



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region, 7600 N. Mineral Drive, Suite 100 • Coeur d'Alene, Idaho 83815

Phone: (208) 762-2800 • Fax: (208) 762-2819 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

February 9, 2011

KIP MCGILLIVRAY
PO BOX 1041
OSBURN, ID 83849

RE: Withdrawal of Protest against 94-7441 MCGILLIVRAY

Dear Applicant(s):

The Department of Water Resources has received withdrawal(s) of protest against the above referenced application from the Idaho Department of Fish and Game.

The application does not have any remaining protests; therefore, the department will take the steps necessary to bring the application to a final resolution.

Please contact this office if you have any questions regarding this procedure. Information about water rights and other matters administered by this agency is also available on the Internet at www.idwr.idaho.gov.

Sincerely,

A handwritten signature in cursive script that reads "Robert G. Haynes". The signature is written in dark ink and is positioned above the printed name and title.

Robert G. Haynes, PE
Regional Manager



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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

February 8, 2011

CHARLES E "CHIP" CORSI
IDAHO DEPARTMENT OF FISH AND GAME
2885 W KATHLEEN AVE.
COEUR D'ALENE, ID 83815

RE: Withdrawal of Protest against 94-7441 - MCGILLIVRAY

Dear Protestant(s):

The Department of Water Resources acknowledges receipt of your withdrawal of protest against the above referenced application.

Please contact this office if you have any questions regarding this procedure. Information about water rights and other matters administered by this agency is also available on the Internet at www.idwr.idaho.gov.

Sincerely,

Robert G. Haynes, PE
Regional Manager

Cc: KIP MCGILLIVRAY

MEMORANDUM

Date: February 14, 2011
To: Water Right File 94-7441
From: kfranklin
Re: Protest

This application was protested by the Department of Fish & Game. Fish and Game withdrew their protest on January 20 2011 after condition language was agreed upon between IDWR and Fish & Game regarding the minimum stream flow on the Coeur d'Alene River.

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

NOTICE OF WITHDRAWAL OF PROTEST

I, Charles E. "Chip" Corsi, as authorized representative for the Idaho Department of Fish & Game, do hereby withdraw the Idaho Department of Fish & Games' protest in the matter of **Water Right Application No. 94-7441**, filed in the name of Kip McGillivray.



Charles E. "Chip" Corsi

Dated this 20 day of January 2011.



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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

August 12, 2010

Charles E. "Chip" Corsi
Idaho Department of Fish & Game
2885 West Kathleen Ave.
Coeur d'Alene, ID 83815

Re: Protested Application For Permit No. 94-7441, McGillivray

Dear Mr. Corsi:

Enclosed is a draft permit for the above said application for permit from the North Fork of the Coeur d'Alene River which contains conditions that should satisfy Fish & Games protest. If the draft permit meets with your approval, please send me a written request withdrawing the protest at your earliest convenience.

If you have any questions, feel free to contact me at this office,

Thank you.

Sincerely,

Keith E. Franklin
Senior Water Resources Agent
Enclosure
Cc. David I. Stanish, DAG

COPY



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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

August 12, 2010

Kip McGillivray
PO Box 1041
Osburn, ID 83849

Re: Protested Application For Permit No. 94-7441, McGillivray

Dear Ms. McGillivray:

Enclosed is a draft permit, for the above said application that contains conditions that may satisfy the protest of your application by the Department of Fish & Game. Condition #7 is the one of most concern and is one that would be part of all permits anyway because of the minimum stream flow on the Coeur d'Alene River.

A copy of the draft permit has been sent to Fish & Game and the Department of Water Resources is waiting for their response. In the mean time, please review the draft permit and if it meets with your satisfaction to satisfy the protest, please send me a letter stating you agree with the draft permit as written.

If you have any questions, don't hesitate to contact me at this office.

Thank you.

Sincerely,

Keith E. Franklin
Senior Water Resources Agent
Enclosure

COPY

State of Idaho
Department of Water Resources

DRAFT

Permit to Appropriate Water

DRAFT

NO. 94-07441

Priority: January 11, 2008

Maximum Diversion Rate: 0.12 CFS

This is to certify, that KIP MCGILLIVRAY
PO BOX 1041
OSBURN ID 83849
(208) 556-0491

has applied for a permit to appropriate water from:

Source: NORTH FORK COEUR D ALENE RIVER **Tributary:** COEUR D ALENE RIVER

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>
IRRIGATION	03/15 to 10/31	0.12 CFS

LOCATION OF POINT(S) OF DIVERSION:

NORTH FORK COEUR D ALENE RIVER, SE1/4SW1/4, Sec. 30, Twp 49N, Rge 02E, B.M.
SHOSHONE County

PLACE OF USE: IRRIGATION

Twp Rge Sec	NE				NW				SW				SE				
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
49N 02E 30												4.3					4.3

Total Acres: 4.3

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before .
2. Subject to all prior water rights.
3. This right does not grant any right-of-way or easement across the land of another.
4. This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 3.0 afa per acre at the field headgate for irrigation of the lands above.
5. A fish screen of 025 inch or smaller mesh shall be installed and maintained at the point of diversion.
6. The approach velocity at the point of diversion shall not exceed 0.5 feet per second.
7. Water shall not be diverted under this right when flows in the Coeur d'Alene River are below minimum flow amounts as defined by Right 94-7341. The right holder shall be responsible for monitoring the daily flow of the Coeur d'Alene River at Cataldo using real-time data published on the internet by the U. S. Geological Survey and shall cease diverting water when flows in the Coeur d'Alene River are below established minimum flow amounts.

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

GARY SPACKMAN, Interim Director

RECEIVED
SEP - 7 2010
IDWR/NORTHERN

September 2, 2010

Keith Franklin
Senior Water Resources Agent

RE: Response to protested Application For Permit No. 94-7441, McGillivray

Dear Keith,

I Have reviewed your letter and agree with the conditions set forth. Although the quantity of water is greatly less than what we had originally asked for I believe this will suit our needs. I appreciate your time dealing with this matter and look forward to your future response.

Sincerely

A handwritten signature in black ink, appearing to read "Kip McGillivray". The signature is written in a cursive, flowing style.

Mr. Kip McGillivray

Franklin, Keith

From: Franklin, Keith
Sent: Monday, August 30, 2010 2:37 PM
To: 'Stanish, David'
Cc: Keen, Shelley; Haynes, Bob
Subject: RE: 94-07441 et al. - Proposed remark language for your review

David,

The department has reviewed your comments regarding condition language that would satisfy the Idaho Department of Fish & Games protest of applications from the Coeur d' Alene River and its tributaries. The reason the department referred to the minimum stream flow's water right number (94-7341) instead of utilizing condition WB9 is because the minimum stream flows could possibly change in the future. As you know minimum stream flows are set by the Idaho State Water Board and if the minimum stream flow numbers change, a permit or license holder could be left with erroneous flow amounts they would have to adhere to. This way they'll always have to meet whatever minimum stream flow is set by the Water Board. Therefore, the department appreciates your comments but suggests leaving the condition as first proposed.

Also, the department is OK with incorporating your suggested language as follows "Unless otherwise specified by the Director, data from the USGS Cataldo gauging station, no. 12413500, may be used for purposes of determining these minimum flow amounts".

The condition would now read as follows;

"Water shall not be diverted under this right when flows in the Coeur d'Alene River are below minimum flow amounts as defined by Right 94-7341. The right holder shall be responsible for monitoring the daily flow of the Coeur d'Alene River at Cataldo using real-time data published on the internet by the U.S. Geological Survey and shall cease diverting water when flows in the Coeur d'Alene River are below established minimum flow amounts. Unless otherwise specified by the Director of the Department of Water Resources, data from the USGS Cataldo gauging station, No. 12413500, may be used for purposes of determining these minimum flow amounts."

The other gauging station that would be used on some of the permits below Cataldo is No. 12413860 at Harrison, Idaho.

Your thoughts are appreciated.

Thanks.

Keith Franklin
Senior Water Resources Agent

From: Stanish, David [mailto:david.stanish@ag.idaho.gov]
Sent: Monday, August 23, 2010 8:05 AM
To: Franklin, Keith
Cc: Keen, Shelley
Subject: 94-07441 et al. - Proposed remark language for your review

<<94-07441 et al. - Letter from IDWR.pdf>>

This communication and its attachments are confidential and/or privileged. If you have received this communication in error, please immediately read the "NOTICE" appended below.

Franklin, Keith

From: Stanish, David [david.stanish@ag.idaho.gov]
Sent: Monday, August 23, 2010 8:05 AM
To: Franklin, Keith
Cc: Keen, Shelley
Subject: 94-07441 et al. - Proposed remark language for your review
Attachments: 94-07441 et al. - Letter from IDWR.pdf

<<94-07441 et al. - Letter from IDWR.pdf>>

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Good morning Keith:

I received the attached documents regarding the pending applications for water right permits along the N.F. Coeur d'Alene River. Upon review, I had the following comments on remark no. 7, which references the IWRB's minimum stream flow right on the mainstem Coeur d'Alene River.

In your draft, remark no. 7 reads:

"Water shall not be diverted under this right when flows in the Coeur d'Alene River are below minimum flow amounts as defined by Right 947341. The right holder shall be responsible for monitoring the daily flow of the Coeur d'Alene River at Cataldo using realtime data published on the internet by the U S Geological Survey and shall cease diverting water when flows in the Coeur d'Alene River are below established minimum flow amounts."

(a) To the extent that the remark references the "minimum flow amounts", it seems to me that the better approach would be to keep the remark consistent with IDWR standard condition WB9 (which I am told shows up in 108 existing recommendations and water rights) rather than using a general reference to the water right number. The language of WB9 reads:

"Water shall not be diverted under this right when flows in the <Snake

River are below 4750 cfs at Weiser River> are below

<established minimum flow amounts>."

(b) I appreciate the language in your draft that places the responsibility for monitoring the minimum flow data on the permittee: "The right holder shall be responsible for monitoring the daily flow of the Coeur d'Alene River at Cataldo using realtime data published on the internet by the U S Geological Survey and shall cease diverting water when flows in the Coeur d'Alene River are below established minimum flow amounts."

(c) I suggest that an additional reference to the specific USGS gauging station at issue may be helpful to the permittee.

The following language attempts to incorporate the comments above:

~~"Water shall not be diverted under this right when flows in the Coeur d'Alene River are below minimum flow amounts as defined by Right 947341. Water shall not be diverted under~~

this right when flows in the Coeur d'Alene River are below 1,018 cfs from November 1 through June 30 and 413 cfs from July 1 through October 31 at the confluence of the Coeur d'Alene River and the South Fork Coeur d'Alene River in the NENW, S31, T49N, R2E, Shoshone County. The right holder shall be responsible for monitoring these minimum flow amounts using realtime data published on the internet by the US Geological Survey and shall cease diverting water when flows in the Coeur d'Alene River are below established minimum flow amounts. Unless otherwise specified by the Director, data from the USGS Cataldo guaging station, no. 12413500, may be used for purposes of determining these minimum flow amounts."

What are your thoughts on this language?

Please be aware that I will need to run any final language by the IWRB and IDFG for their approval before I can withdraw any protests.

Sincerely,

David I. Stanish

Deputy Attorney General

Natural Resources Division

Office of Attorney General

700 West State Street

Joe R. Williams Building, Second Floor

P.O. Box 83720

Boise, Idaho 83720-0010

Phone: (208) 334-4549

Facsimile: (208) 854-8072

Email: david.stanish@ag.idaho.gov

NOTICE: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this notice is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return these papers to us at the address shown above via first class mail.

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Sincerely,

David I. Stanish

Deputy Attorney General

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