

MEMORANDUM

DATE: April 12, 2010

TO: Water Right File 45-14183

FROM: Shelley W. Keen SWK

RE: SWID's plan to mitigate for impacts on prior surface water right holders

In application 45-14183, Southwest Irrigation District (SWID) proposes to divert return flows from Burley Irrigation District (BID) to irrigate land currently irrigated with ground water. The BID return flows, termed "wastewater" in the application, currently discharge from the end of BID's delivery system into the Snake River and contribute to the natural flow delivered to senior water users, including Twin Falls Canal Company, North Side Canal Company, A&B Irrigation District, American Falls Reservoir District No. 2, Milner Irrigation District (collectively "Twin Falls et. al."), and a handful of individual pumpers. Depleting return flows for a new beneficial use will injure the senior downstream water users. SWID proposes to prevent injury in two ways.

First, SWID has entered into an agreement to mitigate its impacts on Twin Falls et. al. by providing storage water or monetary compensation. (See the "Water Right Mitigation Agreement" signed by SWID, BID, and Twin Falls et. al. in August of 2009.) In the agreement, BID agreed to assume SWID's obligation to compensate Twin Falls Canal Company (TFCC) and North Side Canal Company (NSCC). In a meeting with IDWR staff members, Randy Bingham of BID explained that the compensation to TFCC and NSCC is intended to come from the return flow credits accruing to BID pursuant to the "Minidoka Credit Remark" recommended in the SRBA for inclusion on BID's rights and other rights to divert from the Snake River below American Falls Reservoir. (See the 2/12/2010 "Special Master Report and Partial Recommendation" regarding the Minidoka Credit Remark.) The return flow credits represent water owed by TFCC and NSCC to BID every year. In exchange for allowing SWID to divert and use BID's return flows, BID will forgive an equal amount of the water debt (Minidoka Credit) TFCC and NSCC owe it each year. For administration of this portion of SWID's plan, IDWR proposes to approve Application 45-14183 with the following condition:

The right holder shall not divert and use water under this right if the natural flow in the Snake River is not sufficient to fill senior rights diverting from the Snake River as determined by the watermaster of Water District 01 unless the diversion is mitigated by the assignment of compensatory storage water to the senior right holders or by the reduction of return flow credits accruing to Burley Irrigation District.

IDWR will not authorize monetary compensation as mitigation.

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The second portion of SWID's mitigation plan is aimed at the individuals who pump from the Snake River downstream from SWID's proposed point of diversion. SWID plans to protect the senior individual pumpers by diverting water only when Application 45-14183 is in priority, which would be rare except for extremely early in the irrigation season, or when the only natural flow rights being delivered below American Falls Reservoir are TFCC and NSCC rights. Watermaster Lyle Swank of Water District 01 confirmed that this strategy is possible because TFCC and NSCC have the most senior rights in that river reach, and their rights are so large that they typically require the entire quantity of natural flow available. When Snake River flows begin falling, there typically is very little time in which rights junior to TFCC and NSCC, such as the individual pumpers, remain in priority. Lyle indicated that the condition listed above would be sufficient for administration of this portion of SWID's plan also.

For administration purposes, any approval of Application 45-14183 would be under the administration of Water District 01. Consequently, the permit, if issued, will also be listed at Permit 01-10572.