

Keen, Shelley

From: Charles G. Brockway [charles.g.brockway@brockwayeng.com]
Sent: Friday, December 28, 2012 3:23 PM
To: Keen, Shelley
Cc: WShepherd@mountain-home.us; Westra, John
Subject: Water right 61-7439 / Petition for Reconsideration of 12/14/2012 Order

Dear Shelley:

Please accept this letter as a Petition for Reconsideration of the Order issued by the Idaho Department of Water Resources dated December 14, 2012 pertaining to water right 61-7439. The Order states that this water right may not benefit from unqualified subordination relative to water rights held by Idaho Power Company since beneficial use or “substantial investment” did not occur under the right prior to the dates specified in the Swan Falls agreement and 1180 Contract with Idaho Power. However, a review of the information contained in the Department’s files for right 61-7439 indicates that beneficial use did occur prior to these dates. This water right is one of the two rights utilized on the farm owned by the City of Mountain Home as its wastewater reclamation site. Part of the confusion may stem from the fact that water usage on the appurtenant land began in the 1960s or early 1970s without the proper permits being obtained, and then irrigation ceased for some period of time. Once the permit was obtained in June 1981, however, memos in the Department’s file indicate that equipment was in place and beneficial use did occur during the development period and prior to November 1982. Specifically, a January 1989 memo indicates that pre-1982 development occurred and complied at least with the spirit of the Idaho Power agreements. A letter from Idaho Power counsel, and an affidavit from Ron Leydet also indicate that development occurred prior to November 19, 1982 and that substantial investment had been made, and that Idaho Power had no objection to the permit provided no enlargement of acres occurred.

The City of Mountain Home is continuing to review the history of this right and may provide additional information to the Department. I understand that the Department must dispose of this Petition within 21 days of its receipt; therefore we will work to provide any additional information next week.

Cordially,

/s Charles G. Brockway, Ph.D., P.E.