

Cefalo, James

From: Cefalo, James
Sent: Monday, April 21, 2014 11:16 AM
To: 'Nelson, Tyson'
Cc: tom.bassista@idfg.idaho.gov; Hensley, Harriet; Poole,Walt; 'Robertson,Cindy'; Price, Fredric; tailingart@yahoo.com
Subject: RE: Draft Permit 34-14339 (Fulton)
Attachments: 3rd Draft Permit 34-14339 (Fulton).pdf

Dear Parties:

I just spoke with Mr. Fulton. He explained that there are a number of options available within FERC to obtain authorization for the production and sale of power (including the conduit exemption). Mr. Fulton has not yet determined which type of FERC application he will pursue. Tyson correctly pointed out that the 4/15/14 Draft Permit included a condition that specifically referred to an "exemption order" from FERC. The condition would not be correct if Mr. Fulton chose a different FERC application path.

I have adjusted the language of Condition #14 to refer to providing a copy of the "FERC authorization or license." This will give Mr. Fulton flexibility as he moves forward through the FERC process. With this change, the protestants should be able to prepare their conditional withdrawals. Please refer to the 4/21/14 Draft Permit. Again, the IDWR permit will not be issued until Mr. Fulton obtains FERC approval of the proposed project.

James Cefalo

From: Nelson, Tyson [<mailto:tyson.nelson@ag.idaho.gov>]
Sent: Friday, April 18, 2014 9:10 AM
To: Cefalo, James
Cc: tom.bassista@idfg.idaho.gov; Hensley, Harriet; Poole,Walt; 'Robertson,Cindy'; Price, Fredric; tailingart@yahoo.com
Subject: RE: Draft Permit 34-14339 (Fulton)

James,

In your 4/15/14 email, below, you explain that withdrawal of a protest can be conditioned on (1) Mr. Fulton obtaining a license from FERC and (2) the permit being issued as described in the 4/15/14 draft. Condition 14 in the draft permit requires Mr. Fulton to submit a copy of the FERC exemption order when he submits the proof of beneficial use statement, unless it has previously been provided.

These statements raise two questions in my mind. First, what type of FERC approval documentation will IDWR require of Mr. Fulton. For example, if Mr. Fulton obtains a conduit exemption from FERC, I understand the exemption is not a license. Perhaps Mr. Fulton can clarify the type of authorization he will seek from FERC. Second, is Mr. Fulton required to submit the FERC approval documentation before IDWR issues the permit or at the time Mr. Fulton submits his proof of beneficial use statement?

Thanks for your assistance.

Tyson K. Nelson
Deputy Attorney General
Natural Resources Division
Office of the Attorney General
P.O. Box 83720
Boise, ID 83720-0010

Cefalo, James

From: Cefalo, James
Sent: Tuesday, April 15, 2014 2:52 PM
To: 'Nelson, Tyson'; Price, Fredric; tailingart@yahoo.com
Cc: tom.bassista@idfg.idaho.gov; Hensley, Harriet; Poole,Walt; 'Robertson,Cindy'
Subject: Draft Permit 34-14339 (Fulton)
Attachments: Draft Permit 34-14339 (Fulton).pdf

Dear Parties,

Attached is a revised draft permit. I have incorporated the combined diversion rate limit suggested by Mr. Price. As we have discussed, because of right-of-way concerns, the Department will not issue any permit until Mr. Fulton has obtained FERC authorization for the power project. However, the protests can be conditionally withdrawn at this time to allow Mr. Fulton to move forward knowing the parameters of the water right.

If this draft permit sufficiently addresses your issues of protest, you can file a withdrawal of protest conditioned on (1) Mr. Fulton being able to obtain a license for power generation from FERC, and (2) The permit being issued as described and conditioned in the 4/15/14 Draft.

Thank you all for your good faith efforts to resolve this contested case.

James Cefalo

Cefalo, James

From: Price, Fredric [fwprice@blm.gov]
Sent: Wednesday, March 26, 2014 12:28 PM
To: Nelson, Tyson
Cc: Cefalo, James; tailingart@yahoo.com; tom.bassista@idfg.idaho.gov; Hensley, Harriet; Poole, Walt; Robertson, Cindy; Gary Madenford; Jordan Crane; Derek Eichelberger
Subject: Re: Draft Permit 34-14339 (Fulton)

James,

RE: 34-14339, Fulton

The draft permit from 03-18-14, together with your subsequent update later that day (see below), is acceptable to BLM.

Fred

On Wed, Mar 26, 2014 at 8:07 AM, Nelson, Tyson <tyson.nelson@ag.idaho.gov> wrote:

Idaho Department of Fish and Game staff have reviewed the draft permit and do not have any proposed changes.

Tyson K. Nelson

Deputy Attorney General

Natural Resources Division

Office of the Attorney General

P.O. Box 83720

Boise, ID 83720-0010

Phone: (208) 334-4549

Fax: (208) 854-8072

tyson.nelson@ag.idaho.gov

From: Cefalo, James [mailto:James.Cefalo@idwr.idaho.gov]

Sent: Tuesday, March 18, 2014 2:37 PM

To: Price, Fredric

Cc: tom.bassista@idfg.idaho.gov; fredric_price@blm.gov; tailingart@yahoo.com; Nelson, Tyson; Hensley, Harriet

Subject: RE: Draft Permit 34-14339 (Fulton)

Fred,

In my haste to get the draft circulated, I omitted the combined diversion rate condition. The condition would state: "Water rights 34-57, 34-58, 34-836, 34-4039, 34-10585 and 34-14339 when combined shall not exceed a diversion rate of 15.20 cfs from Rock Creek. Diversion 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." I will incorporate the condition, and any other comments/edits into another draft after everyone has responded.

James

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

Sent: Tuesday, March 18, 2014 1:14 PM

To: Cefalo, James

Cc: tom.bassista@idfg.idaho.gov; fredric_price@blm.gov; tailingart@yahoo.com; tyson.nelson@ag.idaho.gov; harriet.hensley@ag.idaho.gov

Subject: Re: Draft Permit 34-14339 (Fulton)

James,

Thank you very much for this draft. I'm used to seeing combined use remarks when there are multiple rights from the same diversion (see item 3 in attached letter) to define how the rights are used in conjunction. Is that done differently when power is involved?

Fred

On Tue, Mar 18, 2014 at 9:42 AM, Cefalo, James <James.Cefalo@idwr.idaho.gov> wrote:

Dear Parties,

As we discussed at the last status conference, I have prepared a draft permit, incorporating the standard hydropower permit conditions and other conditions relating to the bypass flow / measuring device on Rock

Creek. The goal was to create a draft permit sufficiently addressing the issues of protest so that the protests could be conditionally withdrawn, which would allow Mr. Fulton to move forward with his FERC application. The IDWR permit would be issued at some point after FERC approves the conduit application. Attached is a draft permit for you to review. I tried to incorporate the language proposed by Tom Bassista, but made some minor changes for ease of administration. Please let me know if you have any proposed changes.

James Cefalo

Water Resources Program Manager

IDWR Eastern Region

(208) 525-7161

Cefalo, James

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