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AUG 19 2009

Department of Water Resources
Eastern Region

IN THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION) SUBMISSION OF SETTLEMENT
FOR PERMIT NO. 25-14021 IN THE) AGREEMENT BETWEEN
NAME OF O.W. RANCHES, INC.) O.W. RANCHES, INC. AND U.S.
) FISH AND WILDLIFE SERVICE

The U.S. Fish and Wildlife Service (Fish and Wildlife Service) hereby files with the Department of Water Resources the Settlement Agreement Between O.W. Ranches, Inc. and U.S. Fish and Wildlife Service regarding O.W. Ranches, Inc. (O.W. Ranches)'s Application for Permit No. 25-14021 (the Application). The Settlement Agreement provides for amendment of O.W. Ranches' Application and the withdrawal of the Fish and Wildlife Service's Protest to the Application, conditioned upon the terms and conditions of the Settlement Agreement being incorporated into any permit or subsequent license issued under the Application. Based on the Settlement Agreement, O.W. Ranches and the Fish and Wildlife Service, the Parties to the Settlement Agreement, agree that there is no need for a hearing on the Protest.

The Parties to the Settlement Agreement hereby request the Department of Water Resources to take appropriate action consistent with the Settlement Agreement, as follows:

1. Incorporate the following terms or conditions in the Application and any permit or subsequent license issued under this Application:

Reduce the quantity of the proposed appropriation to two acre feet per year;

Limit the period of diversion to storage to October 1 – May 1;

Limit the storage to one fill per year;

Provide that any control structure in the instream storage facility will be adjusted by O.W. Ranches, as needed, to allow all natural inflow to pass the storage facility without being stored in the period May 1 to October 1;

Provide that the Fish and Wildlife Service and Department of Water Resources will have free access to the storage facility to independently confirm elevations and inflow management; and

Provide that any dispute between O.W. Ranches and the Fish and Wildlife Service over the operation of the instream storage facility or regarding any

permit or subsequent license issued for this Application may be referred to the Department of Water Resources for prompt determination.

2. Subject to incorporation of the terms and conditions of the Settlement Agreement into any permit or subsequent license issued under the Application, dismiss the U.S. Fish and Wildlife Service's Protest to the Application.
3. Subject to incorporation of the terms and conditions of the Settlement Agreement into any permit or subsequent license issued under the Application, cancel the hearing on the U.S. Fish and Wildlife Service's Protest to the Application.

Respectfully Submitted this 7th day of August 2009.

A handwritten signature in black ink, reading "Barbara Scott-Brier". The signature is written in a cursive, flowing style.

Barbara Scott-Brier, Agency Representative
for U.S. Fish and Wildlife Service
Office of the Solicitor, Pacific Northwest Region
U.S. Department of the Interior
805 SW Broadway, Suite 600
Portland, OR 97205
Phone 503.231.2139
Fax 503.231.2166

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

IN THE MATTER OF APPLICATION	)	SETTLEMENT AGREEMENT
FOR PERMIT NO. 25-14021	)	BETWEEN O.W. RANCHES,
NAME OF O.W. RANCHES INC.	)	INC. AND U.S. FISH AND
	)	WILDLIFE SERVICE

O.W. Ranches, Inc. ("O.W.") and the U.S. Fish and Wildlife Service ("FWS"), hereafter "parties" to this Settlement Agreement ("Agreement"), do hereby stipulate and agree as follows:

A. STIPULATED FACTS

1. On December 5, 2003, O.W. filed application for permit no. 25-14021 ("Application") with the Idaho Department of Water Resources ("IDWR") for a water right permit from a source designated as "unnamed stream tributary to Grays Lake" for 10 acre feet of water for stockwater storage from January 1 to December 31; and for 10 acre feet of water for stockwater from storage from May 1 to December 31.
2. The Application provides for an instream dam to provide storage ("instream storage facility" or "storage facility") in the unnamed stream tributary to Grays Lake.
3. On January 16, 2006, FWS filed a Notice of Protest ("Protest") with IDWR on the grounds that the proposed use of water under the Application would interfere with existing water rights of the FWS, the water supply is insufficient for the requested use, and the proposed use will conflict with the public interest.
4. FWS holds water rights with senior priority to waters from the source of water described in the Application.
5. The parties have determined that the source of water for the Application is Fulton Creek.
6. On January 22, 2004, IDWR acknowledged FWS's protest and indicated if the FWS protest could not be settled informally, the matter would be scheduled for conference call and/or hearing.
7. On February 24, 2005, IDWR issued a Notice of Pre-hearing conference to attempt resolution of the matter or designate a hearing date if such resolution was not possible.

8. Thereafter, the parties met and negotiated in good faith. O.W. and FWS agreed that they wish to resolve this matter without hearing. Moreover, O.W. and FWS recognize the benefit in working cooperatively on this matter.

9. In consideration of the terms below, and as a result of good-faith negotiations, the parties agree that this matter can be resolved without hearing.

B. TERMS OF AGREEMENT

1. O.W. agrees that any water storage or use requested under the Application will conform to this Agreement and all terms or conditions of a permit or subsequent license authorized by IDWR. FWS agrees that it will not object to any such storage or use if it is consistent with this Agreement and any permit or subsequent license for this Application authorized by IDWR.

2. O.W. agrees to amend its Application to reduce the proposed appropriation to two acre feet per year, and this limitation shall be reflected as a condition in any permit or subsequent license for this Application authorized by IDWR.

3. The parties agree that the Application for storage shall be limited to one fill per year, and this limitation shall be reflected as a condition in any permit or subsequent license for this Application authorized by IDWR.

4. O.W. agrees to amend its Application for storage to October 1 – May 1. Between May 1 and October 1, O.W. will adjust the stoplogs or other control structure in the instream storage facility, as needed, to allow all natural inflow to pass the storage facility without being stored. FWS and IDWR shall have free access to the storage facility to independently confirm elevations and inflow management. These operational and access criteria shall be reflected as a condition in any permit or subsequent license for this Application authorized by IDWR.

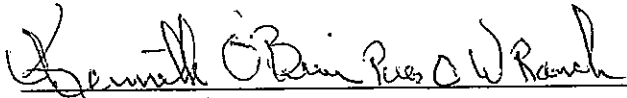
5. In the event of any dispute between OW and FWS over the operation of the instream storage facility or regarding any permit or subsequent license for this Application authorized by IDWR, O.W. and FWS will refer the matter to IDWR for prompt determination.

6. In return for the Terms of this Agreement and conditions to be included in any permit or subsequent license for this Application, the FWS agrees that its Protest is resolved and will be withdrawn, without need for a hearing on the Protest.

This Agreement shall be effective upon signature by all of the parties, and may be signed in counterparts.

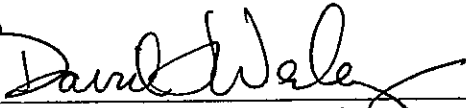
So agreed and stipulated by:

FOR O.W. RANCHES INC.


Kenneth O'Brien
O.W. Ranches
P.O. Box 237
Colville, Utah 84017

May 27 09
Date

FOR U.S. FISH AND WILDLIFE SERVICE:

Acting

For: Robyn Thorson, Regional Director
U.S. Fish and Wildlife Service
911 NE 11th Ave.
Portland, OR 97232

7/15/09
Date


Barbara Scott-Brier, Attorney
Office of the Solicitor, PNWR
U.S. Department of the Interior
805 SW Broadway, Suite 600
Portland, OR 97205

7/14/2009
Date

IN THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 25-14021)
NAME OF O.W. RANCHES INC.) CERTIFICATE OF SERVICE

I certify that the Settlement Agreement between O.W. Ranches, Inc. and U. S. Fish and Wildlife Service was submitted to the Idaho Department of Water Resources and a copy sent to O.W. Ranches Inc. by the method indicated below on the 7th day of August 2009 to the following addresses:

Director,
Idaho Department of Water Resources
Eastern Region
900 North Skyline Dr. Ste A
Idaho Falls, ID 83402

Overnight mail

O.W. Ranches Inc.
C/O Denneth F. O'Brien
364 Judd Ln
Coalville UT 84017

1st Class U. S. Mail, Postage prepaid

Signed this 7th day of August 2009.


Judith A. Cotton, Secretary