

## Cefalo, James

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**From:** Price, Fredric [fwprice@blm.gov]  
**Sent:** Tuesday, April 21, 2015 1:16 PM  
**To:** Cefalo, James  
**Cc:** tailingart@yahoo.com; Richard Todd; Gary Madenford; Bassista, Tom  
**Subject:** Re: Revision to 4/21/2014 Draft Permit 34-14339 (Fulton)

James,

RE: 34-14339, Fulton

Sorry, I got distracted by other tasks. Thank you very much for prodding! BLM is also ok with the condition #3 modification.

As I have become more familiar with the roles of FERC and BLM, it is my understanding that whereas FERC is the entity who has jurisdiction to authorize the generation of power, it still falls to BLM to authorize the land uses associated with the generation of power. In this case, the additional use being the transportation of a new water right across BLM through the existing facility. As part of the process, Fulton will need to obtain a FLPMA right-of-way (ROW) from BLM to transport the new water right for power purposes across federal land within the existing facility.

Fulton & Smith currently hold a ROW under the Act of 1891 (IDI-0-011980 issued 12-21-1960) to transport existing irrigation rights (34-00057 (1887), 34-00058 (1910), 34-00836 (1888), 34-04039 (1934), 34-10585 (1951)) across federal land. A ditch ROW is primarily for the purpose of transporting a water right and secondarily for a facility capable of delivering it.

Fredric W. Price  
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On Tue, Apr 21, 2015 at 9:33 AM, Bassista, Tom <[thomas.bassista@idfg.idaho.gov](mailto:thomas.bassista@idfg.idaho.gov)> wrote:

Dear James:

The Idaho Department of Fish and Game acknowledges we discussed Mr. Fulton's issue with condition #3 of the Draft Permit. Eliminating the second sentence of condition #3 as described below will not affect our withdrawal of protest.

Thank you for the opportunity to discuss and comment.

Please contact me if you need additional assistance.

Sincerely,

Tom Bassista

Environmental Staff Biologist

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208.525.7290

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**From:** Cefalo, James [mailto:[James.Cefalo@idwr.idaho.gov](mailto:James.Cefalo@idwr.idaho.gov)]  
**Sent:** Monday, April 06, 2015 3:32 PM  
**To:** Bassista, Tom; [fredric\\_price@blm.gov](mailto:fredric_price@blm.gov); [tailingart@yahoo.com](mailto:tailingart@yahoo.com)  
**Subject:** Revision to 4/21/2014 Draft Permit 34-14339 (Fulton)

Thank you for being willing to participate in a telephone conference on short notice. In April of last year, I circulated a draft permit for the parties to review. The two protestants in this matter (BLM and IDFG) agreed to withdraw their protests provided the permit issued matched the draft permit. During our meeting this morning, we discussed a condition that Mr. Fulton wanted to have revised. We determined that the second sentence of condition #3 of the 4/21/2014 Draft Permit could be deleted without affecting the withdrawals of protest.

Condition #3 will now state: "Rights 34-57, 34-58, 34-836, 34-4039, 34-10585 and 34-14339 when combined shall not exceed a total diversion rate of 15.2 cfs."

Tom and Fred, would you please respond to this email, confirming that condition #3 can be revised as stated without affecting your withdrawal of protest.

I plan on issuing the permit in the next couple of weeks.

Thanks,

James

## Cox, Sharla

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**From:** Price, Fredric [fwprice@blm.gov]  
**Sent:** Thursday, April 02, 2015 6:13 PM  
**To:** Bassista, Tom; Cox, Sharla  
**Subject:** Re: 34-14339, Fulton - Draft Permit  
**Attachments:** 2014-12-18\_FERC-Notice-Prelim-Determination.pdf; 2015-01-12\_State-Intervene\_CD15-17-000.pdf; 2015-02-05\_FERC-Letter-to-Crockett.pdf; 2014-12-12\_Fulton-Application-to-FERC.pdf

Tom, Sharla

### CONDITION #3:

"Rights 34-57, 34-58, 34-836, 34-4039, 34-10585 and 34-10585 when combined shall not exceed a total diversion rate of 15.2 cfs. Diversion of water under this right shall be limited to times when the same water is diverted and beneficially used under water rights 34-57, 34-58, 34-836, 34-4039 and/or 34-10585."

The protests filed by us raised concerns about diverting additional water during and outside the irrigation season and Fulton agreeing to Condition #3 was important in getting us to withdraw our protests.

Condition #3 restricts this new power use to only diverting water for power purposes during the season of use for the existing water rights and thereby allows water to support the resource below the diversion during the non-irrigation season, as the existing rights only allow 0.02 cfs for stockwater (i.e. same water) during the non-irrigation season.

This was a significant concession on Fulton's part that allowed us to settle. Condition #3 appears to allow 6.5 cfs of the 15.2 cfs diverted for irrigation purposes during the irrigation season to also be used for power purposes; and 0.02 cfs of water diverted for stockwatering purposes during the non-irrigation season of use to be also be used for power purposes.

### FERC CD15-17: Fulton Hydropower Project

It appears that Fulton has begun the process of applying to FERC (#CD15-17) for authorization to generate power (see attached documents).

#### 34-00057: Fulton

2.4 cfs, irr, 05/01 -10/15

**0.02 cfs, stock, yearround**

#### 34-00058: Fulton

3.2 cfs, irr, 05/01 -10/15

#### 34-00836: Fulton

3.2 cfs, irr, 05/01 -10/15

0.19 cfs, stock, 05/01 -10/15

**0.02 cfs, stock, 10/16 -04/30**

#### 34-04039: Smith

3.2 cfs, irr, 04/01 -11-15

#### 34-10585: Smith

3.2 cfs, irr, 04/01 -11-15

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15.20 cfs total for irr

\* 0.02 cfs for stock during non-irrigation season

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On Thu, Apr 2, 2015 at 3:14 PM, Bassista, Tom <[thomas.bassista@idfg.idaho.gov](mailto:thomas.bassista@idfg.idaho.gov)> wrote:

Thank you Sharla. IDFG will certainly listen to his concerns and help determine the validity. But I see it more of a water administration issue.

Glad to help out.

Tom

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**From:** Cox, Sharla [mailto:[Sharla.Cox@idwr.idaho.gov](mailto:Sharla.Cox@idwr.idaho.gov)]  
**Sent:** Thursday, April 02, 2015 2:34 PM  
**To:** Bassista, Tom; [fredric\\_price@blm.gov](mailto:fredric_price@blm.gov)  
**Subject:** 34-14339, Fulton - Draft Permit

Here you go boys. It's condition #3 that Mr. Fulton is disputing. I still haven't heard back from Mr. Fulton, but hopefully he will call me this afternoon.

As soon as I hear from him I will let you know if it's Monday the 6<sup>th</sup> or Friday the 9<sup>th</sup> at 9:00 am.

Thanks guys!

*Sharla*

*Sharla Cox*

*Administrative Assistant*

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