

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT	)	PRELIMINARY ORDER GRANTING
NO. 63-12342 IN THE NAME OF	)	PETITION TO CHANGE WATER
PARKLANE CO	)	BEARING ZONE AND DENYING
	)	REQUEST TO REMOVE A REINJECTION
_____	)	REQUIREMENT

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, the Department finds, concludes and orders:

FINDINGS OF FACT

1. On August 16, 1996, the Department issued Permit No. 63-12342 (permit) in the name of Parklane Co. (permit holder) authorizing the diversion of ground water for cooling purposes within the NW¼NE¼ of Section 10, Township 3 North, Range 2 East, B.M., ADA County.
2. Approval condition no. 5 on the permit states, "Proposed water bearing zone to be appropriated is from 0 to 65 feet. All flows to be reinjected to same zone."
3. On August 29, 1997, the Department received a proof of beneficial use statement submitted by the permit holder in connection with the permit.
4. On November 19, 1997, a Department field examiner conducted an inspection to verify the beneficial use of water established in connection with the permit.
5. During the development period for the permit, the water bearing zone appropriated ranged from 79 to 89 feet below ground surface.
6. During the authorized development period for the permit, the permit holder returned water used for cooling purposes to an injection well 63 feet deep.
7. In 1999, the permit holder deepened and reconstructed the injection well so that water used in connection with the permit would be returned to a depth ranging from 75 feet to 115 feet below ground surface.
8. In 2007, the permit holder deepened and reconstructed the injection well so that water would be returned to a depth of 150 feet to 195 feet below ground surface.

9. The well driller's report for the permit holder's production well depicts a sandy clay layer of sediment from 65-75 feet below ground surface. The well driller indicated that this sandy clay layer is not water-bearing. This sandy clay layer probably impedes the flow of water between the depth to which the permit holder diverted water during the authorized development period, 79 feet to 89 feet, and the depth to which the permit holder re-injected water during the authorized development period, 63 feet.

10. The well driller's report for the permit holder's production well depicts a water-bearing sand and gravel layer of sediment from 73 feet below ground surface to the bottom of the well at 90 feet below ground surface. The well driller's report for the 1999 reconstruction and deepening of the injection well depicts that same water-bearing sand and gravel layer extending from 73 feet below ground surface to the bottom of the well at 115 feet below ground surface.

11. The well driller's report for the injection well deepening and reconstruction in 2007 shows water bearing sediment layers are continuous from 115 feet below ground surface to 195 feet below ground surface.

12. The Department presumes ground water in the area where water is diverted in connection with the permit to be hydraulically connected to the Boise River if it is shallower than 200 feet below ground surface.

13. On March 20, 2009, the Department received the permit holder's petition through its representative to change the water bearing zone on the permit to 79 to 195 feet below ground surface.

14. In the March 20, 2009 petition, the permit holder also requests removal of the reinjection requirement because of injection well plugging problems. On August 22, 2008, the permit holder received approval from Ada County Highway District (ACHD) to discharge their spent cooling water into ACHD's storm water drain system. The permit holder asserts that the removal of the requirement will result in an increase in Boise River flows that will potentially benefit senior Boise River water rights during the irrigation season.

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. During the authorized development period the permit holder did not inject return flows to the same water bearing zone from which water was being diverted. The permit holder came into compliance with condition no. 5 of the permit after deepening the injection well in 1999. Because the water bearing zone from which water is being diverted extends to the depth of the 2007 reconstruction and deepening of the injection well, the permit holder remained in compliance with the permit condition through this change.

3. No protests or complaints have been filed with the department to date despite the fact that the appropriated water bearing zone has been different from the permitted zone since July 31, 1996.

4. Changing the water bearing zone at the authorized point of diversion for the permit to 79 feet to 195 feet below ground surface is not a substantial change to the elements of the water right authorized for development in connection with the permit.

5. An application to amend the permit is not required to change the water bearing zone limitation in the permit to 79 feet to 195 feet below ground surface.

6. The Department should authorize the requested change to the water bearing zone from 0 to 65 feet to 79 to 195 feet.

7. The effect of the requirement to re-inject the water diverted pursuant to the permit back into the aquifer where it originated was to protect prior water rights by limiting the net change in the supply of water in the aquifer and the Boise River. While implementation of the re-injection requirement has been imperfect, removing the re-injection requirement altogether could affect prior rights by changing the supply of ground water available under prior ground water rights and by changing the timing and location of Boise River flows.

8. The department should not remove the requirement that return flows be re-injected to the same underground zone from which water was diverted. Such a change would be a substantial change requiring an application to amend the permit or, since proof of beneficial use has been submitted and a water right license is likely forthcoming, an application for transfer to change the licensed right.

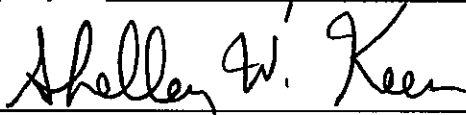
ORDER

IT IS HEREBY ORDERED that the request to change the water bearing zone on the permit to 79 to 195 feet is **APPROVED**.

IT IS FURTHER HEREBY ORDERED that the request to remove the reinjection requirement on the permit is **DENIED**.

IT IS FURTHER HEREBY ORDERED that approval condition no. 5 on Permit No. 63-12342 is **CHANGED** to say, "Water bearing zone to be appropriated is from 79 to 195 feet below ground surface. All flows to be re-injected to same zone."

DATED this 17th day of May, 2010.



SHELLEY KEEN, Manager
Water Rights Section