



United States Department of the Interior

FISH AND WILDLIFE SERVICE

911 NE 11th Ave
Portland, Oregon 97232-4181



In Reply Refer to:
FWS/R1/EN/WR

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DEPARTMENT OF WATER RESOURCES

February 18, 2011

Mr. Gary Spackman, Interim Director
State of Idaho Department of Water Resources
322 East Front Street
PO Box 83720
Boise, ID 83720-0098

Subject: Petition for Reconsideration – Issuance of Licenses 98-07771 and 98-07829

Dear Mr. Spackman:

Enclosed, please find a petition for reconsideration in this matter.

Sincerely,

Gary L. Ball, PE, PLS
Hydrologist

c: Barbara Scott-Brier, Special Attorney, Office of the Solicitor

In the Matter of)
)
 Issuance of Water Right Licenses under)
 Water Right Permits 98-7771 and 98-7829)
 In the name of US Dept of Interior)
 Fish & Wildlife Service)

and 'Diversion to Storage' only." The Service was also requested to file an application for amendment to remove 'Wildlife' as an allowed use under that permit. Service staff informed IDWR staff that would not be possible, due to legal issues regarding Federal property ownership interest. On 2/7/2011, IDWR issued licenses for the Permits excluding Wildlife use under the Permits, limiting the rate allowed to be diverted under the Permits and License 98-7366 to 8.7 cfs, and limiting the maximum diversion volumes of the Permits to 444 AF (98-7771) and 850 AF (98-7829). These limitations do not appear in the Permits.

Request

The Service requests the decision to eliminate Wildlife use from the licenses be reconsidered, and further requests that the decisions to limit the rate allowed under the Permits and License 98-7366 and to limit the maximum diversion volume under the Permits be reconsidered.

Basis for Request

According to the IDWR letter of 1/25/2011, the reason given for elimination of Wildlife use from the licenses is that "water is not discharged back into the Kootenai River once it is diverted." The Service is not aware of a law or rule that defines a Wildlife use to require discharge of the water back into the water source. Further, due to the porous nature of the soils in the alluvium which constitutes the place of use of these rights, most of the water diverted under these rights returns to the river. Therefore, it appears even under this novel definition of Wildlife that the use under the licenses should qualify as Wildlife use.

Pumping records maintained by the Service show that for the period when beneficial use was being established, there were two pump stations, 458002 and 458003, at the location authorized by the Permits. The rate of pump station 458002 can be calculated to be about 9.5 cfs and the rate of pump station 458003 can be calculated to be about 3.5 cfs, so if the rate for the three rights is to be limited, it should be limited to 13.0 cfs, not 8.7 cfs. Since the sum of the rates for the Permits and License 98-7366 is 12.29 cfs, a 12.29 cfs combined rate limitation would be acceptable.

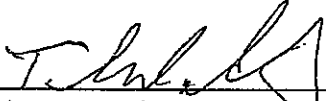
Given the short time period to respond, the Service has not been able to compute the annual quantity diverted from the Kootenai River for any of the years 1996 – 2005. However, there was no apparent annual volume limitation in the Permits, and the Service believes there should be none in the licenses either.

Summary

In summary, the Service believes that Wildlife Use should be an approved use under the new licenses; any limitation on combined rate should be no less than 12.29 cfs; and the maximum

diversion volume should be limited only by the rate. The Service requests a conference with IDWR to resolve the issues stated herein.

Respectfully submitted,



Thomas Smiley, Regional Engineer

2/18/2011

Date