

MEMORANDUM

DATE: March 16, 2010

TO: Water Right File 45-14183

FROM: Shelley W. Keen *SWK*

RE: Questions to be answered before issuing a permit

Two concerns remain about Application 45-14183. First, are all the prior Snake River appropriators protected from injury, not just the canal companies and irrigation districts that signed the "Water Right Mitigation Agreement"? Tony Olenichak's explanation suggests that regulation of the diversion by priority date will protect senior water right holders.

SWID will not be diverting any natural flow (wastewater that otherwise would have returned to the Snake River to be appropriated by senior rights) unless the 2/17/09 priority is being filled on the Snake River. When the 2/17/09 priority is not being filled, SWID will be diverting storage water either delivered by Burley Irrigation District through the wastewater ditch or by diverting SWID or rental storage delivered from the Snake River into the waste ditch.

However, the "Water Right Mitigation Agreement" suggests that SWID intends to take natural flow out of priority and compensate senior water users who may be injured. If SWID takes natural flow out of priority, is it necessary to compensate only the signatories to the "Water Right Mitigation Agreement", or are there other senior water users who must be compensated somehow? A quick examination of the water rights database shows the following rights with points of diversion on the Snake River between the proposed SWID diversion and Milner Dam.

Basin	Sequence	Suffix	Basis	Priority Date	Rate(cfs)	Source	Water Use(s)	Owner(s)
1	2073		Decreed	3/22/1951	1.06	SNAKE RIVER	IRRIGATION	HOBSON
1	7098		Permit	6/17/1989	1.80	SNAKE RIVER	IRRIGATION	HOBSON
1	7113		Permit	11/8/1990	1.80	SNAKE RIVER	IRRIGATION	HOBSON
1	7127		Permit	2/2/1996	0.67	SNAKE RIVER	IRRIGATION	HOBSON
1	7072		License	8/2/1978	1.54	SNAKE RIVER	IRRIGATION	FUNK

Second, if the irrigation districts and canal companies that signed the "Water Right Mitigation Agreement" are giving up their right to receive natural flow, shouldn't the ground water pumpers (IGWA) be allowed to reduce their mitigation requirement in the Surface Water Coalition delivery call? It is not clear that the canal companies and irrigation districts anticipated this possibility.