



State of Idaho  
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ADMINISTRATOR'S MEMORANDUM

TO: Regional Offices and Water Allocation Section  
FROM: Norman C. Young *NCY*  
DATE: May 30, 1985  
RE: Processing of Water Rights in the Snake River  
Drainage Basin

Application Processing No., 33

The purpose of this memorandum is to establish interim guidelines concerning processing of water rights in the Snake River Drainage Basin (SRDB) in view of the Swan Falls negotiations and 1985 legislation. The memorandum is intended to be used by IDWR staff as guidance for processing water rights and for providing assistance to SRDB waterusers who contact our offices with water right questions.

Primary references for review and processing of water rights in the SRDB consist of: standard references including Title 42, Idaho Code; the Swan Falls Contract to Implement (Contract) dated October 25, 1984; the Swan Falls Agreement dated October 25, 1984; SB1008 (effective 7/1/85), which amends Section 42-203, Idaho Code; HB71 (effective 7/1/85), which establishes presumptions of water rights in basin-wide adjudications; Memorandum from the Director, dated November 16, 1984, entitled "Processing of Applications Within the Swan Falls Impact Area"; and a letter and interim approval given to Simon Martin on Application No. 31-7878 dated April 22, 1985, which identifies criteria for interim approval of ground water with replacement of potential river flow reductions from stored water.

Groundwater v. Surface Water

Based on conjunctive use interpretations, water rights for all groundwater aquifers upgradient from Swan Falls are managed the same as surface water sources, with the exception that water right restrictions in groundwater aquifers within Groundwater Management Areas and Critical Groundwater Areas are in no way reduced or changed by other water right review considerations described in this memo.

### Purpose of Use

Pursuant to the Contract, applications for permit for water uses qualifying as DCMI (Domestic, Commercial, Municipal or Industrial) as defined within the Contract are not protested by Idaho Power Company and are currently being processed without special considerations. Also, applications for non-consumptive uses which are not considered to impact downstream water supplies are not subject to considerations intended to protect Idaho Power Company interests.

### Questions to be Answered

#### 1. Which applications can be processed now?

Applications that can be processed now include all applications with source downstream from Swan Falls and all applications with source upstream from Swan Falls for which the uses are either non-consumptive or fall within the provisions of the Contract. Uses which fall within the provisions of the Contract include certain DCMI uses and irrigation uses which had a "substantial investment in irrigation wells and irrigation equipment" prior to November 19, 1982, pursuant to a water right filed prior to November 19, 1982.

Any applications dismissed by Idaho Power Company from the Swan Falls "7500 lawsuit" (Ada County Civil Case No. 81375) may be processed. All applications which do not fit in the category of being eligible for processing now will be held for processing after July 1, 1985, following adoption of rules and regulations to implement 42-203C, Idaho Code.

#### 2. What advice do we give to permit holders that have not developed?

Permit holders for sources downstream from Swan Falls may pursue development, being mindful of the requirements for commencement of construction of works. Holders of permits upstream from Swan Falls should be advised that any part of the permit not placed to a beneficial use prior to July 1, 1985 will be subject to reprocessing under the provisions of Sec. 42-203D. Any permit for which development prior to July 1, 1985 has not been confirmed through the filing of proof of beneficial use prior to July 1, 1985 will be presumed to require reprocessing pursuant to 42-203D, Idaho Code.

3. What advice do we give to those who have developed prior to October 1, 1984 and have not made a filing to record the use?

a) New development prior to mandatory permit dates

Advice: File a notice of claim before July 1, 1985 to obtain benefits of subordination per the Swan Falls Agreement.

b) Expanded development of either an adjudicated or unadjudicated right prior to the mandatory permit dates

Advice: File a notice of claim before July 1, 1985 to obtain the benefits of subordination per the Swan Falls Agreement. A decreed right holder may choose to claim the priority date of the decreed right for the expansion. Those expanding a non-adjudicated right should claim a priority of the day the expansion occurred.

c) New development subsequent to mandatory permit dates

Advice: File an application for permit. If the development occurred prior to October 1, 1984, the application should be filed prior to July 1, 1985 to obtain benefits of subordination per the Swan Falls Agreement.

d) Expanded development of an adjudicated right after the mandatory permit dates

Advice: File an application for permit noting in the comments section that the application is for development already in place, and that the application is being made to insure that the benefits of subordination per the Swan Falls Agreement are obtained. The applicant may also want to note that he intends to claim the priority of the adjudicated right in accordance with HB71, if a basin wide adjudication occurs at a later date. This filing also needs to be made prior to July 1, 1985 to benefit from the Swan Falls Agreement, assuming that the development occurred prior to October 1, 1984.

e) Expanded development of an unadjudicated right after the mandatory permit dates

Advice: File an application for permit noting in the comments section that the application is for development already in place, and that the application is being made to insure that the benefits of subordination per the Swan Falls Agreement are obtained. The applicant may also want to note that he intends to claim the priority date of when the expansion occurred in accordance with HB71, if a basin wide adjudication occurs at a later date. This filing also needs to be made prior to July 1, 1985 to benefit from the Swan Falls Agreement, assuming that the development occurred prior to October 1, 1984.

4. Who can be aided by the temporary approvals using stored water?

An applicant upstream from Swan Falls who wishes to beneficially use water this year under a valid water right can request a temporary replacement (in the form of an application for permit) based on the criteria established in the approval of application for permit 31-7878. Note that approval of this type of water use is temporary only and does not guarantee that stored water will be available for replacement in subsequent years or that trust water will be granted for the use upon reprocessing of the permit. This type of approval will not be a basis for obtaining a water right for Carey Act or DLE development, and probably will not be useful to those needing long term financing.

The intent of this memorandum is to provide initial responses to basic questions that have arisen regarding water rights in the SRDB. This memorandum is not intended to be comprehensive in response, but rather to provide some temporary guidelines regarding Department direction in the interim period before SB1008 becomes effective and rules and regulations for allocating trust water are adopted. Advice to the public, and processing of water rights based on this memorandum, should be tentative in nature and considered to be our best guidance at this time but subject to change. Additional guidance will be issued as modifications to or clarification of information herein is determined.