

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT	)	ORDER MODIFYING THE CONDITION
NO. 63-11831 IN THE NAME OF	)	REQUIRING A MEASURING DEVICE
DARWIN L. MCKAY AND DONNA R.	)	AND GRANTING PETITION TO CHANGE
<u>MCKAY</u>	)	WATER BEARING ZONE

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 the requirement of a measuring device or an agreement to report power records, the Department finds, concludes and orders:

FINDINGS OF FACT

1. On February 5, 1996, the Department issued Permit No. 63-11831 (permit) in the name of Darwin L. McKay and Donna R. McKay (permit holders) authorizing the diversion of ground water from a well within the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 33, Township 3N, Range 1E, B.M., Ada County, for irrigation purposes.
2. Approval condition no. 3 on the permit says:

Prior to diversion of water under this right, the right holder shall install a suitable measuring device or shall enter into an agreement with the department to use power records to determine the amount of water diverted from each point of diversion listed under this right.
3. Approval condition no. 12 on the permit says, "Water bearing zone to be appropriated is from 160 to 220 feet."
4. On February 9, 1996, the Department received a proof of beneficial use statement submitted by the permit holders.
5. On April 27, 2005, the Department received an Application for Drilling Permit to modify the well serving as the point of diversion for Permit 63-11831. The application was subsequently approved by the Department.
6. On September 22, 2006, a certified water right examiner conducted an inspection to verify the beneficial use of water established in connection with the permit.
7. During the development period for Permit 63-11831, the water bearing zone ranged from 250 to 300 feet below ground surface.
8. On July 25, 2008, the Department received the permit holders' petition, through their representative, to change the water bearing zone on the permit to 250 to 300 feet below ground surface. In addition, the representative notified the Department that a measuring device was not installed.

9. At some time during the development of the permit, the well used as the point of diversion was recorded in the Department's Water Measurement Information System (WMIS). The WMIS reflects that the permit holders are not measuring and reporting water diversion information to the Department because it is not a water management objective for the area where water is diverted and used.

10. 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.

11. No water users filed complaints about injury or well interference with the Department to date despite that the appropriated water bearing zone has been different from the permitted zone since May 16, 2005.

CONCLUSIONS

1. Beneficial Use Examination Rule 35.02.d. (IDAPA 37.03.02.35.02.d.) provides for the waiver of a measuring device requirement by the Department.

2. The permit holders have not complied with condition no. 3, but the installation of a measuring device and/or reporting of power records is not necessary for administration of the diversion of water by the permit holders of Permit 63-11831 at this time. It may be necessary in the future.

3. The permit holders have pumped ground water from the proposed water bearing zone for five years without complaint of injury from other ground water users.

4. Changing the water bearing zone at the authorized point of diversion for the permit to 250 to 300 feet below ground surface is not a substantial change to the elements of the water right authorized for development in connection with the permit. Therefore, an application to amend the permit is not required to change the water bearing zone limitation in the permit to 250 to 300 feet below ground surface.

6. The Department should authorize the requested change to the water bearing zone from 160 to 220 feet to 250 to 300 feet.

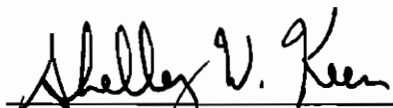
ORDER

IT IS, THEREFORE, HEREBY ORDERED that the condition of approval requiring the installation of a measuring device or the need to enter into an agreement to use power records to determine the amount of water diverted pursuant to Permit No 63-11831 is MODIFIED as follows:

After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.

IT IS, FURTHER HEREBY ORDERED that approval condition no. 12 on Permit No. 63-11831 is **CHANGED** to say, "Water bearing zone to be appropriated is from 250 to 300 feet below ground surface."

DATED this 19th day of November, 2010.

A handwritten signature in black ink, appearing to read "Shelley V. Keen", is written over a horizontal line.

SHELLEY KEEN, Manager
Water Rights Section