



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

October 10, 2002

MIKE FAULKNER
FAULKNER LAND & LIVESTOCK CO INC
1989 S 1875 E
GOODING ID 83330

RE: Water Right Permit No. 37-08720

Dear Mike:

Thank you for meeting with Kay Walker and me yesterday to review your ground water rights. As we discussed, IDWR is reviewing Permit 37-8720 for the purpose of issuing a water right license confirming the extent of development that has been established in compliance with the terms of the permit. Based on IDWR's analysis, the place of use for the irrigation established under Permit 37-8720 is different than described on your permit. Changes that do not increase the authorized use of water under the permit can be requested and approved through the amendment process described in Section 42-211, *Idaho Code*. Before a license can be issued, your permit must be amended to depict your water use as it was actually developed.

The enclosed Application for Amendment form depicts the elements of the water right as they will appear on the license when it is issued. The enclosed application for amendment form is intended to replace a previous application for amendment that you submitted in August of 2000. The previous application for amendment was based on a preliminary analysis that we believe was inaccurate. Please review the new amendment form carefully. If you concur with the information presented, please sign the form and return it within 14 days. The filing fee was already paid in connection with the previous application for amendment. Signing and returning the new application for amendment will be viewed by IDWR as your notice of withdrawal for the previous application for amendment.

In the new application for amendment, the combined diversion rate limit in approval condition no. 4 is based on your diversion system capacity of 5.83 cfs, which was measured in 1997 by Steelhead Engineering. The record of this measurement by Steelhead Engineering is the best information available to IDWR about your diversion capacity. The IDWR field examiner who reviewed your system in 1993 suggested that it might be capable of 6.75 cfs. However, his estimate was not based on an actual measurement. Instead, it was a theoretical calculation based in part on an estimate of

the efficiency of your system and an estimate of the dynamic pumping level. If you have good documentation that your diversion and use exceeded 5.83 cfs during the authorized development period for Permit 37-8720, which ended in July of 1993, I would be glad to review it to determine if the combined diversion rate limit should be revised upward. If you have such documentation, please submit it within the 14-day period mentioned above.

In Section 42-219, *Idaho Code*, IDWR is directed to ensure that water right licenses "in no case shall be an amount in excess of the amount that has been beneficially applied." Permit 37-8720 and water rights 37-8702, 37-8812, 37-8005B, and 37-8005D have all shared a point of diversion since 1995. The diversion rate of 5.83 cfs from the shared point of diversion is the maximum extent of beneficial use that has occurred under these rights while they have been used in combination. As one can see from the table below, water rights 37-8702, 37-8812, 37-8005B, and 37-8005D total 5.75 cfs, which is less than the diversion capacity of the well they share. Therefore, they require no combined use limitation. Similarly, water rights 37-8005B, 37-8812, and Permit 37-8720 (as it is proposed in the new application for amendment) total 5.83 cfs for the 324-acre permissible place of use labeled "Place of Use B" in the table below. Those three rights do not need a combined use limitation because the total of their authorized diversion rates is not in excess of 5.83 cfs. The combined use limit found in approval condition no. 4 on the new amendment is necessary only because there are times when Permit 37-8720 is being used with the other two rights on Place of Use B and you want to irrigate "Place of Use A" at the same time. Because the four water rights and the permit diverted from the shared well nominally total 8.74 cfs, the combined use limitation is necessary to make it clear that the maximum beneficial use established by the five rights used in combination is 5.83 cfs, and thus the five rights must be limited to 5.83 cfs when they are all being used at the same time.

Water Rights Diverted from the well in the SESW, S31, T6S, R15E.

Licensed Rights – Place of Use A

37-08005D	0.41 cfs	limited to	31 acres	within a 260 acre permissible place of use
37-08702	2.50 cfs	limited to	139 acres	within a 260 acre permissible place of use
Subtotal:	2.91 cfs	limited to	170 acres	within a 260 acre permissible place of use

Licensed Rights – Place of Use B

37-08005B	2.02 cfs	for	111 acres
37-08812	0.82 cfs	for	53 acres
Subtotal:	2.84 cfs	for	164 acres

Draft License – Place of Use B

37-08720	2.99 cfs	limited to	160 acres	within a 324 acre permissible place of use
Subtotal:	5.83 cfs	limited to	324 acres	

Total:	5.83 cfs	for	494 acres	(within a 584 acre area)
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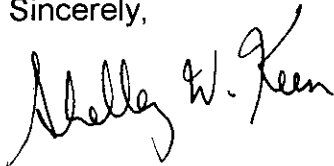
Mike Faulkner
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I recommend that you also review approval conditions 7 and 8 on the new application for amendment. Those conditions are applied to water rights that were developed as a supplemental source of irrigation supply for lands that have another water source as the primary supply. The purpose of the conditions is to link the use of the supplemental right to the use of the primary water right so that the overall use and consumption of water is not expanded. Expansion would result from using the rights from the two sources on separate lands, essentially doubling the number of acres irrigated. The field examiner for Permit 37-8720 reported that in 1993 when he was there you were using primarily Northside Canal Company water to irrigate the land where this permit was developed.

As requested above, please review, sign, and return the amendment form within fourteen days. If you do not concur with the information on the amendment form, please state your concerns in writing and submit them with supporting documentation within the 14-day period. If you have concerns that are strictly limited to the text of the approval conditions but you agree with the described place of use, please submit the signed amendment form with the description of your concerns. The approval conditions can be adjusted by IDWR if necessary prior to issuance of your water right license.

If you have any questions, please call me at 208-327-7946.

Sincerely,

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

Shelley W. Keen
Water Rights Supervisor

Enclosure(s)