



State of Idaho

DEPARTMENT OF WATER RESOURCES

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GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

December 2, 2014

SHELLEY M DAVIS
BARKER ROSHOLT & SIMPSON LLP
PO BOX 2139
BOISE ID 83701-2139

RE: Petition for Reconsideration of Water Right License 61-7724

Dear Shelley:

The Department of Water Resources ("IDWR") has received the *Petition for Reconsideration* ("Petition") you submitted on behalf of Idaho Power Company in the matter of Water Right License 61-7724 ("license"). According to Rule 730.02.a of IDWR's Rules of Procedure (IDAPA 37.01.01), any *party* may petition for reconsideration of a preliminary order. Since Idaho Power Company was not a party to the contested case addressing Application 61-7724, it is not a party to the issuance of the license.¹ Therefore, IDWR cannot accept the petition as such.²

Nevertheless, IDWR has reviewed the suggestions in the petition to determine if the license should be changed on IDWR's motion pursuant to Rule 760 of IDWR's Rules of Procedure.

The key issue is that the license contains the following approval condition, which has been used on more than 500 water right licenses authorizing the use of trust water:

The right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and the re-evaluate the public interest.

Idaho Power Company asks IDWR to change the condition from its standard to:

The source of water diverted under this right is "Trust Water" which is identified in the 1984 Swan Falls Agreement and defined as surface and ground water tributary to the Snake River between Milner Dam and Swan Falls. Diversions under this right shall be subject to curtailment if such diversions would impact the established minimum stream flows of 3,900 cfs from April through October and 5,600 cfs from November through March at the Murphy gage. Further, this right

¹ IDWR notified Idaho Power Company of the issuance of License 61-7724 because it had information that Idaho Power Company may have a legal or contractual interest in the cogeneration portion of the developed water use.

² For entities who are not parties, Idaho Code § 42-1701A(3) affords any aggrieved person the right to request a hearing within 15 days.

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shall be subject to review by the Director consistent with the terms [sic] limits and trust water review imposed upon trust water rights issued by the State and arising out of the 1984 Swan Falls Agreement.

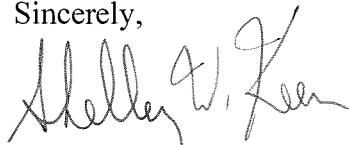
IDWR believes the condition already on the license conveys the same important component as the first sentence of the proposed modification – that the water right authorizes the diversion of trust water. Since the definition of trust water can be found in Rule 30 of the IDWR's Water Appropriation Rules (IDAPA 37.03.08), it is not necessary to paraphrase it on the license.

While IDWR understands the intention in the second sentence of the proposed modification to the condition, IDWR has some concerns about the specific language of the proposal. For example, the statement does not consider that the right holder may be able to mitigate for injury caused to the senior minimum stream flow water rights. Rather than change Right 61-7724, IDWR would like to discuss revised language on this subject that could be used on future water right permits and licenses for trust water. Meanwhile, should regulation of trust water rights become necessary to protect and ensure the minimum stream flow water rights at Murphy, IDWR stands ready, as always, to take appropriate action.

As for the last sentence of the suggested modification, IDWR does not propose to change the 20-year development opportunity stated when Permit 61-7724 ("permit") was issued in 1999 and restated on the license. The 20-year term will expire in mid-2019, which is less than five years from the present. Such a time frame will be soon enough to nearly coincide with IDWR's planned review of trust water appropriations without undermining the 20-year opportunity stated originally in the permit. In the meantime, IDWR has begun limiting new permits for trust water, when they can be issued, to 5-year terms.

Although IDWR does not plan to modify License 61-7724, we are willing, as noted above, to discuss specific language that may be applied to future permits and license issued for the appropriation of trust water. If you have any questions, please call me at 208-287-4947, or email me at shelley.keen@idwr.idaho.gov.

Sincerely,



Shelley W. Keen, Manager
Water Rights Section

cc: Idaho Fresh Pak Inc.
Brian G. Baalman and Sheri L. Baalman
Energy Operations Group