

Orr Affidavit

Exhibit 22

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DEPARTMENT OF
WATER RESOURCES

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Letter from John W. Keyes III,
Assistant Regional Director,
Bureau of Reclamation,
to IDWR Director Ken Dunn
(Jan. 27, 1986)

Fourth Orr Affidavit
Exhibit 74:

**Letter from John W. Keyes III to
Kenneth Dunn, Director, Idaho
Department of Water Resources
(Jan. 27, 1986)**



United States Department of the Interior

BUREAU OF RECLAMATION
PACIFIC NORTHWEST REGION
FEDERAL BUILDING & U.S. COURTHOUSE
BOX 048-550 WEST FORT STREET
BOISE, IDAHO 83724

IN REPLY
REFER TO:

PN 760

832.

JAN 27 1986

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JAN 27 1986

Department of Water Resources

A. Kenneth Dunn, Director
Idaho Department of Water Resources
450 West State Street
Boise, Idaho 83720

Dear Ken:

Subject: Water Allocation Rules

We appreciate the opportunity to comment on the proposed rules and regulations. Even though we have disagreed with some of the interpretations of Idaho Code, we commend the Department in their effort to clarify and enlarge upon areas of interpretation and definition. Through our review of these rules we find differing opinions on certain points, even among our experts in the field. We would recommend anything that can be done to clarify, simplify, and condense these rules should be undertaken by the Department. We would further encourage regular review of the rules to evaluate their effectiveness as tools in the permitting process.

Our specific comments that follow deal with sections in the rules and regulations that from our viewpoint lack definition, clarity, proper interpretation, or have implied incorrect presumptions:

Rule 1,4,2,2--This rule considers all permits using trust water as having a significant impact on hydropower generation. The generality of this presumption is questionable since it may be impossible to prove hydrologically the basis of this premise.

Rule 1,4,2,3--This rule places DCMI uses in advance of irrigation rights which is inconsistent with Idaho Constitution stating the hierarchy of uses.

Rule 1,5,1,1--The rule extends trust water to include surface waters upstream of Milner. The Idaho Statute containing this information may be interpreted in two ways. However, since it is further stated that the minimum flow at Milner is zero, meaning no surface flow is required past Milner for any downstream uses, it would appear to be a misinterpretation to include surface water above Milner. The presumption that all ground water above Swan Falls is tributary to the Snake may be challenged on the issue of significance. The

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the document on file at the department of
Water Resources

Signed this 10th day of October, 2008
Dary Sackman

demarcation of travel time between ground and surface water and the accurate description of travel time within the aquifer may well place ground-water effects beyond the scope of reasonableness. Permits for ground water must be evaluated on an individual basis prior to making the determination of being tributary in a reasonable timeframe or nontributary.

Rule 1,5,2--This rule covers diversions to storage and it would be our understanding that the same public interest would apply to diversions from storage.

Rule 3,2,1--The rule presumes, that all unappropriated water (surface and ground) are trust waters. A further presumption that all proposals to appropriate trust waters would constitute a significant reduction in water available for power production is without hydrologic basis as it affects hydrogeneration facilities upstream from Swan Falls.

Rule 4,4,2,2--This rule places additional burdens upon the applicant, which could very easily discourage the use of a resource now made available for upstream users.

Rule 5,1,1,1--This rule might easily undermine the security of senior right holders and would place the determination of "reasonableness" without any specific direction on the director. It is conceivable that an existing right holder could be forced to change from existing methods to new ones simply by a challenge from an applicant seeking a new permit. There are serious overtones on instability of rights which have historically been preserved by the Department.

Rule 5,3--The presumption of a significant reduction of water available for power production must be analyzed on a case-by-case basis before making such a statement. Each application should be analyzed for individual, measurable or estimated, effects before being determined to reduce water available for power production.

Rule 5,3,2,2--The implied mitigation may be in direct conflict with the statute promoting the continuation of the family farming practice. The value of water for hydrogeneration is generally higher than for irrigation uses so future agricultural uses may be severely curtailed.

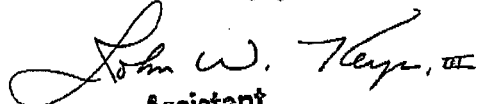
Rule 5,3,7--It is our understanding that this rule would insure no reprocessing of permits for our Teton storage project.

Rule 5,3,9--This rule seems highly discriminatory since there are no hydrologic or geologic reasons for the arbitrary selection of the 4 mile limit. This should be analyzed in future studies.

Rule 6,2--This rule appears to direct its focus on hydro facilities downstream of Swan Falls. To be consistent with other rules it should be limited to the Swan Falls reaches.

It is hoped that these comments will be of help to you. If we can be of assistance to the Department as they proceed with this effort please advise.

Sincerely yours,


Assistant
Regional Director

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Water Resources.

Signed this 10th day of October, 2008
