

## MEMORANDUM

**DATE:** June 11, 2007

**TO:** Water Right File 63-9341

**FROM:** Shelley W. Keen SUK

**RE:** Annual diversion volume limit

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The report "Analysis of the Annual Diversion Requirement for Water Right Permit 63-9341" submitted by David B. Shaw of ERO Resources Corporation suggests four possible time periods that could be the basis for the annual diversion volume limit for Right 63-9341. The suggestions include:

- The coldest year of record – 1985
- The 365-day period leading up to the submission of proof of beneficial use – 5/7/1984 to 5/6/1985
- The first year after the submission of proof of beneficial use for which IDWR believes the reported pumping data is accurate – 1993
- The 1/1 to 12/31 calendar year preceding proof of beneficial use.

Idaho Code § 42-219(1) directs IDWR to issue licenses "which in no case shall be an amount in excess of the amount that has been beneficially applied." IDWR has consistently viewed the opportunity to establish additional beneficial use in connection with a permit as ending when proof of beneficial use is submitted. Proof of beneficial use for Permit 63-9341 was submitted on May 6, 1985.

As described in the ERO report, comparing annual heating degree-days to the 1993 usage data provides a method for determining the volume that probably was used in other time periods. The 1993 annual volume figure itself will not be used on the license, however, because it is not prior to submitting proof of beneficial use. The same goes for the 1985 calendar year, which may have been the coldest on record, but was not prior to submitting proof of beneficial use. Because IDWR administers annual diversion volumes on a January 1 to December 31 basis, the 1/1/1984 through 12/31/1984 figure will be used for the license.

The 1984 volume calculation of 221 million gallons substantially exceeds current usage due to system upgrades apparently implemented in the mid-1990s. Therefore, the right holder could conceivably add additional space to be heated without exceeding the limitations of the water right.