

MEMORANDUM

TO: Water Right File 61-11939
FROM: Daniel A. Nelson
DATE: March 11, 2011
SUBJECT: Idaho Power Water Supply Bank Rental Application

SUMMARY

Idaho Power filed an application to lease a portion of water right 61-11939 for an indefinite term on July 28, 2009. James C. Tucker, Idaho Power's Senior Attorney signed the application. Water right 61-11939 was decreed on October 26, 2000. The applicant wishes to place 0.27 cfs, 104 AF of diversion volume, and 58.2 AF of consumptive volume of the industrial and Cooling use into the water bank, which will leave 1.4 acres, 0.02 cfs, and 6.3 AF for Irrigation use and 0.63 cfs, 183.1 AF of diversion volume and 105.8 AF of Consumptive volume for the Industrial and Cooling uses with a total diversion of 0.65 cfs and 189 AF will continue to be used at the current location.

In 2002, water right transfer number 69262 was approved that split water right 61-2168 and change the nature of use of Idaho Power's portion of the water right into Irrigation, Industrial, and Cooling uses. The transfer allowed for 0.92 cfs, 293.4 AF diversion volume, 164 AF consumptive volume separated out to 1.4 acres of irrigation use (0.02 cfs / 6.3 AF) and Industrial and Cooling uses (0.90 cfs / 287.1 AF). All of the water uses are from ground water. The Mountain Home Aquifer system has been dropping for several years, so this water right transfer received a large number of protests. In order to approve the water right transfer, several conditions were listed on this water right to prevent injury to other water users. One of these conditions defined the consumptive volume of this water right. Another condition required Idaho Power to measure and report annual diversion of water described by this water right.

The owner of this water right has reported their water use from 2003 through 2009. The Department has not received their water use report for 2010 as of the date of this memo. These reports are placed in the Water Management Information System (WMIS). The WMIS records show that Idaho Power has not diverted more than 36 AF since 2003. The water right transfer was filed to supply water to the current facility (two 50 MW units) and supply additional water for future expansion of this facility. The current facility is estimated to use approximately 27.6 AF plus the irrigation of 6.3 AF. The WMIS records suggest that the expansions have yet to be pursued. Therefore, it is reasonable that they would want to place the portion of this water right set aside for future expansion into the water bank.

AUTHORITY TO FILE

The Senior Attorney for Idaho Power, James C. Tucker, signed the application for lease. Mr. Tucker is listed on several Departmental documents, as well as documents submitted to the Snake River Basin Adjudication as Idaho Power's Senior Attorney and Representative. Although it is uncommon for an attorney to sign for client without a power of attorney, Mr. Tucker is on Idaho Power's legal staff, and not a private attorney representing the organization. Therefore, Mr. Tucker should have the authority to sign for the company.

SUFFICIENCY OF SUPPLY

The Mountain Home area has struggled to maintain the water levels in their aquifer. Therefore, sufficiency of water is questionable. However, the previous water right transfer addressed this issue by imposing a consumptive water use limit. As long as the consumptive water use component is maintain, the water supply should not be an issue.

INJURY

There is nothing to suggest that putting these water rights into the water bank would cause injury to other water users. The consumptive use component should address most of the injury issues. However, there are two distinct aquifers in the Mountain Home area. There is the regional or deep aquifer, and there is the perched or shallow aquifer. Once staff receive a request to rent this water right, a review will need to be done that would address whether the rental will change aquifers and what affect that might have. This review will also need to address any changes in location, since that could be a factor as well.

ENLARGEMENT

No enlargement is being proposed. Once again the consumptive component will need to be addressed during the rental of this water right to prevent any enlargement is the water right is rented.

BENEFICIAL USE

The application proposes beneficial use consistent with conservation of water resources in Idaho.

LOCAL PUBLIC INTEREST

There is nothing to suggest that this lease is not in the local public interest. However, care will need to taken if this water right is rented to avoid any public interest issues. Any rental should probably be advertised to ensure agreement with the local public.

WATER DISTRICT

Ground water in the area described is not regulated by a watermaster.

RECOMMENDATION

I recommend that 0.27 cfs, 104 AF for both the Industrial and Cooling uses with a total water use of 0.27 cfs and 104 AF from water right 61-1193 be leased to the water bank. This will leave 0.63 cfs and 104 af for Cooling and Industrial uses, and 0.02 cfs, 6.3 AF and 1.4 acres for the Irrigation use with a total of 0.65 cfs, 189 AF, and 1.4 acres irrigation. The following conditions will also need to be included on the leased portion and the remaining portion.

Leased Portion:

Prior to diversion and use of water under this transfer approval, the right holder shall install and maintain acceptable measuring device(s) at the authorized point(s) of diversion, in accordance with Department specifications and shall report the amount of water diverted to the Department at the end of each calendar year.

The maximum volume of water diverted under this right shall not exceed 104 af per year of which no more than 58.2 af per year can be consumptively used.

Remaining Portion:

Prior to diversion and use of water under this transfer approval, the right holder shall install and maintain acceptable measuring device(s) at the authorized point(s) of diversion, in accordance with Department specifications and shall report the amount of water diverted to the Department at the end of each calendar year.

The maximum volume of water diverted under this right shall not exceed 189 af per year of which no more than 105.8 af per year can be consumptively used.

The above conditions should prevent any issues that may arise if the water right is rented. I would also recommend that the term of this water right lease be from December 8, 2009 to December 8, 2014.