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May 5, 2011

RECEIVED
MAY 06 2011
Department of Water Resources
Eastern Region

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

Re: Stipulation for Withdrawal of Protest of McNellis Transfer

Dear Sharla:

Enclosed is the Stipulation for Withdrawal of Protest to the McNellis transfer that has been signed by all of the Protestants and myself for TJ Ranch. This should resolve all of the remaining issues allowing the Department to process the transfer.

If you have any questions, please do not hesitate to contact me.

Best Regards,

Luke H. Marchant
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosures

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MAY 06 2011
Department of Water Resources
Eastern Region

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 76630
IN THE NAME OF:
JESSICA K AND TERRY A MCNELLIS

**STIPULATION FOR WITHDRAWAL
OF PROTESTS**

THIS STIPULATION FOR WITHDRAWAL OF PROTESTS (the "Stipulation") is made and entered into as of the ____ day of January, 2011, by and between Terry and Jessica McNellis, owners of the TJ Ranch (hereinafter, "Applicants" or "TJ Ranch"), and Clayne Hanson, David A. Lowry, and Randy R. Olson (hereinafter, the "Protestants"). Applicants and the Protestants are hereinafter collectively referred to as the "Parties."

RECITALS

1. Water Right Nos. 74-200, 74-203, 74-204, 74-408B, and 74-433, owned by Terry and Jessica McNellis, and Water Right No. 74-408A, under the name of Merlin and Delores Fisher (which is now owned by TJ Ranch), allow the diversion of up to 7.6 cfs (or 380 inches) from the West Fork of Sandy Creek for irrigation purposes. These water rights, as well as Water Right No. 74-409A (diverted from a spring), are the subject of Transfer No. 76630.

2. It is understood that the above water rights are all proposed to be diverted from the TJ Ranch upper diversion by virtue of Transfer 76630. The current legal description for the TJ Ranch upper diversion is SENENW, Lt. 3, Sec. 4, Township 20N, Range 24E.
3. It is further understood that the middle diversion listed on most of the TJ Ranch water rights was the result of an error in processing of these rights in the Snake River Basin Adjudication. Neither TJ Ranch nor their predecessor-in-interest have ever used a “middle diversion.”
4. It is understood that Clayne Hanson owns water right 74-15590 for 1.92 cfs (96 inches), which is diverted from the lower diversion of West Fork Sandy Creek.
5. Clayne Hanson’s West Fork of Sandy Creek water right (74-15590) is junior to all of TJ Ranch’s irrigation water rights listed in paragraph 1 above.
6. It is understood that David A. Lowry owns Water Right No. 74-480C for 1.72 cfs (86 inches) which is diverted from West Fork Sandy Creek in SENW, Sec. 4, Township 20N., Range 24E and has a priority date of April 1, 1900.
7. David Lowry’s Water Right No. 74-480C is junior in priority to all of TJ Ranch’s water rights except Water Right No. 74-433 which has a priority date of May 4, 1904.
8. Water Right No. 74-7231 is currently in the name of Lemhi Hydropower Company on the records of IDWR, but is used for an existing power facility which is owned jointly by TJ Ranch and Lemhi Hydropower Co. and is a part of TJ Ranch. Water Right No. 74-7231 is for 4.5 cfs (225 inches), and is diverted at the upper diversion point along with the other irrigation water rights listed in paragraph 1 above except Water Right No. 74-409A.
9. The hydropower water right is the most junior water right on West Fork of Sandy Creek by virtue of both its priority date and subordination condition.
10. During the irrigation season, TJ Ranch’s water rights from the West Fork of Sandy Creek are delivered to the TJ Ranch lands by means of both the hydropower penstock (or pipeline) and an existing open ditch.
11. As a matter of priority distribution on the West Fork of Sandy Creek, the water should be distributed as follows:
 - a. First, up to 6.0 cfs or 300 inches to TJ Ranch.
 - b. Second, up to 1.72 cfs (86 inches) for David Lowry and 0.28 cfs (two rights totaling 14 inches) for Kent Lomont.

- c. Third, an additional 1.6 cfs or 80 inches to TJ Ranch for a subtotal of 7.6 cfs (380 inches).
 - d. Fourth, up to 1.92 cfs (96 inches) to Clayne Hanson, up to 0.02 cfs (1 inch) to Glenn Goulet, and up to 0.06 cfs (3 inches) to Boyd Andrews.
 - e. Lastly, 4.5 cfs or 225 inches of hydropower right to TJ Ranch. With this hydropower right in priority, TJ Ranch has a total of 12.1 cfs (605 inches) of water from the West Fork of Sandy Creek.
- 12. Therefore, the highest rate of water available for diversion by TJ Ranch pursuant its earliest priority date water rights—which it can divert before the next junior can divert any water—is 6.0 cfs (300 inches).
 - 13. The total rate of water available for diversion by TJ Ranch before the most junior water right, which is the hydropower right of 74-7231, is 7.6 cfs or 380 inches.
 - 14. Most often, hydropower generation is incidental to irrigation water delivery. In other words, irrigation water rights can be delivered through the penstock and used to generate power before it reaches the place of use for irrigation.
 - 15. The hydropower right is in priority during the irrigation season only after all decreed junior water right holders are first satisfied. In other words, up to 7.6 cfs (380 inches) is delivered to the TJ Ranch either through the pipeline or down the ditch. Junior water rights in the amount of 4.0 cfs (200 inches), must also be satisfied before the hydropower right is in priority during the irrigation season. Once the junior water rights are satisfied, or when irrigation ceases in the West Fork of Sandy Creek drainage, the hydropower right comes into priority allowing a total of 12.1 cfs to be diverted through the pipe and TJ Ditch.
 - 16. During the non-irrigation season, the hydropower right is in priority as there are no other water rights with a use authorized during the non-irrigation season (from November 16th to March 14th).
 - 17. Based on the water rights of record as of the date of this Agreement, any amount of water in excess of 12.1 cfs (605) inches delivered to TJ Ranch and 4.0 cfs (200 inches) delivered to Hanson, Lowry, and Lomont for a total of 16.10 cfs (805 inches) must remain in the natural channel of West Fork of Sandy Creek. To the extent any other water rights are claimed from the West Fork of Sandy Creek Drainage, they will take their place within the priority system and be distributed in accordance with that system. Once those rights, if any, are allowed and

decreed, then any amount of water above the 16.10 cfs and the additional water rights must remain in the natural channel of the West Fork of Sandy Creek.

18. With the above understanding, the Applicant and the Protestants desire to resolve their concerns relative to Transfer No. 76630 as follows:

AGREEMENTS:

THE PARTIES HEREBY AGREE AS FOLLOWS:

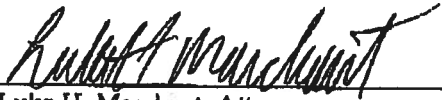
1. **APPLICATION FOR TRANSFER NO. 76630.** The Parties agree that Application for Transfer No. 76630 shall be approved as it is currently submitted, and the Protestants hereby agree to withdraw their protests to Application for Transfer No. 76630 subject to the following conditions:
 - a. A measuring device of a type approved by IDWR and designed, engineered and installed by Brockway Engineering shall be maintained as a part of TJ Ranch diverting works located at the current heading of the pipeline at SENENW, Lt. 3, Sec. 4, Township 20N, Range 24E. The measuring device shall be installed prior to the beginning of the 2011 irrigation season. To the extent there are any delays in the installation of such a device, the Applicant shall communicate such delay to the Protestants and work with due diligence to have the device installed as soon as possible.
 - b. Use of water under Transfer No. 76630 will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district.
 - c. TJ Ranch and any and all successors-in-interest shall not make unauthorized adjustments to the amount of water regulated by the watermaster through their points of diversion.
2. **WITHDRAWAL OF PROTEST:** The Protestants understand that by executing this Stipulation, they will waive their ability to otherwise challenge the approval of Transfer No. 76630 in an administrative hearing or otherwise.
3. **SUBJECT OF IDWR APPROVAL:** The Parties agree and acknowledge that this Stipulation must be approved in substantial form by IDWR. Minor non-substantive changes to any of the above conditions may be made by IDWR without the need for an amended stipulation. To the extent this Stipulation it is not approved by IDWR, or if IDWR requests

substantive changes to Stipulation, the Parties agree to a further meeting to discuss a successor stipulation or otherwise move forward with an administrative hearing on this matter.

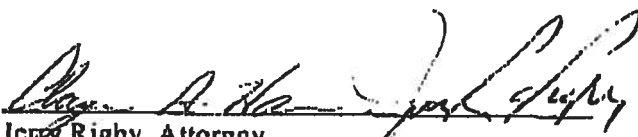
4. **RESERVATION OF RIGHTS:** The Parties agree and acknowledge that this Stipulation resolves the protest to the above-referenced application only and that the Protestants reserve all rights to pursue protests to other applications for transfer in the future, including applications filed by TJ Ranch. Alternatively, by entering into this Stipulation, the Protestants do not waive their future ability to file water rights transfer, and TJ Ranch likewise does not waive its ability to protest such transfers. The Parties shall not use this Stipulation in any other administrative or judicial proceeding for any purpose.
5. **RELIANCE UPON STATEMENTS / INTEGRATION AND MERGER:** The Parties hereto specifically acknowledge and agree that other than as is set forth herein, they have executed this Stipulation without relying upon any statements or representations written or oral, as to any statement of law or fact made by any other party or attorney. The Parties to this Stipulation have read and understand the Stipulation, and warrant and represent that this Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any party. This agreement represents the sole entire and integrated Stipulation by and between the parties hereto, and supersedes any and all prior understandings or agreements whether written or oral except as specifically provided herein.
6. **SUCCESSORS AND ASSIGNS:** This agreement shall be binding upon and shall inure to the benefit of each Parties' officers, directors, shareholders, heirs, successors and assigns, and shall be specifically enforceable.
7. **WAIVER OR MODIFICATION:** No provision of this Agreement may be waived, modified, or amended except by written agreement executed by all of the Parties hereto.
8. **ENFORCEMENT AND MODIFICATION:** This Stipulation is a valid and binding obligation of the parties, and their successors or assigns. It shall be admissible and enforceable according to its terms, and venue in any subsequent action shall rest within the State of Idaho. This Stipulation is subject to interpretation in accordance with the laws of the State of Idaho.

9. **COUNTERPARTS:** This Stipulation may be executed in counterparts, each of which is deemed an original but all of which constitute one and the same instrument. The signature pages may be detached from each counterpart and combined into one instrument.

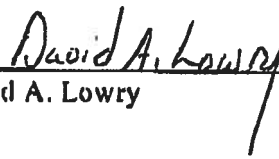
DATED: 01/28/2011


Luke H. Marchant, Attorney
Holden, Kidwell, Hahn & Crapo, P.L.L.C.
Attorneys for: Terry and Jessica McNellis
TJ Ranch

DATED: 1-17-11


Jerry Rigby, Attorney
Rigby, Andrus & Rigby, Chld.
Attorneys for: Clayne Hanson

DATED: 4-29-11


David A. Lowry

DATED: 5/2/11


Randy R. Olson

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