

United States
Department of
Agriculture

Forest
Service

Boise Adjudication Team
Recreation and Lands
Intermountain Region

380 ParkCenter, Suite 330
Boise, ID 83706

Reply to: 2540

Date: March 22, 2001

Allen Merritt
Idaho Department of Water Resources
1341 Fillmore Street, STE 200
Twin Falls, ID 83301

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MAR 23 2001
Department of Water Resources
Southern Region

Dear Allen:

The Forest Service and Marsh Creek Water District 45F have been working together for several months to resolve their protests to transfer application no. 5194 for 45-04114 and application for permit no. 45-07745. We are pleased to report that a settlement has been reached. A Stipulation to Resolve Protests has been prepared and signed by the Counsel for the United States and the Chairman of Marsh Creek Water District 45F and is attached hereto.

We appreciate your patience in allowing us the time to work things out to the satisfaction of the parties. If you have any questions about this matter, please contact Steve Spencer in this office at 331-5944.

Sincerely,



MICHAEL E. COLLETTE
Team Leader
Boise Adjudication Team

Attachment

Cc: Marsh Creek Water District 45F
Roger Ling
Woody Anderson
Bill Levere
Zeke Zimmerman

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MAR 23 2001

**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 UNITED	)	
STATES TRANSFER APPLICATION	)	
NO. 5194 FOR 45-04114 AND	)	STIPULATION TO RESOLVE
APPLICATION FOR PERMIT NO. 45-	)	PROTESTS
07745 IN THE NAME OF THE UNITED	)	
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 protests to transfer number 5194 for water right number 45-04114 and 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

STIPULATION TO RESOLVE PROTESTS

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

WHEREAS, the Forest Service filed transfer application no. 5194 for 45-04114 to add snowmaking places of use; and

WHEREAS, the Forest Service filed application no. 45-07745 for a new water use related to snow making at Pomerelle as described in the application; and

WHEREAS, Marsh Creek Water District #45-F filed a protest to transfer application no. 5194 for 45-04114 and 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, the local community and the general public; and

WHEREAS, it is likely that snow making at Pomerelle will result in an increased snow pack and increase in water produced by snow melting in the spring and summer; and

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

WHEREAS, the water users within the District would be the primary beneficiaries 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; and

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:

STIPULATION TO RESOLVE PROTESTS

1. 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. 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. 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 that use would not exceed 13,000 gallons per day.
4. The developments approved by the Forest Service in the Master Development Plan for Pomerelle involve water use for snow making as anticipated in application no. 45-07745, specifically the construction of 3 storage reservoirs whose primary source of water will be surface water from melting snow.
5. That for purposes of administration, Pomerelle Spring (aka Ski Run Spring) be considered the primary source of water used at Pomerelle and that Bennett Spring be considered a secondary, backup or supplemental source.
6. The existing diversion of water under claim no. 45-04114 from Bennett Spring to the planned storage reservoirs shall be coordinated with and in accordance with the normal District irrigation season and existing water right priority dates.
7. With respect to number 6 above, when water is available or becomes available during the irrigation season the Water Master of the Water District will administer water rights and water deliveries making water available for approved uses at Pomerelle in accordance with 45-04114 and 45-07745.

8. In accordance with Idaho Code 42-701, appropriate devices be installed to measure the volume of water pumped into the planned reservoirs.
9. The Forest Service and Water District agree to coordinate and improve communications for their mutual benefit with respect to all existing and future (including new plans and proposals) water uses and water supply directly tributary to or effecting water sources within Marsh Creek Water District 45F.
10. The District agrees to withdraw with prejudice its protest to the United States application for transfer no. 5194 for 45-04114 and its protest to the United States application for permit no. 45-07745.
11. 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.
12. All parties agree to bear their own costs and attorney fees in connection with this matter.
13. 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:

Thomas V. Geary 2/7/01
Thomas V. Geary Date
Chairman, Marsh Creek Water District 45F

CLAIMANT:

RANDALL J. BRAMER 2/28/01
RANDALL J. BRAMER Date
United States Of America