

STATE OF COLORADO

OFFICE OF THE STATE ENGINEER

Division of Water Resources
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WRITTEN INSTRUCTION AND ORDER 2007-03 Instruction and Order Concerning the Administration of Power Interference Contracts May 31, 2007

The State and Division Engineers shall administer power interference contracts in conformance with the doctrine of prior appropriation and water court decrees. Power interference contracts typically involve one or more water users paying power interference charges to the holder of a hydropower right in exchange for forgone hydropower diversions. Such agreements typically involve the use of the waters of the State of Colorado, and are subject to the limitations of the prior appropriation system, and the statutes and other law governing the use of the state's waters. When construing such contracts, the Division Engineers shall do so consistent with the laws existing at the time the agreement is executed. Parties to such contracts are presumed to be aware of the limits of the law governing the use of the state's waters. The administration of such contracts is handled in the following manner:

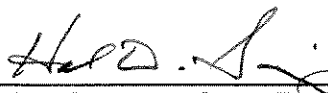
The Division Engineers shall administer the river according to decreed priorities and the availability of water.

If a power interference contract involves all or a portion of a senior hydropower water right and the next right in priority, then the senior water right may agree to forgo diversions, which makes water available to the next water right in priority. The Division Engineers may administer such a contract upon the request of the parties.

If a power interference contract involves all or a portion of a senior hydropower water right and one or more junior water rights that are not the next rights in priority, then the Division Engineers will construe the contract as a subordination of all or a portion of the hydropower right, as appropriate, to the most junior water right covered by the contract and all water rights senior to that most junior water right. In other words, in the line of priorities, all or a portion of the hydropower water right will stand behind the most junior water right covered by the contract.

The State Engineer's Policy Memorandum 99-2, dated March 1, 1999, is hereby withdrawn, and the Division Engineers shall administer power interference contracts in accordance with this instruction and order.

Approved by:


Hal D. Simpson, State Engineer

Date: 5/31/07