

Edl, Michele

From: Steve Harmsen [smh@att.net]
Sent: Tuesday, August 19, 2014 3:43 PM
To: Edl, Michele
Subject: Re: Permit 47-7702 held by HK Hydro LLC

Michele

I have sent a signed request and check out yesterday hope that this will take care of everything and thanks for giving this your personal attention.

Steve Harmsen
26 n State Street
Salt Lake City, Utah 84103
801 550 2300

On Thursday, August 14, 2014 4:32 PM, "Edl, Michele" <Michele.Edl@idwr.idaho.gov> wrote:

Mr. Harmsen,

It was a pleasure to speak with you this morning. Since our phone conversation, I have pursued the answers to a couple of your questions.

To answer your question about the status of the partial decree, I confirmed that the partial decree 47-7702 issued to HK Hydro still has permit status. It is still personal property, not real property.

You should have received the partial decree for 47-7702. That partial decree includes the following statements.

This right is conditioned upon completion of the appropriation in accordance with the statutory procedure for appropriation of water rights. This right remains subject to all conditions set for in the permit upon which this right is based, and will be subject to all conditions set forth in the license issued by IDWR upon completion of the statutory appropriation process.

The statutory appropriation process is the application, permitting, and licensing process. In short, the decree will not be the final word for 47-7702. HK Hydro needs to get a license.

As you know, I was assigned to understand the water use as it was developed under permit 47-7702, and to issue that license. In my review, I found that some of the elements had changed between the time that the permit closed and the time that SRBA commenced. I found that the source of the water and the use remained the same, but the place-of-use and the point-of-diversion had changed. That meant that before I could issue a license, I needed to get an amendment of the permit. You have received that application for amendment. I can't proceed with the license until you sign and return it with the fee.

You had a question about one of the conditions of approval on the application for amendment. The condition is director's review or term review condition. The statutory basis

of that condition is found here.

<http://www.legislature.idaho.gov/idstat/Title42/T42CH2SECT42-203B.htm>

Specifically,

(6) The director shall have the authority to subordinate the rights granted in a permit or license for power purposes to subsequent upstream beneficial depletionary uses. A subordinated water right for power use does not give rise to any claim against, or right to interfere with, the holder of subsequent upstream rights established pursuant to state law. The director shall also have the authority to limit a permit or license for power purposes to a term, which may be in the form of a fixed date or by reference to a federal energy regulatory commission (FERC) license or other authorization issued or contract executed, in connection with the power project.

I wrote the guidance memo which is used by IDWR personnel, assisting them with compliance to this statute. I would be happy to send an electronic copy of that memo to you.

The term on HK Hydro's permit 47-7702 will expire in January 1, 2017. For consistency, I applied the same review date to 47-7702 as had already been applied to HK Hydro's licensed right 47-7700.

Don't hesitate to call me back with additional questions.

Sincerely,
Michele Edl
208-287-4946