

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF PERMIT NO.)	PRELIMINARY ORDER
63-8067 IN THE NAME OF ROBERT)	DENYING APPLICATION
C. & MARLENE D. RHEAD)	FOR AMENDMENT
<u>& THE TRAVELERS INSURANCE CO.</u>)	

This matter having come before the Department of Water Resources (Department) as a result of Application for Amendment of Permit No. 63-8067, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On March 15, 1991, Robert C. & Marlene D. Rhead & The Travelers Insurance Co. (permit holder) applied to the Department for amendment of permit 63-8067 to change the points of diversion and place of use of the permit. Permit 63-8067 was issued with points of diversion located within SW $\frac{1}{4}$ SW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 33, Twp. 1N, Rge. 9E and the place of use to be located within the W $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, Sec. 33; E $\frac{1}{2}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$, Sec. 32; Twp. 1N, Rge. 9E for a total of 320 acres.
2. On November 9, 2005, Department staff sent the permit holder a letter stating that the Department was prepared to issue a license based on a field examination of June 23, 2005, and the permit should be amended to the findings of the field examination rather than as proposed on the application for amendment submitted March 15, 1991. The Department offered to apply the fee submitted with the 1991 amendment towards a new amendment form if the permit holder would withdraw the application submitted in 1991.
3. On December 15, 2005, the permit holders submitted a second application for amendment that reflected the findings of the field examination conducted in June of 2005.
4. As of this date the applicant has not withdrawn the 1991 amendment application.
5. Idaho Code, § 42-211, provides that the director of the Department may grant the amendment in whole or in part or upon conditions, or may deny same.

CONCLUSIONS OF LAW

1. The permit holders did not withdraw the application for amendment submitted in 1991, and the amendment application does not fully represent the right as it should be licensed.

2. The Department should deny the application for amendment of the permit as provided in Idaho Code, § 42-211.

ORDER

IT IS, HEREBY ORDERED that the application for amendment of Permit 63-8067 dated March 15, 1991 is DENIED.

Dated this 23rd day of December, 2005.

for Shelley V. Keen
GARY SPACKMAN