

MEMORANDUM

Date: November 08, 2010
To: Water Right File 94-7530
From: kfranklin
Re: Protest Withdrawal

The application for this water right was protested by the Idaho Department of Fish & Game. A settlement was reached between the applicant and Fish & Game without a protest conference being held. The settlement agreement is in the water right file. Fish & Game withdrew their protest on November 1 2010.

SCANNED
DEC - 7 2010



IDAHO DEPARTMENT OF FISH AND GAME

PANHANDLE REGION

2885 West Kathleen Avenue
Coeur d'Alene, Idaho 83815

C.L. "Butch" Otter/Governor
Cal Groen/Director

March 29, 2010

Mr. Keith Franklin
Idaho Department of Water Resources
Northern Region
7600 Mineral Drive, Ste 100
Coeur d'Alene, ID 83815

RECEIVED

APR 01 2010

IDWR / NORTH

Dear Keith:

REFERENCE: TORRMERE FARMS 94-7530

We have reviewed the above-named application by Torrmere Farms to divert water from Evans Creek, a tributary to Medicine Lake, and an unnamed stream, a tributary to Evans Creek, and ground water. The applicant is requesting a total diversion rate of 0.54 cfs/87.7 acre feet. Two in-stream ponds (unnamed stream) are indicated on the application; however, three are delineated on the photo. It is unclear from the application how the new pond (#3 on the photo) will be created and if water will come from ground water, will be diverted, or the intention is to create another in-stream pond. The ponds will be used for irrigation, stock water and wildlife storage.

Evans Creek is habitat for westslope cutthroat trout including habitat for spawning and rearing. Idaho and neighboring states (MT/WA/OR) have recently fended off a listing of westslope cutthroat under the Endangered Species Act by demonstrating that healthy populations and habitat exist in the Coeur d'Alene River system and that the appropriate state regulatory mechanisms are in place to protect them.

According to Section 36 (706), Idaho Code, no person shall establish and maintain a pond on premises owned or leased by him and obtain, possess, propagate and process for his own personal pleasure and use any fish approved by the Commission, unless he has first obtained a permit from the Director of the Idaho Department of Fish and Game. One of the stipulations that must be met before a permit may be issued by the Director is that the pond is not constructed in or across a natural stream bed containing wild fish, except when it has been determined by the Commission that the water flow and volume of wildlife concerned in such proposed private pond are not a significant part of the wildlife resource of the State.

Requirements to obtain a permit include the following.

Keeping Idaho's Wildlife Heritage

Equal Opportunity Employer • 208-769-1414 • Fax: 208-769-1418 • Idaho Relay (TDD) Service: 1-800-377-3529 • <http://fishandgame.idaho.gov>

DEC - 7 2010

- Pond construction may not be in or across any natural streambed, lake, or other watercourse containing wild fish, except when determined by the Commission that the water flow and volume of wildlife concerned in the proposed pond are not a significant part of the wildlife resource of the state.
- The pond must be located entirely on private property owned or leased by the applicant.
- Any dam constructed to divert water into the pond must meet all requirements in Section 36-906(a), Idaho Code.
- All inlets to the pond must be screened at the point of diversion (screen mesh size should be 0.25 inches; intake approach velocities should not exceed 0.5 ft/second) as provided in Section 36-906(b), Idaho Code, to prevent the entrance of wild fish into the pond.
- The permit application is made using the form provided by the Department, which provides information required by the Director.
- The pond shall be posted in three (3) separate conspicuous places and all entrance roads.

In addition, unless the fish to be stocked are delivered by a commercial hatchery (required for trout), the applicant must acquire a fish transport permit to bring fish to the pond. Both permits are available from Idaho Department of Fish and Game. Before any fish are stocked into the pond, it must be inspected by the IDFG to ensure it is properly screened to prevent fish from escaping downstream into areas occupied by native fish.

Evans Creek has been negatively impacted by stream alterations in the past, and withdrawal of over 0.5 cfs will likely negatively impact westslope cutthroat trout habitat, as midsummer flows are already impaired by stream alterations. Therefore, the Department believes that this request is in conflict with the local public interest and protests issuing this permit.

Please initiate the Interagency Billing process for the applicable fee for this protest. The PCA is 19110 and the ABC code is B7TX. Please send the billing documents to IDFG Headquarters Office, Attention: Walt Poole, P.O. Box 25, Boise, ID 83707.

We will consider withdrawal of this protest if the applicant can demonstrate no impact to fish habitat in Evans Creek, and that any surface diversions will be appropriately screened. If you have questions concerning our comments please contact Mary Terra-Berns at 769-1414.

Thank you for the opportunity to comment.

Sincerely,



Charles E. "Chip" Corsi
Regional Supervisor

CEC:MTB

C: Sharon Kiefer, IDFG Boise
Coeur d'Alene Tribe

File: IDWR Torrmere Farms pond PROTEST

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PROTEST INFORMATION SHEET

Application No. 94-1530

SPECIAL NOTE: _____

Protestant(s) NAME(S)	ADDRESS	PHONE
1 <u>Adoko Fand G.</u>	<u>2885 W Kathleen Ave Cda 83815</u>	<u>769-1414</u>
2 _____	_____	_____
3 _____	_____	_____
4 _____	_____	_____
5 _____	_____	_____
6 _____	_____	_____
7 _____	_____	_____
8 _____	_____	_____
9 _____	_____	_____
10 _____	_____	_____

Protestant(s) ATTORNEY	ADDRESS	PHONE
_____	_____	_____
_____	_____	_____

DATE FILED: 9/25/09 PROTEST DUE DATE: 4/15/10

ISSUES: pond construction location/ who will supply fish/ impact
to fish habitat in Evans Ck & surface diversions properly
screened

Applicant(s)	ATTORNEY	ADDRESS	PHONE
_____	_____	_____	_____

	DATE
Protest Date Entered on Computer	<u>4/7/10</u> (Received 4/1/10 - difficulty entering in program)
Acknowledgment Letters Sent	<u>4/7/10</u>
Conference/Hearing Date	_____
_____	_____
_____	_____

(Other Dates)

Other Information _____

Protest information submitted to computer following hearing: _____

SCANNED
DEC - 7 2010



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

April 7, 2010

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

IDAHO FISH AND GAME
2885 W KATHLEEN AVE
COEUR D ALENE, ID 83815

RE: Application for Permit No(s). 94-7530

Dear Protestant(s):

This office acknowledges receipt of your protest to the issuance of Permit No(s). 94-7530. As part of the application process, the following options are available for the resolution of contested (protested) applications:

- Direct contact with the protestant(s) to determine the nature of the protest(s) and to attempt to resolve the protest. Sincere conversation between the parties prior to initiation of formal proceedings can often resolve protest(s).

- Formal proceedings administered by the department pursuant to the Department's Rule of Procedure (IDAPA 37.01.01). A pre-hearing conference identifies the protestant's concerns and reviews the resolution possibilities with the parties. If the concerns cannot be resolved, a formal hearing will be scheduled.

- Mediation through a certified professional mediator can reduce costs and time that are associated with formal proceedings, present the opportunity to address non-water concerns, provide influence over a final settlement, and fast track the processing of the application if a mediated agreement is reached. If you are interested in this option, please contact our office for details.

Please consider with the applicant the best option(s) for resolution of the contested application and forward your choice to the Department's regional manager. If no response is received within a few weeks, you may be notified that a pre-hearing conference will be scheduled.

You may contact this office if you have any questions regarding the procedure discussed in this letter or additional information about water rights and other matters administered by this agency is available on the Internet at www.idwr.idaho.gov.

Sincerely,

Robert G. Haynes, PE
Regional Manager

Enclosure(s) Pre-Hearing Conference Procedures

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DEC - 7 2010



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

April 7, 2010

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

TORRMERE FARMS OF IDAHO INC
12449 AVONDALE RD
HAYDEN, ID 83835

RE: Application for Permit No(s). 94-7530

Dear Applicant(s):

Enclosed is a copy of a protest(s) filed against the issuance of Permit No(s). 94-7530. As part of the application process, the following options are available for the resolution of contested (protested) applications:

- Direct contact with the protestant(s) to determine the nature of the protest(s) and to attempt to resolve the protest. Sincere conversation between the parties prior to initiation of formal proceedings can often resolve protest(s).

- Formal proceedings administered by the department pursuant to the Department's Rule of Procedure (IDAPA 37.01.01). A pre-hearing conference identifies the protestant's concerns and reviews the resolution possibilities with the parties. If the concerns cannot be resolved, a formal hearing will be scheduled.

- Mediation through a certified professional mediator can reduce costs and time that are associated with formal proceedings, present the opportunity to address non-water concerns, provide influence over a final settlement, and fast track the processing of the application if a mediated agreement is reached. If you are interested in this option, please contact our office for details.

Please consider with the protestant the best option(s) for resolution of the contested application and forward your choice to the Department's regional manager. If no response is received within a few weeks, you may be notified that a pre-hearing protest conference will be scheduled.

You may contact this office if you have any questions regarding the procedure discussed in this letter or additional information about water rights and other matters administered by this agency is available on the Internet at www.idwr.idaho.gov.

Sincerely,

Robert G. Haynes, PE
Regional Manager

Enclosure(s) Pre-Hearing Conference Procedures
Copy of Protest

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DEC - 7 2010

PRE-HEARING CONFERENCE AND/OR HEARING PROCEDURE APPLICATION FOR PERMIT

ISSUES

Applications to appropriate the water of the State of Idaho are referred to as applications for permit, and are for the development of new water rights. Section 42-203A, Idaho Code, requires the department to consider the following issues in connection with an application for permit:

1. Will the proposed appropriation reduce the quantity of water under existing water rights?
2. Is the water supply sufficient for the purpose for which it is sought to be appropriated?
3. Was the application made in good faith or for delay or speculative purposes?
4. Does the applicant have sufficient financial resources with which to complete the proposed project?
5. Will the proposed use conflict with the local public interest, where local public interest is defined as interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource?
6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?
7. Will the proposed use adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates?

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, 3, 4, 6, and 7 above and must provide evidence for the department to evaluate these criteria.

The initial burden of proof on issue 5, if applicable, lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

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DEC - 7/88

CONFERENCE

The purpose of a pre-hearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues to avoid unnecessary proof, identify documents, schedule discovery, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement or make settlement offers, schedule hearings, establish procedure at hearing, and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. When attending the conference, please bring a calendar with your schedule for the next two–six month period from the date of the pre-hearing conference for the purpose of scheduling a hearing. Parties will be expected to discuss their availability at the prehearing conference for the purpose of scheduling the hearing.

HEARING

A hearing may be conducted according to Sections 42-1701A(1) and (2), Idaho Code and the department's Rules of Procedure. Copies of Idaho Code and the department's rules are available upon request or by accessing the department's website at: www.idwr.idaho.gov. The department records formal hearings, and copies of a hearing recording are available upon request. There may be a charge for reproducing the recording.

The hearing will likely be conducted by a hearing officer appointed by the Director rather than by the Director himself. If so, the hearing officer will prepare a recommended or preliminary order. Parties can petition for reconsideration of a decision or file exceptions. A brief to support exceptions may request oral argument. Parties may seek judicial review of any final order issued by the Director.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please notify the department no later than ten (10) days prior to the hearing.

COPIED
DEC - 1 2011

Ball, Dianne

From: Ball, Dianne
Sent: Friday, April 02, 2010 10:56 AM
To: Marston, Sascha
Cc: Franklin, Keith
Subject: Interagency Billing re Protest Fee \$25.00 Torrmere Farms 94-7530

I have a request for interagency billing for a protest fees at \$25.00 for the following WR application:

94-7530 Torrmere Farms

From: Idaho Dept of Fish and Game. See letter of protest with PCA info attached.
F&G PCA Code 19110 and ABC code is B7TX.



94-7530 IDFG
protest ltr.pdf

Billing documents should be sent to:
IDFG Headquarters Office
Attention: Walt Poole
PO Box 25
Boise, ID 83707

Our PCA Code for protests for crediting the fee is 65103.

Please notify me when the fee has been paid for these protest filings.

If you need more information, let me know.

Thanks very much.

Dianne Ball

Administrative Assistant
Idaho Department of Water Resources
7600 N Mineral Dr., Ste. 100
Coeur d'Alene, ID 83815
208-762-2800 Fax 208-762-2819

Dianne Ball

Administrative Assistant
Idaho Department of Water Resources
7600 N Mineral Dr., Ste. 100
Coeur d'Alene, ID 83815
208-762-2800 Fax 208-762-2819

SEARCHED
DEC-7-08



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

October 28, 2010

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

Re: Application For Permit to Appropriate the Public Waters of the State of Idaho
No. 94-7530, Torrmere Farms

Dear Mr. Corsi:

The Idaho Department of Water Resources (IDWR) has received a copy of the signed protest settlement agreement between the Idaho Department of Fish & Game and Torrmere Farms. Enclosed is a copy of a draft permit reducing the original diversion rate from 0.54 cfs to 0.425 cfs and condition #12 that makes reference to the above mentioned settlement agreement and the diversion curtailment when the flow in Evans Creek falls below 3.0 cfs below the permits last point of diversion, for your review.

Also enclosed is a form to formally withdraw Fish & Games protest of the application. If the draft permit is satisfactory, please sign and return the withdrawal of protest at your earliest convenience so IDWR can finalize the permit with Torrmere Farms. 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(s)

Cc: Torrmere Farms, Frank Kelley
David Stanish, AG, Boise

COPY

SCANNED
DEC - 7 2010

DRAFT**Permit to Appropriate Water****DRAFT**

NO. 94-07530

Priority: September 25, 2009

Maximum Diversion Rate: 0.425 CFS
Maximum Diversion Volume: 87.7 AFThis is to certify, that TORRMERE FARMS OF IDAHO INC
12449 AVONDALE RD
HAYDEN ID 83835
(208) 772-1845

has applied for a permit to appropriate water from:

Source: EVANS CREEK
UNNAMED STREAM
GROUND WATER**Tributary:** MEDICINE LAKE
EVANS 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>
DIVERSION TO STORAGE	01/01 to 12/31	0.425 CFS	
IRRIGATION	03/15 to 10/31	0.425 CFS	
IRRIGATION STORAGE	01/01 to 12/31		87.5 AF
IRRIGATION FROM STORAGE	03/15 to 10/31		77.7 AF
WILDLIFE STORAGE	01/01 to 12/31		9.8 AF
STOCKWATER STORAGE	01/01 to 12/31		5.1 AF
STOCKWATER FROM STORAGE	01/01 to 12/31		0.2 AF
STOCKWATER	01/01 to 12/31	0.02 CFS	

LOCATION OF POINT(S) OF DIVERSION:

UNNAMED STREAM KOOTENAI County	L7 (SW1/4SE1/4)	Sec. 3, Twp 47N, Rge 02W, B.M.
EVANS CREEK KOOTENAI County	L7 (SW1/4SE1/4)	Sec. 3, Twp 47N, Rge 02W, B.M.
UNNAMED STREAM KOOTENAI County	L7 (SW1/4SE1/4)	Sec. 3, Twp 47N, Rge 02W, B.M.
GROUND WATER KOOTENAI County	L7 (SW1/4SE1/4)	Sec. 3, Twp 47N, Rge 02W, B.M.
EVANS CREEK KOOTENAI County	L7 (SW1/4SE1/4)	Sec. 3, Twp 47N, Rge 02W, B.M.
GROUND WATER KOOTENAI County	L7 (SW1/4SE1/4)	Sec. 3, Twp 47N, Rge 02W, B.M.

PLACE OF USE: IRRIGATION STORAGE, WILDLIFE STORAGE, STOCKWATER STORAGE

Twp Rge Sec	NE				NW				SW				SE				Totals
47N 02W 3	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
															X		
															L7		

SCANNED

REC-7 10/1

DRAFT**Permit to Appropriate Water****DRAFT**

NO. 94-07530

PLACE OF USE: IRRIGATION, IRRIGATION FROM STORAGE

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
47N 02W 3												2.8			22.2	.2	25.2
											L 6				L 7	L 8	
															0.7		0.7
															L 10		

Total Acres: 25.9

PLACE OF USE: STOCKWATER, STOCKWATER FROM STORAGE

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
47N 02W 3												X			X	X	
											L 6				L 7	L 8	

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. 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.
5. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.0 afa per acre at the field headgate for irrigation of the lands above.
6. A fish screen of 0.25 inch or smaller mesh shall be installed and maintained at the point of diversion.
7. The approach velocity at the point of diversion shall not exceed 0.5 feet per second.
8. Stockwater use is for up to 10 head of mixed stock.
9. The three 3 ponds or reservoirs established by the storage of water under this right shall not exceed a total capacity of 6.0 acre-feet.
10. This right authorizes the diversion of an annual total of 87.7 acre-feet to be used for the initial filling of the ponds or reservoirs, the replacement of losses caused by evaporation from the ponds or reservoirs, the storage of water for irrigation, wildlife and stockwater.
11. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
12. Through a separate agreement between the right holder and the Idaho Department of Fish & Game, which the Department of Water Resources is not a party and which may be independently enforceable by a court of law, the right holder agrees to cease the diversion of water for this right from Evans Creek, when the flow in Evans Creek, below the point or points of diversion, falls below 3.0 cfs.

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

RECORDED
INDEXED
FEB - 7 2001

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

NOTICE OF WITHDRAWAL OF PROTEST

I, Charles E. Corsi, acting on behalf of the Idaho Department of Fish and Game, do hereby withdraw the departments protest in the matter of the **Water Right Application No. 94-7530**, filed in the name of **Torrmere Farms, Inc..**

Charles E. Corsi
Regional Supervisor

Dated this _____ day of _____ 2010

RECORDED
REC-1166

ORIGINAL

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

DAVID I. STANISH (ISB #7310)
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
Telephone: (208) 334-2400
Facsimile: (208) 854-8072

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO**

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 94-07530 IN THE NAME OF) **NOTICE OF APPEARANCE**
TORRMERE FARMS OF IDAHO INC)
_____)

NOTICE is hereby given that David I. Stanish, Deputy Attorney General, hereby enters an appearance as the attorney of record for the Protestant State of Idaho Department of Fish and Game in the above listed administrative proceeding. All documents pertaining to this matter should be served on the State of Idaho Department of Fish and Game as follows:

David I. Stanish
Deputy Attorney General
Natural Resources Division
700 W. State Street, 2nd Floor
P.O. Box 83720
Boise, Idaho 83720-0010

Attn: Walt Poole
Idaho Department of Fish and Game
P.O. Box 25
Boise, Idaho 83707

Attn: Mary Terra-Berns
Idaho Department of Fish and Game
2885 West Kathleen Avenue
Coeur d'Alene, Idaho 83815

DATED this 18th day of June 2010.

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

A handwritten signature in black ink, appearing to read 'D. Stanish', written over a horizontal line.

DAVID I. STANISH
Deputy Attorney General
Natural Resources Division

CERTIFICATE OF SERVICE

I certify that on the 18th day of June 2010, I caused to be served the original and/or copy of this NOTICE OF APPEARANCE on each of the following persons by the indicated method.

1. Original to:

Idaho Department of Water Resources
7600 Mineral Drive, Ste 100
Coeur d'Alene, ID 83815

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____

2. Copies to

Mary Terra-Berns
Idaho Department of Fish and Game
2885 West Kathleen Avenue
Coeur d'Alene, Idaho 83815

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____

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

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____

Torrmere Farms of Idaho Inc
12449 Avondale Rd
Hayden, Idaho 83835

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Federal Express
☐ Facsimile: _____



DAVID I. STANISH
Deputy Attorney General



IDAHO DEPARTMENT OF FISH AND GAME

PANHANDLE REGION
2885 West Kathleen Avenue
Coeur d'Alene, Idaho 83815

C.L. "Butch" Otter/Governor
Cal Groen/Director

RECEIVED
OCT 18 2010
IDWR/NORTHERN

October 14, 2010

Mr. Frank Kelly
Tormere Farms, Inc.
12449 Avondale Loop Road
Hayden Lake ID 83835

Dear Frank:

REFERENCE: WATER RIGHT PROTEST RESOLUTION AND AGREEMENT (94-7530)

Enclosed please find a copy of a signed agreement between Tormere Farms and Idaho Department of Fish and Game (IDFG) established to resolve a water right protest lodged by IDFG over Idaho Department of Water Resources (IDWR) Application for Permit No. 94-7530. By your signature on this application, you agree to cease diversion of flow under this water right when the flow in Evans Creek falls under 3.0 cubic feet per second. You also agree to install and maintain a staff gage to monitor the flow in Evans Creek to ensure stream flow is protected and maintained.

During our conversation yesterday, you had questions about where to locate a stream gage. I did have a chance to look at Evans Creek yesterday afternoon following our discussion, and agree there are some challenges. Without knowing what your diversion structure will look like, it may be possible to affix a staff gage to the structure (e.g., if a box type head gate is used). If not, another alternative would be to work with a downstream neighbor who has a relatively stable reach of stream (appears to be one a short distance upstream from the highway culvert, where the channel is incised and lined with alders). We are open to other suggestions, provided you can demonstrate the gage will accurately reflect stream flow.

By way of copy of this letter to IDWR, we are also notifying them that with enactment of the provisions, and signature, of this agreement, we are withdrawing our protest of 94-7530.

Sincerely,

Charles E. Corsi
Regional Supervisor

CEC:njk

Attachment

C: Idaho Department of Water Resources, CDA
Sharon Kiefer, HQ

Keeping Idaho's Wildlife Heritage

Equal Opportunity Employer • 208-769-1414 • Fax: 208-769-1418 • Idaho Relay (TDD) Service: 1-800-377-3529 • <http://fishandgame.idaho.gov>

①

SETTLEMENT AGREEMENT BETWEEN THE IDAHO DEPARTMENT OF FISH & GAME (IDFG) AND TORRMERE FARMS OF IDAHO INC. IN REGARDS TO IDWR APPLICATION FOR PERMIT No. 94-7530.

This Settlement Agreement (Agreement) is entered into by and between the Idaho Department of Fish & Game (IDFG) and Torrmere Farms of Idaho Inc. to resolve disputes regarding IDWR Application For Permit No. 94-7530. In consideration of the mutual promises specified herein and by conditioning their performance under this Agreement upon satisfaction of the identified conditions precedent, and for other good and valuable consideration, the Parties agree as follows:

A. Scope of Agreement

This Agreement is intended to settle all matters related solely to the protest filed by the Idaho Department of Fish & Game of Torrmere Farms of Idaho Inc. Application For Permit No. 94-7530.

B. Under the terms of this Agreement, Torrmere Farms of Idaho Inc. agrees to under take the following actions:

1. Reduce the diversion rate from Evans Creek to 0.425 cfs.
2. Cease the diversion of water under Permit No. 94-7530 from Evans Creek, when the flow in Evans Creek falls under 3.0 cfs below the point or points of diversion.
3. Install and maintain a staff gauge in Evans Creek at or below the point or points of diversion to monitor the flow in Evans Creek.

C. Mutual Actions

The Parties agree to jointly file a notice of settlement, a copy of this Agreement, and a conditional motion to withdraw the protest requesting that IDWR issue a water right permit that:

1. Incorporates the terms of the amended water right application described in Section B(1) & B(2) .
2. Contains a provision stating, "The diversion and use of water described in this right is subject to additional limitations agreed to by the Idaho Department of Fish & Game and the right holder under separate agreement to which the department is not a party and which may be enforceable by a court of law".
3. References this agreement and includes a copy of this Agreement in the permit file.

The condition for the motion to withdraw the protest shall be conditioned upon the acceptance and inclusion of the terms set forth in that section by IDWR. The Parties further agree not to protest or otherwise challenge the terms of IDWR's water permit should the terms of that permit be issued in a manner consistent with this Agreement.

FK IV to T.F

RECORDED
DEC - 7 1996

D. Actions of IDFG

In consideration for the actions identified above and upon the issuance of a final water right permit the Torrere Farms of Idaho Inc. that incorporates the terms set forth in Section C, IDFG agrees to a full and final dismissal of its protest.

E. Enforcement

1. The Parties agree that all terms of this Agreement may be enforceable, to the extent practicable, through an action by IDWR or by a court of law.

F. Non-Severability

The paragraphs of this Agreement are not severable. This Agreement is executed on the understanding that each paragraph is in consideration of the others.

G. Good Faith

The Parties to this Agreement agree to act in good faith and make all reasonable efforts to satisfy the conditions of the Agreement.

H. Successors and Assigns

This Agreement will be binding and will inure to the benefit of the Parties and their respective heirs, legal representatives, successors and permitted assigns, except as restricted by this Agreement.

I. Authorizations

All individuals executing this Agreement and other documents on behalf of the respective Parties certify and warrant that they have the capacity and have been duly authorized to so execute the documents on behalf of the Parties so indicated.

J. Advice of Attorneys

Each Party represents and warrants that in executing this Agreement, each has been advised by or has had an opportunity to be advised by independent legal counsel. Each party has read the terms of this Agreement and understands their consequence. Each Party further acknowledges and represents that, in executing this Agreement, it has not relied on any inducements, promises or representations made by any other Party or its representatives, except as otherwise stated in this Agreement.

K. Entire Agreement and Amendment

With respect to the issues considered herein, this Agreement contains the entire understanding and agreement of the Parties. There have been no promises, representations, agreements, warranties or undertakings by any of the Parties, either oral or written, of any character or nature binding except as stated in this Agreement. This Agreement may be altered, amended or modified only by an instrument in writing,

FKT & T.F.

SCANNED
11-17-2011

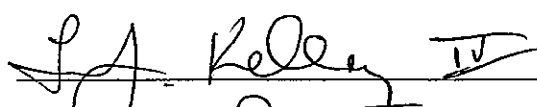
3

executed by the Parties to this Agreement and by no other means. An amendment to the Agreement is binding only on the Parties that execute the Amendment. Each Party waves its right to claim, contest or assert that this Agreement was modified, cancelled, superseded or changed by any oral agreement, course of conduct, waiver, or estoppels.

For The Idaho Department of Fish & Game

 Date 10/13/ 2010
Name and Title Regional Supervisor

For Torrmere Farms of Idaho Inc.

 Date 08/12 2010
Name and Title Pres. Torrmere Farms of Idaho

COANNED
DEC - 7 2010



IDAHO DEPARTMENT OF FISH AND GAME

PANHANDLE REGION

2885 West Kathleen Avenue
Coeur d'Alene, Idaho 83815

Mr. Keith Franklin
Idaho Department of Water Resources
Northern Region
7600 Mineral Drive, Ste 100
Coeur d'Alene, ID 83815

May 24, 2010
C.L. "Butch" Otter/Governor
Cal Groen/Director

RECEIVED
MAY 26 2010
IDWR/North

Dear Keith:

REFERENCE: TORRMERE FARMS 94-7530

This letter is a follow-up to the discussion on April 29, 2010 with you, Greg Taylor, Mr. and Mrs. Kelly, and Mary Terra-Berns.

As we mentioned in our previous letter (April 2, 2010), Evans Creek is habitat for westslope cutthroat trout including habitat for spawning and rearing. In the past, Evans Creek has been negatively impacted by stream alterations and withdrawal of over 0.5 cfs will likely negatively impact westslope cutthroat trout habitat, as midsummer flows are already impaired by stream alterations.

We have calculated the minimum/average stream flow using the StreamStats model (USGS) for the Evan Creek watershed. The results of these calculations show a 1-day mean low flow that occurs, on average, once in ten years of 1.43 cfs. Monthly low flows indicate that August has an average low flow of 4.30 and September has an average low flow of 3.87 cfs.

The applicant has offered to reduce his diversion rate to 0.425 cfs, which may, in very low flow years, reduce the stream flow to about 1.0 cfs. A low flow of 1.0 cfs may hinder fish movement, result in an inadequate amount of instream habitat, and, because of the lack of riparian vegetation in this location, may increase stream temperatures, which can be very detrimental to native trout such a cutthroat.

We will agree to withdraw our Protest if the applicant is willing to agree to: 1) reducing his diversion rate to 0.425 cfs and 2) maintaining a minimum stream flow of 3.0 cfs in Evans Creek.

Thank you for your attention to this matter.

Sincerely,

Charles E. "Chip" Corsi
Regional Supervisor

CEC:MTB

C: Sharon Kiefer, IDFG, Boise

Walt Poole, IDFG, Boise

David Stanish, AG, Boise

File: IDWR Torrmere Farms PROTEST followup

Keeping Idaho's Wildlife Heritage

RECEIVED
MAY 27 2010

Franklin, Keith

From: Franklin, Keith
Sent: Thursday, July 08, 2010 10:53 AM
To: 'Terra Berns, Mary'
Subject: Water Right Application 94-7530, Torrmere Farms of Idaho (Frank Kelley)

Mary,

Attached is a draft permit that includes conditions that may satisfy the concerns of Fish & Game.

First the diversion rate was reduced from 0.54 cfs to 0.425 cfs, as suggested by Fish & Game.

Second, condition #12 was crafted for Fish & Game's concern over the flow in Evens Creek. IDWR has to be very careful here since only the Idaho Water Board can implement minimum stream flows and then only through the application process like everyone else. However, separate agreements can be developed between the right holder and in this case the protestant. Fish & Game would have to craft an agreement that both parties would agree to and the document would then become part of the file.

After you've had a chance to review the draft, let me know your thoughts. Mr. Kelley has already seen a similar draft and seems to be receptive, dependent upon the language in an agreement with Fish & Game.

Thanks.

Keith.



img-708103928.pdf

State of Idaho
Department of Water Resources

DRAFT**Permit to Appropriate Water****DRAFT**

NO. 94-07530

Priority: September 25, 2009

Maximum Diversion Rate: 0.425 CFS
Maximum Diversion Volume: 87.7 AF

This is to certify, that TORRMERE FARMS OF IDAHO INC
12449 AVONDALE RD
HAYDEN ID 83835
(208) 772-1845

has applied for a permit to appropriate water from:

Source: EVANS CREEK
UNNAMED STREAM
GROUND WATER

Tributary: MEDICINE LAKE
EVANS 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>
DIVERSION TO STORAGE	01/01 to 12/31	0.425 CFS	
IRRIGATION	03/15 to 10/31	0.425 CFS	
IRRIGATION STORAGE	01/01 to 12/31		87.5 AF
IRRIGATION FROM STORAGE	03/15 to 10/31		77.7 AF
WILDLIFE STORAGE	01/01 to 12/31		9.8 AF
STOCKWATER STORAGE	01/01 to 12/31		5.1 AF
STOCKWATER FROM STORAGE	01/01 to 12/31		0.2 AF
STOCKWATER	01/01 to 12/31	0.02 CFS	

LOCATION OF POINT(S) OF DIVERSION:

UNNAMED STREAM KOOTENAI County	L7 (SW1/4SE1/4)	Sec. 3, Twp 47N, Rge 02W, B.M.
EVANS CREEK KOOTENAI County	L7 (SW1/4SE1/4)	Sec. 3, Twp 47N, Rge 02W, B.M.
UNNAMED STREAM KOOTENAI County	L7 (SW1/4SE1/4)	Sec. 3, Twp 47N, Rge 02W, B.M.
GROUND WATER KOOTENAI County	L7 (SW1/4SE1/4)	Sec. 3, Twp 47N, Rge 02W, B.M.
EVANS CREEK KOOTENAI County	L7 (SW1/4SE1/4)	Sec. 3, Twp 47N, Rge 02W, B.M.
GROUND WATER KOOTENAI County	L7 (SW1/4SE1/4)	Sec. 3, Twp 47N, Rge 02W, B.M.

COPIED
12-1-7-2009

DRAFT

PLACE OF USE: IRRIGATION

Total Acres: 25.9

Total Acres: 25.9

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	
47N	02W	3																	
													X				X		X
													L 6				L 7		L 8

10-1-50
10-1-50

State of Idaho
Department of Water Resources

DRAFT**Permit to Appropriate Water****DRAFT**

NO. 94-07530

PLACE OF USE: STOCKWATER

Tw	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
47N	02W	3												X			X	X	
														L 6			L 7	L 8	

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. 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.
5. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.0 afa per acre at the field headgate for irrigation of the lands above.
6. A fish screen of 0.25 inch or smaller mesh shall be installed and maintained at the point of diversion.
7. The approach velocity at the point of diversion shall not exceed 0.5 feet per second.
8. Stockwater use is for up to 10 head of mixed stock.
9. The three 3 ponds or reservoirs established by the storage of water under this right shall not exceed a total capacity of 6.0 acre-feet.
10. This right authorizes the diversion of an annual total of 87.7acre-feet to be used for the initial filling of the ponds or reservoirs, the replacement of losses caused by evaporation from the ponds or reservoirs, the storage of water for irrigation, wildlife and stockwater.
11. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
12. The diversion and use of water described in this right is subject to additional limitations agreed to by the Idaho Department of Fish & Game and the right holder under separate agreement to which the department is not a party and which may be enforceable by a court of law.

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

10-1-94
102-135



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

June 8, 2010

Frank J Kelley
Tormere Farms of Idaho, Inc.
12449 Avondale Rd
Hayden, ID 83835

Re: Protested Application For Permit to Appropriate the Public Waters of the State of Idaho
No. 94-7530

Dear Mr. Kelley:

The department received a letter from Fish & Game, copy of which is enclosed, expressing their willingness to withdraw their protest if certain conditions are met. The Northern Region is in contact with the State Office exploring ways, if possible, to develop a permit that would satisfy the protest. It is unfortunate, the letter was not originally sent to you first. We will keep you informed and if you have any questions, feel free to contact me at this office.

Sincerely,

Keith E. Franklin
Senior Water Resources Agent
Enclosure

COPY

COPIED
100-1000

The right holder shall not divert water unless at least 3.0 cfs is flowing past the point of diversion while the diversion is occurring. This bypass flow will be administered by the watermaster of a water district, when one is established to regulate water rights on Evans Creek. Meanwhile, the bypass flow may be enforceable in a court of law pursuant to a separate agreement to which IDWR is not a party.

10/1/20
102-1000

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 94-07530

PLACE OF USE: STOCKWATER

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
47N	02W	3												X			X	X	
													L 6				L 7	L 8	

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. 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.
5. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.0 afa per acre at the field headgate for irrigation of the lands above.
6. A fish screen of 0.25 inch or smaller mesh shall be installed and maintained at the point of diversion.
7. The approach velocity at the point of diversion shall not exceed 0.5 feet per second.
8. Stockwater use is for up to 10 head of mixed stock.
9. The three 3 ponds or reservoirs established by the storage of water under this right shall not exceed a total capacity of 6.0 acre-feet.
10. This right authorizes the diversion of an annual total of 87.7 acre-feet to be used for the initial filling of the ponds or reservoirs, the replacement of losses caused by evaporation from the ponds or reservoirs, the storage of water for irrigation, wildlife and stockwater.
11. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
12. Through a separate agreement between the right holder and the Idaho Department of Fish & Game, which the Department of Water Resources is not a party and which may be independently enforceable by a court of law, the right holder agrees to cease the diversion of water for this right from Evans Creek, when the flow in Evans Creek below the point or points of diversion falls below 3.0 cfs.
13. The diversion and use of water described in this right is subject to additional limitations agreed to by the protestant and the right holder under separate agreement to which the Department is not a party and which may be enforceable by a court of law.

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_____.

JAN 11 2000
12:11 PM



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

June 23, 2010

COPY

Frank J Kelley
Tormmere Farms of Idaho, Inc.
12449 Avondale Rd.
Hayden, ID 83835

Re: Application For Permit to Appropriate the Public Waters of the State of Idaho
No. 94-7530.

Dear Mr. Kelley:

The department has been exploring ways to find a solution to the protest of your application by the Department of Fish & Game. As per Fish & Game's letter dated May 24, 2010, Mr. Corsi suggests they are willing to withdraw their protest if 1.) you would be willing to reduce the diversion of your application to 0.425 cfs (191 gallons per minute) and 2.) agree to cease diverting water from Evans Creek when the flow falls below 3.0 cfs. With that in mind, the department has developed a draft permit for your review that includes the reduced diversion rate and condition #12 that talks about the curtailment of the diversion from Evans Creek.

I have not sent this to Fish & Game, but I have talked with Mary Berns about it. Once you've had a chance to review the draft permit and if you agree, I'll send it to Fish & Game to see if this will satisfy the protest.

If you have any questions, feel free to give me a call.

Sincerely,

Keith E. Franklin
Senior Water Resources Agent
Enclosure

100-17530

State of Idaho
Department of Water Resources

DRAFT**Permit to Appropriate Water****DRAFT**

NO. 94-07530

Priority: September 25, 2009

Maximum Diversion Rate: 0.425 CFS
Maximum Diversion Volume: 87.7 AF

This is to certify, that TORRMERE FARMS OF IDAHO INC
12449 AVONDALE RD
HAYDEN ID 83835

has applied for a permit to appropriate water from:

Source: EVANS CREEK
UNNAMED STREAM
GROUND WATER

Tributary: MEDICINE LAKE
EVANS 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>
DIVERSION TO STORAGE	01/01 to 12/31	0.425 CFS	
IRRIGATION	03/15 to 10/31	0.425 CFS	
IRRIGATION STORAGE	01/01 to 12/31		87.5 AF
IRRIGATION FROM STORAGE	03/15 to 10/31		77.7 AF
WILDLIFE STORAGE	01/01 to 12/31		9.8 AF
STOCKWATER STORAGE	01/01 to 12/31		5.1 AF
STOCKWATER FROM STORAGE	01/01 to 12/31		0.2 AF
STOCKWATER	01/01 to 12/31	0.02 CFS	

LOCATION OF POINT(S) OF DIVERSION:

UNNAMED STREAM KOOTENAI County	L7 (SW1/4SE1/4)	Sec. 3, Twp 47N, Rge 02W, B.M.
EVANS CREEK KOOTENAI County	L7 (SW1/4SE1/4)	Sec. 3, Twp 47N, Rge 02W, B.M.
UNNAMED STREAM KOOTENAI County	L7 (SW1/4SE1/4)	Sec. 3, Twp 47N, Rge 02W, B.M.
GROUND WATER KOOTENAI County	L7 (SW1/4SE1/4)	Sec. 3, Twp 47N, Rge 02W, B.M.
EVANS CREEK KOOTENAI County	L7 (SW1/4SE1/4)	Sec. 3, Twp 47N, Rge 02W, B.M.
GROUND WATER KOOTENAI County	L7 (SW1/4SE1/4)	Sec. 3, Twp 47N, Rge 02W, B.M.

COPIED
DEC - 7 2009

DRAFT

PLACE OF USE: IRRIGATION

Total Acres: 25.9

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
47N	02W	3																	
													X				X		
													L 6				L 7		L 8

CHARGED
DEC 7 1961

State of Idaho
Department of Water Resources

DRAFT**Permit to Appropriate Water****DRAFT**

NO. 94-07530

PLACE OF USE: STOCKWATER

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
47N 02W 3												X			X	X	
											L 6				L 7	L 8	

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. 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.
5. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.0 afa per acre at the field headgate for irrigation of the lands above.
6. A fish screen of 0.25 inch or smaller mesh shall be installed and maintained at the point of diversion.
7. The approach velocity at the point of diversion shall not exceed 0.5 feet per second.
8. Stockwater use is for up to 10 head of mixed stock.
9. The three 3 ponds or reservoirs established by the storage of water under this right shall not exceed a total capacity of 6.0 acre-feet.
10. This right authorizes the diversion of an annual total of 87.7acre-feet to be used for the initial filling of the ponds or reservoirs, the replacement of losses caused by evaporation from the ponds or reservoirs, the storage of water for irrigation, wildlife and stockwater.
11. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
12. Through a separate agreement between the right holder and the Idaho Department of Fish & Game, which the Department of Water Resources is not a party and which may be independently enforceable by a court of law, the right holder agrees to cease the diversion of water for this right from Evans Creek, when the flow in Evans Creek, below the point or points of diversion, falls below 3.0 cfs.

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

COPIED
NOV-7-95

Franklin, Keith

From: Franklin, Keith
Sent: Tuesday, July 13, 2010 8:08 AM
To: 'Terra Berns, Mary'
Cc: 'gardenallyear@hotmail.com'
Subject: Torrmere Farms of Idaho Inc. Application For Permit No. 94-7530

Mary,

Yesterday Greg and I met with Chip regarding a settlement to the protest for Torrmere Farms application for permit. Chip was receptive to a simple agreement that contains the two points of settlement in his letter to the department dated May 24, 2010. Chip also said he would have to run such an agreement by F&G's legal folks and would be willing to expedite the process if Torrmere Farms initiated such a document. To speed things up, I've developed a draft settlement agreement, which has been used by Kootenai Environmental Alliance to settle past protests that can be used as a template. I'm e-mailing a copy to Frank Kelley for his review and would you pass this on to Chip? I believe the agreement contains all the necessary elements to settle the protest. I hope this can be of help to both F&G and Frank Kelley.

Your thoughts are appreciated.

Keith



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COPIES
1102-71307

SETTLEMENT AGREEMENT BETWEEN THE IDAHO DEPARTMENT OF FISH & GAME (IDFG) AND TORRMERE FARMS OF IDAHO INC. IN REGARDS TO IDWR APPLICATION FOR PERMIT No. 94-7530.

This Settlement Agreement (Agreement) is entered into by and between the Idaho Department of Fish & Game (IDFG) and Torrmere Farms of Idaho Inc. to resolve disputes regarding IDWR Application For Permit No. 94-7530. In consideration of the mutual promises specified herein and by conditioning their performance under this Agreement upon satisfaction of the identified conditions precedent, and for other good and valuable consideration, the Parties agree as follows:

A. Scope of Agreement

This Agreement is intended to settle all matters related solely to the protest filed by the Idaho Department of Fish & Game of Torrmere Farms of Idaho Inc. Application For Permit No. 94-7530.

B. Under the terms of this Agreement, Torrmere Farms of Idaho Inc. agrees to under take the following actions:

1. Reduce the diversion rate from Evans Creek to 0.425 cfs.
2. Cease the diversion of water under Permit No. 94-7530 from Evans Creek, when the flow in Evans Creek falls under 3.0 cfs below the point or points of diversion.

C. Mutual Actions

The Parties agree to jointly file a notice of settlement, a copy of this Agreement, and a conditional motion to withdraw the protest requesting that IDWR issue a water right permit that:

1. Incorporates the terms of the amended water right application described in Section B(1) & B(2).
2. Contains a provision stating, "The diversion and use of water described in this right is subject to additional limitations agreed to by the Idaho Department of Fish & Game and the right holder under separate agreement to which the department is not a party and which may be enforceable by a court of law".
3. References this agreement and includes a copy of this Agreement in the permit file.

The condition for the motion to withdraw the protest shall be conditioned upon the acceptance and inclusion of the terms set forth in that section by IDWR. The Parties further agree not to protest or otherwise challenge the terms of IDWR's water permit should the terms of that permit be issued in a manner consistent with this Agreement.

RECEIVED
12-1-12

D. Actions of IDFG

In consideration for the actions identified above and upon the issuance of a final water right permit the Torrmere Farms of Idaho Inc. that incorporates the terms set forth in Section C, IDFG agrees to a full and final dismissal of its protest.

E. Enforcement

1. The Parties agree that all terms of this Agreement may be enforceable, to the extent practicable, through an action by IDWR or by a court of law.

F. Non-Severability

The paragraphs of this Agreement are not severable. This Agreement is executed on the understanding that each paragraph is in consideration of the others.

G. Good Faith

The Parties to this Agreement agree to act in good faith and make all reasonable efforts to satisfy the conditions of the Agreement.

H. Successors and Assigns

This Agreement will be binding and will inure to the benefit of the Parties and their respective heirs, legal representatives, successors and permitted assigns, except as restricted by this Agreement.

I. Authorizations

All individuals executing this Agreement and other documents on behalf of the respective Parties certify and warrant that they have the capacity and have been duly authorized to so execute the documents on behalf of the Parties so indicated.

J. Advice of Attorneys

Each Party represents and warrants that in executing this Agreement, each has been advised by or has had an opportunity to be advised by independent legal counsel. Each party has read the terms of this Agreement and understands their consequence. Each Party further acknowledges and represents that, in executing this Agreement, it has not relied on any inducements, promises or representations made by any other Party or its representatives, except as otherwise stated in this Agreement.

K. Entire Agreement and Amendment

With respect to the issues considered herein, this Agreement contains the entire understanding and agreement of the Parties. There have been no promises, representations, agreements, warranties or undertakings by any of the Parties, either oral or written, of any character or nature binding except as stated in this Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the Parties to this Agreement and by no other means. An amendment to the Agreement is binding only on the Parties that execute the Amendment. Each Party waves

COPIED
12-17-11

its right to claim, contest or assert that this Agreement was modified, cancelled, superseded or changed by any oral agreement, course of conduct, waiver, or estoppels.

For The Idaho Department of Fish & Game

_____ Date _____ 2010

Name and Title

For Torrmere Farms of Idaho Inc.

_____ Date _____ 2010

Name and Title

RECEIVED
JAN 12