

Cefalo, James

From: Rob Harris <rharris@holdenlegal.com>
Sent: Tuesday, November 07, 2017 11:08 AM
To: Cefalo, James; T. J. Budge; Travis Thompson; Kent Fletcher (wkf@pmt.org)
Cc: 'Daryl Klassen'
Subject: Signed Stipulation for MPH Farms Transfer Nos. 81333, 81337, and 81338
Attachments: 20171027 Addendum-signed all.pdf

Hearing Officer Cefalo:

In response to the concerns raised in your email below, the parties circulated and agreed to the provisions of the attached *Addendum to Stipulation for Settlement of Protests*. The addendum provides that the in-person inspection provisions do not need to be included in the transfer approval, but that the rights in those provisions are enforceable by contract. This change resolves the concern you raised.

With this *Addendum*, you should have everything you need to proceed with the issuance of the approval for 81338.

The original stipulation calls for an amended transfer for 81333 that will need to be readvertised. We will file the amended transfer as soon as we are able.

The stipulation also calls for the withdrawal of 81337. We anticipate that the stipulation is sufficient to withdraw 81337. However, if another filing is necessary for withdrawing this transfer, please let me know. Consistent with past IDWR practice, we anticipate that a confirmation letter indicating 81337 has been withdrawn will be sent to the parties.

Thank you for your attention to all of these matters.



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From: Cefalo, James [mailto:James.Cefalo@idwr.idaho.gov]
Sent: Tuesday, October 24, 2017 9:05 AM
To: Rob Harris <rharris@holdenlegal.com>; T. J. Budge <tjb@racinelaw.net>; Travis Thompson <tlth@idahowaters.com>; Kent Fletcher (wkf@pmt.org) <wkf@pmt.org>
Subject: RE: Signed Stipulation for MPH Farms Transfer Nos. 81333, 81337, and 81338

Dear Parties,

Thank you for working cooperatively to find a resolution of the issues of protest for these transfers. I have reviewed the proposed conditions and have only one concern. Condition c on page 2 and Condition d on page 3 grant the protestants a right to request an in-person inspection of the pivot system. I am concerned about adding this condition to the transfer approval because it does not relate to IDWR, the state of Idaho, or the Idaho water laws in any way. It appears to be a private agreement to grant the protestants access to the proposed place of use under certain conditions. If the condition is added to the water right, IDWR may become responsible for enforcement of that private right of access. Although I don't have any issues with the idea or with the parties adopting a right of inspection as a term of the settlement agreement, I am concerned about adding the term as a condition on the water right.

Please let me know if it is acceptable to move forward with the settlement agreement without adding condition c on page 2 and condition d on page 3 to the transfer approvals.

James Cefalo

From: Rob Harris [<mailto:rharris@holdenlegal.com>]
Sent: Monday, October 16, 2017 11:08 PM
To: Cefalo, James <James.Cefalo@idwr.idaho.gov>
Cc: T. J. Budge <tjb@racinelaw.net>; Travis Thompson <tit@idahowaters.com>; Kent Fletcher (wkf@pmt.org) <wkf@pmt.org>
Subject: Signed Stipulation for MPH Farms Transfer Nos. 81333, 81337, and 81338

Hearing Officer Cefalo:

Enclosed for processing with IDWR is a fully-executed stipulation to resolve protests to three transfers filed by MPH Farms—Transfer Nos. 81333, 81337, and 81338.

Because the stipulation calls for IDWR to include certain conditions, to ensure the conditions are acceptable, I have included a signature line for you to approve the form and content of the stipulation. This is only to assure the parties to the stipulation that the conditions, as written, are acceptable to the Department. We recognize that the Department is not a party to this agreement and do not intend for IDWR to become a party by signing. If the conditions as written are acceptable, please include your signature on the stipulation, and email a copy to the parties. I recall that we discussed these provisions generally at a pre-hearing conference, and we do not think there are any conditions that should be of concern. However, if there are any conditions that are a concern, please let us know.

The stipulation calls for an amended transfer for 81333 that will need to be readvertised, which will be filed once you indicate that the conditions are acceptable.

The stipulation also calls for the withdrawal of 81337. We anticipate that the stipulation is sufficient to withdraw 81337. However, if another filing is necessary for withdrawing this transfer, please let me know. Consistent with past IDWR practice, we anticipate that a confirmation letter indicating 81337 has been withdrawn will be sent to the parties.

Finally, once we know that the conditions in the stipulation are acceptable, an amended transfer application for 81338 will be filed, but it will not need to be readvertised because the amended transfer will reduce the number of acres that are proposed to be moved in the transfer. However, the approved transfer must include the conditions set out in the stipulation.

Please let me know if you have any questions regarding the stipulation.

Thanks,