

MEMORANDUM

TO: Application 78-12361
FROM: Steve Lester
DATE: July 30, 2009 
RE: Basin 77-79 Processing

This application replaces relinquished 78-7198 following Mat Weaver's 2008 beneficial use exam for that permit. The system was mostly completed but not used by then. The applicants seek 5 years to complete this project due to anticipated testing and refinement of the system if this application is approved.

IDWR agreed to expedite the application for Salmon-Clearwater processing. Expedited processing included IDWR solicitation of comments from IDEQ and IDFG in addition to seeking comments from the County Commissioners, Stream Channel Protection and Planning Bureau. Additional Rule 40 information was not necessary in this case: 78-7198 was approved in 1999 and no additional approvals for Hat Creek since then.

Note that statutory claims 78-4105 and 78-4116 show the same P/D GIS centroid for a Hat Creek diversion in SWSE Sec. 21 for land owned by the applicants. Those rights were not claimed in the SRBA and are not factors in the current situation.

Here are the results of expedited processing:

Wild & Scenic Rivers processing is not relevant for this source and location.

IDEQ, letter received 4/21/09 – typical IDEQ comments were received, lacking any specific data or requirements that could be used in conditions of approval.

IDFG, email received 4/15/09 after confirmation that Dale Allen in McCall was the appropriate contact – did not have any objections, similar reply in 78-7198. Did not mention anything about fish screening or other limitations. Assume condition 029 should be used.

County – no reply.¹

¹ **Suggestion for SO consideration:** Western has yet to receive any comments from Counties in this upper basins processing. We are wasting time and money on this part of our process. Let's delete it – it's not accomplishing anything.

Stream Channel, email from Aaron Golart 4/23/09 – inflow should have fish screen. Outflow (return flow) should be similarly screened if submerged. If return flow is elevated above water, it should discharge onto rocks or directly onto water to avoid soil erosion. A modified version of condition 029 can cover these thoughts.

Planning, telephone conversation with Sandra Thiel 4/29/09 – downstream minimum stream flow (msf) issues n/a since water will be totally returned to the creek. Hat Creek does not include a msf right.

Comments were not sought from prior protestants from the 1980s in 78-7198 based on excellent research of that file by Mat (see 4/10/09 email). Those numerous protests were associated with a prior owner for a much larger project originally proposed under the now relinquished right. Those protests were eventually withdrawn. When Cesaros took over under 78-7198 and processing resumed for that older filing, protests were not a factor.

78-7198 included two P/D sites in Section 22: SWSW on Cesario property (diversion verified in 2008 exam), SESE on BLM land (diversion not developed). Due to some confusion on my part in processing 78-12361, only the outdated P/D in SESE was listed in 78-12361 and advertised. BLM protested the application, resulting in discovery of the P/D error. Cesario amended the application to correct the error. BLM unconditionally withdrew its protest on 7/15/09.

Re-advertising is not needed for this amended P/D. IC 42-203A specifies the legal notice shall include the “*approximate* location of the point of diversion (emphasis added).” It did. Also, local residents did not protest this application. There is no benefit from re-advertising.

The amount of water requested is consistent with Application Memo #24 for power. FERC and IPUC are not involved for power used solely on the applicants’ land.

Summary

The application should be approved as noted by the draft approval. Allow 5 years to file proof due to health factors and other issues confronting the owners (personal communication from applicants during office visits). Fish screening condition 029 is included based on overall fishery concerns even though not specified by IDFG in this particular case.

Return flows will occur somewhere around the power plant without any need to require a specific $\frac{1}{4}$ $\frac{1}{4}$ in which this will occur. A database comment was added to the draft permit record to alert a future field examiner regarding the P/U (P/U is the power plant, $\frac{1}{4}$ $\frac{1}{4}$ clarification vs. licensing amendment).

Parallel processing with SO staff (Mat Weaver) was completed 7/29/09.