

MEMORANDUM

Date: May 03, 2005
To: Water Right File 65-22885
From: Shelley Keen *SK*
Re: Amendment Review

The permit holders filed an application for amendment to change the approval conditions on their permit. This was considered to be the appropriate method because Idaho Code Section 42-211, which governs amendments, requires an application for amendment to be file for any "substantial changes" to the permit.

Under their original permit, the permit holders intended to drill a supplemental irrigation well below the first confining layer to prevent a direct hydraulic connection with the Payette River. When their well was drilled, they obtained a large quantity of water at the level of the river and virtually no water for a couple hundred feet below the first confining layer. In addition, the permit holders found that property ownership and easement issues prevented them from accessing their point of diversion on the river. As a result, they cannot use their primary surface water rights -- 65-2590C and 65-11292C. (I know about their inability to use surface water because I spoke with Joni Shepherd on the phone and because Steve Lester wrote on the regional office review sheet that the permit holders have surface water rights they cannot use "due to easement and/or trespass issues.") On the application for amendment, the permit holders seek relief from the requirement that they divert from below the first confining layer, and they acknowledge that the change would require their diversions under this permit to be regulated by Water District 65. They did not ask for the removal of the conditions requiring them to use their surface water rights first. However, if the ground water diverted under this right is essentially river water, then it does not make sense to require them to use their other surface water rights first. Therefore, I recommend dropping the conditions that make this right supplemental to surface water as well as the condition requiring them to divert from below the first confining layer.

The regional office staff asked if the priority date of this permit should be advanced to protect surface water users with priorities later than the 5/19/2004 priority for this permit. This issue is complicated by the fact that May 19, 2004 is the appropriate priority date against all other ground water appropriators. This issue is being resolved by requiring mitigation. See my memo of 4/29/2005 in the water right file.

The diversion rate is being reduced from 0.12 cfs to 0.11 cfs because the mitigation rights add up to 0.11 cfs. Although the mitigation place of use is only 5.8 acres, the place of use for this approval is being left at 6.0 acres in accordance with our policy of rounding when the place of use is greater than five acres.