

IDAHO DEPARTMENT OF WATER RESOURCES
Proof Report

9/11/2020

Water Permit 47-8409

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	SOUTHWEST IRRIGATION DISTRICT PO BOX 668 BURLEY, ID 83318 (208) 878-8382

Status: Relinquished

<u>Source</u>	<u>Tributary</u>
---------------	------------------

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
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Source and Point(s) of Diversion

Place Of Use

Conditions of Approval:

Comments:

Dates and Other Information

Water District Number: TBD
Mitigation Plan: False

Combined Use Limits

N/A

SubCase:

N/A

Water Supply Bank:

N/A


[Redacted Signature]

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PETITION TO)
INTERVENE IN THE PROTESTED)
APPLICATION FOR PERMIT NO.)
47-08409 IN THE NAME OF)
SOUTHWEST IRRIGATION DISTRICT)

**ORDER GRANTING
PETITION TO
INTERVENE**

On February 5, 1997, Southwest Irrigation District (applicant) filed with the Department of Water Resources (department) an application for permit. On April 9 and 15, 1995 respectively-timely protests against the application were received from Idaho Rivers United and Idaho Department of Fish & Game raising all issues described in §42-222 against the approval of the application.

On June 16, 1997-BP Hydro Associates, (petitioner), by their attorney, Stephen E. Champagne of the firm of CURTIS THAXTER STEVENS BRODER & MICOLEAU, submitted to the department a petition for an order to intervene in the above described matter as authorized in Rule of Procedure IDAPA 37.01.01350 (Rule 350).

After reviewing said protestants' original protests and said petitioner's petition, it is found that the petitioner has shown sufficient interest in the matter without unduly broadening the issues.

ORDER

IT IS THEREFORE HEREBY ORDERED that the petition of BP Hydro Associates requesting intervention in any conference and/or hearing scheduled by the department in connection with the above captioned matter is GRANTED.

Dated this 24th day of June, 1997.



Allen Merritt
Hearing Officer

CERTIFICATE OF MAILING

I hereby certify that on the 24th day of June, 1997, a true and correct copy of the foregoing Order Granting Petition to Intervene was forwarded with all required charges prepared, by regular U.S. Mail to the parties listed:

Mary A. Baldwin
Secretary

GARR WAYMENT CHAIRMAN
SOUTHWEST IRRIGATION DIST
PO BOX 668
BURLEY ID 83318

WILLIAM A PARSONS ESQ
PARSONS SMITH STONE & FLETCHER
PO BOX 910
BURLEY ID 83318

MARTI L BRIDGES
WATER POLICY DIRECTOR
IDAHO RIVERS UNITED
PO BOX 633
BOISE ID 83701

CARL H NELLIS SUPERVISOR
IDAHO DEPT FISH & GAME
PO BOX 428
JEROME ID 83338

ROCK CREEK JOINT VENTURE
C/O PATRICK D BROWN ESQ
HEPWORTH LEZAMIZ & HOHNHORST
PO BOX 389
TWIN FALLS ID 83303-0389

BP HYDRO ASSOCIATES
C/O STEPHEN E CHAMPAGNE ESQ
CURTIS THAXTER STEVENS
BRODER & MICOLEAU
PO BOX 7320
PORTLAND ME 04112-7320

CURTIS THAXTER STEVENS BRODER & MICOLEAU LLC
ATTORNEYS AT LAW

ONE CANAL PLAZA, P.O. BOX 7320, PORTLAND, ME 04112-7320 / TEL: 207-774-9000 FAX: 207-775-0612

Stephen E. Champagne
sec@curthax.com

185 STATE STREET
P.O. BOX 5307
AUGUSTA, ME 04332
TEL: 207-626-0388
FAX: 207-626-3052

June 12, 1997

Idaho Dept. of Water Resources
1341 Filmore Street
Suite 200
Twin Falls, ID 83301
Attn: Allen Merrit

JUN 16 1997

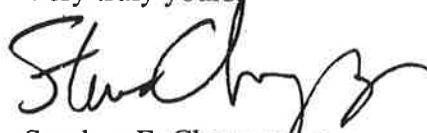
Department of Water Resource
Southern Region

RE: Southwest Irrigation District Permit Application #47-08409

Dear Mr. Merrit:

Enclosed please find a check in the amount of \$25.00 for the filing fee which we neglected to include in submitting the Protest and Petition for Late Intervention of BP Hydro Associates in the above-referenced matter. Thank you for your attention to this matter.

Very truly yours,


Stephen E. Champagne

Enclosure

CURTIS THAXTER STEVENS BRODER & MICOLEAU LLC

ATTORNEYS AT LAW

ONE CANAL PLAZA • P.O. BOX 7320

PORTLAND, MAINE 04112-7320

TEL (207) 775-2361

FAX (207) 775-0612

AUGUSTA OFFICE

185 STATE STREET

P.O. BOX 5307

AUGUSTA, ME 04332-5307

TEL (207) 626-0388

FAX (207) 626-3052

SIDNEY W. THAXTER (1914-1977)

KENNETH M. CURTIS

ROBERT E. STEVENS

SIDNEY ST. F. THAXTER

JAMES N. BRODER

CHARLES J. MICOLEAU

JOHN W. BERNOTAVICZ

BRUCE R. JOHNSON

MICHAEL B. PEISNER

D. MICHAEL FRINK

KIMBALL L. KENWAY

LAWRENCE C. WALDEN

JOHN D. GLEASON

STEPHEN E. CHAMPAGNE

DAVID P. SILK

MAURICE A. SELINGER, III

CHRISTIAN T. CHANDLER

JAMES L. COSTELLO

of counsel

WALTER E. COREY, III

JANET C. McCAA

June 4, 1997

RECEIVED
No Fee
JUN 09 1997

Department of Water Resources
Southern Region

BY FEDERAL EXPRESS

Karl Dreher

Idaho Dept. of Water Resources

Statehouse Mail

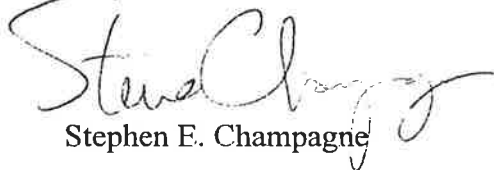
Boise, ID 83720

RE: Southwest Irrigation District Permit Application #47-08409

Dear Mr. Dreher:

Enclosed for filing in the above-referenced matter please find the Protest and Petition for Late Intervention submitted on behalf of BP Hydro Associates. Please feel free to contact me if you have any questions or comments.

Very truly yours,


Stephen E. Champagne

Enclosure

cc: Donald Jarrett, CHI Western Operations, Inc.
Marti L. Bridges, Water Policy Director
Director, Dept. of Water Resources ✓
Lair Lucas, Land and Water Fund of the Rockies
Southwest Irrigation District

Receipt #5020302
6/16/97
MB

Stephen E. Champagne, Esq.
Curtis Thaxter Stevens Broder & Micoleau LLC
One Canal Plaza, 10th Floor
P.O. Box 7320
Portland, ME 04112-7320

Donald Jarrett
CHI Western Operations, Inc.
111 West North Bend Way
P.O. Box 1029
North Bend, WA 98045

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

IN THE MATTER OF APPLICATION)	PROTEST AND PETITION FOR
FOR PERMIT TO APPROPRIATE)	LATE INTERVENTION
WATER, RIGHT NO. 47-08409)	
IN THE NAME OF SOUTHWEST)	
IRRIGATION DISTRICT OF)	
BURLEY, IDAHO		

I. INTRODUCTION

This Protest and Petition for Late Intervention is respectfully submitted on behalf of BP Hydro Associates. BP Hydro Associates, an Idaho general partnership, ("BP Hydro") is the holder of Permit No. 47-7771 pursuant to which BP Hydro has been granted the right to appropriate 202 cubic feet per second ("CFS") of water for its hydroelectric project located on Rock Creek, a tributary of the Snake River. Of the 202 CFS of water, 200 CFS is used on a non-consumptive basis by BP Hydro to generate hydroelectric power, 1 CFS is reserved for industrial purposes and 1 CFS is reserved for fire protection. BP Hydro's permit was initially approved September 15, 1982 and the hydroelectric project has been in operation since April, 1989. The terms and conditions of any permit which may be issued to the Southwest Irrigation District ("SID") will have a direct and substantial impact on the interests of BP Hydro.

II. MOTION FOR LATE INTERVENTION

BP Hydro hereby moves for permission for late intervention in this proceeding based on the following facts. BP Hydro has been a permitted user of the waters of Rock Creek since 1989. Issuance of the permit requested by SID will have a direct negative impact on BP Hydro. BP Hydro never received formal notification of the Application for Permit submitted by SID and only learned of its application as a result of conversations with the Idaho Department of Fish and

Game in mid-May, 1997. BP Hydro has taken immediate steps to submit this Protest and Petition in a timely manner upon learning of the proceeding. Granting BP Hydro's motion for late intervention will not disrupt this proceeding, unduly prejudice existing parties or unduly broaden the issues in this matter. Rather, it is in the best interest of all parties that BP Hydro be permitted to intervene so that all relevant issues may be properly considered by the Director.

III. PROTEST

As noted previously, BP Hydro's permit was issued in 1982. Since that time BP Hydro has invested considerable time, effort and finances to develop the Rock Creek II Hydroelectric Project in an environmentally sound manner. BP Hydro has installed fish screens and a fish ladder to allow upstream and downstream passage to preserve and enhance the resident fish population. BP hydro has undertaken extensive plantings and landscaping to control erosion and reduce sediment in Rock Creek. BP Hydro has made these investments in the context of its operation of a hydroelectric facility which relies on the non-consumptive use of water flows to maximize the generation of electricity in an environmentally sound manner.

SID's proposed consumptive use of 40 CFS of water will negatively impact BP Hydro's efforts to date in two ways. First, it will have a negative impact on the resident fish population which BP Hydro has gone to great expense to protect through the measures described above. Specifically, reducing creek flows by 40 CFS during the proposed time period of November 1 to March 1 will reduce fish habitat substantially. This will obviously set back the efforts which the State of Idaho and BP Hydro have undertaken to enhance the fish populations in this area.

Second, based on our past experience, SID's proposed consumptive use of water will reduce BP Hydro's ability to generate power by up to 80% as compared to historical generations during SID's proposed period of use. The economic repercussions to BP Hydro are obvious.

SID's proposed use will likely have two additional adverse impacts. First it will have an adverse impact on recreational fishing opportunities. Second, it will have a negative impact on the local economy since less fishing means fewer tourist dollars. In addition, because of the lack of water during the time SID proposes to withdraw from Rock Creek, BP Hydro will likely have to reduce its local work force.

IV. CONCLUSION

In conclusion, BP hydro respectfully requests that the Southwest Irrigation District's application for a permit to appropriate water from Rock Creek be denied because granting the permit is not in the public interest, will have a negative impact on the local economy, will be destructive of fish habitat and recreational opportunities and will inequitably harm BP Hydro Associates. BP Hydro further requests that a public hearing be scheduled to consider the negative impacts which will result from issuance of the requested permit and that use of the requested water right be denied until such hearing occurs.

Stephen Champagne of Curtis Thaxter Stevens Broder & Micoleau, LLC is designated counsel and Donald P. Jarrett is designated representative. A copy of all correspondence should be mailed to each of them.

Respectfully submitted,

Dated June 4, 1997



Stephen E. Champagne, Esq.
Attorney for BP Hydro Associates

I hereby certify that I have this 4th day of June 1997, served the foregoing Protest and Petition for Late Intervention upon all known parties of record in this proceeding by mailing a copy thereof, properly addressed with postage prepaid to:

Marti L. Bridges
Water Policy Director
Idaho Rivers United
P.O. Box 633
Boise, ID 83701

Director
Dept. of Water Resources
Southern Region
1341 Fillmore St., Ste 200
Twin Falls, ID 83301

Laird Lucas
Land and Water Fund of the Rockies
P.O. Box 1612
Boise, ID 83701

Southwest Irrigation District
Box 668
Burely, ID 83318

F:\WPDOCS\SEC\16511\ROCKCREE\PLEADING.DOC

MAILING LIST FOR APP 47-08409

Applicant:

GARR WAYMENT CHAIRMAN
SOUTHWEST IRRIGATION DIST
PO BOX 668
BURLEY ID 83318

Legal Counsel for applicant:

WILLIAM A PARSONS ESQ
PARSONS SMITH STONE & FLETCHER
PO BOX 910
BURLEY ID 83318

Protestants:

MARTI L BRIDGES
WATER POLICY DIRECTOR
IDAHO RIVERS UNITED
PO BOX 633
BOISE ID 83701

CARL H NELLIS SUPERVISOR
IDAHO DEPT FISH & GAME
PO BOX 428
JEROME ID 83338

Intervenors:

ROCK CREEK JOINT VENTURE
C/O PATRICK D BROWN ESQ
HEPWORTH LEZAMIZ & HOHNHORST
PO BOX 389
TWIN FALLS ID 83303-0389

BP HYDRO ASSOCIATES
C/O STEPHEN E CHAMPAGNE ESQ
CURTIS THAXTER STEVENS
BRODER & MICOLEAU
PO BOX 7320
PORTLAND ME 04112-7320



IDAHO DEPARTMENT
OF HEALTH AND WELFARE

DIVISION OF
ENVIRONMENTAL QUALITY

601 Pole Line Road, Suite 2, Twin Falls, ID 83301-3035, (208) 736-2190

Philip E. Batt, Governor

June 24, 1997

RECEIVED

JUN 25 1997

Department of Water Resources
Southern Region

Allen Merritt
Idaho Department of Water Resources
1341 Fillmore St., Suite 200
Twin Falls, ID 83301

Re: Water Right Application No. 47-08409 in the Name of Southwest Irrigation District to
Appropriate Waters From Rock Creek, Twin Falls County, Idaho

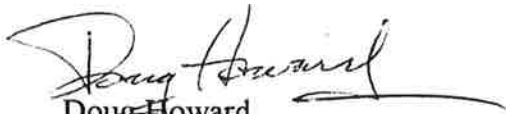
Dear Mr. Merritt:

The Division of Environmental Quality (DEQ) submits the following comments related to the above water right application submitted by Southwest Irrigation District.

The reach of Rock Creek directly below the proposed diversion by Southwest Irrigation District has been identified as a 303(d) listed stream and as a result of this designation does not currently meet Idaho Water Quality Standards. Diversions that result in flow alterations to Rock Creek can result in additional adverse impact on water quality. Diversion activities shall not impair beneficial uses of the water body and when a total maximum daily load (TMDL) for the stream is established ongoing activities shall ensure that water quality will be protected.

Should any question arise please contact Darren Brandt in our Twin Falls Regional Office at 736-2190.

Sincerely,


Doug Howard
Regional Administrator

DH/MJM/ml

cc: Jim Johnston, Assistant Administrator/Regional Administrator, DEQ-IFRO
Larry Koenig, Assistant Administrator, DEQ, CO
Darren Brandt, Regional Manager-Water Quality, DEQ-TFRO

SEP 26 1997

FORM 202
2/96

RECEIVED

Ident. No. 47-08409

FEB 07 1997

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

FEB 05 1997

Department of Water Resources
Southern Region

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

Department of Water Resources

1. Name of Applicant SOUTHWEST IRRIGATION DISTRICT Phone 208-678-8382
Mailing address Box 668 - Burley, Idaho 83318
2. Source of water supply Rock Creek which is a tributary of Snake River
3. Location of point of diversion is Township 12 S. Range 18 E Sec. 1, in the SW NW 1/4, SW NW 1/4, Govt. Lot , B.M., Twin Falls County,
additional points of diversion if any:
4. Water will be used for the following purposes:
Amount 40 cfs for GW RECHARGE injection purposes from Nov. 1 to Mar. 1 (both dates inclusive)
(cfs or acre-feet per annum)
Amount for purposes from to (both dates inclusive)
(cfs or acre-feet per annum)
Amount for purposes from to (both dates inclusive)
(cfs or acre-feet per annum)
Amount for purposes from to (both dates inclusive)
(cfs or acre-feet per annum)
Amount for purposes from to (both dates inclusive)
(cfs or acre-feet per annum)
Amount for purposes from to (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated is (a) 40 cfs and/or (b)
cubic feet per second acre feet per annum
6. Proposed diverting works:
a. Describe type and size of devices used to divert water from the source Ditch, pipe, bubble screen, well injection apparatus
b. Height of storage dam feet; active reservoir capacity acre-feet; total reservoir capacity acre-feet
c. Proposed well diameter is inches; proposed depth of well is feet
d. Is ground water with a temperature of greater than 85°F being sought?
e. If well is already drilled, when? ; Drilling firm
Well was drilled for (well owner) ; Drilling Permit No.
7. Time required for completion of works and application of water to proposed beneficial use is 1 years (minimum 1 year)
8. Description of proposed uses (if irrigation only, go to item 9):
a. Hydropower; show total feet of head and proposed capacity in KW.
b. Stockwatering; list number and kind of livestock.
c. Municipal; show name of municipality.
d. Domestic; show number of households.
e. Other; describe fully. Injection

WITHDRAWN

Changes per public consultation by Kennedy Brown 11/1/97

9. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	N E				N W				S W				S E				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11S	19E	31			E														
11S	19E	30											E						
11S	19E	29					E						Lot 4						

Total number of acres to be irrigated _____

10. Describe any other water rights used for the same purposes as described above. _____

11. a. Who owns the property at the point of diversion? Marian Crockett Estate

b. Who owns the land to be irrigated or place of use? _____

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: Permissive use by well owners

12. Remarks: This permit is for Southwest Irrigation District to continue its recharge project in the vicinity of the lands where the permit is sought to be approved.

13. MAP OF PROPOSED PROJECT REQUIRED - Attach an 8½"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

BE IT KNOWN that the undersigned hereby makes this application for permit to appropriate the public waters of the State of Idaho as herein set forth.

SOUTHWEST IRRIGATION DISTRICT

[Signature]
Signature of Applicant (and title, if applicable)

Received by Net Date 2-5-97 Time _____ Preliminary check by [Signature] Date 2-5-97
 Fee \$ 60.00 Received by Net # 2037941 Published in Idaho News Date 4/1/97
 Publication prepared by mb Date 3/26/97 Published in Lewis & Clark Date 4/1/97
 Publication approved mb Date 4/1/97 Lewis & Clark

TRANSMISSION VERIFICATION REPORT

TIME : 11/12/1997 13:44
NAME : IDWR SOUTHERN REGION
FAX : 2087363037
TEL : 2087363033

DATE, TIME
FAX NO./NAME
DURATION
PAGE(S)
RESULT
MODE

11/12 13:44
97360041
00:00:21
01
OK
STANDARD
ECM

FAX ADM's letter 26th SEPT 97
TO SHARON @ ROSHOLT, ROBERTSON, TUCKER...



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

September 26, 1997

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

WILLIAM A PARSONS ESQ
PARSONS SMITH STONE & FLETCHER
PO BOX 910
BURLEY ID 8331

Re: Application for Permit No. 47-08409

Dear Mr. Parsons:

This office acknowledges receipt of your request to withdraw the above referenced application for permit on behalf of the Southwest Irrigation District. The protestants have been informed of this action.

This action classifies the Application as null, void and of no further consideration by the Idaho Department of Water Resources.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Allen D. Merritt, P.E.
Regional Manager

AM:MB

CC:
GARR WAYMENT CHAIRMAN
SOUTHWEST IRRIGATION DIST
PO BOX 668
BURLEY ID 83318



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

September 26, 1997

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

MARTI L BRIDGES
WATER POLICY DIRECTOR
IDAHO RIVERS UNITED
PO BOX 633
BOISE ID 83701

Re: Application for Permit No. 47-08409-Southwest Irrigation District

Dear Protestant(s):

This office has received a letter of withdrawal of the above referenced application.

This action classifies the above numbered Application as null, void and of no further consideration by the Idaho Department of Water Resources; therefore, no further contact with you is anticipated regarding your protest.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Allen D. Merritt, P.E.
Regional Manager

AM:MB



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

September 26, 1997

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

CARL H NELLIS SUPERVISOR
IDAHO DEPT FISH & GAME
PO BOX 428
JEROME ID 83338

Re: Application for Permit No. 47-08409-Southwest Irrigation District

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Allen D. Merritt, P.E.
Regional Manager

AM:MB



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

September 26, 1997

**PHILIP E. BATT
GOVERNOR**

**KARL J. DREHER
DIRECTOR**

ROCK CREEK JOINT VENTURE
C/O PATRICK D BROWN ESQ
HEPWORTH LEZAMIZ & HOHNHORST
PO BOX 389
TWIN FALLS ID 83303-0389

Re: Application for Permit No. 47-08409-Southwest Irrigation District

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Very truly yours,

Allen D. Merritt, P.E.
Regional Manager

AM:MB



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

September 26, 1997

**PHILIP E. BATT
GOVERNOR**

**KARL J. DREHER
DIRECTOR**

BP HYDRO ASSOCIATES
C/O STEPHEN E CHAMPAGNE ESQ
CURTIS THAXTER STEVENS
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PO BOX 7320
PORTLAND ME 04112-7320

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Very truly yours,

Allen D. Merritt, P.E.
Regional Manager

AM:MB

PARSONS, SMITH, STONE & FLETCHER, LLP

WILLIAM A. PARSONS
RICHARD K. SMITH
RANDOLPH C. STONE
WM. KENT FLETCHER

ATTORNEYS AT LAW
137 WEST 13TH STREET
P. O. BOX 910
BURLEY, IDAHO 83318

TELEPHONE
(208) 678-8382
FAX NO.
(208) 678-0146

September 24, 1997

RECEIVED

SEP 25 1997

Allen Merritt
State of Idaho
Department of Water Resources
1341 Fillmore Street - Suite 200
Twin Falls, Idaho 83301

Department of Water Resources
Southern Region

RE: Southwest Irrigation District
Application for Permit 47-08409

Dear Allen:

You are correct in your September 23, 1997 letter that the directors of Southwest Irrigation District have opted to withdraw the application for the permit because of all the controversy and the protests.

Southwest Irrigation District does not have the resources with which to fight this battle. The permit would not have damaged any of the Protestants, however, that would have to be proved and the district is not in a financial resource position to do so.

The permit would have been for a proper application of beneficial use of water but that may be left to another day.

You may advise the Protestants that the application is being withdrawn.

Very truly yours,


William A. Parsons

WAP:rt

cc: Randy Brown
Grant Wyatt
Garr Wayment

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PETITION TO)
INTERVENE IN THE PROTESTED)
APPLICATION FOR PERMIT NO.)
47-08409 IN THE NAME OF)
SOUTHWEST IRRIGATION DISTRICT)

**ORDER GRANTING
PETITION TO
INTERVENE**

On February 5, 1997, Southwest Irrigation District (applicant) filed with the Department of Water Resources (department) an application for permit. On April 9 and 15, 1995 respectively timely protests against the application were received from Idaho Rivers United and Idaho Department of Fish & Game raising all issues described in §42-222 against the approval of the application.

On June 4, 1997-Rock Creek Joint Venture, (petitioner), by their attorney, Patrick Brown of the firm of HEPWORTH LEZAMIZ & HOHNHORST, submitted to the department a petition for an order to intervene in the above described matter as authorized in Rule of Procedure IDAPA 37.01.01350 (Rule 350).

After reviewing said protestants' original protests and said petitioner's petition, it is found that the petitioner has shown sufficient interest in the matter without unduly broadening the issues.

ORDER

IT IS THEREFORE HEREBY ORDERED that the petition of Rock Creek Joint Venture requesting intervention in any conference and/or hearing scheduled by the department in connection with the above captioned matter is GRANTED.

Dated this 12th day of June, 1997.



Allen Merritt
Hearing Officer

CERTIFICATE OF MAILING

I hereby certify that on the 12th day of June, 1997, a true and correct copy of the foregoing Order Granting Petition to Intervene was forwarded with all required charges prepared, by regular U.S. Mail to the parties listed:

Mary A. Baldwin
Secretary

GARR WAYMENT CHAIRMAN
SOUTHWEST IRRIGATION DIST
PO BOX 668
BURLEY ID 83318

WILLIAM A PARSONS ESQ
PARSONS SMITH STONE & FLETCHER
PO BOX 910
BURLEY ID 83318

MARTI L BRIDGES
WATER POLICY DIRECTOR
IDAHO RIVERS UNITED
PO BOX 633
BOISE ID 83701

CARL H NELLIS SUPERVISOR
IDAHO DEPT FISH & GAME
PO BOX 428
JEROME ID 83338

ROCK CREEK JOINT VENTURE
C/O PATRICK D BROWN ESQ
HEPWORTH LEZAMIZ & HOHNHORST
PO BOX 389
TWIN FALLS ID 83303-0389

MEMORANDUM

TO: Application for Permit 47-08409

FROM: Corey Skinner *CS*

DATE: May 8th, 1997

SUBJECT: Application Inquiry

This day, Del Higbe of CHI Mountain States Operations ("CHI") called inquiring about Application for Permit 47-08409. According to Mr. Higbe, "CHI" operates the Rock Creek #2 hydropower plant just above Rock Creek's confluence with the Snake River. Mr. Higbe said that he had read the news article that appeared in today's edition of the Times News (copy in file) and wanted to know about the application. I took Mr. Higbe's number and went to find the application file.

734-0551

After finding the file, I called Mr. Higbe back. I informed him that the last date for submittal of protests was April 21st. I told him that the application had been protested by Idaho Rivers United and the Idaho Department of Fish and Game. Mr. Higbe said that the Fish and Game had sent him a copy of application 47-08409 earlier today. Mr. Higbe expressed his displeasure with the proposed application, stating that they ("CHI") had a water right out of Rock Creek for 200 cfs for year round hydropower uses. He was afraid that if the application was approved it would infringe on their water right(s). I mentioned that the application would have a 1997 priority and that in Idaho, water is distributed by the "first in time, first in right" principle. I also suggested that he may want to contact the other protestants to possibly assist them in their protest. I gave him the names and addresses of Idaho Rivers United and the Idaho Department of Fish & Game from the file.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

April 22, 1997

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

WILLIAM A PARSONS ESQ
PARSONS SMITH STONE & FLETCHER
PO BOX 910
BURLEY ID 83318

RE: APPLICATION FOR PERMIT NO. 47-08409

Dear Mr. Parsons:

Enclosed are copies of protests filed against the above referenced application.

The Department suggests you contact the protestant(s) directly to determine the exact nature of the protest(s) and, if possible, to resolve the matter without action by the Department.

The attachment to this letter describes the issues which the Department must consider in taking action on an application. It also gives a brief description of the conference and hearing procedure followed by the Department in resolving protested applications.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Allen D. Merritt, P.E.
Southern Region Manager

AM:MB

Enclosure(s)

cc: GARR WAYMENT CHAIRMAN
SOUTHWEST IRRIGATION DIST
PO BOX 668
BURLEY ID 83318

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR PERMIT ISSUES

Section 42-203A, Idaho Code, requires the department to consider the following issues in connection with an application for permit:

1. Will the proposed appropriation injure other water rights?
2. Is the water supply sufficient for the purpose for which it is sought to be appropriated?
3. Was the application made in good faith or for delay or speculative purposes?
4. Does the applicant have sufficient financial resources with which to complete the proposed project?
5. Is the proposed appropriation in the local public interest, which is defined as the affairs of the people in the area directly affected by the proposed use?
6. Is the proposed use contrary to conservation of water resources within the state of Idaho?

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, 3, 4, and 6 above and must provide evidence for the department to evaluate these criteria. The initial burden of proof on issue 5 above lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a pre-hearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement or make settlement offers, schedule hearings, establish procedure at hearing and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. The department may issue a "pre-conference statement order" which requires response to the inquiries.

HEARING

The department will tape record the hearing. Copies of a hearing tape are available upon request and the payment of the cost of reproducing the tape. The hearing likely will be conducted by a hearing officer appointed by the Director rather than by the Director himself. If so, the hearing officer will prepare a recommended order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director. Parties may by written stipulation waive the right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer. As part of the conference a date may be set by which exchange of exhibits and witness lists must occur.

EFFECT OF FAILURE TO APPEAR AT A CONFERENCE OR HEARING

Failure to appear at the time and place set for a conference or hearing by the applicant or protestant(s) may allow the department to dismiss without prejudice the protest(s) or the application. Any and all cost incurred by reason of such non-appearance may be assessed against such non-appearing party.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within (10) days prior to the hearing.



State of Idaho

DEPARTMENT OF WATER RESOURCES

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Phone: (208) 736-3033 FAX: (208) 736-3037

April 22, 1997

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

CARL H NELLIS SUPERVISOR
IDAHO DEPT FISH & GAME
PO BOX 428
JEROME ID 83338

RE: APPLICATION FOR PERMIT NO. 47-08409

Dear Protestant(s):

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant with the suggestion that he contact you directly to determine the exact nature of the protest and, if possible, to resolve the matter without action by the Department.

The attachment to this letter describes the issues which the Department must consider in taking action on an application. It also gives a brief description of the conference and hearing procedure followed by the Department in resolving protested applications.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Allen D. Merritt, P.E.
Southern Region Manager

AM:MB
Enclosure(s)



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

April 22, 1997

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

MARTI L BRIDGES
WATER POLICY DIRECTOR
IDAHO RIVERS UNITED
PO BOX 633
BOISE ID 83701

RE: APPLICATION FOR PERMIT NO. 47-08409

Dear Protestant(s):

Your protest against the approval of the above referenced application has been received and a copy has been sent to the applicant with the suggestion that he contact you directly to determine the exact nature of the protest and, if possible, to resolve the matter without action by the Department.

The attachment to this letter describes the issues which the Department must consider in taking action on an application. It also gives a brief description of the conference and hearing procedure followed by the Department in resolving protested applications.

If you have any questions or if this office can be of further assistance, please feel free to contact us.

Very truly yours,

Allen D. Merritt, P.E.
Southern Region Manager

AM:MB
Enclosure(s)



RECEIVED

APR 15 1997

IDAHO FISH & GAME

Magic Valley Region
868 East Main • P.O. Box 428
Jerome, Idaho 83338
(208) 324-4350
Fax (208) 324-1160

Department of Water Resources
Southern Region

Philip E. Batt/Governor
Stephen P. Mealey/Director

April 10, 1997

Mr. Allen Merritt
Idaho Dept. of Water Resources
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

RE: Water Right #47-08409 Southwest Irrigation District - Rock Creek

Dear Allen,

We would like to protest water right Application for Permit #47-08409 for 40 cfs. of water during the time period November 1 through March 1, from Rock Creek, a tributary to the Snake River. The reason for the protest is the appropriation will be detrimental to fish and wildlife, including their associated habitat, and therefore, is not in the best interest of the general public of the State of Idaho.

Rock Creek supports diverse populations of fish and riparian dependent wildlife. Survival of these species, especially the fish populations, are dependent on adequate winter flows to maintain biological parameters. Removal of 40 cfs. from Rock Creek will result in winter flows which will not support dissolved oxygen levels and flowing water in pools and interstitial spaces which are utilized by fish and other aquatic organisms for over-wintering habitat. The 40 cfs. flow reduction, which we estimate represents between 60 and 80% of the average winter streamflow at that location, will also result in a substantial reduction in overall habitat available for fish from the diversion point to the Snake River.

Thank you for your consideration of this matter. If you have further questions please contact Dave Parrish, Natural Resource Biologist at this office.

Sincerely,

Carl H. Nellis
Magic Valley Regional Supervisor

cc: IDFG-NRPB (Robertson)
IDFG-Partridge
Id. Attorney Gen. (Just)
Southwest Irrigation District

Receipt SO 20027
4/15/97
MB

Marti L. Bridges
Water Policy Director
Idaho Rivers United
P.O. Box 633
Boise, ID 83701

RECEIVED

APR 09 1997

Department of Water Resources
Southern Region

April 7, 1997

208-343-7481

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

IN THE MATTER OF APPLICATION)	
FOR PERMIT TO APPROPRIATE)	PROTEST AND PETITION TO
WATER, RIGHT NO. 47-08409)	INTERVENE
IN THE NAME OF SOUTHWEST)	
IRRIGATION DISTRICT OF)	
BURLEY, IDAHO)	

Idaho Rivers United is an Idaho non-profit corporation representing citizens in improving river and stream management in keeping with public interest and public trust considerations. Our members use and enjoy the Snake River and its tributaries in the affected watershed and stream reaches. Idaho Rivers United has a direct and substantial interest in the above proceedings in that many of our members could be negatively impacted by the proposed appropriation of water for recharge purposes. Our members have historically used and enjoyed the Snake River and its tributaries for fishing, recreation, wildlife viewing, aesthetics, hiking and water quality.

The Idaho Department of Water Resources has promulgated rules and regulations for the conjunctive management of interrelated surface and ground water sources within the Eastern Snake Plain Aquifer. It would be premature to issue this water right without those rules and regulations being taken into consideration, and with particular attention given to local public interest criteria.

We are concerned that taking water from Rock Creek will adversely impact flows by de-watering the stream, destroy fishery and wildlife habitat and damage riparian areas. November 1st to March 1st is critical rainbow trout spawning and rearing. Anecdotal evidence indicates bull trout exist in the upper reaches of the drainage. Rock Creek has had hundreds of thousands of federal dollars spent to clean up its water quality. Rock Creek is also proposed mitigation for the proposed Auger Falls hydroelectric project. Any further allocation of water from Rock Creek

Receipt # 50 20009
4/4/97 - MB

would make mitigation null and void, would further impact water quality, and would make less water available for existing hydropower generation on the mainstem Snake River.

In summary, we believe that issuance of this water right is not in the "local public interest" under IC 42-203A(5); is contrary to the conservation of water resources within the State of Idaho under IC-42-203A(5); the water supply is insufficient under IC 42-203A(5) and issuance would violate the Clean Water Act.

Idaho Rivers United would like to request that a public hearing be scheduled to consider the negative public impacts and loss of beneficial uses that this proposed water right would create. We recommend denial of this water right until such hearing occurs. Laird Lucas of the Land and Water Fund of the Rockies is designated counsel. All correspondence should be mailed to him, as well as Idaho Rivers United.

Sincerely,

Dated April 7, 1997

Marti L Bridges

Marti L. Bridges
Water Policy Director

copies mailed to:

Karl Dreher
Idaho Dept. of Water Resources
Statehouse Mail
Boise, Idaho 83720

Director
Dept. of Water Resources
Southern Region
1341 Fillmore St., Ste 200
Twin Falls, ID 83301

Laird Lucas
Land and Water Fund of the Rockies
P.O. Box 1612
Boise, ID 83701

Southwest Irrigation District
Box 668
Burely, ID 83318