

MEMORANDUM

DATE: April 29, 2005

TO: Water Right File 65-22885

FROM: Shelley W. Keen *SWK*

RE: Conversation with permit holders

This afternoon I spoke on the phone with permit holders Mike and Joni Shepherd about the disposition of their surface water rights, 65-2590C and 65-11272C, once their application for amendment is approved. The Shepherds said they would email or mail me a statement indicating that they're willing to use the surface water rights as mitigation for their diversion of shallow ground water under this permit. I believe the mitigation is important for three reasons.

1. There are about 20 surface water rights in Basin 65 that are junior to this permit. Amending the permit to authorize the use of shallow ground water that is hydraulically connected to the river will injure the junior surface water right holders. There are two ways to avoid the injury. One way is to advance the priority date of the permit, but there is no statutory authority for IDWR to do that. The second way is to mitigate by agreeing not to divert under the surface water right in exchange for being able to irrigate under this permit. By mitigating, the permit holders are assuring the junior appropriators that diversions under this permit will not result in less water than the juniors were accustomed to having in the river.
2. Converting the surface water rights to mitigation preserves them. Otherwise, after five years of non-use, the surface water rights are potentially subject to forfeiture. By preserving the mitigation rights, they could be converted back to irrigation if it ever becomes advantageous for the permit holders to resume the use of surface water and to give up diverting and using ground water.
3. By mitigating with the surface water rights, the permit holders allow the water district to regulate their diversions under the priorities of the surface water rights. While the surface water rights are relatively junior within the Payette River system, they still offer a better potential for saving money on storage water releases than this permit with its 2004 priority date does.

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 65-11272C

WATER RIGHT NUMBER: 65-11272C

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	EUGENE M SHEPHERD PO BOX 398 HORSESHOE BEND, ID 83629 (208)584-9038
Current Owner	JONI D SHEPHERD PO BOX 398 HORSESHOE BEND, ID 83629 (208)584-9038

Mitigation
Right

Priority Date: 06/22/1966

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
PAYETTE RIVER	SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	4/01 to 11/01	0.030 CFS	
	<u>Total Diversion:</u>	0.030 CFS	

Location of Point(s) of Diversion

PAYETTE RIVER	L1 (SE1/4SW1/4SE1/4)	Sec. 24, Twp 07N, Rge 01E, B.M.
GEM County		

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals	
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
07N	01E	24																	1.6	1.6
																			L 1	

Total Acres: 1.6

Conditions of Approval:

1. C18 THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.

Remarks:

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report 65-11272C

Comments:

Dates and Other Information:

Licensed Date:
Decreed Date: 7/18/2002
Water Supply Bank Enrollment Accepted:
Water Supply Bank Enrollment Removed:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
State or Federal: S
Owner Name Connector:
Water District Number: 65
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Decree Defendant:
Decree Plaintiff:
Civil Case Number: 39576
Judicial District: FIFTH
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

Combined Use Limits:

Water Supply Bank:

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report 65-2590C

WATER RIGHT NUMBER: 65-2590C

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	JONI D SHEPHERD PO BOX 398 HORSESHOE BEND, ID 83629 (208)584-9038
Current Owner	EUGENE M SHEPHERD PO BOX 398 HORSESHOE BEND, ID 83629 (208)584-9038

Mitigation
Right

Priority Date: 04/19/1954

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
PAYETTE RIVER	SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	4/01 to 11/01	0.080 CFS	
	<u>Total Diversion:</u>	0.080 CFS	

Location of Point(s) of Diversion

PAYETTE RIVER	L1 (NE1/4SW1/4NE1/4)	Sec. 25, Twp 07N, Rge 01E, B.M.
GEM County		
PAYETTE RIVER	L1 (SW1/4SE1/4)	Sec. 24, Twp 07N, Rge 01E, B.M.
GEM County		

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07N	01E	24																4.2	4.2
																		L 1	

Total Acres: 4.2

Conditions of Approval:

1. C18 THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.

Remarks:

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report 65-2590C

Comments:

1. sbock 5/3/2001 pod

Comment: A second pod was added to this right in Sec 24 SWSE. According to a statement submitted by Ben Goslin the pump was in place during the summer of 1966. Document can be found in the A file. Both pumps are used to deliver this right.

Dates and Other Information:

Licensed Date:

Decreed Date: 6/28/2002

Water Supply Bank Enrollment Accepted:

Water Supply Bank Enrollment Removed:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

State or Federal: S

Owner Name Connector:

Water District Number: 65

Generic Max Rate Per Acre:

Generic Max Volume Per Acre:

Decree Defendant:

Decree Plaintiff:

Civil Case Number: 39576

Judicial District: FIFTH

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Carey Act Number:

Mitigation Plan: False

Combined Use Limits:Water Supply Bank: