



IN REPLY REFER TO:

United States Department of the Interior

OFFICE OF THE SOLICITOR
PORTLAND REGION

805 SW Broadway, Suite 600
Portland, OR 97205

FEB 9 2009

Mr. Ernest Carlsen
Hearing Officer
Idaho Department of Water Resources
900 N. Skyline Drive, Suite A
Idaho Falls, ID 83402

Re: Application for Transfer No. 73951

Dear Mr. Carlsen:

Enclosed for filing is the Stipulation for Withdrawal of U.S. Fish and Wildlife Service Protest [to application for transfer No. 73951]. The Stipulation provides for amendment of the Mud Lake Water Users Application No. 73951 and the withdrawal of the U.S. Fish and Wildlife Service's Protest to the Application. If you have any questions please contact Robert Harris, Attorney for the Mud Lake Water Users or myself.

Sincerely,

Barbara Scott-Brier
Agency Representative
For U.S. Fish and Wildlife Service
503-231-2139

Enclosure

cc: Service List

RECEIVED

FEB 10 2009

Department of Water Resources
Eastern Region

Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
1000 Riverwalk Dr., Ste. 200
P.O. Box 50130
Idaho Falls, Idaho 83405
Telephone: (208) 523-0620
Facsimile: (208) 523-9518
Idaho State Bar Number 7018

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 73951 IN THE NAME
OF MUD LAKE WATER USERS, INC.

**STIPULATION FOR
WITHDRAWAL OF UNITED STATES
FISH AND WILDLIFE SERVICE
PROTEST**

RECITALS:

1. Camas Creek flows through the Camas National Wildlife Refuge (the "Refuge") in Jefferson County, Idaho. The Refuge is owned and managed by the United States Fish and Wildlife Service ("USFWS"). Camas Creek flows into Rays Lake on the Refuge and, after leaving the Refuge, flows into Mud Lake.
2. The USFWS holds water rights to Camas Creek; and Mud Lake Water Users ("MLWU") hold water rights to Mud Lake, to which Camas Creek is a tributary.

10. After the Application was advertised pursuant to Idaho law, it was protested by three individuals and one entity, which entity was the USFWS. The USFWS believes the dike pump is a new point of diversion and, as set out in MLWU's Application, believes the new point of diversion would injure certain USFWS's water rights.
11. There is a certain staff gage located at a bridge located near the southwest corner of the Refuge, which bridge is commonly referred to as the "Rays Lake Bridge." The staff gage is commonly referred to as the "New Rays Lake Bridge staff gage."
12. The USFWS's protest indicated that certain conditions would resolve its protest, namely: "Set a condition on the proposed change that would set a minimum pumping elevation for the proposed Owsley Dike POD at approximately 4783.35 ft. AMSL, which corresponds to 13.90 ft on the Ray's Lake Bridge staff gage."
13. After the protest was filed by the USFWS, the parties engaged in settlement negotiations, and agreed to resolve this matter regardless of how the other protests are resolved – whether through negotiation or a formal hearing.
14. Accordingly, MLWU and the USFWS hereby agree to resolve the USFWS's protest as follows, and both parties agree to be forever bound hereby:

AGREEMENTS:

1. **MINIMUM PUMPING LEVEL.** Unless otherwise precluded by law, MLWU may use the dike pump as that pump has been described above, but may only draw down the water level behind the dike to a level measured at 13.40 on the Rays Lake staff gage. MLWU may not pump the water level below level 13.40 on the Rays Lake staff gage, regardless of whether the dike pump is ultimately required to be a listed point of diversion under any of MLWU's water rights.
2. **PUMP ELEVATION.** MLWU may not lower the level of the dike pump from its present pumping level. MLWU with the USFWS shall take a GPS elevation reading of the upper pump bowls, and the pump shall be maintained at this position.

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

**IN THE MATTER OF APPLICATION)
FOR TRANSFER NO 73951 IN THE NAME)
OF THE MUD LAKE WATER USERS INC.)** **CERTIFICATE OF SERVICE**

I mailed this date in the Overnight mail and Regular mail a Stipulation for Withdrawal of U.S. Fish and Wildlife Service Protest [to application for transfer No. 73951] to the following:

By Overnight Mail

Ernest Carlsen, Hearing Officer
Idaho Department of Water Resources
900 N. Skyline Drive., Suite A
Idaho Falls, ID 83402

Perry Woodward
Box 85
Hamer, ID 83425

By Regular Mail:

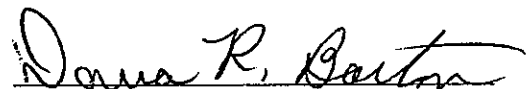
Robert L. Harris, Esq.
Holden Kidwell, Hahn & Crapo, P.L.L.C.
P.O. Box 50130
Idaho Falls, ID 83405

Sid Ashcraft
2504 N. Lennox
Mesa, AZ 85207

U.S. Fish and Wildlife Service
Attn: James Crammond
911 NE 11th Ave.
Portland, OR 97232

Lyle R. Shupe
2296 E. 1940 N.
Hamer, ID 83425

Dated this 9th day of February, 2009


Donna R. Barton
Secretary