

MEMORANDUM

DATE: October 16, 2015

TO: Jeff Peppersack



FROM: Shelley W. Keen

RE: Update to IDWR's Trust Water Conditions

When issuing new permits in the Swan Falls Trust Water area, IDWR has the following objectives relative to Idaho's obligation to enforce the minimum stream flows in the Snake River at Murphy Gage:

1. Identify the right as diverting water in the Swan Falls Trust Water area (thus appropriating trust water).
2. Communicate and preserve the opportunity for a periodic (term) review of the right to re-evaluate the availability of water and the public interest.
3. Communicate to the right holder the potential for curtailment if the minimum stream flow water rights in the Snake River at Murphy Gage are not being satisfied. The curtailment obligation depends on which of the three following categories the water use falls within:
 - A. Unmitigated consumptive uses or mixes of unmitigated consumptive uses and nonconsumptive uses (These will be located mostly in Western Region between King Hill and Swan Falls. Mitigation to fully offset new depletions is not required in this area.)
 - B. Solely nonconsumptive uses
 - C. Mitigated consumptive uses or mixes of mitigated consumptive uses and nonconsumptive uses (These will be located mostly within the portion of the Trust Water area tributary to the Snake River between Milner and King Hill. The moratorium in this area prohibits new consumptive uses of water unless the depletion is fully mitigated.)

To meet the objectives identified above, I recommend replacing our current standard approval conditions with the following standard approval conditions:

For Objectives 1 and 2 – Use on all new appropriations of Swan Falls Trust Water, including consumptive uses, nonconsumptive uses, and mitigated consumptive uses.

This right is for the use of trust water, and it is subject to review <5> years after its initial approval (date of permit approval) to re-evaluate the availability of trust water for the authorized use and to re-evaluate the public interest criteria for reallocating trust water.

For Objective 3.A – Use on all new appropriations of Swan Falls Trust Water with consumptive uses, or mixes of consumptive and nonconsumptive uses, not subject to moratorium-related mitigation requirements.

When the minimum stream flow water rights in the Snake River at Murphy Gage are not being satisfied, the right holder shall cease diverting water for the consumptive uses authorized by this right.

For Objectives 3.B and 3.C – Use on all new Swan Falls Trust Water appropriations for nonconsumptive uses of water and consumptive uses subject to moratorium-related mitigation requirements.

Use of water pursuant to this right is either nonconsumptive or the right holder is required to provide ongoing mitigation to offset the depletion of water resulting from the use of this right. Regulation of this right to satisfy the minimum stream flow water rights in the Snake River at Murphy Gage shall not be required.

If this proposal were to be adopted, each new appropriation for Swan Falls Trust Water would have one condition addressing Objectives 1 and 2 and another condition addressing Objective 3.

This memo does not apply to de minimis rights. Conditions for de minimis rights will be addressed at a later date.