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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

C.L. "Butch" Otter / Governor

Virgil Moore / Director

March 28, 2012

James Cefelo

Idaho Department of Water Resources

900 North Skyline Drive Suite A

Idaho Falls, ID 83402

RE: Notice of Protest-Water Right Application No. 34-14339 (Fulton Hydropower)

Dear James:

Idaho Department of Fish and Game (Fish and Game) has reviewed the above referenced Application for a Permit to appropriate public surface waters submitted by Mr. Gordon Fulton (Applicant), resident of 5907 Hwy 93, Mackay, ID 83251. The applicant seeks to divert up to 6.5 c.f.s. of Rock Creek at an existing diversion for the beneficial use of hydropower from January 1 to December 31 (inclusive). My staff has met onsite with Mr. Fulton on several occasions and is very familiar with the proposed project and project area. Additionally, Fish and Game provided a comment letter on February 10, 2012 to Mr. Fulton as part of the necessary documentation required by Idaho Department of Water Resources (IDWR) to access conflicts with the local public interest (Appendix A). The letter describes the abundance of wildlife in this area and discusses the potential effects the proposed water appropriation may have on the local public interest, namely effects on riparian habitat for wildlife resources below the existing diversion structure. Fish and Game made specific recommendations in the comment letter to Mr. Fulton requesting additional information and recommendations as to how potential adverse effects can be mitigated. Based on review of the most current application, none of our recommendations were incorporated into an amended application.

In accordance with provisions of Idaho Code § 42-203A(4) Fish and Game understands that a formal protest is required to participate in the water right application process. In fulfilling its mission of protecting, preserving, and managing fish and wildlife resources, it is part of the role and responsibility of Fish and Game to provide technical information regarding the potential effects of proposed water right on these resources and assess how any adverse effects can be avoided, minimized, or mitigated. The Fish and Game does not support or oppose this proposal but is instead filing this protest to assist IDWR in the decision-making process.

Please initiate the Interagency Billing for the applicable protest fee of \$25.00. The PCA is 11606

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and the ABC code is B7/TX. Please send the billing documents to IDFG Headquarters,
Attention: Dr. Walt Poole, P O Box 25, Boise, ID 83707.

If you have questions, please contact the Region's Environmental Staff Biologist, Tom Bassista,
at 525-7290.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Schmidt', with a long horizontal flourish extending to the right.

Steve Schmidt
Regional Supervisor

SLS:TPB:jms

Enclosure:

cc: Walt Poole (IDFG-HQ)
Harriet Hensley (OAG)
Sharon Kiefer (IDFG-HQ)
Terry Thomas (IDFG-Region 6)
Fred Price (BLM-State Office)
Steve Spencer (USFS)
Diane Weaver (Salmon Challis National Forest-Mackay)
Gail Baer (Salmon Challis National Forest-Salmon)
Todd Kuck (BLM-Challis)
Gordon Fulton-Project Proponent



IDAHO DEPARTMENT OF FISH AND GAME

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C.L. "Butch" Otter / Governor
Virgil Moore / Director

February 10, 2012

Mr. Gordon Fulton
5907 Hwy 93
Mackay, Idaho 83251

RE: Request for Comments-Proposed Hydropower Project and Diversion off Rock Creek

Dear Mr. Fulton:

Idaho Department of Fish and Game (Department) has received a request from you seeking comments on a proposal to appropriate public surface waters for a small hydropower generation facility constructed on an existing irrigation pipeline (Project). In a letter to you sent by Idaho Department of Water Resources (IDWR), you were required to seek comments from the Department concerning Project effects on aquatic habitat for fish and wildlife resources prior to IDWR verifying you have a complete Application for Permit (Application). In addition to utilizing your existing stock-water and irrigation water rights, you propose to divert an additional 6.5 cubic feet per second (c.f.s.) of surface water from an existing diversion from January 1 to December 31 (inclusive). The existing diversion structure is located on Rock Creek, a disconnected tributary to Chilly Slough in the Big Lost River basin. The diversion structure and perennial stream channel of Rock Creek is situated on lands administered by the Salmon-Challis National Forest. A portion of the intermittent Rock Creek channel downstream of the diversion structure is situated on lands administered by the Bureau of Land Management (BLM). Department staff has met with you on-site several times and is familiar with the proposed Project and Rock Creek watershed.

Fish and wildlife are property of all Idaho citizens. The Department and the Idaho Fish and Game Commission are expressly charged with statutory responsibility to preserve, protect, perpetuate, and manage fish and wildlife in Idaho (Idaho Code 36-103 (a)). In fulfillment of our statutory charge and direction as provided by the Idaho Legislature, we offer the following comments and recommendations. The purpose of these comments is to assist you by providing technical information addressing potential effects relative to conflicts with the local public interest (Idaho Code Section 42-203A(5)(e)) including effects on aquatic habitat for fish and wildlife resources. It is not the intention of the Department to support or oppose this proposal.

The Rock Creek watershed, which drains the northwest slopes of Mount Borah, is abundant in wildlife resources. The area downstream of the diversion is key habitat for greater sage-grouse and year-round habitat for pronghorn. The area of Rock Creek upstream and downstream of the diversion is considered wintering habitat for mule deer, elk, and bighorn sheep. In 2005, 34 bighorn sheep were released in this area of Rock Creek to help offset substantial declines of wild bighorn sheep populations (IDFG 2010). Though abundant in wildlife, the Department has no occurrence information of fish utilizing Rock Creek.

The Department is concerned about de-watering Rock Creek below the existing diversion structure and the negative effect it may have on aquatic habitats, particularly riparian vegetation that is used by wildlife. The Department concludes that there would be no net change on aquatic habitat for fish and wildlife resources if the Project were only to use your existing water rights. However, because you are requesting to use an additional 6.5 c.f.s of Rock Creek surface water year-round, the Department is concerned about de-watering effects on wildlife habitat. De-watering below the diversion would be most evident during base flows from November through March when

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irrigation water rights are not authorized and surface flow is less than 6.5 c.f.s. You and other water right holders on Rock Creek are only authorized to divert stock-water from November through March. Any un-appropriated water passes the diversion and flows down the Rock Creek channel. Any water flowing past the diversion helps maintain riparian habitats important to all wildlife species. The Department recommends you amend your Application to show you are leaving a flow of surface water in Rock Creek downstream of the diversion.

The Department does not believe that Rock Creek has a sufficient supply of water to satisfy a 6.5 c.f.s. year-round appropriation. In your Application, you claim that base flows are typically between 1 and 3 c.f.s.; however, your application did not include any hydrologic or flow information. Predictions made utilizing the U.S. Geological Survey Web-based Stream Stats program show flows are less than 3.0 c.f.s. in Rock Creek for the months of November through March. Accordingly, IDWR is required under Idaho Code Section 42-203A(5) to determine if the water supply is sufficient for the purposes for which it is sought to be appropriated. If IDWR authorizes a 6.5 c.f.s. year round water appropriation, there is a high likelihood that flows would be eliminated or greatly diminished in Rock Creek below the diversion. This may have negative effects on wildlife and wildlife habitat. The Department recommends you provide realistic flow information in your Application for the months of November through March and seek to appropriate a commensurate amount of water based on actual flow information.

In summary, Idaho Department of Fish and Game is concerned about the potential your Project has to de-water Rock Creek below the diversion structure during the non-irrigation season and adverse effects it may have on riparian vegetation and wildlife habitat. To help avoid adverse impacts to the local public interest, namely wildlife habitat, the Department recommends that you prepare a modified Application that shows you are leaving some water in the Rock Creek channel year-round below your diversion.

Idaho Department of Fish and Game appreciates the opportunity to review and comment on your proposal. If you have questions or require further assistance, please contact our Environmental Staff Biologist, Tom Bassista, at 208.525.7290.

Sincerely,



Steve Schmidt
Regional Supervisor

SLS:tpb:jms

cc: Kerrie Mathews (IDWR-Idaho Falls)
Walt Poole (IDFG-HQ)
Troy Saffle (DEQ-Idaho Falls)
Carol Benkowsky (Salmon Challis National Forest-Mackay)
Gail Baer (Salmon Challis National Forest-Salmon)
Todd Kuck (BLM-Challis)

Literature Cited

Idaho Department of Fish and Game (IDFG). 2010. *Bighorn Sheep Management Plan 2010*.
Idaho Department of Fish and Game, Boise, USA.

Cox, Sharla

From: Cox, Sharla
Sent: Monday, April 02, 2012 9:54 AM
To: Marston, Sascha
Subject: Interagency Billing
Attachments: DOC.pdf

Sascha, please interagency bill the following:

Amount \$25.00
Reason: Protest fee
Bill: Idaho Dept of Fish & Game
Attn: Walt Poole
PO box 25
Boise ID 83707

See enclosed letter.

Please let me know when we receive the funds.

Thank you.

Sharla

Sharla Cox
Administrative Assistant
Idaho Department of Water Resources
900 N. Skyline Dr. Ste. A
Idaho Falls ID 83402
208-525-7161 - telephone
208-525-7177 - fax
sharla.cox@idwr.idaho.gov