
From: Cefalo, James <James.Cefalo@idwr.idaho.gov>
Sent: Friday, August 11, 2023 2:52 PM
To: Chris Bromley <cbromley@mchughbromley.com>; Greg Sullivan <greg.sullivan@brockwayeng.com>
Cc: John K. Simpson <jsimpson@martenlaw.com>; Pugrud, Scott <spugrud2@idahopower.com>; Lafortune, Thomas <Thomas.Lafortune@idwr.idaho.gov>
Subject: Applications for Transfer 87984 and 87987 (City of Heyburn)

Chris and Greg,

We are scheduled to conduct an informal settlement conference for these contested cases on August 29th. In addition to the issues of protest raised by Idaho Power Company, I wanted to make you aware of some concerns I have with Applications 87984 and 87987. I think it is worthwhile to make you aware of these concerns prior to the informal settlement conference so you can prepare for the discussion.

Application 87984

Water right 35-14680 is a split portion of water right 35-2122. Application for Permit 35-2122, filed on December 24, 1948, stated that the proposed place of use was covered by 15 shares in Aberdeen Springfield Canal Company (ASCC). The proof of beneficial use for the right refers to the same 15 shares in ASCC. The licensed place of use for water right 35-2122 covered parts of the NW1/4, NWNE and SWNE of Section 22, T03S, R33E.

Water right 35-14683 is a split portion of water right 35-7417. Application for Permit 35-7417 was filed on May 8, 1974. The place of use described in the application included acres in the NE1/4, NENW and SENW of Section 21, and the NWNW of Section 22, T03S, R33E. Application 35-7417 states that 48 shares in Aberdeen-Springfield Canal Company were also used to irrigate the 200-acre proposed place of use.

Some of the acres under the current place of use for water rights 35-14680 and 35-14683 were claimed as irrigated acres by ASCC in the SRBA. These claimed acres are part of the 61,772.6 authorized acres described in the ASCC water rights. The current combined place of use for water rights 35-14680 and 35-14683 overlaps the irrigated acres claimed by ASCC by 83 acres.

A recent Idaho Supreme Court Case, 3G Ag LLC v. IDWR, addressed questions of enlargement when unstacking ground water rights from canal company shares. The court held that moving ground water irrigation rights to a new place of use without reducing the irrigated acres of the underlying canal company rights would result in an enlargement.



Application 87984 raises similar enlargement concerns. Water rights 35-14680 and 35-14683 and the ASCC canal shares constitute a single combined beneficial use on the 83 acres of overlap. If the entire consumptive use associated with water rights 35-14680 and 35-14683 is moved off the property under Application 87984, then the ASCC water rights must be reduced by 83 acres to prevent an enlargement of the water rights.

Application 87987

Application 87987 proposes to change the nature of use of water rights 36-8550 and 36-8738 from municipal use to irrigation use. Generally, when an application for transfer proposes to change the nature of use for a water right, the Department limits the new beneficial use to the historical consumptive use occurring under the existing water rights. The City proposes to divert 1,126.8 acre-feet of water under water rights 36-8550 and 36-8738 for irrigation use. However, the City has never pumped that volume of water under water rights 36-8550 and 36-8738 at the existing points of diversion. Based on delivery records from Water District 130, the City usually pumps between 500 and 600 combined acre-feet per year under water rights 36-8550 and 36-8738. Although the water district records show a large volume of water pumped in 2013, the watermaster confirmed that the city's flowmeters were broken in 2013 and the diversion volume for that year is not reliable. Further, the City's wastewater flow for 2013 suggests that the diversion volume reported for that year is not reliable. Most of the water pumped by the City is not consumed and is discharged into a drain channel connected to the Snake River. For example, in 2022, the City diverted 513.7 acre-feet and returned 510.5 acre-feet to the drain channel through its wastewater treatment facility. The wastewater plant returns the water to the reach of the Snake River most impacted by the pumping from the City's wells. Based on the current ESPA model, over 40% of the depletion impacts from the City's wells propagate to the Neeley to Minidoka reach of the Snake River.

I look forward to our discussion.

James

 IDAHO DEPARTMENT OF
WATER RESOURCES
James Cefalo | Regional Manager
900 N Skyline Drive, Idaho Falls, ID 83402
(208) 525-7161 | www.idwr.idaho.gov