



State of Idaho

DEPARTMENT OF WATER RESOURCES

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GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

July 22, 2016

MARY E SLOAN
1063 LEMHI RD
SALMON ID 83467

ZENAS HARTVIGSON TRUST
DBA BRIER ROSE RANCH LLC
PO BOX 246
IDLEDALE CO 80453

RE: Protested Applications for Transfer 80592 & 80644
Applicant: Brent W. Mulkey
Protestant: Mary E. Sloan & Zenas Hartvigson Trust

Dear Mary Sloan and Scott Hartvigson:

The Department is continuing processing of the above referenced transfers. You both filed protests to the transfers referenced above, participated in a pre-hearing conference on June 22, 2016 and agreed after discussion to withdraw your protests. I provided protest withdrawal forms and you submitted conditional withdrawal statements. I am writing you to address the conditions you included on your withdrawal forms and note some provisions may be outside the Department's jurisdiction.

Although stated slightly differently, there are three items listed by both of you:

- 1) A measuring device shall be constructed near the county backroad that is accessible by the public to accurately measure the water delivered to the Mulkey property
- 2) Conveyance water for Right 74-192 will be measured during peak temperatures in late summer
- 3) Amy Cassel or IDWR will closely monitor the transfer for compliance.

I will address each of these items one at a time.

- 1) Measuring devices to address the proposed changes are standardly applied for each right based on multiple factors. The location of one of the devices will be at the most effective location near the point where water was originally delivered to the Mulkey property and the county road location as discussed, but may not be visible from the road. The device will be located on private property and the Department has no authority to provide access to an individual's property by others. The watermaster of Water District No. 74F, Pratt Creek, will have the authority to monitor this measuring device.

- 2) As we discussed at the conference there will be a second measuring device required at the location where water is injected into Sandy Creek. This measuring device will be regulated by the watermaster of Water District No. 74G, Sandy Creek. He will verify the amount of water injected into Sandy Creek in order to know how much water may be diverted from Sandy Creek at the redirection point which will also require a measuring device. The difference between the original location measurement and the injection point measurement will reflect any conveyance losses. Measurements and regulation of rights from Sandy Creek are under the watermaster's authority and he will conduct his efforts consistent with other rights from Sandy Creek.
- 3) Amy Cassel's role is not regulatory. She will oversee the installation of the required measuring devices as part of her separate project agreement with the applicant. She will also be monitoring the proposed new system to verify the goal of the funding investment for the project is accomplished and water use is consistent with the water rights as transferred. This is separate from the coordinated regulation of Pratt Creek water delivered via Sandy Creek by the respective watermasters, but the information will be available to everyone.

A partial list of the standard conditions proposed for the Pratt Creek rights for these two transfers addressing the primary concerns of the proposed delivery changes of Pratt Creek water are listed below for your review. We will also include other pertinent conditions as needed to define each individual right and combined rights.

Use of water under this right will 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 74F, Pratt Creek. Injection of Pratt Creek water into and redirection from Sandy Creek will be regulated by the watermaster of State Water District No. 74G, Sandy Creek. Delivery accounting of this right will be governed by the watermaster of Water District 74G with regulation authority shared by Water District 74F and Water District 74G.

Rediversion of water is limited to those times water is available for diversion under this right and priority from Pratt Creek and the amount of water actually injected into Sandy Creek.

Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the department for measuring the flow in Pratt Creek at the original point of diversion, at the point of injection into Sandy Creek and at the point of redirection from Sandy Creek.

A lockable device subject to the approval of the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion(s).

This explanation and proposed conditions may not be fully consistent with the parties' expectation for withdrawal of the protests. This letter provides opportunity for review and comment by the parties. If use of the proposed standard conditions are not acceptable, please provide written comment to the Department within 14 days. Written

comment objecting to the proposed conditions will result in a determination by the Department that the protests are not withdrawn and that the pending applications remain active contested cases before the Department. If no comment is received in that time, the transfers will be issued with the proposed standard conditions to address your concerns.

If you require additional information regarding this matter, please call me directly at (208) 287-4951, e-mail me at pam.skaggs@idwr.idaho.gov or contact me by mail, and I will be happy to assist you.

Sincerely,



Pamela S. Skaggs
Water Rights Supervisor

Cc: Brent W. Mulkey
Amy Cassel