

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE)	
NO. 37-8705 IN THE NAME OF)	ORDER ON
<u>WILLIAM HUBERT SHAW</u>)	RECONSIDERATION

This matter having come before the Department of Water Resources (Department) as a petition to reconsider the issuance of a water right license, the Department finds, concludes and orders as follows:

FINDINGS OF FACT

1. On June 12, 1991, the Department issued Permit 37-8705 (permit) authorizing William Hubert Shaw (right holder) to develop a right to divert 7.0 cfs from groundwater in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ or in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, Township 6 South, Range 19 East, B.M., Lincoln County, to irrigate four hundred and twenty acres.
2. In April of 1991 Elsing Drilling constructed a well for the right holder in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 29, Township 6 South, Range 19 East, B.M. The well was constructed to a depth of 305 feet below ground surface, and the static water level was 265 feet below ground surface.
3. On May 13, 1992, the Department received a proof of beneficial use statement (proof statement) for the permit from the right holder. The proof statement indicated that the point of diversion was equipped with a 200 horsepower motor and pump and was diverting 7.0 cfs of water in connection with the permit.
4. On September 13, 2001, Department staff measured the flow rate of water at the point of diversion in connection with the permit. At the field visit, Department staff found a 200 horsepower motor and pump and measured 3.98 cfs at the permitted point of diversion.
5. On September 3, 2008, Department staff sent the right holder a letter in order to schedule a field examination to verify the beneficial use of water developed in accordance with the permit.
6. On January 21, 2009, the Department received two pieces of documentation from the right holder. The documentation was intended to show that a higher diversion rate than that which was measured on September 13, 2001, was developed during the development period for the permit. The first document is a December 12, 2008, statement signed by Max Auker, a former employee of Silver Creek Irrigation. Mr. Auker stated that he installed a pump in the permitted point of diversion sometime between 1989 and 1990 and that it was capable of pumping 7.0 cfs of water. Mr. Auker attached a pump performance curve to the statement. The second piece of evidence that the right holder submitted was an invoice from Layne Pumps, Inc., dated June 2, 1993. The invoice was for several items that were sold to the right holder for a "300 horsepower Layne deep well". There is a note affixed to the invoice that says, "1993 pulled 300 hp, repaired, moved to another well. Replaced w/ 200 hp." The note was not dated and the origin of the note is unknown.

7. On August 30, 2012, a Department field examiner conducted an examination to verify the beneficial use of water developed in accordance with the permit. The examiner reported that the right holder diverted groundwater to irrigate four-hundred and ten acres in accordance with the permit. The examiner did not measure the diversion capacity of the point of diversion, but used the measurement taken by the Department in 2001.
8. On April 5, 2013, the Department issued Water Right License 37-8705 (license) confirming the right to divert up to 3.9 cfs of groundwater for the irrigation of four hundred and ten acres. The license was issued as a preliminary order (order) of the Department pursuant to Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730).
9. On April 19, 2013, the Department received a petition for reconsideration (petition) of the order from the right holder's attorney. In the petition, the right holder asks the Department to amend the licensed diversion rate of 3.9 cfs to 7.0 cfs. Affidavits from the right holder and Mr. Auker were, included in the petition, are summarized as follows:
 - Max Auker states in regard to the licensed point of diversion, "In or about 1991, I personally installed the pump and motor on the well. As originally configured, the pump that was placed on the well was a 300 hp pump. The pump was set up to discharge water at the rate of 7.0 cfs."
 - The right holder states that he purchased a 300 horsepower motor and pump from Silver Creek Irrigation and used it in 1991 and 1992 to divert 7.0 cfs of ground water in connection with the permit. The water diverted from the well was delivered open discharge, meaning that it was not delivered into a pressurized sprinkler system.
 - The right holder states that his proof statement that he was using a 200 horsepower motor and pump was a clerical mistake. Instead he asserts he was using a 300 horsepower motor and pump at the point of diversion during the time the proof statement was filed with the Department. The right holder explained that the 300 horsepower motor and pump was pulled from the point of diversion in 1993 and was replaced with a 200 horsepower motor and pump since there was sufficient surface water to irrigate the permitted place of use.
10. Rule 730.02.a. of the Department's Rules of Procedure (IDAPA 37.01.01.730.02.a.) provides in pertinent part as follows:

Any party may file a petition for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law.

ANALYSIS

The Department issued the license for 3.9 cfs because it had been confirmed in 2001 and because, given the other characteristics of the diversion system (likely pumping depth and open discharge) it was consistent with the use of a 200 horsepower motor and pump, as stated on the right holder's

proof statement. The Department also found that the pump performance curve submitted in 2009 was not consistent with the use of a 300 horsepower motor and pump at the permitted point of diversion. In fact, the pump curve is problematic because it does not seem to accurately reflect use of a 300 horsepower motor or a 200 horsepower motor for a diversion system with the other characteristics of the right holder's diversion system.

Despite the Department's logic in issuing the license for 3.9 cfs, both Mr. Auker and the right holder reasserted in their affidavits that a 300 horsepower motor and pump was indeed employed prior to the proof statement. The significance of a 300 horsepower motor is that it could have resulted in the diversion of 7.0 cfs, whereas use of a 200 horsepower motor certainly would not have provided 7.0 cfs, even when efficiency of the pump and motor were optimal.¹ The right holder stated that he made a clerical error when filling out his proof statement and meant to say that a 300 horsepower motor and pump was installed in connection with the permit. Also, Mr. Auker's statement that he installed a 300 horsepower pumping system in connection with the permit is particularly credible because installing motors and pumps was his profession, and he has no apparent personal stake in the water right. The Department did not inspect the permitted point of diversion until 2001. Therefore, it is plausible that a 300 horsepower motor was in place during the permitted development period.

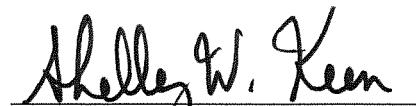
CONCLUSIONS OF LAW

1. The petition was filed timely.
2. The right holder diverted and used 7.0 cfs for irrigation purposes during the authorized development period for the permit.
3. The Department should revise the diversion rate description on the license.

ORDER

IT IS HEREBY ORDERED that the diversion rate for irrigation use shall be **CORRECTED** from 3.9 cfs to 7.0 cfs on Water Right License 37-8705.

Dated this 9th day of May, 2013.


Shelley W. Keen, Manager
Water Right Permits Section

¹ The Department sometimes employs a calculation called the horsepower equation to estimate the rate of water diverted from pumping systems when a direct measurement is not possible. In this case, the field examiner found that the pump must lift water about 300 feet, and the discharge is not pressurized. When these variables are used in the horsepower equation, along with an efficiency of 83%, the 300 horsepower motor and pump could produce 7.0cfs. All else being equal, a 200 horsepower motor and pump could not produce 7.0 cfs. Typical pump efficiency would be about 70%, but efficiencies exceeding 80% are sometimes achieved when a new motor and pump are being used.