

MEMORANDUM

DATE: September 10, 2015

TO: Water Right Files 63-9206, 63-33329, and 63-33599

FROM: Shelley W. Keen *SWK*

RE: No annual volume limit necessary

Permits 63-9206, 63-33329, and 63-33599 authorize off-stream power generation using water diverted into the Boise Project canal system for irrigation and other purposes during the irrigation season. Beneficial Use Examination Rule 35.01.j.v exempts "on-stream, run-of-the-river, non-consumptive power generation uses" from annual volume limits. Water right licenses for off-stream power generation normally receive annual volume limits based on the beneficial use accomplished during the development period authorized by the permit.

Volume limits on off-stream hydropower rights are necessary to guard against enlargement in two scenarios. In the first scenario, water is diverted to an off-stream hydropower plant and then returned to the source stream downstream. If a junior on-stream hydropower plant were established between the point of diversion and the point of return for the off-stream plant, enlarging the volume diverted to the off-stream plant would injure the on-stream junior. In the second scenario, water used in the off-stream hydropower plant is not returned to the source stream. In that case, enlargement of the water diverted to the off-stream hydropower plant would injure any junior hydropower right diverted downstream from the point of diversion for the off-stream plant.

Rights 63-9206, 63-33329, and 63-33599 are examples of the second scenario described above. Therefore, IDWR would normally impose volume limits to prevent enlargement. However, because they are limited to using only water already diverted into the canals for other purposes, such as irrigation, there is no opportunity for these power producers to enlarge their diversions from the Boise River of their own volition under their own priority dates. Adding a volume limit would provide no safeguard, and it would serve only to restrict the right holder's opportunity to generate power. Therefore, no volume limit will be imposed on the licenses for Rights 63-9206, 63-33329, and 63-33599.