

Cefalo, James

From: John Simpson <jks@idahowaters.com>
Sent: Friday, February 19, 2021 10:49 AM
To: Cefalo, James
Cc: Jerry Rigby; Rob Harris; TJ Budge; Pugrud, Scott
Subject: American Falls Application no. 01-7128

Hearing Officer,

I am sending this correspondence on behalf of the parties to the contested application, 01-7128. At the last pre-hearing conference in early January, the parties agreed to meet and discuss certain hydrologic matters associated with Snake River flows at American Falls dam to determine whether a settlement on a hydropower subordination condition was feasible. The parties have met multiple times but no agreement has been reached. Hence, the parties would agree to the following process to bring the contested action to conclusion and would submit this proposal for your consideration:

1. The parties agree that the sole contested issue remaining in the permitting process is what is the proper hydropower subordination condition for the junior power right at American Falls. In stating this issue the parties recognize the present standard Department condition includes the phrase "other than hydropower" in the subordination condition and that such condition has existed since the early 1980s. However, some parties reserve the ability to argue that the standard condition doesn't apply to the specific factual circumstances at American Falls due to it's unique history and litigation through the SRBA.
2. The parties believe that a hearing is not required in this matter and an adequate record can be created through briefing with discovery closed. Further, no oral argument is requested.
3. The parties would agree to simultaneous briefing limited to the issue identified in #1 above, with opening briefs due on April 2, 2021 and response briefs due on or before April 23, 2021.

Be assured that the parties are still committed to discussing resolution short of the proposed briefing schedule but desire to bring the permitting process to conclusion. Thank you for your consideration of this proposal.

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