

United States
Department of
Agriculture

For
Service

Boise Adjudication Team
Recreation and Lands
Intermountain Region

380 ParkCenter, Suite 330
Boise, ID 83706

M. for your information of files
[Signature]
8/21/2000

Reply to: 2540

Date: August 15, 2000

Tom Geary
964 S. 950 E.
Albion, ID 83311

RECEIVED

AUG 22 2000

Department of Water Resources
Southern Region

Rec'd from R. Sorenson
8/18/2000
[Signature]

Dear Mr. Geary:

In April you and several members of Water District 45F met with Forest Service personnel in the Forest Service Conference Room in Burley to discuss the Water District's protest of application number 45-07745 filed by the Forest Service for new uses at Pomerelle Ski Resort.

At this meeting the Forest Service explained the new water uses that are intended to be developed under the application and the Water District explained their position with respect to the new application and water uses at Pomerelle.

The new use proposed in 45-07745 is snowmaking at Pomerelle. This involves construction of up to 3 small storage reservoirs on the mountain. The application shows purposes of use to be commercial storage, commercial from storage and diversion to storage. The total storage capacity would not exceed 16.3 acre feet and the primary source of water would be snow melt. There are no perennial streams that would be diverted and gravity fed into the ponds. It is likely that water supplied by claim number 45-04114 would also be stored and used.

The Water District's protest indicates concern over many aspects of water use at Pomerelle. These were openly discussed and appeared to center around four major areas: (1) existing water uses in relationship to statutory claim 45-04114; (2) acknowledgement that water will be administered in accordance with state law; (3) appropriate acknowledgement of domestic use needs during the summer months; and (4) future development anticipated in 45-07745.

As a result of this discussion Steve Spencer has prepared a draft stipulation to resolve the Water District's protest. The draft stipulation is attached. We believe it addresses the major issues and is ready for consideration and review by the District. Steve is also available to come over and meet with you to discuss matters so that our discussions and interaction can lead to a resolution that promotes lawful and efficient use of the water in this area.

United States
Department of
Agriculture

FoI
Service

Snake River Basin
Adjudication Team;
Intermountain Region

0 ParkCenter, Suite 330
Boise, ID 83706

If you have any questions about this matter, please contact Steve Spencer in this office at (208) 331-5944. Pete Peterson in Burley can also serve as a contact and intermediary if you so desire.

Sincerely,



MICHAEL E. COLLETTE
Team Leader

CC: Marsh Creek Water District 45F
Roger Ling
Pete Peterson

Attachment

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Department of Water Resources
Southern Region

Names of Parties Filing Document:

UNITED STATES OF AMERICA

MARSH CREEK WATER
DISTRICT 45 F

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

IN THE MATTER OF THE	)	
APPLICATION FOR PERMIT NO. 45-	)	
07745 IN THE NAME OF THE UNITED	)	STIPULATION TO RESOLVE PROTEST
STATES FOREST SERVICE	)	

DESCRIPTIVE SUMMARY

This is a stipulation between the United States of America, acting on behalf of the United States Department of Agriculture, Forest Service (hereinafter "Forest Service"), applicant and Marsh Creek Water District 45 F (hereinafter "District") to resolve their protest to water right application number 45-07745.

STIPULATION

WHEREAS, it is Forest Service policy to file application for and secure water rights in the name of the United States in accordance with state law for water used by permittees on National Forest System Lands; and

WHEREAS, Pomerelle Ski Area (hereinafter "Pomerelle") is authorized by a special use permit on the Sawtooth National Forest as a recreation resort; and

WHEREAS, the Forest Service filed claim number 45-04114 for water use at Pomerelle in 1980; and

WHEREAS, the Forest Service approved a Master Development Plan in 1997 authorizing new developments at Pomerelle, including snow making that could include three new storage reservoirs with a combined storage capacity of 16.3 acre feet; and

WHEREAS, the Forest Service restricted water diversions from existing surface sources to those already in use and claimed as water right no. 45-04114; and

WHEREAS, the Forest Service filed application no. 45-07745 for a new water use; and

WHEREAS, Marsh Creek Water District #45-F filed a protest to application no. 45-07745; and

WHEREAS, the parties recognize that Pomerelle Ski Area as authorized by the Forest Service is an important use of the National Forest System Lands and that continued availability and use of water at Pomerelle in accordance with State Law is in the best interest of the Forest Service, the District and the local community; and

WHEREAS, the possible increases in water available as a result of snowmaking activities at Pomerelle cannot occur if development does not occur; and

WHEREAS, the District would be the primary beneficiary of any increases in water production and that if the estimated benefits do not materialize, water rights would continue to be administered according to state law.

WHEREAS, the District and the Forest Service wish to resolve the protest to the above referenced application for a water right without litigation expense and delay.

THEREFORE, the parties stipulate and agree as follows:

1. That the use of water at Pomerelle must be in accordance with applicable state law and federal policy and that such water rights be held by the United States for use at Pomerelle
2. That the United States has complied with State Law by filing claims, applications for permit and applications for transfer with the Idaho Department of Water Resources for water uses at Pomerelle.

3. That domestic water use at Pomerelle during the summer at a caretakers residence and a bunkhouse be recognized as domestic and administered under state law as any other domestic water use at a residence. This includes would not exceed 13,000 gallons per day.
4. That the developments approved by the Forest Service in the Master Development Plan for Pomerelle involving water use anticipated in application no. 45-07745 be constructed.
5. That diversion of water from Bennett Spring to the planned storage reservoirs be coordinated with and in accordance with District irrigation needs and priority dates.
6. The District agrees to withdraw with prejudice its protest to the United States application no. 45-07745.
7. This stipulation was reached through negotiations for the purpose of resolving legal disputes, including pending litigation. All parties agree that no offers and/or compromises made in the course of the negotiations shall be construed as admissions against interest or be used in any legal proceeding.
8. All parties agree to bear their own costs and attorney fees in connection with this matter.
9. This stipulation was entered into and executed voluntarily by all parties in good faith, and without any fraud, misunderstanding, overreaching, misrepresentation, duress, or undue influence.

PROTESTANT:

CLAIMANT:

DONALD GUNDERSON Date
Marsh Creek Water District 45F

RANDALL J. BRAMER Date
United States Of America