

Cefalo, James

From: Janice Anderson [norskriver@hotmail.com]
Sent: Wednesday, May 06, 2015 1:42 PM
To: Cefalo, James
Subject: Re: Draft Permit for Review

Importance: High

James Cefalo, IDWR
Concerning Permit No. 2914117

I am withdrawing my protest contingent on the final permit issued by the IDWR will match the draft sent to me on 5/6/15 for Permit 29-14117 by James Cefalo, IDWR office, Idaho Falls, Idaho.

Stephan N. Anderson and Janice K. Anderson

From: Cefalo, James
Sent: Wednesday, May 06, 2015 11:00 AM
To: TJ Budge ; Janice Anderson ; fredric_price@blm.gov
Subject: Draft Permit for Review

Dear Parties:

Attached is a draft permit incorporating the conditions discussed in our emails over the last two days. I made some slight adjustments to wording, but the end result is the same. If this draft permit adequately addresses the issues of protest, the protestants can send me written confirmation that the protests are withdrawn contingent on the final permit issued by IDWR matching the 5/6/15 Draft Permit 29-14117. This can be done by email or by letter. In this case, email might be preferable because of our disclosure deadline today and the upcoming hearing date. Thanks for being so quick in responding to each other's emails about proposed conditions.

James

From: TJ Budge [mailto:tjb@racinelaw.net]
Sent: Wednesday, May 06, 2015 9:16 AM
To: Cefalo, James
Cc: Janice Anderson; fredric_price@blm.gov
Subject: FW: App for Permit 29-14117 (Tatar)
Importance: High

James,

Per the email below, it looks like we have reached a settlement and can vacate the hearing and disclosure deadline. Please confirm at your earliest convenience it has been vacated.

My sense is that all of the parties would like to see the permit conditions to ensure they are comfortable with them before the permit is issued. Would you be willing to email a draft permit to the parties and give us an opportunity to review it before it is formally issued?

Thanks,

Cefalo, James

From: TJ Budge [tjb@racinelaw.net]
Sent: Wednesday, May 06, 2015 9:16 AM
To: Cefalo, James
Cc: Janice Anderson; fredric_price@blm.gov
Subject: FW: App for Permit 29-14117 (Tatar)

Importance: High

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Thanks,

TJ

T.J. Budge
Attorney



208.232.6101 — Phone
208.232.6109 — Fax

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Pocatello, Idaho 83204
www.racinelaw.net

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From: Janice Anderson [mailto:norskriver@hotmail.com]
Sent: Tuesday, May 05, 2015 10:51 PM
To: TJ Budge
Subject: Re: App for Permit 29-14117 (Tatar)
Importance: High

T.J Budge:

I am on board pending the final reading of the stipulations or amendments to the permit as written by James Cefalo, IDWR to be included in the application.

I would like to see the final result with the BLM requirements

included and the items I mentioned below or the wording James e-mailed that were important to me.

I am sure we are close to resolving all the issues.

Thanks

Stephan Anderson

From: TJ Budge

Sent: Tuesday, May 05, 2015 5:44 PM

To: 'Price, Fredric'

Cc: Cefalo, James ; Janice Anderson

Subject: RE: App for Permit 29-14117 (Tatar)

Fred, thanks for the email. To address your additional items:

1. No objection. The application has already been amended to change the source to "unnamed stream."
2. An amended map is appropriate, but the one attached to your email is not quite accurate. I've marked the approximate location of the POD on the attached map prepared by IDWR which is based on GPS data points. This is where the stream first crosses onto the Tatar property.
3. No objection, but an alternative to consider: "This right does not permit alteration of the natural course of the unnamed stream to direct water toward or around the point of diversion listed above."

Steve, please confirm you are on board. Assuming you are, I propose we agree by email to vacate the hearing and disclosure deadline.

Thanks,

TJ

T.J. Budge

Attorney



208.232.6101 — Phone

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From: Price, Fredric [<mailto:fwprice@blm.gov>]

Sent: Tuesday, May 05, 2015 5:30 PM

To: TJ Budge

Cc: Cefalo, James; Janice Anderson

Subject: Re: App for Permit 29-14117 (Tatar)

Everyone,

RE: 29-14117, Tatar

SETTLEMENT:

Good job! This is encouraging. Conditions 1, 2 and 3 proposed by IDWR get us most of the way!

Can we tweak the first sentence of condition #3 to read as follows: "This right is limited to the diversion of no more than 1/2 of the water flow in the unnamed stream or 0.02 cfs and 2,500 gpd whichever is less." The condition speaking to 1/2 the flow shouldn't be misinterpreted to somehow allow more than the diversion rate/volume to be diverted.

In order to resolve BLM's protest, we also need:

- (1) The Source description needs to be amended from "Temporary Spring" to "Unnamed Stream."
- (2) The map attached to the Tatar Application for Permit shows a dot depicting where the diversion structure is to be located, which according to IDWR's Exhibit 1, appears to be on the trespass ditch that was dug across BLM land in order to bypass the tree debris. I would need that dot to be moved over to the point where IDWR's Exhibit 1 has the "natural channel" crossing under the fence between the Anderson & Tatar properties. Attached is a proposed Amended Map for your consideration.
- (3) Conditions 1 & 2 proposed by IDWR are great, but since the Tatar's have a predeliction for disturbing BLM land, and because BLM does not believe there is a natural surface water source located on Tatar's property; the draft Settlement Agreement I proposed some time ago went further to stipulate that: "The Applicants stipulate and agree that they shall not disturb BLM land in order to direct or redirect water emanating from the springs located on BLM to their point of diversion on privately owned land, and shall only seek to divert any naturally occurring water once it flows onto their privately owned land." I believe a shorter version of that would enhance condition #2 if there were also language that read something like: "This right does not allow the disturbance of the land of another in order to direct or redirect water toward the point of diversion list above."

If these items could be reflected in a Proposed Permit (with a new map), then I could withdraw BLM's protest based upon the Proposed Permit.

DISCLOSURE:

Just in case we don't get this wrapped up tomorrow, the disclosure deadline is tomorrow for disclosure of exhibits and witnesses. I have previously emailed everyone the exhibits for BLM. I would also like to be able to refer to the records in IDWR's file during the hearing (i.e. application, publication, correspondence, emails, maps, etc). With regard to witnesses, BLM will offer myself (water rights are my job) and Blaine W. Newman who is the Assistant Field Manager for BLM's Pocatello Field Office (he been out to the site so is familiar with the features on the ground and what they mean to BLM).

Fredric W. Price
Water Rights Specialist
BLM, Idaho State Office, ID-933b
1387 S. Vinnell Way, Boise, ID 83709
(208) 373-3831
fwprice@blm.gov

On Tue, May 5, 2015 at 3:36 PM, TJ Budge <tjb@racinelaw.net> wrote:

James,

This approach is fine. I would prefer to restructure the settlement agreement to say that the diversion structure will be located on the Tatar property and 1/2 of the water will return to the natural channel, but if the Andersons aren't comfortable with that then I'm fine with them simply withdrawing their protest provided the conditions below are added.

I will talk to Fred about the BLM protest. I don't expect resolving that to be a problem.

TJ

T.J. Budge
Attorney



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From: Cefalo, James [mailto:James.Cefalo@idwr.idaho.gov]
Sent: Tuesday, May 05, 2015 1:37 PM
To: TJ Budge
Cc: Janice Anderson
Subject: App for Permit 29-14117 (Tatar)

TJ,

I just spoke with Mr. Anderson again. He is hesitant to sign a settlement agreement. We discussed the permitting process and the types of permit conditions that can be placed on water rights. He offered to simply withdraw his protest as long as the permit includes the following conditions:

1) This right does not grant any right-of-way or easement across the land of another.

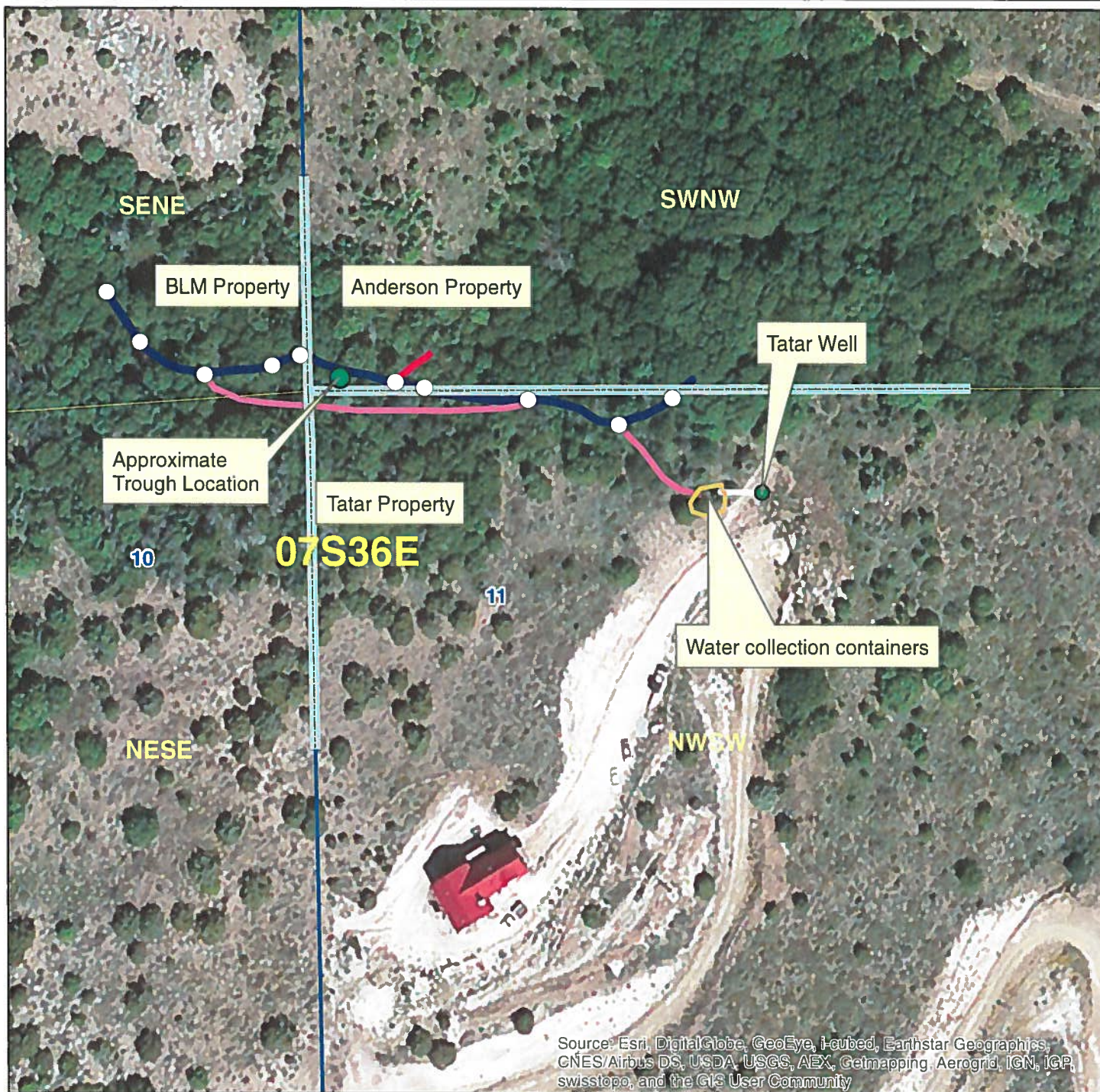
2) The point of diversion for this right must be located on property owned by the right holder, in the NWSW of Section 11, T07S, R36E.

3) This right is limited to the diversion of no more than $\frac{1}{2}$ of the water flow in the unnamed stream. The right holder shall maintain a diversion structure that will allow $\frac{1}{2}$ of the flow in the unnamed stream to continue past the diversion in the natural stream channel.

This option would eliminate the need for a settlement agreement and would avoid Anderson filing for his own water right. Let me or Mr. Anderson know if this is an acceptable resolution and he can prepare the withdrawal of protest.

How do you propose handling the BLM protest?

James



- Natural_Channel_GPS_Points
- Property Boundary
- Pipeline to Well
- Ditch
- Natural Channel
- Ditch
- Township/Range
- Sections
- QQ

0 60 120 240 Feet

1 inch = 100 feet

