



State of Idaho

DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 13, 2005

J7 LLC
1990 N 4000 W
DAYTON ID 83232

RE: Application for Permit No. 13-7649

Dear Applicant:

The Department of Water Resources (IDWR) is reviewing your application to appropriate 1.0 cfs from ground water for the irrigation of 73.9 acres in the N½ Section 11, T15S, R38E, B. M. As you know, the management plan adopted for the Bear River Ground Water Management Area requires mitigation to offset the annual depletion of water expected from the diversion and use of water for the project proposed in the application. IDWR's review of your application is focusing on the adequacy of the mitigation plan you have proposed.

In the Bear River Ground Water Management Area, the first step in evaluating the adequacy of mitigation for new irrigation is to calculate the depletion using the method adopted by the Bear River Commission. Using the established method, it appears that the depletion expected from your proposed use is 1.0 af per acre irrigated. I have enclosed the relevant documents so you can review and check this calculation. Related to the depletion per acre is the total number of new acres to be irrigated. Your application indicates 73.9 acres, which is apparently based on the land irrigated by the water right you're proposing to use for mitigation. If I understand correctly, you refer to this land as "the Mortensen farm". IDWR's concern is that the proposed place of use on your application is 148.5 acres, of which Water Right 13-7629 covers 82.6 acres. The difference is 65.9 acres, not 73.9, which could mean that you do not have to provide as much mitigation as initially contemplated.

The second step in determining the adequacy of your proposed mitigation plan is to verify the validity of the mitigation right(s). In your case it appears that Right 13-2164 issued to Carl A. Mortensen in 1954 is to be used for mitigation, although documents in your application file refer to 20 shares in West Cache Irrigation Co. It is not clear to IDWR how Right 13-2164 and the West Cache shares are related. At any rate, Right 13-2164 is still in the name of Carl A. Mortensen. For you to mitigate with it, you must demonstrate ownership of the right by submitting a Notice of Change of Water Right Ownership with the necessary supporting documentation. Besides ownership of the mitigation right, IDWR must also determine that the mitigation right has not been forfeited or abandoned. According to staff in IDWR's Eastern Region office, "the diversion works (i.e. dam) still exist and the place of use appears to have been irrigated." However, it is not clear that Right 13-2164 has been the sole source of irrigation water for the lands to which it is appurtenant. In your February 14, 2000, letter to Jody Williams (see file 13-7546), you state that the "spring *and canal water* irrigate the Mortensen Farm" and

also that the spring "has been a great source of water for early season irrigation (May) and late season irrigation (September and October)." For that reason, IDWR cannot rely on aerial photography alone to verify use of the spring right, and it will be necessary for you to provide other evidence of use, such as pumping records and/or affidavits from people with knowledge of your past irrigation practices.

The third step in verifying the adequacy of your mitigation proposal is to make sure that the plan provides sufficient reduction in use to offset the depletion calculated in the first step. Because the proposed mitigation source is an irrigation right, the way to achieve sufficient reduction is to cease irrigating an equivalent number of acres under the mitigation right and to ensure that they are not irrigated from another source either. In other words, it means permanently "drying up" the same number of acres that your application proposes to begin irrigating. Because it appears that the spring right is not the sole source of water for the Mortensen farm, IDWR wants to be sure that you understand that you will have to cease irrigating those lands to which the spring right is appurtenant and not irrigate them from any source. If canal water is a significant portion of the total irrigation supply for the Mortensen farm, then it will also be necessary for the canal company to agree that a portion of its right can be changed from "irrigation" to "mitigation" and left in the source without being diverted. Otherwise, it is possible that the canal water will simply be moved to other new lands, undermining the drying up of acres for mitigation purposes.

The fourth step is to verify that the mitigation water will reach the Bear River or its tributaries in the Lower Division. Because your proposed mitigation source is tributary to the Bear River in the Lower Division, it appears that this criterion will be met if the mitigation right is found to be valid and sufficient in quantity.

So that IDWR can complete the review of your application, please submit the following items within 30 days. If IDWR does not receive your response during that time period, it will be assumed that you no longer have an interest in your application, and it will be voided. IDWR can grant more time if you request it in writing.

- Confirmation of the number of acres you propose to irrigate from ground water and the corresponding depletion volume.
- A Notice of Change of Water Right Ownership with the supporting documentation and fee for Water Right 13-2164.
- An explanation of the relationship between Water Right 13-2164 and your 20 shares of West Cache Irrigation Co.
- Evidence that Right 13-2164 has not been abandoned or forfeited. This evidence should show the maximum extent of beneficial use within the last five years.

J7LLC

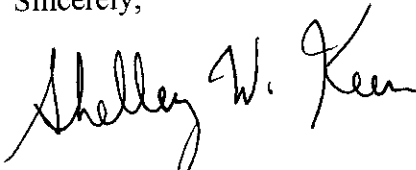
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- Confirmation that it is your intent to "dry up" the same number of acres you are proposing to irrigate from ground water and that you will not irrigate them from the spring right, 13-2164, or any other water source.
- An explanation of the use of canal water on the mitigation lands (Mortensen farm). If canal water has been used regularly on these lands, IDWR will also require a written statement from the canal company that it will allow the portion of its water right used on the Mortensen farm to be changed from irrigation to mitigation.

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 that reads "Shelley W. Keen". The signature is written in a cursive, flowing style.

Shelley W. Keen
Water Rights Supervisor

Enclosures