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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

| | | |
|------------------------------|---|----------------------------------|
| IN THE MATTER OF LICENSE NO. |) | |
| 37-07842 IN THE NAME OF THE |) | PETITION FOR RECONSIDERATION |
| IDAHO WATER RESOURCES |) | (<i>IDAPA 37.01.01.740.02</i>) |
| BOARD |) | |
| _____ |) | |

COME NOW, Petitioners, by and through their attorney, Joseph F. James, of James Law Office PLLC, and hereby request the Director of the Department of Water Resources (“Director”) to reconsider a portion of the Order Rescinding Permit and Amendment Approval; Order Delaying Processing dated March 11, 2019 (“Order”). This petition is brought pursuant to Rule 740.02 of the Rules of Procedure of the Idaho Department of Water Resources.

In his Order, the Director determined that the water had been put to beneficial use during the developmental period under Permit No. 37-7842, in that recharge to ground water occurred in 1984 as a byproduct of the Little Wood River back-flow through the bifurcation or as a byproduct of flood control operations in the Dietrich Canal. Order, p. 16. The Director determined that water had been put to beneficial use under Permit No. 37-7842 through application to ground water recharge at the Dietrich site and that a license should issue pursuant to Idaho Code §42-219(1). Order, pp. 8-12. The Director found that License

No. 37-7842 should include a diversion rate of 276 cfs for the Dietrich site. Order, P. 10. This determination was based on a maximum rate of diversion occurring on May 18, 1984. *Id.* See also IWRB Ex. 108 at Appendix L, Page 3455. The Director also determined that water had been put to beneficial use under Permit No. 37-7842 through application to ground water recharge at the Shoshone site. Order, Pp. 12-15. The Director found that License No. 37-7842 should include a diversion rate of 295 cfs for the Shoshone site based on a maximum rate of diversion occurring on April 17, 1984. Order p. 15 citing IWRB Ex. 108 at Appendix M, Page 3503.

The Order included, as an attachment, proposed Applications for Amendment consistent with the Order. Order p.17. In a footnote, the Director indicated that, due to the Dietrich site and Shoshone site having distinct points of diversion and delivery systems, the attached Applications for Amendment split Permit 37-7842 to move a portion of the Permit to the point of diversion for the Dietrich site (37-7842) and the remainder to the point of diversion for the Shoshone site (37-23145) *id.* However, neither the proposed Application for Amendment for Permit No. 37-7842, nor the proposed Application for Amendment for Permit No. 37- 23145 included a condition of approval that Rights No. 37-7842 and No. 37- 23145 when combined shall not exceed a total diversion rate of 295 cfs. Without including such a condition of approval, the Director proposed amendment allows the license holder to divert, during the month of April, at a rate nearly double any diversion rate accomplished under the permit during the developmental period.

The Idaho Code provides that license shall state the quantity of water which may be used, “which in no case shall be an amount in excess of the amount that has been beneficially applied.”

I.C § 42-219. Under the Department’s Water Appropriation Rules, the Director may issue permits with conditions to insure compliance with the provisions of Title 42, Chapter 2 of the Idaho Code, including conditions to promote efficient use and conservation of energy and water. IDAPA 37.03.08.050.01.

Below is a table setting forth the maximum combined diversion rates under Permit No. 37-07842 during the month of April of the 1984 flood event:

| Date | Recharge Shoshone (cfs) | Recharge Dietrich (cfs) | Total Diversion |
|----------|-------------------------|-------------------------|-----------------|
| 04/01/84 | 0 | 0 | 0 |
| 04/02/84 | 0 | 0 | 0 |
| 04/03/84 | 0 | 0 | 0 |
| 04/04/84 | 0 | 0 | 0 |
| 04/05/84 | 0 | 0 | 0 |
| 04/06/84 | 0 | 0 | 0 |
| 04/07/84 | 0 | 0 | 0 |
| 04/08/84 | 0 | 0 | 0 |
| 04/09/84 | 0 | 0 | 0 |
| 04/10/84 | 0 | 0 | 0 |
| 04/11/84 | 0 | 0 | 0 |
| 04/12/84 | 0 | 0 | 0 |
| 04/13/84 | 0 | 0 | 0 |
| 04/14/84 | 159 | 0 | 159 |
| 04/15/84 | 216 | 0 | 216 |
| 04/16/84 | 285 | 0 | 285 |
| 04/17/84 | 295 | 0 | 295 |
| 04/18/84 | 24 | 0 | 24 |
| 04/19/84 | 20 | 192 | 212 |
| 04/20/84 | 32 | 170 | 202 |
| 04/21/84 | 0 | 129 | 129 |
| 04/22/84 | 0 | 127 | 127 |
| 04/23/84 | 7 | 139 | 146 |
| 04/24/84 | 7 | 128 | 135 |
| 04/25/84 | 0 | 141 | 141 |
| 04/26/84 | 8 | 141 | 149 |
| 04/27/84 | 4 | 139 | 143 |
| 04/28/84 | 5 | 138 | 143 |

| | | | |
|----------|---|-----|-----|
| 04/29/84 | 4 | 136 | 140 |
| 04/30/84 | 6 | 136 | 142 |

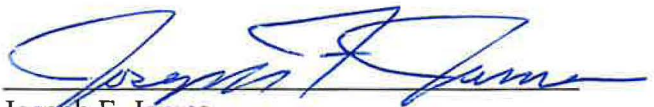
See IWRB Ex. 108 at Appendix L, Page 3455; IWRB Ex. 108 at 3054. At no point during the month of April 1984, the flood event of 1984, or the developmental period of Permit No. 37- 23145 was water diverted pursuant to the permit at a rate greater than 295 cfs.

The Director's proposed Applications for Amendment would allow the right holder to divert a combined total of 571cfs during the month of April. Again, at no point, including the combined diversions at the Shoshone site and the Dietrich site, was water diverted pursuant to the permit at a rate greater than 295 cfs. To allow the permit holder to increase its maximum rate of diversion from 295 to 571 cfs by simply diverting the same water from the same channel at a different point on a different day is inappropriate.

For the reasons stated above, the Petitioners respectfully petition the Director to reconsider a portion of the Order Rescinding Permit and Amendment Approval; Order Delaying Processing dated March 11, 2019. The Petitioners ask the Director to include a condition of approval on License Nos. 37-7842 and No. 37- 23145 that, when combined, Rights No. 37-7842 and No. 37- 23145 shall not exceed a total diversion rate of 295 cfs.

DATED this 25th day of March, 2019.

JAMES LAW OFFICE


Joseph F. James

CERTIFICATE OF SERVICE

I certify that on March 25, 2019, I mailed a true and correct copy, postage prepaid, of the foregoing Petitioner's Petition for Reconsideration, to the persons listed below:

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