

MEMORANDUM

FROM: Garrick Baxter, Deputy Attorney General, Water Resources Section

TO: David R. Tuthill, Jr., Director, Idaho Department of Water Resources

CC: Phil Rassier, Chief, Water Resources Section

DATE: August 31, 2007

RE: History of Subordination Comment for 03-7018 (Idaho Power)

On December 24, 1975, the Idaho Power Company (IPC) filed an application for permit with the Idaho Department of Water Resources (IDWR) for additional power generation capacity at Brownlee Reservoir. IDWR approved the application for permit on January 29, 1976. See attached copy of the Approved Permit.

A statement that the permit holder had completed development was received by IDWR on August 8, 1980. A beneficial use exam took place on September 18, 1985. While IDWR has not yet issued the license for this right, but it is my understanding that IDWR is close to being ready to issue the license.

IDWR filed its recommendation for water right claim no. 03-7018 with the Snake River Basin Adjudication (SRBA) distinct court on August 18, 2006. IDWR's recommendation reflects the elements listed in the permit, including the subordination language used in the permit. The subordination language provides:

The rights for the use of the waters under this permit shall be subordinate to and not prevent or interfere with any future upstream diversion and use of the waters of the Snake River and its tributaries for the irrigation of lands or other consumptive beneficial uses in the Snake River watershed.

On November 1, 2006, IPC filed an objection to IDWR's recommendation for 03-7018. Specifically, Idaho Power objected to the subordination language. IPC's objection states that IDWR should have used the subordination language from the other Hells Canyon complex water rights in this right. The language used in the other Hells Canyon complex water rights is as follows:

The project shall be operated in such manner as will not conflict with the future depletion in flow of the waters of the Snake River and its tributaries, or prevent or interfere with the future upstream diversion and use of such waters above the backwater created by said dam for the irrigation of lands and other beneficial consumptive uses in the Snake River watershed.

IPC's attorney has sent IDWR a proposed settlement agreement. In the agreement, IPC proposes that to keep the language used in the permit, but add the "backwater" language used in the other rights. The language IPC proposes to insert appears in red below:

Use This condition { The rights for the use of the waters under this ^{right} permit shall be subordinate to and not prevent or interfere with any future upstream diversion and use of the waters of the Snake River and its tributaries above the backwater created by said dam for the irrigation of lands or other consumptive beneficial uses in the Snake River watershed. }

The question now before IDWR is whether or not IDWR it should accept the settlement offer.