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DEC 08 2017

Department of Water Resources
Eastern Region

STATE OF IDAHO
BEFORE THE DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF APPLICATION FOR	:	
TRANSFER NO. 82005 Water Right Numbers :	:	PROTEST
11-7600, 11-7614	:	PACIFICORP, AN OREGON CORPORATION
	:	PROTESTANT
	:	
Applicant: Michael McMillan.	:	
	:	
	:	

PacificCorp, an Oregon corporation, whose address is 1407 West North Temple, Suite 110, Salt Lake City, Utah 84116, hereby protests the Application for Transfer filed November 6, 2017 ("Application") by Michael McMillan. ("Applicant"). The protest application fee is hereby submitted by PacificCorp.

1. Notices. PacificCorp requests that the Department send notices and correspondence regarding this water right proceeding to:

Buffi Morris
Senior Property Agent
PacificCorp
1407 W. North Temple, Suite 110
Salt Lake City, UT 84116
Buffi.Morris@PacificCorp.com

2. PacificCorp Water Rights. PacificCorp owns water rights in Bear Lake and in the Bear River as decreed in the matter of *Utah Power & Light Company v Last Chance Canal Company, Limited, et al.*, in Equity No. 203, July 14, 1920 (Dietrich Decree), and *Utah Power & Light Company v. Richmond Irrigation Company, et al.*, February 21, 1922 (Kimball Decree), as well as other rights in the Bear River.

Receipt
#2043601

PacifiCorp's Bear Lake storage water rights authorize PacifiCorp to store Bear River water in Bear Lake "for the development of power or generating electric energy in any power plant which it may now have, or hereafter construct or acquire in or along Bear River, in the states of Idaho and Utah, and for irrigation purposes in what is generally known as Bear River Valley in said states." Dietrich Decree, p. 14. PacifiCorp owns the storage water rights in Bear Lake for power generation and irrigation purposes and delivers supplemental irrigation water to over 156,000 acres of land between the Outlet Canal at Bear Lake and Cutler Dam. The recipients of this supplemental irrigation water have delivery contracts with PacifiCorp.

The irrigation contractors and PacifiCorp also entered into the 2004 Amended and Restated Bear Lake Settlement Agreement whereby the irrigation contractors and PacifiCorp agreed to reduce their demand on Bear Lake in order to meet recreational and esthetic demands at Bear Lake.

In addition to its Bear Lake storage rights, PacifiCorp owns significant Bear River water rights in Idaho and Utah for power generation, all located downstream of the proposed Application.

3. Proposed Application. The Application seeks to change the place of use of water rights 11-7600 and 11-7614 to reflect actual irrigation practices in accordance with the Water Right Allocation Agreement (the "Agreement") submitted with the Application.

4. Proposed Reallocation of the Water Rights. In May 2008, IDWR segregated (or split) water right 11-7600 from its parent right 11-929 and limited the number of acres to 52.5 acres. Water right 11-7614 was segregated/split from 11-7596 whose parent right is 11-924 and is authorized for irrigation of 37.2 acres. The Agreement between the Applicant and 3 other parties is a private agreement in which the parties agree to reallocate their respective rights

diverted into then out of the Nuffer Ditch based on historic practices. The parties acknowledge errors in the original decree, commonly known as the "Dietrich Decree" ("Decree") relative to the place(s) of use of the parent rights. PacifiCorp can find no record of an ownership change of either 11-7600 or 7614 that shows the Applicant has any interest in either of these rights. IDWR records show 11-7600 is owned by William Robison and 11-7614 is owned by Lanette Kimball.

5. Conclusion. PacifiCorp commends the parties to the Agreement for efforts to correct the errors in the Decree and to agree on reallocating the water between the parties who divert from the Nuffer Ditch. PacifiCorp is aware of previous applications and errors that exist relative to the originally decreed rights commonly known as the Ola Transtrum rights ("Transtrum Rights"). The Transtrum Rights are part of the Terrell Decree- *Preston-Montpelier Irrigation Co v Dingle Irrigation Co. dated August 24, 1923*. PacifiCorp questions the ownership of the rights under this Application and whether or not the Applicant has the authority to file the Application. PacifiCorp is concerned that through this process there be no expansion of the rights that were defined in the Terrell Decree. PacifiCorp is concerned about all of the Transtrum Rights originally decreed and if the remaining Transtrum Rights, if any, need to be reallocated as well. PacifiCorp respectfully requests that IDWR carefully review the proposed reallocation do ensure that no expansion of the rights is allowed in an approval of the Application. PacifiCorp requests that it be party to discussions with the Applicant and IDWR relative to the Application.

Dated: December 8, 2017.

PACIFICORP



Buffi Morris, Senior Property Agent

CERTIFICATE OF MAILING

On this ____ day of December, 2017, a true and complete copy of the foregoing document, was mailed postage prepaid, to the following:

Idaho Department of Water Resources
Eastern Division
900 N, Skyline Drive, Suite A
Idaho Falls, Idaho 83402

Thomas J. Budge
Racine, Olson, Nye, Cooper & Budge
P.O. Box 1391
201 E. Center
Pocatello, Idaho 83204-1391

Michael McMillan
3955 West Old Hwy Rd.
Morgan, UT 84050

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Department of Water Resources
Eastern Region

Idaho Department of Water Resources
Eastern Regional Office
900 N. Skyline Drive, Suite A
Idaho Falls, ID 83402

RE: Transfer Applications 81987, 82005 and 82010 / PROTEST

To Whom It May Concern:

Enclosed are three protest letters for the following Applications for Transfer: 81987 (11-7597, 11-7601), 82005 (11-7600, 11-7614) and 82010 (11-7600, 11-7628). Also included is a check in the amount of \$75.00 for the respective fees.

Please contact me with questions, direct 801.220.7803 or buffi.morris@pacificcorp.com.

Best regards,



Buffi Morris
Water Rights Administrator

Enclosures