

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF LICENSE NO.)
63-31969 IN THE NAME OF STAR SEWER)
& WATER DISTRICT)
_____)

**ORDER GRANTING PETITION
FOR RECONSIDERATION AND
CORRECTING LICENSE**

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:

FINDINGS OF FACT

1. On June 28, 2010, Department staff conducted a field examination to verify the beneficial use of water developed in accordance with Permit No. 63-31969. The field examiners found three points of diversion as follows:

Location	Full Design Pumping Capacity in cubic feet per second (cfs)
SW¼NW¼ of Sec. 8, Township 4 North, Range 1 West, B.M.	4.46
SE¼SW¼ of Sec. 8, Township 4 North, Range 1 West, B.M.	0.90
SE¼SW¼ of Sec. 5, Township 4 North, Range 1 West, B.M.	4.79

The point of diversion located in the SE¼SW¼ of Sec. 8 is for back-up purposes only. The other two points of diversion are primarily used by the right holder for municipal and fire protection uses. The field examiner reported that the maximum rate of water diverted for municipal purposes during the development period was 3.24 cfs. The field examiners based their conclusion on peak flow data from customers in the Star Sewer & Water District (right holder) between 2008 and 2010.

2. On January 6, 2011, the Department issued Water Right License 63-31969 (license) to the right holder for the diversion of 3.24 cfs for municipal purposes and 5.0 cfs for fire protection purposes in Ada County.

3. The Department issued the license as a preliminary order (order) pursuant to Idaho Code § 67-5243 and Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730).

4. 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.

5. On January 20, 2011, the Department received a Petition for Reconsideration (petition) of the license from the right holder's representative (representative) on behalf of the right holder. Through the petition, the representative asked the Department to reconsider the maximum licensed diversion rate of 3.24 cfs for municipal purposes. The representative explained that the pumps at the points of diversion "ramp up to full design pumping capacity" when they are called on and discharge into a 500,000 gallon storage tank (storage tank). The usage data relied upon for the beneficial use field report is for discharges from the storage tank. The representative requests that the Department change the authorized diversion rate for municipal purposes on license 63-31969 to 4.79 cfs and explains that without the proposed change the right holder will exceed the diversion rate as currently licensed each time the pump(s) are called on.

6. The license included condition of approval #3 that states:

Rights 63-12100, 63-12370, and 63-31969 when combined shall not exceed a total diversion rate of 3.24 cfs for municipal purposes.

7. On January 21, 2011, the Department received an electronic mail from the representative that further explained that pumps at the primary points of diversion can be used together, but the water system demands are currently not high enough for the pumps to be used simultaneously.

8. Between the two primary pumps, the maximum diversion rate of 4.79 cfs is diverted at the point of diversion within the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 5, Township 4 North, Range 1 West, B.M.

CONCLUSIONS OF LAW

1. Idaho Code § 42-219 directs the Department to issue a water right license that accurately portrays the beneficial use of water developed in accordance with the permit.

2. The current license does not accurately depict the beneficial use of water established in connection with the permit. The beneficial use of water should be depicted to reflect the maximum diversion rate that is used to discharge to the storage tank not the maximum diversion rate that is discharged from the storage tank

3. If the licensed diversion rate changes to 4.79 cfs from 3.24 cfs, condition #3 must also change to reflect a combined diversion rate of 4.79 cfs.

4. The petition was filed timely.

5. The Department should grant the right holder's petition for reconsideration.

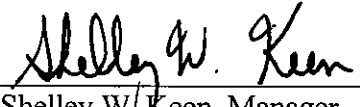
6. The Department should revise the diversion rate description on the license.

ORDER

IT IS HEREBY ORDERED that the right holder's petition for reconsideration of the license is **GRANTED**.

IT IS FURTHER HEREBY ORDERED that the diversion rate for municipal use and that condition #3 on the license are **CORRECTED** as set forth in the Amended Water Right License issued on this date in conjunction with this order.

Dated this 2nd day of February, 2011.



Shelley W. Keen, Manager
Water Right Permits Section