

## Keen, Shelley

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**From:** Swank, Lyle  
**Sent:** Tuesday, April 13, 2010 11:34 AM  
**To:** Keen, Shelley; Peppersack, Jeff  
**Cc:** Olenichak, Tony  
**Subject:** FW: 45-14183 Draft Permit.doc SWID

Shelley,

The main concern I had was moving storage water around outside of the rental pool and private lease procedures. There is always potential to impact to junior storage spaceholders. After you have reviewed Tony's word document, let us know if you want a teleconference meeting to discuss the conditions.

Lyle

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**From:** Olenichak, Tony  
**Sent:** Tuesday, April 13, 2010 10:28 AM  
**To:** Swank, Lyle  
**Subject:** RE: 45-14183 Draft Permit.doc SWID

Lyle,

Read the attached summary to see if the proposed changes satisfy your concerns for Condition #9.

Tony



Changes to  
Condition #9.doc

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**From:** Swank, Lyle  
**Sent:** Tuesday, April 13, 2010 8:45 AM  
**To:** Olenichak, Tony  
**Subject:** FW: 45-14183 Draft Permit.doc SWID

Tony,

Look at the conditions proposed for this permit, and let's discuss it before I reply.

Lyle

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**From:** Keen, Shelley  
**Sent:** Monday, April 12, 2010 3:16 PM  
**To:** Swank, Lyle  
**Subject:** 45-14183 Draft Permit.doc SWID

Lyle,

Jeff and I would appreciate your feedback before we route this permit to Gary. We're especially interested in your take on condition no. 9. We used the term "reallocation" instead of "reassignment" because we thought it sounded better. What do you prefer?

Shelley

<< File: 45-14183 Draft Permit.doc >>

Shelly, I spoke to Gary about this - he concurred. Let's try to get something signed today JF

Proposed revision for Condition #9 on Permits 45-14183 & 01-10572:

The right holder shall not divert and use water under this right if the natural flow in the Snake River is not sufficient to fill senior rights diverting from the Snake as determined by the Watermaster of Water District 01 unless injury to senior water right holders is mitigated by the ~~reallocation of storage water, which may include storage water representing return flow credits accruing to Burley Irrigation District and provided on behalf of the right holder.~~ delivery of storage water either from contracted shares owned by the right holder or storage rented or leased according to the Water District #1 Rental Pool Procedures.

can we keep this in as one source of storage water that would be rented through rental pool

The reason for the change is to protect all senior water right holders as a result of the additional storage being evacuated from the reservoir system to provide surface water to this new diversion when its right is out of priority.

to keep it documented in the cond. am.

The last two paragraphs of Page 3 in the SETTLEMENT AGREEMENT FOR DETERMINING NATURAL FLOWS PURSUANT TO FOSTER DECREE (Minidoka Return Flow Credit Agreement), dated February 14, 2006, says:

"The storage water credited to MID, BID, and AFRD#2 may, as they determine, be diverted for use on lands within their respective service area or may be rented to third parties, which water shall be diverted and delivered through the diversion works and distribution system of the respective entity leasing said water to the third party."

"The storage water provided under this agreement and diverted and rented as herein provided will not impact the natural flow or storage rights of any other water users in Water District 01, the transfers and uses of stored water as herein provided being an integral part of the operations of the parties to this agreement"

These agreement provisions allow Burley Irrigation District to lease the storage water described in the Minidoka Return Flow Agreement to SWID's diversion, but it does not circumvent the current Rental Pool Procedures whereby any lease to a third party must be processed through the Water District #1 Rental Pool to protect water rights from the impacts of transferring the leased storage to the SWID diversion.

The previous (strikethrough) language in Condition #9 gives the impression that Burley Irrigation District can reallocate its storage without going through the leasing process contained in the current Rental Pool Procedures that are in place to protect the storage rights of other water users in Water District #1. The newly proposed (underlined) language includes the only two sources of water that can be diverted by the SWID diversion when it is out of priority.

The provisions for adjusting the return-flow credits owed by Twin Falls and North Side Canals to Burley Irrigation District under the Minidoka Return Flow Agreement are provided for in the agreements referenced in Conditions #16 and #17.