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MAR 13 2013

Department of Water Resources
Eastern Region

Gordon Fulton
5907 Hwy 93
Mackay Id, 83251

Idaho Department of Water Resources
900 North Skyline Drive, Suite A
Idaho Falls, Idaho 83402-1718

RE: Application for Permit No. 34-14339

Dear Kerrie;

Enclosed are copies of two letters that I recently sent to the two Protestants of my water right application, for your files. I don't know yet if I am gaining but I sure am having fun creating paperwork.

Cheers!

A handwritten signature in black ink, appearing to read "Gordon Fulton", written in a cursive style.

Gordon Fulton

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COPY

United States Department of the Interior
Bureau of Land Management
Idaho State Office
1387 South Vinnell way
Boise, Idaho 83709-1657

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Mr. Fredric W. Price
Dear Sir;

This is a complementary letter to update you on my attempts to resolve the protests filed by The Bureau of Land Management and the Idaho Department of Fish and Game for a non-consumptive water right application for power generation purposes (Application for Permit No. 34-14339).

I tried unsuccessfully, last spring and again last fall to make contact with Dave Murphy or Fredrick Price by telephone to discuss the issues that the BLM may have with my application. I was unable to talk to them, however, on or about April, 10 2012 I did talk to Nate Arave, of the Challis BLM office, who came to our grazing association meeting, apparently for the purpose of discussing my water right application. He indicated that it was his opinion that most or all of the issues could be resolved without a formal hearing.

I will briefly cover, or try to explain, what I am currently doing to address the several items you listed as concerns in your protest.

1. **Proof of authorization from FERC.** Unfortunately I do not have proof of authorization yet, but I am apparently eligible for, and am currently applying for an "Existing Conduit Exemption". You correctly noted that I don't own the land where the power plant is to be located, but Wiley Smith, who does own the land has already notarized an agreement allowing me to use his decreed irrigation water for power generation, and he has further agreed to sign an affidavit, worded in a manner acceptable to FERC, giving me the necessary control of the small parcel of land where the power plant is to be located.
2. **Inclusion of following conditions.** Condition 025: Obtaining the Existing Conduit Exemption should satisfy both FERC and IPUC. Condition 054: I am not yet aware of what bonding requirements may be appropriate to government entities, but am not averse to obtaining them if it is feasible.
3. **Limit the diversion of water to the existing quantities for irrigation (i.e. no additional appropriation for power purposes. In other words, power would be generated from just the quantities diverted for irrigation purposes.** I am in no way applying for any additional water just for power

generation. My intention is simply to utilize the available decreed water that is currently flowing through the pipeline into what to me looks like a very clean necessary, environmentally sound, socially acceptable, renewable resource.

4. **Limit the diversion of water to the irrigation season:** Since the pipeline was installed in 1984 we have continually diverted most of the available water through the pipeline during the winter months for stock water purposes. Admittedly the volume diverted is excessive for just stock water, but it requires considerable thermal mass, or volume for the water to reach the fields where the cows are located. With a lesser flow the water either sinks or freezes solid well before it is of any beneficial use to us. Since the bulk of the water has been beneficially diverted through the pipeline, year around, for nearly 40 years now, I maintain that there will be no real change in the way it has been administered since 1984.
5. **Provide for bypass flows in order to maintain the existing riparian habitat below the diversion:** Enclosed is a letter to the Idaho Department of Fish and Game addressing this very issue. One of their representatives, Tom Bassista, has made several on site visits to assess the effects on both wintering wildlife species and downstream riparian habitat. There is considerable leakage under and around the existing concrete headgate, amounting to about 20% to 25% of the measured total wintertime volume. We agreed to have the local water-master measure the current bypass flows and assure that we would not alter the head-gate structure or otherwise reduce current, non-irrigation season, in-stream flows. This will assure the continued downstream availability of water, and winter ice-skating opportunities for wildlife and riparian habitat.
6. **Provide a diagram of the transmission line route between powerhouse and grid:** Salmon River Electric just happens to have a 69kv line that traverses Wiley's field a mere 800 or so feet from where we propose to place the power plant. They have indicated that they would be perfectly happy to allow us to tie in to the grid right there, and would either buy the power or wheel it another buyer if necessary. I, of course would have to meet their inspection, engineering and safety requirements. I can provide a diagram of the transmission line route at a later date if necessary, but it does happen to be very close.

Hopefully this will answer at least some of your concerns as I continue to try to navigate the permitting process. I will be in further contact when I have more information from FERC, if that will help to resolve your concerns.

Sincerely,



Gordon Fulton

COPY

Gordon Fulton
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Mackay, Id 83251

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Department of Water Resources
Eastern Region

Idaho Department of Fish and Game
UPPER SNAKE REGION
4279 Commerce Circle
Idaho Falls, Idaho 83401

Steve Schmidt;
Regional Supervisor
Dear Sir;

This letter is in regard to a protest filed by the Idaho Fish and Game against a non-consumptive water right application filed by Gordon Fulton for power generation (Application for permit No.34-14339) on Rock Creek, near Mackay Idaho.

According to the protocols for resolving a protest, as described to me by Idaho Department of Water resources, the first step is to attempt to resolve any questions by communicating directly with the interested parties.

Since the existing pipeline was installed in 1984 we have continually diverted most of the available water through the pipeline during the winter months for stock water purposes. Admittedly the volume diverted is excessive for just stock water, but it requires considerable thermal mass, or volume for the water to reach the fields where the cows are located. With a lesser flow the water either sinks, or freezes solid well before it is of any beneficial use to us. Since the bulk of the water has been beneficially diverted through the pipeline, year around, for nearly 40 years now, I maintain that there will be no real change in the way it has been administered since 1984.

On about April 19, 2012 I talked, by phone, to Tom Bassista at some length about their concerns, regarding my application. Tom had made several prior site visits, during both winter and summer, so he had first hand knowledge of both the issues and the area. Tom indicated to me that, although he would have to consult with their legal counsel in Boise for their approval, it was his opinion that since there is a considerable amount of water leaking under and around the concrete head-gate structure, that it would suffice for a baseline in-stream flow during the winter or non-irrigation season.

On about February 22, 2013, I again talked, via telephone, to Tom Bassista, and he again reiterated that it is his opinion that their concerns could probably be met if we were to measure or quantify the current in-stream flows, and assure that we would not change our management policy to reduce that volume. I agreed to have the local water-master come up and take two measurements, about a month apart, in February, then again in March to establish the historic in-stream flows.

Unfortunately due to scheduling conflicts and deep snow we were a few days late getting the first measurement, but on March 6, 2013 we built a weir and took snow machines up to the site and were able to have the water-master measure the flows. Enclosed is a picture of the water-master, the stream, and the weir, as well as a letter from the water-master describing the current flow.

At the time he measured 0.2095 cfs or a little over 10 miners inches past the diversion. We also measured the flow being diverted for stock water as 0.9 cfs. I will note that a considerable amount of water was leaking through the porous gravel around our weir also, so at the time, over 20% of the available water was going down the stream channel. We will measure the flow again sometime in March, as agreed, but having been monitoring the flows for several years, I don't expect much change, until spring runoff starts.

I am not sure what the logistics are of assuring the historic flows, but I certainly am open to either an agreement, or wording in the water right to maintain the current norm.

Sincerely;

A handwritten signature in cursive script, appearing to read "Gordon Fulton".

Gordon Fulton



did son on March 1st
I measured the water with a weir installed
by Mr. Fulton for the purpose of measuring
water. I found there to be 0.2095 CFS which
equals 10.48 million inches of water in Idaho.

Sincerely
Roger Tottle
Watermaster District 34