

MEMORANDUM

DATE: June 12, 2006

TO: Water Right File 85-15653

FROM: Shelley W. Keen *SWK*

RE: Local Public Interest

Application 85-15653 proposes a diversion of 0.20 cfs of water from Farrens Creek to generate power for a single home that is not on the regional power grid. IDFG and IDEQ recommended that IDWR approve Application 85-15653 with a condition that a portion of the stream flow must remain in the stream channel for habitat protection for unspecified wildlife species.

The applicant has stated in numerous telephone conversations with IDWR staff members that he needs as much of the stream flow as possible, up to 0.20 cfs, to generate power with the limited head available to him. When flows are below 0.20 cfs, the applicant wants to be able to divert the entire flow of the stream.

Article XV, Section 3, of the Idaho Constitution states, "The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied, except that the state may regulate and limit the use thereof for power purposes." However, Idaho Code Section 42-203A(5) and Water Appropriation Rule 40.05.g direct IDWR to ensure that a proposed use of water will not conflict with the local public interest. The criteria for evaluating the public interest are stated in Water Appropriation Rules 45.01.i-iii, which can be summarized as follows:

- i. Effects on the local economy.
- ii. Effects on recreation, fish, and wildlife resources.
- iii. Compliance with air, water, and substance standards and local zoning ordinances.

The concerns of IDFG and IDEQ fall within the scope of Rule 45.01.ii, which requires IDWR to consider effects of the proposed appropriation on recreation, fish, and wildlife resources. Information regarding each of the three listed resources can be summarized as follows:

- **Fish** – IDFG, IDEQ, and USFS all stated that Farrens Creek is probably not populated by ESA-listed fish species. The USFS stated that it did not find any fish at all in Farrens Creek.
- **Wildlife** – IDFG and IDEQ expressed concern that the proposed appropriation would negatively impact wildlife, but they did not specify which species they were concerned about or what the relative abundance of those species might be.

- **Recreation** – Farrens Creek is not known for recreational opportunities. Flows are insufficient for fishing and boating.

Of the three values, the only one that might be impaired by the proposed diversion of water is wildlife habitat. IDFG and IDEQ did not specify species of concern or why the flows of Farrens Creek are critical to the survival of those species. IDWR calculated that the applicant's proposed system would likely generate about 500 Watts maximum, which is not sufficient for the typical modern household, but is sufficient for some electrical supply to a home that is not on the power grid and that would otherwise have to rely on expensive fossil fuels for power. Moreover, the applicant's overall impact on Farrens Creek will be minimal. The potentially de-watered section of the stream will be a few hundred feet at most, and it will be contained on the applicant's own property. The specific benefits to the applicant, tempered by the minimal environmental impact of the project, outweigh the vague public interest concerns expressed by IDFG and IDEQ.