



State of Idaho

DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 11, 2006

KENT W FOSTER
HOLDEN KIDWELL HAHN & CRAPO PLLC
PO BOX 50130
IDAHO FALLS ID 83405

RE: Application for Permit No. 35-13542 (South Interchange Properties, LLC)

Dear Kent:

IDWR received your letter summarizing the mitigation possibilities for Application for Permit No. 35-13542. Here are some suggestions to help your client finalize the mitigation proposal.

Ground water pumped from the eastern Snake River Plain aquifer (ESPA) will deplete the flows in the Snake River. IDWR must ensure that senior surface water appropriators are not injured by your client's proposed withdrawal of ground water from the ESPA. Even for non-consumptive water uses, injury can occur if the water is not returned to the original source or if it is returned to the original source at a different location or a different time of the year than occurred in the past. Therefore, even though most of your client's proposed use is non-consumptive, IDWR must ensure that the unconsumed water is discharged to the Snake River in such a way that it offsets the depletions to the river that will be caused by pumping ground water at the proposed point of diversion.

To explore the potential for injury, IDWR used the new ESPA transfer spreadsheet to determine where depletions to the Snake River will occur if your client's application is approved. According to the spreadsheet, some depletion will occur in upstream reaches that cannot be replenished by discharging water from the City of Shelley sewage treatment facility. Therefore, mitigation is necessary not only to offset the consumptive portion of the proposed new use, but also to offset impacts to river reaches upstream from the point where the City of Shelley's sewage treatment facility discharges into the river.

In your letter you indicated that your client has two potential sources of mitigation water – surface water rights held by New Sweden Irrigation District and ground water right 35-7206D. If your client intends to use the New Sweden Irrigation District water rights for mitigation, then you must provide written notification from New Sweden that it concurs with the proposal and that it is willing to allow IDWR to reduce the total use under its water rights by the required number of acres and diversion rate. The written notice must also specify which of New Sweden's water rights are to be changed to show that portions of them are committed to mitigate for your proposal.

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If your client intends to use Right 35-7206D for mitigation, then your mitigation plan must indicate which portion of the right is to be changed to mitigation purposes, and you must include a map showing the location of the acres that will no longer be irrigated under Right 35-7206D.

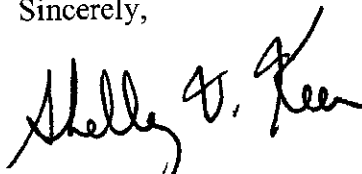
To implement the reduction of either Right 35-7206D or the New Sweden right(s) for mitigation, IDWR will condition the permit for 35-13542 (assuming one is issued) to say that the required portion of the right or rights will be changed to mitigation purposes and can no longer be diverted.

In either case, please use the ESPA transfer spreadsheet to evaluate your mitigation proposal and offer a plan that limits the impact to each river reach to 2 AF or less per trimester. IDWR's initial review shows that reducing the irrigation under Right 35-7206D by 45 AF per trimester, or about 45 acres annually, will mitigate for the Snake River depletions likely to be caused by the proposed ground water pumping, and it will also offset the overall consumption of water that will result from your client's proposed use. IDWR did not use the ESPA transfer spreadsheet to evaluate the possibility of using New Sweden water rights for mitigation purposes.

IDWR will hold Application 35-13542 in accordance with the moratorium until you have submitted an acceptable mitigation plan.

If you have any questions, please call me at 208-287-4947, or email me at shelley.keen@idwr.idaho.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Shelley W. Keen". The signature is fluid and cursive, with the first name "Shelley" and last name "Keen" being clearly legible.

Shelley W. Keen
Water Rights Supervisor