

ORIGINAL

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Attorney for Idaho Power Company

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DEPARTMENT OF
WATER RESOURCES

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

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 83566

WITHDRAWAL OF PROTEST

In the name of Marilyn Mowrey-Lambert

COMES NOW, Idaho Power Company (the "Protestant"), by and through its attorneys of record, Barker Rosholt & Simpson LLP, and hereby withdraws its Protest to Application for Transfer No. 83566.

DATED this 25th day of November, 2019.

BARKER ROSHOLT & SIMPSON LLP



John K. Simpson
Attorney for Idaho Power Company



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& Simpson LLP**

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November 25, 2019

Idaho Department of Water Resources
Idaho Water Center
322 East Front Street, Ste. 648
Boise, Idaho 83702-7371

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DEPARTMENT OF
WATER RESOURCES

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DEC 05 2019

Department of Water Resources
Eastern Region

Re: Application for Transfer No. 83566, in the name of Marilyn Mowrey-Lambert

Dear Clerk:

Enclosed for filing, please find one original and one copy of a *Withdrawal of Protest* in the above referenced matter. Please return the copy with your file stamp in the enclosed postage prepaid envelope.

Please contact me if you have any questions. Thank you for your assistance.

Very truly yours,

BARKER ROSHOLT & SIMPSON LLP

Jessica L. Witt, Assistant to
John K. Simpson

/jlw

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of November, 2019, I served the original of the foregoing **WITHDRAWAL OF PROTEST**, by hand-delivering or depositing same in the U.S. Mail, postage prepaid, as indicated, addressed to the following:

Idaho Department of Water Resources
Idaho Water Center
322 East Front Street
Boise, Idaho 83702-7374

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email

Marilyn Mowrey-Lambert
2524 N. 3300 W
Arco, Idaho 83213

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile
☐ Email



John K. Simpson

Cefalo, James

From: Cefalo, James
Sent: Monday, October 28, 2019 9:24 AM
To: 'John Simpson'
Cc: Fritz, Cooper
Subject: Application for Transfer 83566 (Lambert)

John,

We recently received the protest you filed on behalf of Idaho Power Company against Application for Transfer 83566 in the name of Marilyn Lambert. The primary issue of protest appears to be that one of the water rights included in the transfer application did not include the proper trust water conditions.

Water right 34-7233 bears a priority date of March 6, 1986 and does not include any of the standard trust water conditions. At first glance, it seemed that the trust water conditions must have been inadvertently left off of the water right at licensing. Upon closer inspection, however, we discovered that the water right is not a trust water right, but instead benefits from full subordination under the Swan Falls Agreement.

The Swan Falls Agreement states that Idaho Power Company's rights are subordinate to water users who have beneficially used water prior to October 1, 1984 and have filed an application for permit prior to June 30, 1985.

Application for Permit 34-7233 was filed on August 15, 1979. The permit was approved on October 16, 1979. Proof of beneficial use was due by October 1, 1984. Proof was not filed in a timely manner. The permit lapsed. The permit holder filed late proof of beneficial use on March 6, 1986. The permit holder demonstrated (through power records and infrastructure receipts) that water had been beneficially used under Permit 34-7233 prior to the proof due date (Oct 1, 1984). The Department reinstated Permit 34-7233, but advanced the priority date to the date proof was filed (March 6, 1986).

Water right 34-7233 satisfies both requirements to receive full subordination protection under the Swan Falls Agreement. Water was beneficially used prior to October 1, 1984. Coincidentally, that was the proof due date for Permit 34-7233. The only way water right 34-7233 could be licensed was if water had been beneficially used prior to October 1, 1984. Further, the application for permit was filed in 1979, well before the June 30, 1985 deadline.

I hope this summary of the history of water right 34-7233 satisfies your issues of protest. If not, let me know and we will move forward with scheduling a pre-hearing conference.

James Cefalo
Regional Manager
IDWR Eastern Region
(208) 525-7161