



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

September 19, 2005

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

KENT W FOSTER
HOLDEN KIDWELL HAHN & CRAPO PLLC
PO BOX 50130
IDAHO FALLS ID 83405

TRAVIS L THOMPSON
BARKER ROSHOLT & SIMPSON LLP
PO BOX 485
TWIN FALLS ID 83303-485

RE: Application No. 25-14114 (Falls Water Company)

Gentlemen:

IDWR has reviewed your Stipulation to Resolve Protest in the matter of Application for Permit 25-14114, which was filed in the name of Falls Water Co., Inc. Your stipulation calls for the inclusion of the following condition on the water right permit, if it is issued.

Diversion and use of water under this right, in conjunction with water right nos. 25-7148, 25-7191, 25-7418, 25-14035 and 25-14055 is limited to a total annual volume of 3,716 acre-feet.

IDWR has a number of concerns about this proposed condition. First, the condition excludes Water Right 25-7509, which was purchased by Falls Water Company and transferred to municipal use on March 3, 2005. The stipulation provides no explanation for the exclusion of Water Right 25-7509, which adds 15.2 acre-feet to Falls Water Company's water rights. Second, the SRBA court has not decreed Claims 25-14035 and 25-14055. Therefore, IDWR is reluctant to include them in a list of water rights without addressing the possibility that the court may not confirm them. Third, most of Falls Water Company's water rights have been claimed in the SRBA. The condition should allow for the possibility, however remote, that the SRBA court will not confirm those rights. For those reasons, IDWR proposes to modify the condition from the stipulation to say:

Diversion and use of water under this right in conjunction with water right nos. 25-7148, 25-7191, 25-7418, 25-7509, and Snake River Basin Adjudication Claims (SRBA) claim nos. 25-14035 and 25-14055 is limited to a total annual volume of 3,730.4 acre-feet. If any of these rights are claimed in the SRBA but are not confirmed by the SRBA court, then the total combined annual volume of

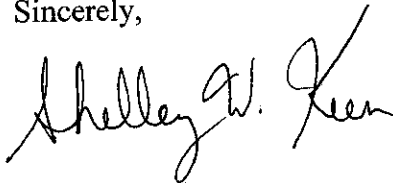
Kent W. Foster
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3,730.4 acre-feet shall be reduced by the amount of the right or claim that is not confirmed in the SRBA.

IDWR will hold the application for 14 days to give you an opportunity to comment on the proposed change. Please notify me in writing within that period if the proposed change is acceptable to you or if you have questions or concerns. If IDWR does not receive a response within that period, I will assume that the proposed change is acceptable to you. If the proposed change is not acceptable, then the protest by Twin Falls Canal Company and Northside Canal Company will not be considered to have been withdrawn, and the application will remain an active contested case before IDWR. As with other contested cases, the parties shall have further opportunity to resolve the contested case through continued negotiations.

If you have any questions, please call me at 208-287-4947, or email me at shelley.keen@idwr.idaho.gov.

Sincerely,

A handwritten signature in black ink, reading "Shelley W. Keen". The signature is written in a cursive, flowing style.

Shelley W. Keen
Water Rights Supervisor