet from the Water District 63 rental pool. Emmert will annually rent 7 AF from the Water District 63 rental pool for delivery to the New York Canal. The water can be added to the storage deliveries under Boise Project water rights (i.e., considered as additional Boise Project storage water), or specifically delivered to the canal at a time designated by Boise Project. The 7-AF volume is based on a 3.1 AF delivery to Lake Lowell with a 50% delivery loss or shrink (based on Boise Project policy), for a total diversion requirement of 6.2 AF at Diversion Dam. Water District 63 does not rent fractional acre feet, so the 6.2-AF volume is rounded up to 7.0 AF. If shrink is not required, Emmert will annually rent 4 acre feet.
5. Provide mitigation through Water Bank Rental. Emmert will annually rent 7 AF of Boise River water from the State Water Bank for delivery to the New York Canal. Initially, the water will be rented under water right 63-161BN, of which a 25-ac, 112.5 AF, and 0.50 cfs portion is available for lease until December 30, 2019. The water right has a priority date of April 30, 1866, and is not reduced by the Stewart Decree 100-75-60% sliding scale. Therefore, it is available for diversion at 100% delivery at any time during the irrigation season. Emmert will rent 0.03 cfs, 1.5 acres and 7 AF annual through 2019, and will continue to rent into the future if the lease is renewed. If the lease is not renewed, Emmert will rent a different water right that will yield 7 AF annually to the New York Canal.
6. Provide mitigation through Canal Company Shares and Mitigation Plan. Emmert will purchase shares in a canal company for mitigation purposes, and cause 7 AF of water to be delivered to the New York Canal. South Boise Water Company has available shares that can be considered for this purpose. SBWC policy is to require a 5:1 share ratio of mitigation to irrigation, so that mitigation shares for 7.5 acres (5 x 1.5) will be needed to yield 7 AF of water. SBWC can provide this water through the Water District 63 Rental Pool by allowing 7 acre feet of SBWC storage water to be delivered to the head of the New York Canal each year.
7. Purchase a natural flow water right. If an opportunity presents itself, Emmert can purchase a natural flow right in the Boise River and dedicate it to mitigation through a transfer. Emmert has review some options here, but views this option as an alternative that he could

possibly pursue in the future and would seek amendment of the mitigation plan in conjunction with the transfer of the purchased water right.

Please contact me with any questions or comments regarding this proposed mitigation plan.

Sincerely,

A handwritten signature in blue ink, appearing to read "Terry M. Scanlan".

Terry M. Scanlan, P.E., P.G.

Cc: Chris Emmert and Sam Emmert (samemmert@yahoo.com)

SPF File: 1247.0010