

MEMORANDUM

DATE: April 2, 2008

TO: Water Right File 67-14787

FROM: Shelley W. Keen *SWK*

RE: Overlap with surface water rights

Weiser River Water Rights 67-498 and 67-11178 are recommended in the SRBA with places of use that include most of the place of use proposed in ground water Application 67-14787. In similar circumstances, IDWR normally requires the ground water right to be supplemental to the surface water. IDWR believes requiring the use of surface water instead of ground water is good policy because:

- It reserves ground water for uses that require clean water.
- Continued surface water diversion provides a source of recharge for the ground water.
- It conserves water in Idaho by using a supply that would otherwise run downstream and out of state.
- It ensures the long-term viability of the canal companies and irrigation districts that deliver surface water.

In this instance the applicant has not submitted an ownership change notice for the surface water. She informed Water Resource Agent Nick Van Dyke that the owner of the remaining portions of the surface water rights has obliterated the part of the delivery system that conveyed water to her parcel. Rather than try to establish a new conveyance system, the applicant would rather just use ground water to irrigate her parcel.

The applicant could proceed to condemn a right-of-way to the Weiser River for a new conveyance system as authorized by Idaho Code § 42-1102. However, I think IDWR can deviate from the general policy in this case and allow a new ground water use on land that has surface water rights for irrigation because:

- The surface water rights are not delivered by a canal company or irrigation district whose viability might become an issue.
- Ground water is available for this and other current and future uses in Basin 67.
- Establishing a new right-of-way to acquire surface water would be a significant hardship for the applicant and adjacent landowners for such a small irrigation project.