

WATER RIGHT PERMIT NO. 01-7001 (Milner Hydro)
NOTICE OF INTENT TO ISSUE LICENSE
COMMENTS RECEIVED

NAME / ADDRESS	ATTORNEY	COMMENT
United Canal Company 74 North 600 West Blackfoot, ID 83221 By: Neil Morgan, Pres.	Jerry Rigby	Subordinate to future uses including recharge
Progressive Irrigation Dist. 2585 N. Ammon Road Idaho Falls, ID 83401-1949 By: Dale Rockwood	N/A	Same ("Form")
Salem Union Canal Co. 1419 N 7 th W Sugar City, ID 83448 By Jerry Balling, Pres.	N/A	Form
Trail Cr. Irrigation Co. By: ?	N/A	Form
New Sweden Irrigation Dist. 2350 W 1700 S Idaho Falls, ID By: Paul R. Berggren	N/A	Form
Snake River Irrigation Dist. Shelley, ID By: Carlos S. Nielson, Pres.	N/A	Form
Inland Canal ? Ellis Canal By: Ted Hanson	N/A	Form
Butte Market Lake Canal Co. Michelsen Farms PO Box 438 Rigby, ID 83442-0438 By: Mark Mickelsen, Pres.	N/A	Form
McBee Ditch By: Ron Green	N/A	Form
Teton Island Canal Co. By: Ken MacKay, V-Pres.	N/A	Form
Roxana Canal Co. By: Winston Larsen, Pres.	N/A	Form
Rexburg Irrigation Co. By Robert T. Powell, V-Pres.	N/A	Form
North Fremont Canal System Rex Wade, Director	N/A	Form

Wilford Irrigation Manufacturing Company By: Brant Kerls ?	N/A	Form
Farmers Own Canal Systems By: L. Sea? Mangrant?, Pres.	N/A	Form
Chester Canal & Irr. Co. By: M. Elmo Seeley, Pres.	N/A	Form
Teton Irr. & Manufacturing By: John S. Rocock?, Pres.	N/A	Form
Consolidated Farmers Canal Co. 3215 N 3000 W Rexburg, ID 83440 By: Dell Raybould, Sec.	N/A	Form
United Canal Co. By: Neil Morgan, Pres.	N/A	Form
Palisades Water Users, Inc. PO Box 1892 Idaho Falls, ID 83403 By: ?	N/A	Form
Riverside Canal Co. By: Jerry Anderson, V-Pres.	N/A	Form
Eastern Idaho Water Rights Coalition PO Box 50125 Idaho Falls, ID 83405-0125 By: Stan Clark, Pres.	N/A Nahan Olsen	Form
Idaho Ground Water Appropriators, Inc.	Randy Budge	"Zero flow" at Milner requires subordination to all existing and future uses, including recharge
Idaho Irrigation District 496 E 14 th Street Idaho Falls, ID 83404 By: Alan D. Kelsch, Dir.	N/A	Form
Aberdeen-Springfield Canal Co.	Randy Budge	"Zero flow" at Milner requires subordination to all existing and future uses, including recharge
Water District No. 110 By: Kirk M. Jack, Pres.	N/A	Form
Mud Lake Water Users Independent Water Users Jefferson Canal Co. Montevue Canal Co. Producer's Canal Co. c/o Holden Kidwell Hahn PO Box 50130 Idaho Falls, ID 83405	Robert L Harris	Subordinate to future upstream diversions, including recharge, to be consistent with the Swan Falls Agreement and Policy 32 of the State Water Plan. Water users relied upon statements from IDWR personnel in 1977 that the Milner hydro right would be subordinated to all upstream uses and development.

North Fremont Canal	N/A	Form
Yellowstone Canal 4054 East 1300 North St. Anthony, ID 83420	N/A	Form
Enterprise Irrigation District 2626 East 100 North Teton, ID 83451	N/A	Form
Teton Island Feeder Canal Co. 386 North 2400 East St. Anthony, ID 83445	N/A	Form
Salem Irrigation Canal Co. 5152 East Free Avenue Iona, ID 83427	N/A	Form
North Fork Protective Assoc. 350 North 6 th West St. Anthony, ID 83445	N/A	Form
Marysville Irrigation Co. P.O. Box 131 Ashton, ID 83420	N/A	Form
Teton Island Canal 252 West Moran View Rexburg, ID 83440	N/A	Form
Canyon Creek Lateral 1509 N Canyon Creek Road Newdale, ID 83436	N/A	Form
Farmers Own Ditch, Inc. By: Lon Ateh??, Sec.	N/A	Form
Marysville Irrigation Co. By: Lon Ateh??, Sec.	N/A	Form
Twin Falls Canal Co. North Side Canal Co.	John K. Simpson	Companies object to unlawful process undertaken to add or modify permit language, which vested upon filing of proof of beneficial use in 1993. Companies have filed an action against Director and Department in Jerome County District Court.

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF LICENSING WATER)
RIGHT PERMIT NO. 01-7011 IN THE NAME)
OF TWIN FALLS CANAL COMPANY AND)
NORTH SIDE CANAL COMPANY)
)
)

**NOTICE OF INTENT
TO ISSUE LICENSE**

On June 29, 1977, the Idaho Department of Water Resources ("Department") issued Water Right Permit No. 01-7011 to Twin Falls Canal Company and North Side Canal Company ("Permit Holders") with a priority date of March 30, 1977. Permit No. 01-7011 authorized the year-round diversion of 12,000 cfs from the Snake River at Milner Dam for hydropower purposes and was issued without any subordination condition. Proof of construction of works and application of water to beneficial use was due on or before June 1, 1982.

On March 31, 1982, the Department approved an application for extension of time that extended the proof of beneficial due date to June 1, 1987. On March 4, 1987, the Department approved a second application for extension of time that extended the proof of beneficial due date to November 1, 1990, and added the following subordination condition to the permit:

The rights for use of water acquired under this permit shall be junior and subordinate to all other rights for the consumptive beneficial use of water, other than hydropower and groundwater recharge within the Snake River Basin of the state of Idaho that are initiated later-in-time than the priority of this permit and shall not give rise to any right or claim against any future rights for the consumptive beneficial use of water, other than hydropower and groundwater recharge within the Snake River Basin of the state of Idaho initiated later-in-time than the priority of this permit.

On October 30, 1990, the Department approved a third application for extension of time that extended the proof of beneficial due date to May 1, 1992. The application for extension stated that the Federal Energy Regulatory Commission ("FERC") issued the Permit Holders and the Idaho Power Company a license for Milner Project No. 2899 on December 15, 1988 (45 FERC ¶ 61,423). On April 28, 1992, the Department approved a fourth application for extension of time that extended the proof of beneficial due date to November 1, 1993.

The Permit Holders submitted proof of beneficial for Permit No. 01-7011 on November 1, 1993, pursuant to Idaho Code § 42-217. The field examination report completed by Charles E. Brockway, P.E. on October 29, 1993, recommends that the water right be licensed for a total diversion rate of 5,714.7 cfs for use at the Milner Power Plant. Proof of beneficial use having been submitted under the permit, the Department is prepared to issue a license for the water right pursuant to Idaho Code § 42-219. Counsel for the Permit Holders has orally requested that the Department issue a license for the water right.

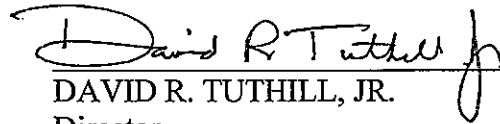
SCANNED

SEP 07 2007

The Department received written requests for notice for an opportunity to be heard on the form of the subordination condition to be included on the license for Water Right No. 01-7011 from the Bingham Ground Water District on January 11, 2007; from the Idaho Ground Water Appropriators, Inc. on February 7, 2007, for and on behalf of its ground water districts and other members, represented by the law firm of Racine Olson Nye Budge & Bailey, Chartered; and from the Mud Lake Water Users, Independent Water Users, Jefferson Canal Co., Montevue Canal Co., and Producer's Canal Co., on April 16, 2007, represented by the law firm of Holden, Kidwell, Hahn & Crapo, P.L.L.C.

NOW THEREFORE NOTICE IS HEREBY GIVEN that the Department will accept and consider written Comments from the Permit Holders and other interested persons or entities addressing the form of the subordination condition that should be included on the license for Water Right No. 01-7011. Any Comments submitted should be addressed to Director, Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho 83720-0098 and received by the Department or post marked on or before October 10, 2007.

DATED this 5th day of September 2007.



DAVID R. TUTHILL, JR.
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of September 2007, I caused a true and correct copy of the foregoing Notice of Intent to Issue License to be sent by U.S. Mail, postage paid to the following:

John A. Rosholt, Esq.
Barker Rosholt & Simpson LLP
113 Main Avenue West, Suite 303
P.O. Box 485
Twin Falls, ID 83303-00485

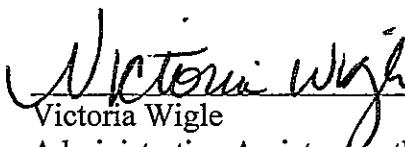
Craig B. Evans, Chairman
Bingham Ground Water District
1725 Riverton Road
P.O. Box 1268
Blackfoot, Idaho 83221

Randall C. Budge, Esq.
Racine Olson Nye Budge & Bailey
201 East Center Street
P.O. Box 1391
Pocatello, Idaho 83204-1391

Lyle Swank, Manager
Department of Water Resources
Eastern Regional Office
900 North Skyline Dr., Ste A
Idaho Falls, ID 83402-1718

Kent W. Foster, Esq.
Robert L. Harris, Esq.
1000 Riverwalk Dr. Suite 200
P.O. Box 50130
Idaho Falls, Idaho 83405

Allen D. Merritt, Manager
Department of Water Resources
Southern Regional Office
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301-3380


Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources

United Canal Company
74 North 600 West
Blackfoot, ID 83221

RECEIVED
SEP 21 2007
DEPARTMENT OF
WATER RESOURCES

September 13, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: *Notice of Intent to Issue License: TFCC/NSCC Permit No. 01-7011
Milner Dam Hydro*

Dear Director Tuthill:

Pursuant to that certain Notice of Intent to Issue License, dated September 5, 2007 from your office, this letter is intended to object to the subordination condition to the above entitled permit as proposed in said Notice of Intent to Issue License.

When the Application was originally filed by Twin Falls Canal Company (TFCC) and North Side Canal Company (NSCC) on March 30, 1977 seeking a permit to appropriate 12,000 cfs for power purposes at Milner Dam, we understand that the notice of the Application was published May 16 and 26, 1977. At that time, well before the Swan Falls controversy and resulting settlement, there was a widespread assumption and belief that all power rights were subordinate to all upstream depletions. After the publication, we are informed by Department representatives and upstream users that numerous inquiries were made to the Department expressing concerns about the Application and whether protests were needed to protect their interests. In response, Department representatives, including then Eastern Region Manager and District One Watermaster, Ronald D. Carlson, provided assurance that the proposed hydro power water rights were unquestionably subordinated to all upstream uses and development and that there was no reason to be concerned or protest the Application. Protests were not filed in reasonable reliance upon these representations.

On June 29, 1977, the Department approved Permit No. 01-7011 for power purposes. Appropriate and necessary conditions, including subordination, were omitted by the Department for reasons unknown. Proof of beneficial use was originally due June 1, 1982. However, the proof of beneficial use due date was changed several times with the latest approval requiring proof of beneficial use on November 1, 1993. Proof of beneficial use was submitted by the Applicants on October 30, 1993, and the permit is waiting for action by the Department.

Upon review of this permit file, we would submit that any license issued for the above permit must include a condition that is consistent with Policy 32 of the State Water Plan adopted and approved by the Idaho Water Resources Board and codified at Idaho Code §42-1736B and the Department's recommendations in the SRBA that recognize that there is a "zero flow" at Milner Dam. Furthermore, Applicants certainly recognize and have formally taken the "zero flow" position as they have voted in favor of Water District 01 Resolution Number 20B which states: "The zero minimum flow at Milner, as established in the state water plan be recognized as the Water District 1's position, and that there can be no call for deliveries below Milner by downstream interests."

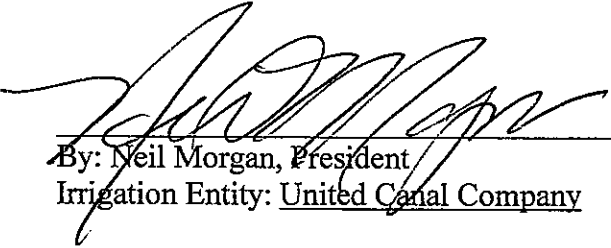
Any license for this water right must include a condition that subordinates this water right to all existing and future uses, including recharge water rights in order to not violate state law or policy and in order to not undermine efforts to effectively manage the Eastern Snake Plain Aquifer. To do otherwise would deprive interested parties and adversely affected right holders of due process and an opportunity to be heard by reason of the above-described representations of the Department at the time of publication.

Furthermore, since the permit was issued, Applicants have never once protested any recharge program which have been in direct contradiction of their claimed permit. In fact, Applicants have fully participated in many of these state funded programs.

Thus, we respectfully request that the conditions be modified to delete any language which would grant Applicants the right to claim upstream recharge is not subordinated to this permit/license. Also, we respectfully request that we be advised of any notices, correspondence, or other actions the Department may take with regards to Permit No. 01-7011. Please direct any correspondence or documents to the above entitled address and to:

Jerry R. Rigby
Rigby, Andrus and Moeller, Chtd
P. O. Box 250
Rexburg, ID 83440

Sincerely



By: Neil Morgan, President
Irrigation Entity: United Canal Company

RECEIVED

SEP 17 2007

DEPARTMENT OF
WATER RESOURCES

September 12, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

*Re: Notice of Intent to Issue License: TFCC/NSCC Permit No. 01-7011
Milner Dam Hydro*

Dear Director Tuthill:

Pursuant to that certain Notice of Intent to Issue License, dated September 5, 2007 from your office, this letter is intended to object to the subordination condition to the above entitled permit as proposed in said Notice of Intent to Issue License.

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beneficial use due date was changed several times with the latest approval requiring proof of beneficial use on November 1, 1993. Proof of beneficial use was submitted by the Applicants on October 30, 1993, and the permit is waiting for action by the Department.

Upon review of this permit file, we would submit that any license issued for the above permit must include a condition that is consistent with Policy 32 of the State Water Plan adopted and approved by the Idaho Water Resources Board and codified at Idaho Code §42-1736B and the Department's recommendations in the SRBA that recognize that there is a "zero flow" at Milner Dam. Furthermore, Applicants certainly recognize and have formally taken the "zero flow" position as they have voted in favor of Water District 01 Resolution Number 20B which states: "The zero minimum flow at Milner, as established in the state water plan be recognized as the Water District 1's position, and that there can be no call for deliveries below Milner by downstream interests."

Any license for this water right must include a condition that subordinates this water right to all existing and future uses, including recharge water rights in order to not violate state law or policy and in order to not undermine efforts to effectively manage the Eastern Snake Plain Aquifer. To do otherwise would deprive interested parties and adversely affected right holders of due process and an opportunity to be heard by reason of the above-described representations of the Department at the time of publication.

Furthermore, since the permit was issued, Applicants have never once protested any recharge program which have been in direct contradiction of their claimed permit. In fact, Applicants have fully participated in many of these state funded programs.

Thus, we respectfully request that the conditions be modified to delete any language which would grant Applicants the right to claim upstream recharge is not subordinated to this permit/license. Also, we respectfully request that we be advised of any notices, correspondence, or other actions the Department may take with regards to Permit No. 01-7011. Please direct any correspondence or documents to the above entitled address.

Sincerely,

Dale Rockwood

By:

Irrigation Entity: Progressive Irrig. Dist.

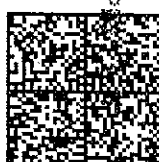
PROGRESSIVE IRRIGATION DISTRICT

2585 North Ammon Road
Idaho Falls, Idaho 83401-1949

Address Service Requested

POCATELLO ID 832

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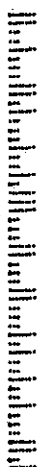


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David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
PO Box 83720
Boise, Idaho 83720-0098

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RECEIVED
SEP 18 2007
DEPARTMENT OF
WATER RESOURCES

Salem Union Canal Company
C/O Jerry Dalling
1419 North 7th West
Sugar City, Idaho 83448

September 12, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

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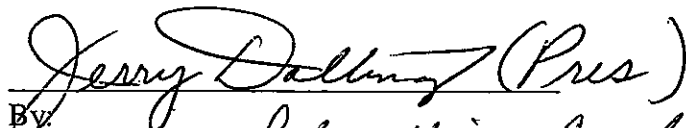
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Sincerely,


By: Jerry Darling (Pres)
Irrigation Entity: Salem Union Canal Co.

RECEIVED
SEP 24 2007
DEPARTMENT OF
WATER RESOURCES

September 14, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

*Re: Notice of Intent to Issue License: TFCC/NSCC Permit No. 01-7011
Milner Dam Hydro*

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September 14, 2007

Page 2

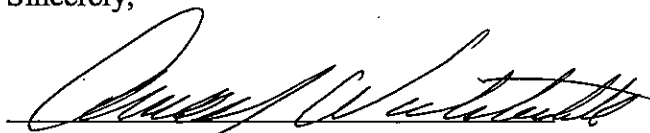
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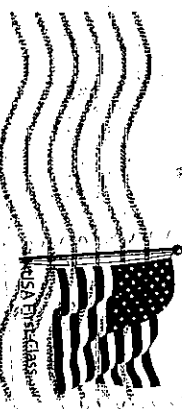
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Sincerely,



By:

Irrigation Entity: Tracy Co. Irrig Co
Secretary



FOCATED 1033

21 SEP 2007 PM 1 T

1d WR
322 E. Front St.
P.O. Box 83726

11-10-68

B 6156 Pd G3720-0098

THE NEW SWEDEN IRRIGATION DISTRICT

2350 W. 1700 SO.
IDAHO FALLS, IDAHO

OFFICE OF THE SECRETARY-TREASURER



RECEIVED

SEP 24 2007

DEPARTMENT OF
WATER RESOURCES

September 13, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

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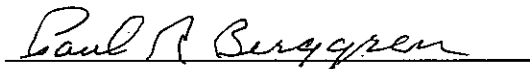
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Sincerely,



By:

Irrigation Entity: New Sweden Irrigation District

Dave
RECEIVED

SEP 21 2007

DEPARTMENT OF
WATER RESOURCES

September 17, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

*Re: Notice of Intent to Issue License: TFCC/NSCC Permit No. 01-7011
Milner Dam Hydro*

Dear Director Tuthill:

Pursuant to that certain Notice of Intent to Issue License, dated September 5, 2007 from your office, this letter is intended to object to the subordination condition to the above entitled permit as proposed in said Notice of Intent to Issue License.

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September 14, 2007

Page 2

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Sincerely,

Pres - Carlos S. Nielson

By:

Irrigation Entity: *Snake River Irig
District, Shelley Lecho*

Dave

RECEIVED
SEP 25 2007
DEPARTMENT OF
WATER RESOURCES

September 17, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: *Notice of Intent to Issue License: TFCC/NSCC Permit No. 01-7011
Milner Dam Hydro*

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Page 2

By: Edmund Canal
Irrigation Entity: Edmund Canal
Edmund Canal

At this permit is granted and applied,
it would seal the fate of mitigation
inc. 7 making it impossible to have
anything of value for that organization.

Sincerely
Ted Hanson

Dave
RECEIVED
SEP 27 2007
DEPARTMENT OF
WATER RESOURCES

September 17, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

*Re: Notice of Intent to Issue License: TFCC/NSCC Permit No. 01-7011
Milner Dam Hydro*

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Sincerely,

Mark Mickelsen, President

By:

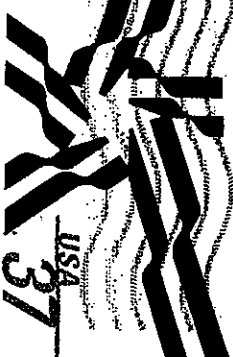
Irrigation Entity: Butte Market Lake Canal Co

Mark Mickelsen
(208) 313-1295

MICKELSEN FARMS
PHONE (208) 745-6626
P. O. BOX 438
RIGBY, ID 83442-0438

POCATELLO, ID 83401

SEP 2008



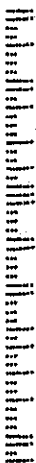
David R. Tuttle Jr. Director
Idaho Dept Water Resources

322 E Front St.

P.O. Box 83720

Boise, Idaho 83720-0098

83720+0038 8300



RECEIVED
SEP 28 2007
DEPARTMENT OF
WATER RESOURCES

McBee Ditch
P.O. Box 236
Chester, Idaho 83421

September 12, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: *Notice of Intent to Issue License: TFCC/NSCC Permit No. 01-7011
Milner Dam Hydro*

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September 12, 2007
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Sincerely,



By:

Irrigation Entity: McBee Ditch

RECEIVED

SEP 28 2007

DEPARTMENT OF
WATER RESOURCES

Teton Island Canal Company
252 West Moran View Road
Rexburg, Idaho 83440

September 12, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: *Notice of Intent to Issue License: TFCC/NSCC Permit No. 01-7011
Milner Dam Hydro*

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September 12, 2007

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Sincerely,


By: _____

Irrigation Entity: Teton Island Council Co.

RECEIVED
SEP 28 2007
DEPARTMENT OF
WATER RESOURCES

Roxana Canal Company
4590 North Salem Road
Rexburg, Idaho 83440

September 12, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: *Notice of Intent to Issue License: TFCC/NSCC Permit No. 01-7011
Milner Dam Hydro*

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Sincerely,

Pres. Winston Larsen

By:

Irrigation Entity: Rokana Canal

RECEIVED

SEP 28 2007

DEPARTMENT OF
WATER RESOURCES

Rexburg Irrigation Company
409 West Poleline Road
Rexburg, Idaho 83440

September 12, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: *Notice of Intent to Issue License: TFCC/NSCC Permit No. 01-7011
Milner Dam Hydro*

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Sincerely,

Robert T. Powell V-Pres.

By:

Irrigation Entity: Beeburg Irrigation Co.

RECEIVED
SEP 28 2007
DEPARTMENT OF
WATER RESOURCES

North Fremont Canal System
P.O. Box 241
Ashton, Idaho 83420

September 12, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: *Notice of Intent to Issue License: TFCC/NSCC Permit No. 01-7011
Milner Dam Hydro*

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Sincerely,

Rex A. Wade (Director)

By:

Irrigation Entity: North Fremont Canal System

RECEIVED
SEP 28 2007
DEPARTMENT OF
WATER RESOURCES

Wilford Irrigation and Manufacturing Company
4483 East 2000 North
Sugar City, Idaho 83448

September 12, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: *Notice of Intent to Issue License: TFCC/NSCC Permit No. 01-7011
Milner Dam Hydro*

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Sincerely,

Brant Kesler (President)

By:

Irrigation Entity: Wilford Irr. & Man. Co.

RECEIVED

SEP 28 2007

DEPARTMENT OF
WATER RESOURCES

Farmers Own Canal Systems
P.O. Box 241
Ashton, Idaho 83420

September 12, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: *Notice of Intent to Issue License: TFCC/NSCC Permit No. 01-7011
Milner Dam Hydro*

Dear Director Tuthill:

Pursuant to that certain Notice of Intent to Issue License, dated September 5, 2007 from your office, this letter is intended to object to the subordination condition to the above entitled permit as proposed in said Notice of Intent to Issue License.

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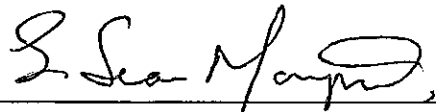
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Sincerely,

 PRES.

By:

Irrigation Entity: FARMERS OWN CANAL

RECEIVED
SEP 28 2007
DEPARTMENT OF
WATER RESOURCES

Chester Canal & Irrigation Company
P.O. Box 74
Chester, Idaho 83421

September 12, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: *Notice of Intent to Issue License: TFCC/NSCC Permit No. 01-7011
Milner Dam Hydro*

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September 12, 2007

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Sincerely,

M. Elmo Laelary

By:

Irrigation Entity: President

Teton Irrigation & Manufacturing
4483 East 2000 North
Sugar City, Idaho 83448

September 12, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: *Notice of Intent to Issue License: TFCC/NSCC Permit No. 01-7011*
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Sincerely,

John S. Beach President

By:

Irrigation Entity: Teton Irrigation & Manufacture

RECEIVED
SEP 23 2007
DEPARTMENT OF
WATER RESOURCES

CONSOLIDATED FARMERS CANAL CO.

3215 North 3000 West
Rexburg, Idaho 83440

September 12, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

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Sincerely,

By:  Sec.

Consolidated Farmers Canal Co.
3215 North 2000 West
Rexburg, ID 83440

RECEIVED

SEP 28 2007

DEPARTMENT OF
WATER RESOURCES

United Canal Company
74 North 600 West
Blackfoot, ID 83221

September 13, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: *Notice of Intent to Issue License: TFCC/NSCC Permit No. 01-7011
Milner Dam Hydro*

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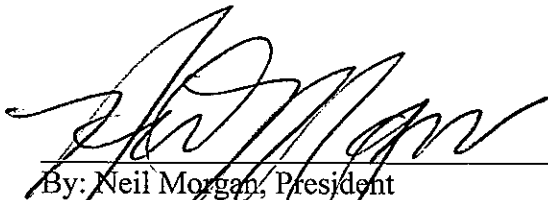
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Jerry R. Rigby
Rigby, Andrus and Moeller, Chtd
P. O. Box 250
Rexburg, ID 83440

Sincerely



By: Neil Morgan, President
Irrigation Entity: United Canal Company

Dave

Palisades Water Users, Inc.

P.O. BOX 1892 • IDAHO FALLS, ID 83403 • (208) 351-2608

RECEIVED

SEP 28 2007

**DEPARTMENT OF
WATER RESOURCES**

September 17, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

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Milner Dam Hydro*

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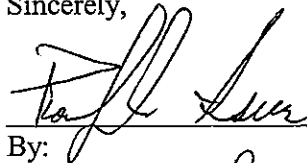
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By:

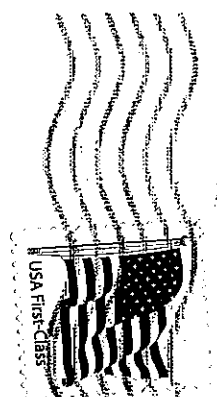
Irrigation Entity: Palisades Water Users, Inc.

Palisades Water Users, Inc.

P.O. Box 1892
IDAHO FALLS, ID 83403

POCATELLO ID 832

26 SEP 2007 PM 1 T



DAVID R TUTHILL
IDWR
PO BOX 83720
BOISE ID 83720-0098

83720+0054



RECEIVED

OCT 01 2007

DEPARTMENT OF
WATER RESOURCES

Riverside Canal Company
247 North 300 West
Blackfoot, ID 83221

September 13, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

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September 12, 2007

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Sincerely,

By: James Anderson vice president
Irrigation Entity: Riverside canal company

Paul D. [Signature]
Keith [Signature]
Gary L. [Signature]

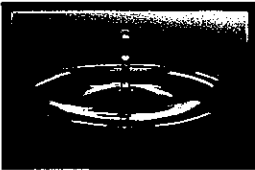
RECEIVED

OCT 01 2007

DEPARTMENT OF
WATER RESOURCES

EASTERN IDAHO WATER RIGHTS COALITION

P.O. Box 50125 • Idaho Falls, ID • 83405-0125



Executive Committee:

*Stan Clark,
President*

*Representative
Dean Mortimer*

Cortney Liddiard

*Mayor
Jared Fuhrman*

Bruce Scott

Jeff Raybould

Craig Evans

Roger Warner

*Nahan Olsen
Counsel*

*Dr Rebecca Casper
Administrator*

26 September 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

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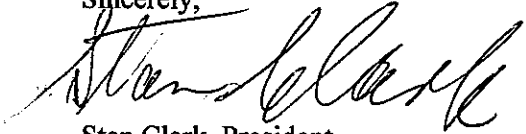
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Sincerely,

A handwritten signature in black ink, appearing to read "Stan Clark", written over a horizontal line.

Stan Clark, President
Eastern Idaho Water Rights Coalition

Randall C. Budge, ISB No. 1949
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
Phone: 208-232-6101
Fax: 208-232-6109

RECEIVED

OCT 9 2007

DEPARTMENT OF
WATER RESOURCES

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF LICENSING WATER)
RIGHT PERMIT NO. 01-7011 IN THE NAME OF)
TWIN FALLS CANAL COMPANY AND)
NORTH SIDE CANAL COMPANY)
_____)
_____)
_____)

**COMMENTS ON LICENSE
SUBORDINATION CONDITION**

COMES NOW the Idaho Ground Water Appropriators, Inc., acting for and on behalf of its Ground Water Districts and other members (collectively "IGWA"), through counsel, and hereby submits the following comments on the form of the subordination conditions that should be included on the License for Water Right No. 01-7011 in response to the Director's Notice of Intent to Issue License dated September 5, 2007, requesting comments on or before October 10, 2007.

Twin Falls Canal Company and North Side Canal Company ("permit holders") originally filed their Application for Permit No. 01-7011 on March 30, 1977, seeking a permit to appropriate 12,000 cfs for power purposes at Milner Dam. Notice of the Application was published May 16 and 26, 1977. At that time, well before the Swan Falls controversy and resulting settlement, there was a widespread assumption and belief by ground water users and others that all power rights were subordinate to all upstream depletions. Subsequent to the publication numerous inquiries were made by upstream water users to the Department expressing concern about the application and whether protests were needed to protect their interests. In response, Department representatives, including Eastern Region Manager and District 01 Water Master Ronald D. Carlson repeatedly provided regular assurance that the proposed hydro power water rights were unquestionably subordinated to all upstream users and development and that there was no reason to be concerned or protest the applications. Accordingly, protests were not filed in reliance upon these representations. Subsequently on June 29, 1977, the Department approved Permit No. 01-7011 for power purposes. The permit has been awaiting action by the Department since proof of beneficial use was submitted by the permit holder on November 1, 1993.

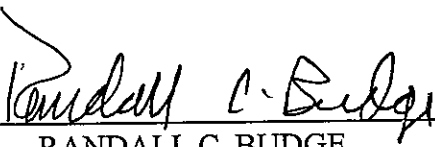
IGWA asserts that any license issued for this permit must include a condition that is consistent with Policy 32 of the State Water Plan adopted and approved by the Idaho Water

Resource Board and codified at Idaho Code §42-1736(b), as well as the Department's recommendations in the SRBA that recognize there is a "zero flow" at Milner Dam. (See Recommendations for Example for Water Right Nos. 2-200, 2-201, 2-223, 2-224, and General Provision No. 4 for Basin 02.) Accordingly, any license issued for this water right must include a condition that subordinates this water right to all existing and future uses, including recharge water rights, to comply with state law and to ensure that efforts to effectively manage the East Snake Plain Aquifer are not undermined. Otherwise interested parties and adversely affected right holders would be deprived of due process of law and an opportunity to be heard by reason of the above-described representations of the Department at the time of publication.

The opportunity to provide these comments is appreciated.

RESPECTFULLY SUBMITTED this 4th day of October, 2007.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By 
RANDALL C. BUDGE
Attorney for IGWA

cc: IGWA:
Tim Deeg, President
Lynn Tominaga, Executive Director
Executive Committee
Idaho Water Resource Board:
Jerry Rigby, Chairman
Hal Anderson, Secretary

Idaho Irrigation District
496 E 14th Street
Idaho Falls, ID 83404

RECEIVED
OCT 09 2007
DEPARTMENT OF
WATER RESOURCES

September 21, 2007

To: David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Notice of Intent to Issue License: TFCC/NSCC Permit No. 01-7011 Milner Dam Hydro

Dear Director Tuthill:

Pursuant to that certain Notice of Intent to Issue License, dated September 5, 2007 from your office, this letter is intended to object to the subordination condition to the above entitled permit as proposed in said Notice of Intent to Issue License.

When the Application was originally filed by Twin Falls Canal Company (TFCC) and North Side Canal Company (NSCC) on March 30, 1977 seeking a permit to appropriate 12,000 cfs for power purposes at Milner Dam, we understand that the notice of the Application was published May 16 and 26, 1977. At that time, well before the Swan Falls controversy and resulting settlement, there was a widespread assumption and belief that all power rights were subordinate to all upstream depletions. After the publication, we are informed by Department representatives and upstream users that numerous inquiries were made to the Department expressing concerns about the Application and whether protests were needed to protect their interests. In response, Department representatives, including then Eastern Region Manager and District One Watermaster, Ronald D. Carlson, provided assurance that the proposed hydro power water rights were unquestionably subordinated to all upstream uses and development and that there was no reason to be concerned or protest the Application. Protests were not filed in reasonable reliance upon these representations.

On June 29, 1977, the Department approved Permit No. 01-7011 for power purposes. Appropriate and necessary conditions including subordination were omitted by the Department for reasons unknown. Proof of beneficial use was originally due June 1, 1982. However, the proof of beneficial use due date was changed several times

with the latest approval requiring proof of beneficial use on November 1, 1993. Proof of beneficial use was submitted by the Applicants on October 30, 1993, and the permit is waiting for action by the Department. September 12, 2007

Upon review of this permit file, we would submit that any license issued for the above permit must include a condition that is consistent with Policy 32 of the State Water Plan adopted and approved by the Idaho Water Resources Board and codified at Idaho Code §42-1736B and the Department's recommendations in the SRBA that recognize that there is a "zero flow" at Milner Dam. Furthermore, Applicants certainly recognize and have formally taken the "zero flow" position as they have voted in favor of Water District 01 Resolution Number 20B which states: "The zero minimum flow at Milner, as established in the state water plan be recognized as the Water District 1's position, and that there can be no call for deliveries below Milner by downstream interests."

Any license for this water right must include a condition that subordinates this water right to all existing and future uses, including recharge water rights in order to not violate state law or policy and in order to not undermine efforts to effectively manage the Eastern Snake Plain Aquifer. To do otherwise would deprive interested parties and adversely affected right holders of due process and an opportunity to be heard by reason of the above-described representations of the Department at the time of publication.

Furthermore, since the permit was issued, Applicants have never once protested any recharge program which have been in direct contradiction of their claimed permit. In fact, Applicants have fully participated in many of these state funded programs.

Thus, we respectfully request that the conditions be modified to delete any language which would grant Applicants the right to claim upstream recharge is not subordinated to this permit/license. Also, we respectfully request that we be advised of any notices, correspondence, or other actions the Department may take with regards to Permit No. 01-7011. Please direct any correspondence or documents to the above entitled address.

Sincerely,



Director, Idaho Irrigation District

22
Randall C. Budge, ISB No. 1949
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
Phone: 208-232-6101
Fax: 208-232-6109

RECEIVED

OCT 19 2007

DEPARTMENT OF
WATER RESOURCES

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF LICENSING WATER)
RIGHT PERMIT NO. 01-7011 IN THE NAME OF)
TWIN FALLS CANAL COMPANY AND)
NORTH SIDE CANAL COMPANY)
_____)

**COMMENTS ON LICENSE
SUBORDINATION CONDITION
SUBMITTED BY ABERDEEN-
SPRINGFIELD CANAL CO.**

COMES NOW the Aberdeen-Springfield Canal Company (ASCC), through counsel, and hereby submits the following comments on the form of the subordination conditions that should be included on the License for Water Right No. 01-7011 in response to the Director's Notice of Intent to Issue License dated September 5, 2007, requesting comments on or before October 10, 2007.

Twin Falls Canal Company and North Side Canal Company ("Permit Holders") originally filed their Application for Permit No. 01-7011 on March 30, 1977, seeking a permit to appropriate 12,000 cfs for power purposes at Milner Dam. Notice of the Application was published May 16 and 26, 1977. At that time, well before the Swan Falls controversy and resulting settlement, there was a widespread assumption and belief by ground water users and others that all power rights were subordinate to all upstream depletions. Subsequent to the publication numerous inquiries were made by upstream water users to the Department expressing concern about the application and whether protests were needed to protect their interests. In response, Department representatives, including Eastern Region Manager and District 01 Water Master Ronald D. Carison repeatedly provided regular assurance that the proposed hydro power water rights were unquestionably subordinated to all upstream users and development and that there was no reason to be concerned or protest the applications. Accordingly, protests were not filed in reliance upon these representations. Subsequently on June 29, 1977, the Department approved Permit No. 01-7011 for power purposes. The permit has been awaiting action by the Department since proof of beneficial use was submitted by the permit holder on November 1, 1993.

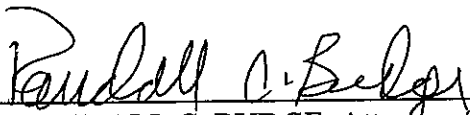
ASCC asserts that any license issued for this permit must include a condition that is consistent with Policy 32 of the State Water Plan adopted and approved by the Idaho Water Resource Board and codified at Idaho Code §42-1736(b), as well as the Department's recommendations in the SRBA that recognize there is a "zero flow" at Milner Dam. (See Recommendations for Example for Water Right Nos. 2-200, 2-201, 2-223, 2-224, and General

Provision No. 4 for Basin 02.) Accordingly, any license issued for this water right must include a condition that subordinates this water right to all existing and future uses, including recharge water rights, to comply with state law and to ensure that efforts to effectively manage the East Snake Plain Aquifer are not undermined. Otherwise interested parties and adversely affected right holders would be deprived of due process of law and an opportunity to be heard by reason of the above-described representations of the Department at the time of publication.

The opportunity to provide these comments is appreciated.

RESPECTFULLY SUBMITTED this 4th day of October, 2007.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By 
RANDALL C. BUDGE, Attorney for
Aberdeen-Springfield Canal Company

cc: Aberdeen-Springfield Canal Company:
Steve Howser, Manager
Board of Directors

September 17, 2007

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OCT 19 2007

DEPARTMENT OF
WATER RESOURCES

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

*Re: Notice of Intent to Issue License: TFCC/NSCC Permit No. 01-7011
Milner Dam Hydro*

Dear Director Tuthill:

Pursuant to that certain Notice of Intent to Issue License, dated September 5, 2007 from your office, this letter is intended to object to the subordination condition to the above entitled permit as proposed in said Notice of Intent to Issue License.

When the Application was originally filed by Twin Falls Canal Company (TFCC) and North Side Canal Company (NSCC) on March 30, 1977 seeking a permit to appropriate 12,000 cfs for power purposes at Milner Dam, we understand that the notice of the Application was published May 16 and 26, 1977. At that time, well before the Swan Falls controversy and resulting settlement, there was a widespread assumption and belief that all power rights were subordinate to all upstream depletions. After the publication, we are informed by Department representatives and upstream users that numerous inquiries were made to the Department expressing concerns about the Application and whether protests were needed to protect their interests. In response, Department representatives, including then Eastern Region Manager and District One Watermaster, Ronald D. Carlson, provided assurance that the proposed hydro power water rights were unquestionably subordinated to all upstream uses and development and that there was no reason to be concerned or protest the Application. Protests were not filed in reasonable reliance upon these representations.

On June 29, 1977, the Department approved Permit No. 01-7011 for power purposes. Appropriate and necessary conditions including subordination were omitted by the Department for reasons unknown. Proof of beneficial use was originally due June 1, 1982. However, the proof of beneficial use due date was changed several times with the latest approval requiring proof of beneficial use on November 1, 1993. Proof of beneficial use was submitted by the Applicants on October 30, 1993, and the permit is waiting for action by the Department.

September 14, 2007

Page 2

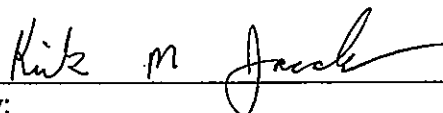
Upon review of this permit file, we would submit that any license issued for the above permit must include a condition that is consistent with Policy 32 of the State Water Plan adopted and approved by the Idaho Water Resources Board and codified at Idaho Code §42-1736B and the Department's recommendations in the SRBA that recognize that there is a "zero flow" at Milner Dam. Furthermore, Applicants certainly recognize and have formally taken the "zero flow" position as they have voted in favor of Water District 01 Resolution Number 20B which states: "The zero minimum flow at Milner, as established in the state water plan be recognized as the Water District 1's position, and that there can be no call for deliveries below Milner by downstream interests."

Any license for this water right must include a condition that subordinates this water right to all existing and future uses, including recharge water rights in order to not violate state law or policy and in order to not undermine efforts to effectively manage the Eastern Snake Plain Aquifer. To do otherwise would deprive interested parties and adversely affected right holders of due process and an opportunity to be heard by reason of the above-described representations of the Department at the time of publication.

Furthermore, since the permit was issued, Applicants have never once protested any recharge program which have been in direct contradiction of their claimed permit. In fact, Applicants have fully participated in many of these state funded programs.

Thus, we respectfully request that the conditions be modified to delete any language which would grant Applicants the right to claim upstream recharge is not subordinated to this permit/license. Also, we respectfully request that we be advised of any notices, correspondence, or other actions the Department may take with regards to Permit No. 01-7011. Please direct any correspondence or documents to the above entitled address.

Sincerely,


By: _____
Irrigation Entity: Water Dist 110
 President

Law Offices
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

KENT W. FOSTER
ROBERT E. FARNAM
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*Also licensed in Wyoming
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OCT 11 2007

**DEPARTMENT OF
WATER RESOURCES**

Arthur W. Holden
(1877-1967)
Robert B. Holden
(1911-1971)
Terry L. Crapo
(1939-1982)
William S. Holden
(1907-1988)

Of Counsel
Fred J. Hahn
Marie T. Tyler

October 9, 2007

Director David R. Tuthill, Jr.
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, ID 83720-0098

*RE: Written Comments in Response to Notice of Intent to Issue License In The Matter of
Licensing of Water Right Permit No. 01-7011 In the Name of Twin Falls Canal Company
and North Side Canal Company.*

Dear Director Tuthill:

This letter is provided in response to the Notice of Intent to Issue License (the "Notice"), dated September 5, 2007 wherein you requested written comments on the form of the subordination condition to be included on the license for Water Right No. 01-7011 to be issued to the Twin Falls Canal Company ("TFCC") and the North Side Canal Company ("NSCC"). We provided a letter to your office on April 16, 2007 requesting an opportunity to comment on the licensing of this water right, and we appreciate your consideration in providing us such an opportunity with the notice we received last month. On behalf of Mud Lake Water Users, Independent Water Users, Jefferson Canal Co., Montevue Canal Co, and Producer's Canal Co., we provide the following comments.

Based upon the recount of the history of Water Right No. 01-7011 contained in the Notice, the following subordination condition was added to the permit for Water Right No. 01-7011 after the Department approved a second application for extension of time that extended the proof of beneficial use due date to November 1, 1990:

The rights for use of water acquired under this permit shall be junior and subordinate to all other rights for the consumptive beneficial use of water, other than hydropower and groundwater recharge within the Snake River Basin of the state of Idaho that are initiated later-in-time than the priority of this permit and shall not give rise to any right or claim against any future rights for the consumptive beneficial use of water, other than hydropower and groundwater recharge within the Snake River Basin of the state of Idaho initiated later-in-time than the priority of this permit.

In our view, the above language should be altered in a manner such that Water Right No. 01-7011 is subordinated to groundwater recharge. We would propose the following subordination language:

The rights for use of water acquired under this permit shall be junior and subordinate to all other rights for the consumptive beneficial use of water that are initiated later-in-time than the priority of this permit, including, but not limited to, the use of water for groundwater recharge within the Snake River Basin of the state of Idaho. The rights for use of water acquired under this permit shall not give rise to any right or claim against any future rights for the consumptive beneficial use of water initiated later-in-time than the priority of this permit, including, but not limited to, the future beneficial use of water for groundwater recharge,. The rights for use of water acquired under this permit shall not be subordinated to future rights for hydropower within the Snake River Basin of Idaho.

As you can see, our proposed subordination language subordinates Water Right No. 01-7011 to the consumptive beneficial use of water (i.e., irrigation) *and* also subordinates this right to future rights that may be acquired for other beneficial uses such as groundwater recharge. Our reasoning for proposing such language is set forth below.

I. Subordination to Groundwater Recharge Water Rights Is Consistent With the Swan Falls Agreement.

The Department is no doubt familiar with the Swan Falls Agreement, and for the sake of brevity, we will not recount the history, terms, or conditions of that Agreement except for the subordination portion of the Agreement. TFCC and NSCC were not signatories to the agreement, but nevertheless, the subordination principles contained in the Swan Falls Agreement have important applicability in the licensing of 01-7011 because this license involves hydropower rights.

In 2006, the Honorable Bruce Newcomb proposed legislation that would have removed language contained in Idaho Code §§ 42-234(2) and 42-4201A(2) which essentially provides that groundwater recharge is a secondary use, even to hydropower rights, that were subordinated pursuant to the Swan Falls Agreement. Speaker Newcomb sent a letter to the Idaho Attorney General on February 27, 2006 with questions relating to the statutes and aquifer recharge. In a letter dated March 9, 2006, Attorney General Lawrence Wasden provided a response, now known as "Attorney General Opinion 06-2." In that letter, the Attorney General concluded that "hydropower rights referenced in the Swan Falls Agreement are subordinated to aquifer recharge in accordance with state law." 06-2 at 2. The reasoning for this conclusion is set out in the letter. The reasoning provided in the letter from Mr. Wasen is relevant to the present licensing issue in which you have requested written comments. The following comments in this section of our letter are taken nearly directly from the Attorney General Opinion 06-2.

In response to the Idaho Supreme Court's decision of *Idaho Power Co. v. Dept. of Water Resources*, 104 Idaho 575, 661 P.2d 741 (1983), Idaho Power Co. and the State of Idaho entered into the Swan Falls Agreement in which the parties agreed that a portion of Idaho Power's claimed water rights would be held in trust by the State of Idaho and that hydropower use of the trust water would be subordinated to subsequent beneficial upstream uses approved by the State in accordance with state law. The solution was a compromise between the State's desire to have immediate and complete subordination of Idaho Power's hydropower water rights and Idaho Power's desire to retain full ownership and use of its hydropower water rights until a new beneficial use of the water was approved by the Idaho Department of Water Resources. It is against this backdrop that the subordination provision of the Swan Falls Agreement must be construed.

The parties to the Swan Falls Agreement viewed it as providing "a plan best adapted to develop, conserve, and utilize the water resources of the region in the public interest." This was to be achieved largely through the subordination provision of the Agreement. *Miles v. Idaho Power Co.*, 116 Idaho 635, 637, 778 P.2d 757, 759 (1989) ("[t]he purpose of the [Swan Falls] agreement concerning subordination was to make more water available for future appropriators and to assist in the expansion of other beneficial uses of the water in the Snake River").

The actual subordination provision established certain minimum flows and provided that water accruing to Idaho Power's hydropower water rights above these minimum flows would be held in trust by the State of Idaho for "subsequent beneficial upstream uses":

The Company [Idaho Power] is also entitled to use the flow of the Snake River at its facilities to the extent of its actual beneficial use but not to exceed those amounts stated in State Water License Numbers [recitation of the applicable water right license numbers], but such rights in excess of the [minimum flow] amounts stated in 7(A) **shall be subordinate to subsequent beneficial upstream uses** upon approval of such uses by the State in accordance with State law unless the depletion violates or will violation paragraph 7(A). Company retains its right to contest any appropriation of water in accordance with State law. Company further retains the right to compel State to take reasonable steps to insure the average daily flows established by this Agreement at the Murphy U.S.G.S. gauging station. . . . This paragraph shall constitute a subordination condition.

(emphasis added).

The language in the above subordination provision is rather straightforward, as it expressly provides for subordination to "subsequent" beneficial upstream uses "upon approval of such uses by the State." These terms explicitly require subordination to beneficial uses approved after the execution of the Agreement. In the absence of any textual limitation to the contrary, the most natural

reading of this language is that it includes not only new diversion for established types of beneficial uses, **but also diversions for new types of beneficial uses recognized and approved in accordance with State law.** It seems clear that Idaho state law is static and changes over time, and this is particularly true not only with water rights and water administration in general, but specifically with respect to what uses of water are to be considered “beneficial uses”. As noted in the concurring opinion of Justice Bakes in the case of *Dept. of Parks v. Idaho Dept. of Water Administration*, 96 Idaho 440, 447-48, 530 P.2d 924, 931-32 (1974), “[w]ith the exception of the uses implicitly declared to be beneficial by Article 15, § 3, there is always a possibility that other uses beneficial in one era will not be in another and vice versa.”

At the time of the Swan Falls Agreement, aquifer recharge was an issue that had already been raised and discussed. In fact, statutes authorizing aquifer recharge were first enacted in 1978, some six years prior to the Swan Falls Agreement. The 1978 aquifer recharge statutes invoked the same “multiple use water policy of this state” that the parties explicitly recognized in the 1984 Swan Falls Agreement. In addition, at the time of the Swan Falls Agreement, other states had recognized aquifer recharge as a recognized beneficial use. See *McTaggart v. Montana Power Co.*, 602 P.2d 992, 996 (Mont. 1979); *Oahe Conservancy Subdistrict v. Janklow*, 308 N.W.2d 559, 564 (S.D. 1981).

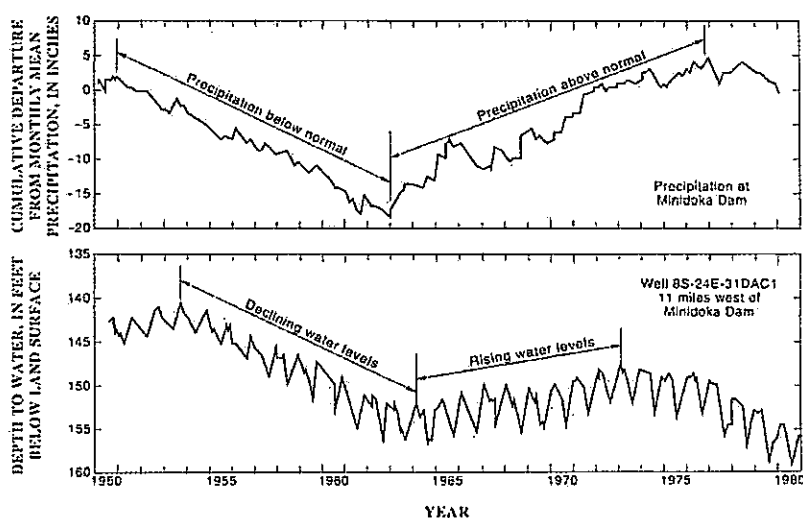
The point of the above discussion of the Swan Falls Agreement is that groundwater recharge is a use of water that has been discussed in Idaho for nearly thirty (30) years. There can be little doubt that TFCC and NSCC were also aware of the discussion concerning aquifer recharge when they filed their permit application for 01-7011. The same rationale provided above applies to 01-7011 in that groundwater recharge was a recognized beneficial use at the time the permit application was filed, and additionally, ground water recharge is today expressly recognized as a beneficial use by Idaho Code § 42-234(2). In the same spirit as the Swan Falls Agreement, 01-7011 should likewise be subordinated to groundwater recharge. It is therefore entirely appropriate for the Director to condition 01-7011 as we have proposed above in light of the above history and in light of Idaho Code § 42-234(2).

II. Groundwater Recharge Is Vital to the Health and Vitality of the Eastern Snake Plain Aquifer.

While there are many varying opinions on how the Eastern Snake Plain Aquifer (“ESPA”) should be managed, the consensus of most individuals is that recharge, both incidental and managed, is a key component of ESPA management.

There is little doubt that the Department has individuals on its staff with a much better knowledge and understanding of hydrogeology and the interaction of ground and surface water than this author. Nevertheless, we have done our best to gain a greater understanding of the hydrology of the ESPA, and offer a few brief comments on this issue which are important on this issue.

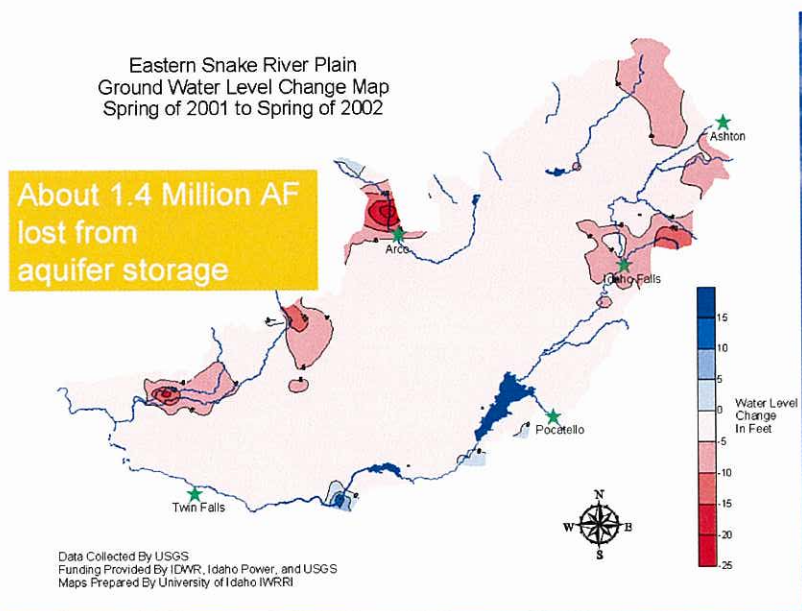
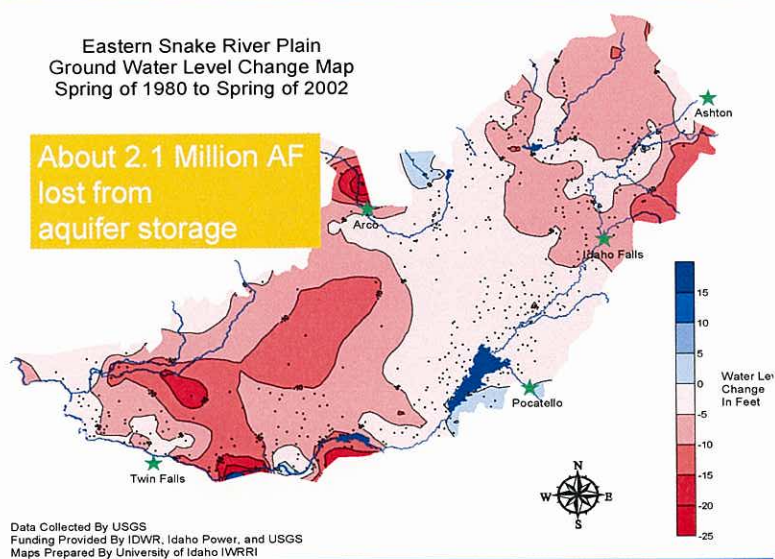
It appears most agree, and the scientific data supports the assertion, that the ESPA is very responsive to above ground precipitation conditions, such as high precipitation and drought conditions. The following powerpoint slide was taken from slides provided in a class taught at the University of Idaho by Donna Cosgrove, Ph.D, who worked closely with IWIRRI. The slide simply shows that aquifer water levels correlate well with precipitation:



Modified from Young and Norrish (1954)

FIGURE 26.—Relation of precipitation to ground-water-level trends. Locations shown on plate 1.

In relation to the above slide, and in further support of the assertion that the ESPA is responsive to above-ground precipitation conditions, such as drought, the following two slides show that between 1980 and 2002, approximately 2.1 million acre-feet (“MAF”) of water was lost from aquifer storage. Of the 2.1 MAF lost during that time period, 1.4 MAF (2/3 of the overall loss in aquifer storage) happened in one year between 2001 and 2002, a year of severe drought:



This is only a simple demonstration of the effects drought conditions have on the ESPA, and there are surely additional scientific studies and data in the hands of the Department to support this fact. The nature of our aquifer is well known as it is one of the most studied in America, and it has been commonly stated that the ESPA is very responsive to drought conditions. To buffer the effects of these drought conditions and ensure an adequate water supply for the future, managed groundwater recharge during times of normal to above-normal water supplies is perhaps the most important tool in maintaining aquifer water levels because water would be added to the aquifer in addition to natural precipitation.

Unfortunately, while the idea of groundwater recharge has been an issue discussed for nearly thirty (30) years, to our knowledge, there are very few, if any, water rights which authorize groundwater recharge. Thus, as a practical matter, if the Department were to condition 01-7011 in a manner that would not subordinate this hydropower right to future groundwater recharge, groundwater recharge would become virtually impossible because such rights would be later in priority to 01-7011, a water right with a gargantuan rate of diversion (5,714.7) cfs for the Milner Power Plant. The Department would in effect remove a vital tool that it needs to effectively manage the ESPA in the interests of all Idahoans. Presently, managed ground water recharge is still in the development process, and if the Department fails to subordinate 01-7011, ground water recharge would effectively be a tool destroyed in its infancy.

Simply put, groundwater recharge is a recognized beneficial use of water that is in the public interest of all Idaho's citizens and is desperately needed for an aquifer so highly responsive to drought. A single permit for the benefit of two powerful canal companies should not be allowed to hold the rest of the citizens hostage in the desire to manage the ESPA.

III. Reliance Upon Statements From Department Personnel.

When the Application for Permit for 01-7011 was initially filed by TFCC and NSCC on March 30, 1977, which was before the Swan Falls controversy and its resulting agreement, there was a widespread assumption and belief that all power rights were already subordinate under the law to all upstream depletions from out of stream diversions for other beneficial uses. After the publication, many people were informed by Department representatives and upstream users that numerous inquiries were made to the Department expressing concerns about the Application and whether protests were needed to protect their interests. In response, Department representatives, including Ronald D. Carlson (at the time the Eastern Region Manager and District One Watermaster), provided assurance that the proposed hydropower rights were unquestionably subordinated to all upstream uses and development and that there was no reason to be concerned or protest the Application. Protests were not filed in reliance upon these representations.

The above assertion is supported by the attached memorandum from Mr. Thomas G. Nelson. Mr. Nelson, once an attorney for Idaho Power, held the position that hydropower rights were

subordinate to all other beneficial uses. The attached memo came to light during the so-called "Swan Falls Controversy". As you can see, it was even his position at the time that hydropower rights were subordinate to all other beneficial uses. The memorandum is indicative of the beliefs held by many people as to the nature of hydropower rights at the time, including Idaho Power Co..

IV. Our Proposed Condition is Consistent With Policy 32 of the State Water Plan Adopted and Approved by the Idaho Water Resources Board and Codified at Idaho Code § 42-1736B.

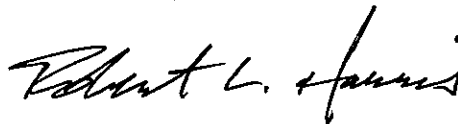
Policy 32 of the State Water Plan recognizes a "zero flow at Milner" position, a policy that has been supported formally by TFCC and NSCC. Both voted in favor of Water District 01 Resolution Number 20B, which states: "The zero minimum flow at Milner, as established in the state water plan be recognized as the Water District 1's position, and that there can be no call for deliveries below Milner by downstream interests." The licensing of 01-7011 must include a provision recognizing this policy, which the proposed provision accomplishes.

V. Conclusion.

For the reasons set forth above, we respectfully request that the condition proposed in this letter be included in the conditions of Water Right No. 01-7011. Should the Department prepare its own language on this issue, we respectfully request that the condition be modified to delete any language which would allow TFCC and/or NSCC to claim that water right No. 01-7011 is not subordinate to upstream diversions for aquifer recharge purposes. We also respectfully request that we be advised of any notices, correspondence, or other actions taken by the Department with regards to 01-7011. Please direct any responsive correspondence to Robert L. Harris at P.O. Box 50130, Idaho Falls, ID, 83405.

We appreciate the opportunity to provide written comments on this matter. If you have any questions regarding the above, please feel free to contact us at any time.

Sincerely,



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosures

c: Mud Lake Water Users
 Independent Water Users
 Jefferson Canal Co.
 Monteview Canal Co.
 Producer's Canal Co.
 Jerry Rigby
 Randy Budge

MEMORANDUM

TO: James E. Bruce

FROM: Thomas G. Nelson

SUBJECT: Possibility of using the Swan Falls water right to stop upstream depletion of the Snake River.

DATE: June 22, 1976.

FACTS: The Idaho Power Company has the following water rights at the Swan Falls site:

2150 cfs	priority January 17, 1900
1840 cfs	priority January 17, 1900
1460 cfs	priority April 17, 1900
4000 cfs	priority July 29, 1919

The discussion of the possibility of using the Swan Falls water right to prevent upstream depletion of the river by irrigation projects and consequent diminution in power generation was raised in the Pioneer licensing proceeding. A full understanding of the issue requires review of FPC licenses on other IPC projects on the river and the present status of the re-licensing of the existing Swan Falls plant.

The original FPC license on the existing Swan Falls plant was issued in 1928 to expire on June 30, 1970. IPC timely filed an application for re-licensure, which has been complicated by three options for power production in the area: (1) re-license and maintain existing plant; (2) re-build Swan Falls as a part of a two dam project, with a re-regulating dam at Guffey, to be an IPC project, or (3) build the two dam project as a joint venture with the Idaho Water Resource Board. Since 1970, the existing plant has been operating under a series of annual licenses issued by the FPC.

The joint venture proposal has progressed to the point of passage of state enabling legislation, a contract and an opinion of the Supreme Court of the State of Idaho. (Idaho Water Resource Board v. Kramer, 548 P. 35 (1976)). The project is presently undergoing study to update the original cost estimates and determine its financial feasibility.

The license issued for the Hells Canyon project (No. 1971) contained the following language:

"Article 41. The project shall be operated in such manner as will not conflict with the future depletion in flow of the waters of Snake River and its tributaries, or prevent or interfere with the future upstream diversion and use of such water above the backwater created by the project, for the irrigation of lands and other beneficial consumptive uses in the Snake River waterhead." (sic)

A similar provision is found in the state water license issued for the C. J. Strike Project (License No. 21671.) and in some, but not all, of the Hells Canyon water licenses. Those water license provisions were inserted at the request of IPC. An essentially identical provision is included in the license issued for re-licensing of the existing American Falls power plant (in Article 32). The license issued for the proposed new American Falls power plant did not contain such a provision, since the FPC felt it unnecessary in view of the control of USBR over releases of water from the American Falls Dam. (pp 11-12 of opinion of FPC)

The original Swan Falls license contained no language comparable to that found in Article 41 of the Hells Canyon license. Article 13 of that license provided:

"Article 13. The licensee will interpose no objections to, and will in no way prevent, the use of water for domestic purposes by persons or corporations occupying lands of the United States under permit along or near any stream or body of water, natural or artificial, used by this license, provided such use will not materially reduce the amount of power produced and is not in conflict with the laws of the State of Idaho."

Section 3 of the state Swan Falls enabling legislation provides, in pertinent part:

"provided that the state or the state and the joint venturer shall petition the federal power commission for insertion of a license condition subordinating the project power right to future upstream depletionary use." (1971 S.L. Ch 265, p. 1064)

The joint venture contract executed by IPC and the Idaho Water Resource Board contains the following provision:

"Section 14.2. Balance Between Irrigation and Power. The parties hereto recognize that the Act requires that the Board, or the Board and the Company, shall petition the Federal Power Commission

for insertion of a license condition subordinating the Swan Falls-Guffey Project water right to future upstream depletionary use. The parties agree to comply with this requirement."

DISCUSSION

An appropriator of water has the right to have the water he has appropriated flow to his point of diversion (Weeks v. McKay, 85 Idaho 617, 382 P 2nc. 288, 1963), but is not injured by the activities of junior appropriators which do not substantially interfere with his use. (5 Water & Water Rights, Clark, Section 4102, p. 130) That is, a senior appropriator cannot complain of the gaining of a water right by junior appropriators until those activities result in a diminution in the quantity or quality of water to which the senior appropriator is entitled. The Idaho Power Company, or any senior appropriator, cannot object to the proposed appropriation of a junior appropriator, since the junior appropriator takes his water right subject to the rights of senior appropriators.

The hydraulic capacity of the turbines at Swan Falls is approximately 8,000 cfs. Even though the water rights at Swan Falls total 9,450 cfs, an appropriator gains the right to only that amount of water which he can beneficially use. In this case, the water right at Swan Falls would be the hydraulic capacity of the turbines, or approximately 8,000 cfs.

Actual monthly flows at Murphy during June, July, August, and September 1940-1974 are as follows, in cfs:

<u>YEAR</u>	<u>JUNE</u>	<u>JULY</u>	<u>AUGUST</u>	<u>SEPTEMBER</u>
1940	7262	7026	7382	8613
1941	7982	7250	7898	8650
1942	9854	7479	7642	8654
1943	22,490	13,710	8182	9017
1944	15,540	7965	7950	8564
1945	15,040	8648	8079	8847
1946	12,160	7818	8072	9070
1947	17,080	7812	8409	9182
1948	17,500	8246	8045	9064

<u>YEAR</u>	<u>JUNE</u>	<u>JULY</u>	<u>AUGUST</u>	<u>SEPTEMBER</u>
1949	10,650	7702	8232	9407
1950	17,190	13,630	8464	9347
1951	12,100	8090	9004	9576
1952	15,110	9993	8627	9306
1953	15,290	8153	8249	9117
1954	9345	7907	8070	8869
1955	7927	7682	7644	8483
1956	21,410	7594	8243	9128
1957	11,520	7716	8151	9325
1958	6662	7595	8246	9110
1959	6951	7212	7881	9236
1960	7540	7043	7541	8209
1961	6572	6219	6838	7778
1962	9558	7062	7821	8435
1963	19,600	7235	7605	8700
1964	17,620	7394	7450	8565
1965	11,170	8672	8705	9441
1966	6731	6701	7387	8421
1967	13,310	8304	7277	8260
1968	9109	6748	8897	8743
1969	9024	7427	7292	8687
1970	14,220	8859	7154	9327
1971	18,990	11,000	7385	9008
1972	17,120	7719	7884	9779
1973	7114	6370	6694	8472
1974	14,780	8810	6855	8037

Looking at the last five years of record set out above, of the 20 months there involved, only 8 months show mean flows below the capacity of the turbines, and two of those months are within 500 cfs of turbine capacity. It is only in those months that IPC could complain of injury to its prior rights, since in the other months, the junior appropriators were using water to which IPC had no claim.

In order to obtain a prescriptive title to a water right used by another, the claimant must have made a use of the water in question that was (1) open and notorious, (2) adverse and hostile to the claim of the rightful owner, (3) exclusive of the use by the owner, (4) continuous and uninterrupted, (5) under a claim of right and (6) for five years. (Hutchins, "The Idaho Law of Water Rights," Vol. 5, Idaho Law Review, Number 1, page 80) In order for a use to be exclusive, it must be made at a time when the rightful owner actually needs the water. An irregular and interrupted possession is not sufficiently continuous to constitute "continuous use." (Carrington v. Crandall, 65 Idaho 575, 147 P2d. 1009, 1944)

Applying the above criteria to junior appropriators who potentially could claim to have adversely a portion of IPC's Swan Falls right, it appears that the elements of exclusive and continuous use are absent, since their use in the other 12 months of the 20 discussed above is consistent with their own junior right, and not inconsistent with IPC's senior right. (There may be 5 year periods in the past which could give rise to a valid claim of prescription but as to junior claimants of the last 10 years, it is doubtful that any prescriptive claims would be valid.) In Martiny v. Wells, 91 Idaho 215, 419 P2d. 470, (1966) the court said that the claimant must show "that he has used the water during each of the irrigation seasons of the five-year period when it was actually needed by the prior owner."

A more difficult question is the one of estoppel. Long and continuous known acquiescence in another's use and enjoyment of a property or a privilege may preclude one from subsequently asserting his own claim. (Hutchins, supra, p. 84) As a public utility, IPC has to furnish service to persons within its service area requesting it, including pumpers from the Snake and its tributaries. The Company has no discretion in the matter.

Using the Bell Rapids project as an example, the settlers spent large sums of money reclaiming the land and preparing it for cultivation. They contracted with IPC for power for pumping. It is a matter of common knowledge that successful irrigated farming requires the availability of

water throughout the growing season. There are no senior consumptive uses below Bell Rapids which would deprive them of a water supply in dry years. So their water supply is assured, absent an assertion of a flow right by IPC.

In looking downstream, the Bell Rapids settlers could find the depletion provisions in the Hells Canyon and Strike water licenses and in the Hells Canyon FPC license.

If IPC now attempts to enforce the Swan Falls right against Bell Rapids, it is saying, "We saw you spend the money, we will deliver power for pumping and collect money for it, but don't deplete our Swan Falls flow right." The counter argument that IPC had to furnish the service and that Bell Rapids water rights were subject to the same risks of short supply as any other junior appropriator would probably not be convincing. In the case of Newport Water Company v. Kellogg, 31 Idaho 574, 174 P. 602 (1918), Kellogg had sold some land to the water company for a reservoir site to enable it to sell water to its customers both in and out of Idaho. The court held that Kellogg was estopped to question the right of the water company to carry the water outside of the state.

Absent the giving of prior notice of its intentions to enforce its Swan Falls rights, the Company probably could not enforce those rights to the detriment of upstream junior pumpers to whom it furnished power. While the prior discussion has related to existing junior appropriators, the same answer would apply to people who have applied, but not yet diverted.

Rejected
by Sup.
ct.

If IPC was to attempt to use its Swan Falls water right to prevent further irrigation depletion above Strike, any benefit from stopping such depletion would, of course, redound to the benefit of flows at Strike, and potentially in Hells Canyon. Thus IPC would be doing indirectly what it cannot do directly, that is, protect its Strike and Hells Canyon projects from upstream depletion. In our judgment, the FPC license and state water license provisions above referred to would be construed to make the Swan Falls right subject also to depletion, since the IPC plants on the Snake are all co-ordinated for operation, and since the water license depletion provision in the Strike and some of the Hells Canyon licenses were inserted at the request of IPC.

Additionally, a depletion provision similar to that in the license for Hells Canyon and the old American Falls plant will almost certainly be in any new license issued by the FPC for the Swan Falls site, whether a renewal of the existing license or a license for the two dam plan, as a sole project

of IPC or as a joint venture with the State of Idaho. Therefore, as a practical matter, even if the Swan Falls right could now be used as a basis for stopping development which would substantially impair that right, the issuance of a new FPC license for that site will prevent any such protection being derived from the Swan Falls water right.

CONCLUSION: The Idaho Power Company's water rights for its Swan Falls plant cannot be used to prevent consumptive uses from depleting the flow of the Snake River above Swan Falls.

RECEIVED
OCT 11 2007
DEPARTMENT OF
WATER RESOURCES

North Fremont Canal
PO Box 241
Ashton, Idaho 83420

September 12, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: *Notice of Intent to Issue License: TFCC/NSCC Permit No. 01-7011
Milner Dam Hydro*

Dear Director Tuthill:

Pursuant to that certain Notice of Intent to Issue License, dated September 5, 2007 from your office, this letter is intended to object to the subordination condition to the above entitled permit as proposed in said Notice of Intent to Issue License.

When the Application was originally filed by Twin Falls Canal Company (TFCC) and North Side Canal Company (NSCC) on March 30, 1977 seeking a permit to appropriate 12,000 cfs for power purposes at Milner Dam, we understand that the notice of Application was published May 16 and 26, 1977. At that time, well before the Swan Falls controversy and resulting settlement, there was a widespread assumption and belief that all power rights were subordinate to all upstream depletions. After the publication, we are informed by Department representatives and upstream users that numerous inquiries were made to the Department expressing concerns about the Application and whether protests were needed to protect their interests. In response, Department representatives, including then Eastern Region Manager and District One Watermaster, Ronald D. Carlson, provided assurance that the proposed hydro power water rights were unquestionably subordinated to all upstream uses and development and that there was no reason to be concerned or protest the Application. Protests were not filed in reasonable reliance upon these representations.

On June 29, 1977, the Department approved Permit No. 01-7011 for power purposes. Appropriate and necessary conditions including subordination were omitted by the Department for reasons unknown. Proof of beneficial use was originally due June 1, 1982. However, the proof of

September 12, 2007
Page 2

beneficial use due date was changed several times with the latest approval requiring proof of beneficial use on November 1, 1993. Proof of beneficial use was submitted by the Applicants on October 30, 1993, and the permit is waiting for action by the Department.

Upon review of this permit file, we would submit that any license issued for the above permit must include a condition that is consistent with Policy 32 of the State Water Plan adopted and approved by the Idaho Water Resources Board and codified at Idaho Code §42-1736B and the Department's recommendations in the SRBA that recognize that there is a "zero flow" at Milner Dam. Furthermore, Applicants certainly recognize and have formally taken the "zero flow" position as they have voted in favor of Water District 01 Resolution Number 20B which states: "The zero minimum flow at Milner, as established in the state water plan be recognized as the Water District 1's position, and that there can be no call for deliveries below Milner by downstream interests."

Any license for this water right must include a condition that subordinates this water right to all existing and future uses, including recharge water rights in order to not violate state law or policy and in order to not undermine efforts to effectively manage the Eastern Snake Plain Aquifer. To do otherwise would deprive interested parties and adversely affected right holders of due process and an opportunity to be heard by reason of the above-described representations of the Department at the time of publication.

Furthermore, since the permit was issued, Applicants have never once protested any recharge program which have been in direct contradiction of their claimed permit. In fact, Applicants have fully participated in many of these state funded programs.

Thus, we respectfully request that the conditions be modified to delete any language which would grant Applicants the right to claim upstream recharge is not subordinated to this permit/license. Also, we respectfully request that we be advised of any notices, correspondence, or other actions the Department may take with regards to Permit No. 01-7011. Please direct any correspondence or documents to the above entitled address.

Sincerely,

 Director

By:

Irrigation Entity: North Fremont CANAL
system

RECEIVED
OCT 11 2007
DEPARTMENT OF
WATER RESOURCES

Yellowstone Canal
4054 East 1300 North
St. Anthony, Idaho 83420

September 12, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: *Notice of Intent to Issue License: TFCC/NSCC Permit No. 01-7011*
Milner Dam Hydro

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Sincerely,

 VP & Director

By:

Irrigation Entity: Yellowstone Canal

RECEIVED
OCT 11 2007
DEPARTMENT OF
WATER RESOURCES

Enterprise Irrigation District
2626 East 100 North
Teton, Idaho 83451

September 12, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: *Notice of Intent to Issue License: TFCC/NSCC Permit No. 01-7011
Milner Dam Hydro*

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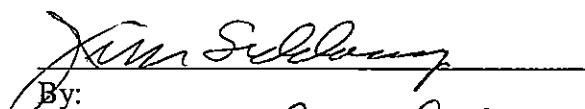
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Any license for this water right must include a condition that subordinates this water right to all existing and future uses, including recharge water rights in order to not violate state law or policy and in order to not undermine efforts to effectively manage the Eastern Snake Plain Aquifer. To do otherwise would deprive interested parties and adversely affected right holders of due process and an opportunity to be heard by reason of the above-described representations of the Department at the time of publication.

Furthermore, since the permit was issued, Applicants have never once protested any recharge program which have been in direct contradiction of their claimed permit. In fact, Applicants have fully participated in many of these state funded programs.

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Sincerely,


By:

Irrigation Entity: Pres. Enterprise Irrig Dist

RECEIVED
OCT 11 2007
DEPARTMENT OF
WATER RESOURCES

Teton Island Feeder Canal Co.
386 North 2400 East
St. Anthony, Idaho 83445

September 12, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: *Notice of Intent to Issue License: TFCC/NSCC Permit No. 01-7011
Milner Dam Hydro*

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Sincerely,


By: _____
Irrigation Entity: Teton Island Gravel
Canal Co.

RECEIVED
OCT 11 2007
DEPARTMENT OF
WATER RESOURCES

Salem Irrigation Canal Co.
5152 East Free Avenue
Iona, Idaho 83427

September 12, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

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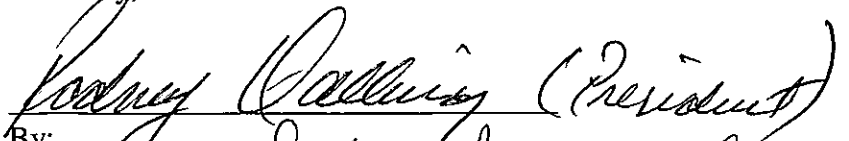
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Sincerely,


By: Rodney Balling (President)
Irrigation Entity: Salmon Irrigation Canal

 Board member

RECEIVED
OCT 11 2007
DEPARTMENT OF
WATER RESOURCES

North Fork Protective Association
350 North 6th West
St. Anthony, Idaho 83445

September 12, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

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On June 29, 1977, the Department approved Permit No. 01-7011 for power purposes. Appropriate and necessary conditions including subordination were omitted by the Department for reasons unknown. Proof of beneficial use was originally due June 1, 1982. However, the proof of

beneficial use due date was changed several times with the latest approval requiring proof of beneficial use on November 1, 1993. Proof of beneficial use was submitted by the Applicants on October 30, 1993, and the permit is waiting for action by the Department.

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Sincerely,


By: _____
Irrigation Entity: _____

RECEIVED
OCT 11 2007
DEPARTMENT OF
WATER RESOURCES

Marysville Irrigation Co.
P.O. Box 131
Ashton, Idaho 83420

September 12, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: *Notice of Intent to Issue License: TFCC/NSCC Permit No. 01-7011*
Milner Dam Hydro

Dear Director Tuthill:

Pursuant to that certain Notice of Intent to Issue License, dated September 5, 2007 from your office, this letter is intended to object to the subordination condition to the above entitled permit as proposed in said Notice of Intent to Issue License.

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September 12, 2007

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Sincerely,

Ted D. Sturm DR

By:

Irrigation Entity: Marysville Irrigation
Company

RECEIVED

OCT 11 2007

DEPARTMENT OF
WATER RESOURCES

Teton Island Canal
252 West Moran View
Rexburg, Idaho 83440

September 12, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

*Re: Notice of Intent to Issue License: TFCC/NSCC Permit No. 01-7011
Milner Dam Hydro*

Dear Director Tuthill:

Pursuant to that certain Notice of Intent to Issue License, dated September 5, 2007 from your office, this letter is intended to object to the subordination condition to the above entitled permit as proposed in said Notice of Intent to Issue License.

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Sincerely,



By:

Irrigation Entity: Teton Island Canal

RECEIVED

OCT 11 2007

DEPARTMENT OF
WATER RESOURCES

Canyon Creek Lateral
1509 N Canyon Creek Road
Newdale, Idaho 83436

September 12, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: *Notice of Intent to Issue License: TFCC/NSCC Permit No. 01-7011
Milner Dam Hydro*

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Sincerely,


By: _____
Irrigation Entity: Canyon Creek Canal

RECEIVED
OCT 12 2007
DEPARTMENT OF
WATER RESOURCES

September 12, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

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Milner Dam Hydro*

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Sincerely,

Lon Atchley, Sec

By:

Irrigation Entity: Frederick Owen Atchley, Inc.

RECEIVED

OCT 12 2007

DEPARTMENT OF
WATER RESOURCES

September 12, 2007

David R. Tuthill, Jr., Director
Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

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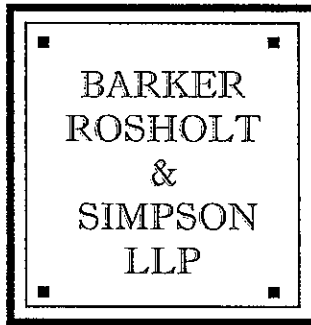
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Sincerely,

Don Hehl, Sec
By:
Irrigation Entity: Maysville Irr. Co.

ALBERT P. BARKER
JOHN A. ROSHOLT
JOHN K. SIMPSON
TRAVIS L. THOMPSON
SHELLEY M. DAVIS
PAUL L. ARRINGTON



1010 W. Jefferson, Suite 102
Post Office Box 2139
Boise, ID 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

113 Main Avenue West, Suite 303
Twin Falls, ID 83301-6167
(208) 733-0700 telephone
(208) 735-2444 facsimile
jar@idahowaters.com

John K. Simpson
jks@idahowaters.com

October 10, 2007

VIA HAND DELIVERY

Director David R. Tuthill, Jr.
Idaho Department of Water Resources
322 E. Front St.
P.O. Box 83720
Boise, Idaho 83720-0098

RECEIVED

OCT 12 2007

**DEPARTMENT OF
WATER RESOURCES**

Re: September 5, 2007 Notice of Intent to Issue License (Water Right 01-7011)

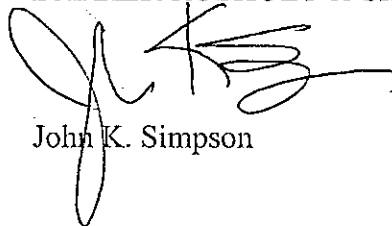
Dear Director Tuthill:

This letter is being sent on behalf of our clients Twin Falls Canal Company and North Side Canal Company ("Canal Companies"). The Canal Companies object to the unlawful process you are attempting to undertake with respect to their water right 01-7011. Consequently, the Canal Companies have filed an action against you and the Department in the District Court of the Fifth Judicial District in Jerome County. Obviously, the Canal Companies object to any efforts to add to or modify the permit language which vested upon filing of proof of beneficial use in 1993.

In the event the District Court determines this process you are attempting is valid, the Canal Companies reserve the right to file any necessary comments.

Sincerely,

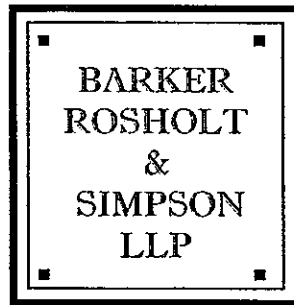
BARKER ROSHOLT & SIMPSON LLP



John K. Simpson

cc: Ted Diehl, NSCC
Vince Alberdi, TFCC

ALBERT P. BARKER
JOHN A. ROSHOLT
JOHN K. SIMPSON
TRAVIS L. THOMPSON
SHELLEY M. DAVIS
PAUL L. ARRINGTON



1010 W. Jefferson, Suite 102
Post Office Box 2139
Boise, ID 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

113 Main Avenue West, Suite 303
Twin Falls, ID 83301-6167
(208) 733-0700 telephone
(208) 735-2444 facsimile
jar@idahowaters.com

John K. Simpson
jks@idahowaters.com

October 10, 2007

RECEIVED

OCT 11 2007

DEPARTMENT OF
WATER RESOURCES

VIA HAND DELIVERY

Director David R. Tuthill, Jr.
Idaho Department of Water Resources
322 E. Front St.
P.O. Box 83720
Boise, Idaho 83720-0098

Re: September 5, 2007 Notice of Intent to Issue License (Water Right 01-7011)

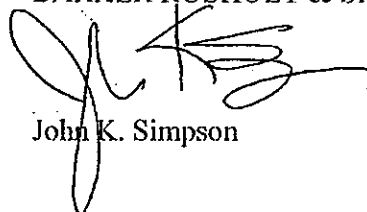
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