

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

**IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 1-7128 IN THE)
NAME OF IDAHO POWER COMPANY)**

**ORDER ESTABLISHING
BRIEFING SCHEDULE**

On October 23, 1996, Idaho Power Company filed Application for Permit 1-7128 with the Idaho Department of Water Resources (“Department”), proposing to divert 7,850 cfs for power use at the American Falls facility. The Department published notice of the application in February 1997. Protests were filed by Idaho Ground Water Appropriators, U.S. Bureau of Reclamation, Burgess Canal Company, Idaho Rivers United, Progressive Irrigation District, New Sweden Irrigation District, Peoples Canal & Irrigation Company, Fremont-Madison Irrigation District, New Lavaside Ditch Company, East Teton Canal Company and Egin Bench Canals Inc. Idaho Rivers United withdrew its protest without condition on February 25, 2021.

Shortly after the contested case was initiated, the parties asked the Department to suspend its processing of Application 1-7128 to allow Idaho Power Company to pursue Snake River Basin Adjudication claims for the existing water rights at the American Falls facility. The Department resumed the processing of Application 1-7128 in March 2019. The Department has conducted multiple status conference since that time.

The parties have determined that the contested case can proceed without a hearing. According to an email sent to the hearing officer by the Applicant on behalf of the remaining parties, the only unresolved issue of protest is what language should be used in the hydropower subordination condition to be included on the proposed permit.

Pursuant to Rule 564 of the Department’s Rules of Procedure (IDAPA 37.01.01), a hearing officer may request briefs from the parties setting forth arguments and positions on any questions of law in a contested case. The hearing officer has determined that argument briefs would be helpful in deciding the remaining issue in this contested case. Therefore, the hearing officer authorizes the parties to file argument briefs addressing the following questions:

Should the proposed permit be junior and subordinate to all other rights for the use of water within the State of Idaho that are initiated later in time than the priority of the proposed permit (October 23, 1996)?

Or, in the alternative, should the proposed permit be junior and subordinate to all other rights for the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of the proposed permit (October 23, 1996)?

The briefing will be simultaneous, meaning any party wanting to participate in the briefing shall file an opening brief. Response briefs are optional. Opening briefs shall be filed on or before April 2, 2021. Response briefs shall be filed on or before April 23, 2021.

Dated this 26th day of February 2021.

A handwritten signature in black ink, appearing to read 'J Cefalo', written over a horizontal line.

James Cefalo
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of February 2021, true and correct copies of the documents described below were served by placing a copy of the same with the United States Postal Service, postage prepaid and properly addressed to the following:

APPLICATION 1-7128 - ORDER ESTABLISHING BRIEFING SCHEDULE

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