



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

September 1, 2005

TIMBERVIEW PROPERTIES LLC
165 N WOODRUFF AVE
IDAHO FALLS ID 83401

RE: Application for Permit No. 25-14071

Dear Water Right Applicant:

The Department of Water Resources (IDWR) has reviewed the mitigation plan you submitted to resolve the protest of your application to divert 0.76 cfs from ground water for domestic use in a 44-home subdivision in Bonneville County. Your mitigation plan calls for surface water diverted under an irrigation water right or water rights held by Progressive Irrigation District to be committed to a ground water recharge project to offset the depletion of ground water that would result from lawn and garden irrigation in your proposed subdivision.

Continuing to divert and use surface water has the twin benefits of saving Idaho's relatively clean ground water for uses that require clean water and providing a source of recharge for the ground water. For that reason, for many years IDWR has required developers who have a supply of surface water to continue using it for irrigation in a new subdivision. Rather than committing your supply of surface water to ground water recharge, IDWR would prefer that you find a way to use the surface water in a pressurized irrigation system, as has been done in many other communities in Idaho. If you had not proposed a mitigation plan, IDWR would have required you to continue to use the surface water to irrigate your subdivision.

If continuing to use the surface water for irrigation is not possible, then IDWR will require the use of the surface water in a mitigation plan. The basic concept of your mitigation plan is acceptable. However, before it can be implemented, IDWR must have assurance that Progressive Irrigation District also endorses and supports the mitigation plan. The typical method for establishing the concurrence of the owner of the mitigation water right is for that entity (in this case, Progressive Irrigation District) to file an application for transfer to change its water right (or rights) to show that some water is dedicated to ground water recharge. In this instance, IDWR might also accept a detailed letter from Progressive Irrigation District endorsing your mitigation plan. There is a letter from Progressive Irrigation District in your application file, but it does not clearly address the mitigation plan. Instead, it refers to "third party verification" and concerns about their canal right-of-way.

On a related matter, the stipulation to resolve the protest submitted in connection with your application lists some approval conditions to be included on your permit, if it is granted. The second proposed approval condition is not acceptable to IDWR. The proposed condition says:

The Applicant is a landowner within the Progressive Irrigation District and is entitled to receive approximately 0.66 cfs of surface water during the irrigation season for use in the SWNE and SENE of Section 21, Township 3 North, Range 38 East, Bonneville County, Idaho (site of Timberview subdivision).

The affirmative wording of the condition makes it appear that IDWR is conferring an entitlement on the landowner. The approval conditions on a water right permit are not the proper forum for confirming and declaring that the applicant is a landowner within the Progressive Irrigation District or that the landowner is entitled to receive water diverted under Progressive Irrigation District's water rights. IDWR prefers a condition worded something like this:

To mitigate for the depletion of water resulting from the use of water under this right, the right holder shall implement a mitigation plan as follows:

- Each irrigation season the right holder shall cause 55 AF of water delivered for ground water recharge purposes by Progressive Irrigation District to flow into a pond located in the S½NE¼, Section 21, T3N, R38E, B. M., where it shall seep into the ground.
- At the point where water is diverted from the Progressive Irrigation District lateral into the pond for ground water recharge 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.
- By December 31 of each year, the right holder shall report to the Department the total volume of water diverted into the pond for ground water recharge purposes during the year.
- 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.
- The right holder assumes all liability for implementation of the mitigation plan.

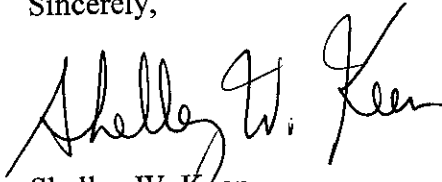
The Department will hold your application awaiting either your election to use your surface water for irrigation purposes, the filing of a water right transfer by Progressive Irrigation District to implement your mitigation plan, or the submittal of a letter or other means of assurance that Progressive Irrigation District endorses and supports your mitigation plan. Meanwhile, because IDWR cannot accept the approval conditions mandated by the protest resolution agreement, the protest by Twin Falls Canal Company and Northside Canal Company will not be considered to

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have been withdrawn, and the application will remain an active contested case before IDWR. As with other contested cases, the parties shall have further opportunity to resolve the contested case through continued negotiations.

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" being more prominent and the last name "Keen" written in a similar style.

Shelley W. Keen
Water Rights Supervisor

Cc: Travis L. Thompson
Kent W. Foster
Roger Warner, IDWR Eastern Region
Gail McGarry, U. S. Bureau of Reclamation