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RECEIVED

APR 22 2014

Department of Water Resources
Eastern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 34-14339 IN THE)
NAME OF GORDON FULTON)

)

WITHDRAWAL OF PROTEST

The Idaho Department of Fish and Game hereby withdraws its protest filed in the above-entitled matter. This withdrawal is conditioned on (1) the applicant obtaining authorization from the Federal Energy Regulatory Commission to generate hydropower and (2) issuance of a water right permit as described and conditioned in the April 21, 2014 Draft Permit distributed via email to the parties by Hearing Officer James Cefalo. A copy of the Draft Permit is attached hereto.

DATED this 21 day of April, 2014.



TYSON K. NELSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on this 21 day of April, 2014, I caused to be served the original and/or copy of the foregoing WITHDRAWAL OF PROTEST on the following persons by U.S. Mail, postage prepaid:

Original To:

James Cefalo
Idaho Department of Water Resources
900 N. Skyline Dr., Ste. A
Idaho Falls, ID 83402-1718

Copies To:

Gordon Fulton
5907 Highway 93
Mackay, ID 83251

Fred Price
U.S. Bureau of Land Management
1387 S. Vinnell Way
Boise, ID 83709-1657

Tom Bassista
Idaho Department of Fish and Game
Upper Snake Region
4279 Commerce Circle
Idaho Falls, ID 83401

Cindy Robertson
Walt Poole
Idaho Department of Fish and Game
P.O. Box 25
Boise, ID 83707



TYSON K. NELSON
Deputy Attorney General

State of Idaho
Department of Water Resources

4/21/2014 Draft Permit to Appropriate Water

NO. 34-14339

Priority: June 29, 2011

Maximum Diversion Rate: 6.50 CFS

This is to certify, that GORDON FULTON
5907 HWY 93
MACKAY ID 83251

has applied for a permit to appropriate water from:

Source: ROCK CREEK

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
POWER	01/01 to 12/31	6.50 CFS	

LOCATION OF POINT(S) OF DIVERSION:

ROCK CREEK SE ¼ SW ¼ SE ¼ Sec. 34, Twp 10N, Rge 22E, B.M. CUSTER County

PLACE OF USE: POWER

Twp Rge Sec	NE				NW				SW				SE				
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
09N 22E 5											X						

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **April 01, 2019**.
2. Subject to all prior water rights.
3. 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. 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.
4. The right holder shall install a measuring device that can be used to determine the instantaneous rate of flow of water through the power generation system, or the right holder shall provide to the department a flow rate measurement or computation made by a certified water right examiner in accordance with actual system design and operation.
5. When diverting water for power purposes under this right, the right holder shall maintain an instantaneous bypass flow of at least 0.2 cfs past the point of diversion on Rock Creek, located in the SESWSE of Section 34, T10N, R22E. The right holder shall cease diverting water under this right if the bypass flow in Rock Creek is less than 0.2 cfs.

State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 34-14339

6. The right holder shall maintain a permanent measuring device, with staff gage, in Rock Creek capable of measuring the required bypass flow of 0.2 cfs. The measuring device shall be approved by IDWR after consultation with the Idaho Department of Fish & Game. At least once per year, the right holder shall confirm that the bypass flow measuring device is in good condition and providing accurate measurements prior to diverting water for power purposes.
7. The measuring device for the bypass flow shall be located no more than 100 feet downstream of the authorized point of diversion for this right, located in the SESWSE of Section 34, T10N, R22E.
8. Upon specific notification by the Department, the right holder shall install a lockable device of a type acceptable to the Department in a manner that will provide the watermaster suitable control of the diversion.
9. Use of water under this right shall be non-consumptive.
10. This right is subject to the provisions of Sections 42-205 through 42-210, Idaho Code, restricting the sale, transfer, assignment, or mortgage of this right. Failure to comply with these provisions is cause for immediate cancellation of this right.
11. The rights for the use of water acquired under this right shall be junior and subordinate to all other rights for the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.
12. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
13. The term of this permit shall run concurrently with the length of any effective energy sales agreement between the right holder and a purchasing utility. Prior to the expiration of the term, the Director may issue an order canceling all or any part of the use authorized herein, may establish a new term, or may revise, delete, or add conditions under which the water right permit or subsequent water right license may be exercised. The order shall take effect on the date the current term expires. If the Director does not issue such an order, the term shall automatically extend to a length equal to the prior term and any prior conditions on the water right permit or subsequent water right license shall remain in effect.
14. If it has not been previously provided, the permit holder shall submit a copy of the FERC authorization or license and a copy of the effective energy sales/purchase agreement for this project in conjunction with the Proof of Beneficial Use statement.
15. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
16. This right does not grant any right-of-way or easement across the land of another.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this _____ day of _____, 20_____.

GARY SPACKMAN, Director