

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT	)	ORDER GRANTING PETITION TO
NO. 63-31550 IN THE NAME OF	)	CHANGE WATER BEARING ZONE
CITY OF CALDWELL	)	AND MODIFYING THE CONDITION
	)	STIPULATING THE CASE AND SEAL
_____	)	OF THE POINT OF DIVERSION

This matter having come before the Department of Water Resources (Department) as a petition to change a condition limiting the water bearing zone from which ground water can be appropriated and to modify the condition specific to the point of diversion construction, the Department finds, concludes and orders:

FINDINGS OF FACT

1. On September 20, 2002, the Department received an Application for Permit (application) from the City of Caldwell to appropriate 4.90 cubic feet per second from ground water within the SE¼NE¼ of Section 10, Township 3 North, Range 3 West, B.M., for municipal purposes.
2. On October 3, 2002 and October 10, 2002, the Department caused a Notice of Application for Water Right to be published in the Idaho Press-Tribune.
3. On October 21, 2002, the Department received a Notice of Protest (protest) protesting the application from the United States Department of the Interior Bureau of Reclamation (BOR or protestants) citing injury to BOR project water rights as the basis of the protest.
4. On December 4, 2002, the Department received a letter from the BOR that withdrew the protest. An agreement had been reached by the BOR and permit holder.
5. On January 9, 2003, the Department issued permit no. 63-31550 (permit) in the name of City of Caldwell (permit holder). Approval condition no. 6 on the permit says;

Water bearing zone is between 260 and 900 feet.

Approval condition no. 9 on the permit came from the agreement between the protestant and the permit holder and addressed well construction standards for the permitted point of diversion. Condition no. 9 on the permit says:

The well serving as the point of diversion for this right shall be continuously cased and sealed from land surface to the top of the proposed target aquifer at 216 feet below ground level. The full depth surface seal for the well shall consist of solid bentonite chips poured into place as an envelope to a centralized well casing."

6. On November 1, 2006, the Department received the permit holder's proof of beneficial use statement for the permit and the field examination report prepared by a certified water right examiner. The examiner found that the water bearing zone appropriated ranged from 199 feet to 320 feet below ground surface. The examiner recommended that the Department modify condition no. 6 on the permit to change the water bearing zone interval to 200 feet to 500 feet below ground surface.

7. In his field examination report, the field examiner concluded the following in regard to condition no. 9:

Although a full-depth surface seal was emplaced and documented, to envelop a centralized casing from land surface to the top of the completion aquifer, the surface seal consists of a high-solids (>30% solids by weight) bentonite grout rather than "solid bentonite chips" specified by the permit. Also the upper limit of the aquifer is 199 feet rather than the 216 feet specified by the permit.

The examiner recommended re-wording condition no. 9 to to say:

The well serving as the primary point of diversion for this right shall be continuously cased and sealed from land surface to the top of the completion aquifer at 199 feet below ground level. The seal shall consist of an approved grout pumped into place from the base of the casing, or a solid bentonite chip poured into place, into a uniform annular space surrounding the centralized casing.

8. On December, 8, 2011, the Department sent a letter to the BOR that shared the field examination report and asked them to respond if they had any concerns with the changes proposed by the field examiner. The Department gave the BOR 60 days to respond.

9. To date, the Department has not received a response from the BOR.

CONCLUSIONS

1. Section 42-211, Idaho Code, says, in pertinent part:

Whenever a permit has been issued pursuant to the provisions of this act, and the permit holder desires to change the place, period, or nature of the intended use, or make other substantial changes in the method of diversion or proposed use or uses of water, he shall file an application for amendment upon forms to be furnished by the department of water resources together with the statutory fee for filing and recording same, and upon receipt thereof it shall be the duty of the department of water resources to examine same and if approval thereof would not result in the diversion and use of more water than originally permitted and if the rights of others will not be adversely affected thereby, the director of the department of water resources shall approve said application and return an approved copy to the permit holder.

2. Changing the authorized water bearing zone to 199 to 320 feet below ground surface, as developed, is not a substantial change to the elements of the water right authorized for development in connection with the permit.
3. No protests or complaints have been filed with the Department to date despite that the water bearing zone was developed differently than permitted.
4. The well construction specifications outlined in condition no. 9 were not met when the well was constructed. However, to date, no complaints have been filed.
5. The BOR, who originally protested the application for permit, was informed that condition no. 9 had not been met and was given the opportunity to comment. To date, the Department has not received any comment or complaint from the BOR.
6. An application to amend the permit is not required to change the water bearing zone or to modify condition no 9.
7. The Department should authorize modification of condition no. 6 and condition no. 9 as described below.

ORDER

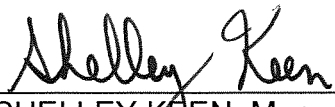
IT IS, THEREFORE, HEREBY ORDERED that approval condition no. 6 on Permit No. 63-31550 is **CHANGED** to say:

Water bearing zone to be appropriated is from 199 to 320 feet.

IT IS FURTHER, THEREFORE, HEREBY ORDERED that approval condition no. 9 on Permit No. 63-31550 is **MODIFIED** to say:

The well serving as the point of diversion for this right shall be continuously cased and sealed from land surface to the top of the completion aquifer at 199 feet below ground level. The seal shall consist of an approved grout pumped into place from the base of the casing, or a solid bentonite chip poured into place, into a uniform annular space surrounding the centralized casing.

DATED this 16th day of February, 2012.



SHELLEY KEEN, Manager
Water Rights Section