

Keen, Shelley

From: Keen, Shelley
Sent: Monday, November 07, 2005 3:05 PM
To: 'tlt@idahowaters.com'; 'kfoster@holdenlegal.com'
Cc: Warner, Roger
Subject: Draft permit for Timberview Properties (25-14071) for review by November 21, 2005

Gentlemen:

Last week IDWR received a detailed letter from Progressive Irrigation District endorsing the mitigation plan offered by Timberview Properties for Application 25-14071. In response, I have attached a draft permit incorporating the mitigation plan. While the draft approval conditions on the permit are similar in content to the conditions in your 4/25/2005 Stipulation to Resolve Protest, they are not the same. The Stipulation to Resolve Protest states that the withdrawal of protest is contingent upon IDWR's use of the conditions proposed in the stipulation. Because IDWR prefers slightly different conditions, the protest remains unresolved.

Please review the draft permit carefully and provide your thoughts or comments to me in writing by Monday, November 21, 2005. If the draft permit is acceptable to all parties, then IDWR will consider the protest to be resolved. If you notify me that the draft is not acceptable, then IDWR will proceed with the usual protest resolution process.

Please call or email if you have questions.

Sincerely,

Shelley Keen
Water Right Permits Section
Idaho Dept. of Water Resources
208-287-4947
shelley.keen@idwr.idaho.gov



25-14071 Draft
Permit for Timb...

DRAFT

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State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 25-14071

Priority: March 16, 2004

Maximum Diversion Rate: 0.76 CFS

This is to certify, that TIMBERVIEW PROPERTIES LLC
165 N WOODRUFF AVE
IDAHO FALLS ID 83401

has applied for a permit to appropriate water from:

Source: GROUND WATER

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
DOMESTIC	01/01 to 12/31	0.76 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 21, Twp 03N, Rge 38E, B.M.	BONNEVILLE County
GROUND WATER	SE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 21, Twp 03N, Rge 38E, B.M.	BONNEVILLE County
GROUND WATER	NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 21, Twp 03N, Rge 38E, B.M.	BONNEVILLE County

PLACE OF USE: DOMESTIC

Twp	Rge	Sec	NE				NW				SW				SE				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
03N	38E	21			X	X													

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **November 1, 2007**.
2. Subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code, and applicable Well Construction Rules of the Department.
5. Points of diversion are located within Lot 4, Blk. 2, Timberline Estates; Lot 13, Blk. 2; and Lot 13, Blk. 3; Fairview Estates Subdivision No. 1.
6. Domestic use is for 44 homes.
7. Place of use is located within Lots 1-5, 7, Blk. 1; Lots 1-16, Blk. 2; Lots 1-8, Blk. 4; Lots 1-8, Blk. 3; and Lots 1-6, Blk. 5; Timberline Estates.
8. The domestic use authorized under this right shall not exceed 13,000 gallons per day per home.
9. The irrigation occurring under this domestic use shall not exceed 1/2 acre within each platted subdivision lot upon which a home has been constructed. This right does not provide for irrigation of common areas or for irrigation of lots upon which homes have not been constructed.

State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 25-14071

CONDITIONS OF APPROVAL CONTINUED

10. Prior to the diversion and use of water under this right, the right holder shall install and maintain acceptable measuring devices, including data loggers, at the authorized points of diversion and in accordance with Department specifications.
11. The right holder shall record the quantity of water diverted and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.
12. The use of water under this right shall not give rise to any claim against the holder of a senior water right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.
13. Mitigation for the diversion of water under this right shall be implemented as follows:
 - A. The right holder shall maintain control of 55 AF of water supplied annually by the Progressive Irrigation District.
 - B. Each irrigation season the right holder shall cause the 55 AF of water delivered by the Progressive Irrigation District to flow into a pond located in the S1/2NE1/4, Section 21, T3N, R38E, B.M., where it shall seep into the ground.
 - C. At the point where water is diverted from the Progressive Irrigation District lateral into the pond for mitigation purposes, the right holder shall install and maintain a measuring and recording device that records the total volume of water diverted into the pond annually. The right holder shall make the device and/or records available to the Department for inspection at any time.
 - D. By December 31 of each year, the right holder shall report the total volume of water diverted into the pond for mitigation purposes during the year.
 - E. The right holder assumes all liability for implementation of the mitigation plan.
 - F. If the specified mitigation right, or portion thereof, is sold, transferred, leased, used on any place of use, or is not deliverable due to a shortage of water or a priority call, then the amount of water authorized for irrigation of lawns and gardens under this right shall be reduced by the same proportion as the reduction to the mitigation right.
 - G. If the right holder cannot continue to implement this mitigation plan each year for any reason, the right holder shall cease diverting water for irrigation purposes under this right or the right holder shall implement an alternative mitigation plan that has been reviewed and accepted by the department.