

File for
01-7011

Dave

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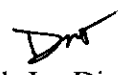
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February 5, 2007



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

Re: TFCC/NSCC Permit No. 01-7011
Milner Dam Hydro

Dear Mr. Tuthill:

This letter requests that the Idaho Ground Water Appropriators (IGWA), acting for and on behalf of its ground water districts and other members, be advised of any notices, correspondence or actions taken by the Idaho Department of Water Resources (Department) with regards to Permit No. 01-7011, the Milner Dam filing of Twin Falls and North Side Canal Companies.

This 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. 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

February 5, 2007

Page 2

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.

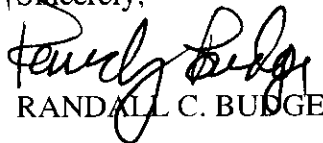
On June 29, 1977, the Department approved Permit No. 01-7011 for power purposes. Appropriate and necessary conditions including subordination were omitted by the Department for reasons unknown. Proof of beneficial use was originally due June 1, 1982. However, the proof of beneficial use due date was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

Upon review of this permit file, IGWA believes 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 (see recommendations for example for water right numbers 2-200, 2-201, 2-223, 2-224, and General Provision No. 4 for Basin 02).

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. At a minimum, the Application would need to be re-advertised under these irregular and unusual circumstances.

Thus, IGWA respectfully requests that it 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 me at Racine, Olson, Nye, Budge & Bailey, Chartered, P.O. Box 1391, Pocatello, Idaho 83204-1391.

Sincerely,


RANDALL C. BUDGE

RCB:rr

cc: IGWA:

Tim Deeg, President
Lynn Tominaga, Executive Director
Executive Committee

Idaho Water Resource board:

Jerry Rigby, Chairman
Hal Anderson, Secretary