

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION	)	ORDER DENYING PETITION FOR
FOR TRANSFER NO. 74120 IN THE	)	RECONSIDERATION AND GRANTING
NAME OF MICHAEL W. SEIBERT AND	)	A VARIANCE TO A MEASURING
KATHLEEN SEIBERT	)	DEVICE REQUIREMENT
_____	)	

This matter having come before the Department of Water Resources ("Department") as a petition to reconsider a preliminary order approving a transfer application, the Department finds, concludes, and orders:

FINDINGS OF FACT

1. On January 11, 2008, the Department issued a preliminary order ("order") approving Application for Transfer No. 74120 ("transfer") in the name of Michael W. Seibert and Kathleen Seibert ("applicants").

2. The applicants' transfer application proposed changes to the points of diversion and places of use for three ground water irrigation rights. The ground water model for the Eastern Snake River Plain aquifer shows that the ground water used to satisfy the three rights is hydraulically and hydrogeologically connected to the Eastern Snake River Plain aquifer.

3. The Department requires measuring devices and data loggers for diversions of water in the Eastern Snake River Plain aquifer and tributary aquifers to provide for improved management of the aquifer. The Department sometimes grants variances to the measuring device requirement when the relevant data or management objectives can be accomplished with different methods.

4. Idaho Code § 42-701 says, in pertinent part:

Each such appropriator shall construct and maintain, when required by the director of the department of water resources, a rating flume or other measuring device at such point as is most practical in such canal, ditch, wellhead or pipeline for the purpose of assisting the watermaster or department in determining the amount of water that may be diverted into said canal, ditch, wellhead or pipeline from the stream, well or other source of public water.

If an appropriator determines that installation and maintenance of a measuring device required by the director would be burdensome for his diversion, the appropriator may, upon approval of the director, execute an agreement with

the director and submit to the director such information and technical data concerning the diversion and pumping facilities as the director determines necessary to establish the relationship of power usage to water withdrawal by any pump used to divert public water.

5. The Department approved the applicants' proposed changes in point of diversion and place of use for each of the three irrigation water rights with the following condition:

Prior to the diversion and use of water under Transfer approval 74120 the right holder shall install and maintain acceptable measuring device(s), including data logger(s), at the authorized point(s) of diversion and in accordance with Department specifications, or shall obtain an approved variance from the Department to determine the amount of water diverted from power records or to maintain an existing measuring device.

6. 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.

7. On January 23, 2008, the applicants filed a Petition for Reconsideration ("petition") with the Department in connection with the preliminary order. In their petition, the applicants asked the Department to reconsider the approval condition requiring installation of measuring device(s) and data logger(s).

8. Water use is measured and regulated by operative water districts, water measurement districts, and ground water districts. The points of diversion for the applicants' water rights are not currently within a water district, water measurement district, or ground water district, but they could be incorporated into a water district, water measurement district, or ground water district in the future.

CONCLUSIONS OF LAW

1. The applicants filed the petition on time.

2. Removing the approval condition that requires the right holders to install measuring devices is not the only remedy available to the right holders. The conditions of approval for the transfer state that the Department can grant a variance from the measuring device and data logger requirement.

3. Water measurement is not needed for proper administration of the transfer at this time, but it may be necessary in the future.

4. The Department should deny the petition for reconsideration of the order pursuant to Rule 730.02.a. of the Department's Rules of Procedure.

5. The department should grant a variance from the measuring device and data logger requirement but reserve the ability to require one or more measuring devices and data loggers in the future.

ORDER

IT IS HEREBY ORDERED that the petition is **DENIED** pursuant to Rule 730.02.a. of the Department's Rules of Procedure.

IT IS FURTHER ORDERED that a variance to the measuring device requirement stated in the approval of Transfer No. 74120 is **GRANTED**. The Department can use power records to determine the amount of water diverted. In the future the Department may, however, require the right holders to install and maintain measuring devices and data loggers to quantify and report the amount of water diverted from the points of diversion authorized in connection with Transfer No. 74120.

Dated this 13th day of February, 2008.



JEFF PEPPERSACK, Chief
Water Allocation Bureau