



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

June 18, 2013

COMMISSION SECRETARY
IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE ID 83720-0074

RE: Case No. PAC-E-13-06

Dear Commissioners:

I am responding to your May 31, 2013, Order No. 32822 notifying the Idaho Department of Water Resources ("IDWR") that PacifiCorp, dba Rocky Mountain Power filed an application for authority to sell its hydroelectric facility located at St. Anthony, Idaho. Water Right No. 21-12914 authorizes PacifiCorp to divert up to 700 cfs from the Henry's Fork of the Snake River to operate the hydroelectric facility.

Idaho Code § 42-1701(6) provides opportunity for IDWR to condition the sale of hydropower water rights to prevent injury to other water right holders. Because the record for Water Right No. 21-12914 indicates that it shares diversion works with the Egin Canal, it is important that any sale of the hydroelectric facility does not result in an operational change that interferes with delivery of irrigation water into the canal. My staff members have been informed by Water District 01 that the St. Anthony hydroelectric plant has been operated in a manner consistent with irrigation deliveries in the past. My staff members have also confirmed that Egin Bench Canals, Inc., officials are aware of the proposed sale and of your notice of telephonic hearing. They have not expressed any concerns to me about past operations of the hydroelectric facility, nor have any other water users. Therefore, I do not think the sale of the hydropower water right to St. Anthony Hydro will cause injury to other water right holders, and I do not propose to add conditions to the sale of the water right.

Please note that when the water right ownership change occurs, the new owner must notify the Department of Water Resources pursuant to Idaho Code § 42-248.

Finally, it may also be worth noting that Water Right No. 21-12914 received an extension of time to avoid forfeiture pursuant to Idaho Code § 42-222 in 2007. Resumption of beneficial use was required on July 1, 2012. As you are aware, rather than resuming use, PacifiCorp leased its water right to the Water Supply Bank operated by IDWR for the Idaho Water Resource Board. Pursuant to Idaho Code § 42-223(5), water rights leased to the Water

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Supply Bank are not subject to forfeiture. Because it is a more recent legislative action, it seems logical that the Idaho Public Utilities Commission forfeiture protection afforded via Idaho Code § 42-223(5) overcomes the resumption of use requirement in Idaho Code § 42-222. For that reason, the application to lease the water right to the Water Supply Bank until June 30, 2017, was approved. However, the apparent tension in the law has not been formally addressed before this agency or in the court system.

If you have any questions, please call me at 208-287-4800, or email me at gary.spackman@idwr.idaho.gov

Sincerely,

A handwritten signature in black ink that reads "Gary Spackman". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Gary Spackman
Director