

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

**IN THE MATTER OF PETITION FOR  
ORDER AUTHORIZING ADDITIONAL USE  
UNDER AUTHORIZED PERMITS AND  
MORATORIUM ORDER FOR WATER  
RIGHT PERMIT 63-34326 IN THE NAME OF  
THE CITY OF BOISE**

**INTERLOCUTORY ORDER  
AUTHORIZING ADDITIONAL USE**

On October 16, 2017, the Idaho Department of Water Resources (“Department”) issued an *Order Accepting Settlement* accepting the Stipulated Agreement submitted to the Department on August 29, 2017 (“Agreement”).

On December 5, 2017, the Department authorized an increase in the production limit for use under the City of Boise’s (“City”) permit no. 63-34326 (“Permit”) in combination with its existing water right license no. 63-9139 (“Existing License”) to 325 million gallons per year (“mmg/yr”).

On May 3, 2019, the Department authorized an increase in the production limit for use under the City’s Permit in combination with its Existing License to 355 mmg/yr.

On March 10, 2020, the Department met with the parties to the Agreement to review the Department’s annual summary report regarding monitoring data and the City’s annual production and injection report (“City Report”). The Department and parties also discussed the City’s request to increase the production limit to 370 mmg/yr under the Permit in combination with its Existing License. Some parties requested that the City submit a report identifying future demands that justify the requested increase.

On March 24, 2020, the City submitted its *Supplemental Report: City of Boise Geothermal Heating System; Stipulated Agreement for Water Right Permit 63-34326; City*

*Points in Support of Increase in Production Limit to 370 MG/yr commencing WY 2021*

(“Supplemental Report”). The Supplemental Report lists recent building connections, upcoming committed building connections, and future building connections “in discussion.”

The Department requested that all parties inform the Department of any opposition to the increase no later than April 7, 2020.

In response to its request, the Department received an email from the State of Idaho Department of Administration, stating that it does not oppose the City’s requested increase. The Department also received a letter from Edwards Family, LLC (“Edwards Family”), opposing the City’s requested increase. Edwards Family raises a handful of issues, but the overall focus of its argument is that “the Department should deny the City’s request for a geothermal production limit increase from 355 mmg/yr to 370 mmg/yr [Water Year 2021] because it is inconsistent with the generally accepted objective that any increase to the City’s production be deliberate and incremental to avoid adverse impacts to senior water rights, and also because the City’s request is being made for speculative purposes in violation of Idaho Code Section 42-203A(5).” Letter from William Fletcher, attorney for Edwards Family, to Gary Spackman, Idaho Department of Water Resources Director (“Director”) (April 7, 2020).

The City responded in detail, arguing that the request is consistent with Section II.C.5 and 6 of the Agreement and that the requested increase does not violate Idaho Code Section 42-203(5). Regarding Idaho Code Section 42-203(5), the City reasons:

This statutory provision applies as part of the criteria when the Department is considering an application for a permit to appropriate water, providing that the Director may reject the application if “such application... is made for delay or speculative purposes...” among other criteria. “Speculation” is defined in the Department’s rules as “an intention to obtain a permit to appropriate water without the intention of applying the water to beneficial use with reasonable diligence (IDAPA 37.03.08.045.01.c). These provisions do not apply to development of beneficial use under an already issued permit, such as Permit 63-34326, in

accordance with the Permit terms. In any case, there is no indication that the City has not intended or has not been proceeding with applying the water authorized by the Permit to System heating use with reasonable diligence.

Letter from Robert Maynard, attorney for the City, to Gary Spackman, Director (April 17, 2020).

Having considered the matter, the Department concludes that the City's request for an increase in the production limit to 370 mmg/yr for Water Year 2021 is not in violation of Idaho Code Section 42-203A(5). This statutory provision applies as part of the criteria when the Department is considering an application for a permit to appropriate water and does not apply to development of beneficial use under an already issued permit.

The Department also concludes that the City's request is consistent with Sections II.C.5 and 6 of the Agreement. Sections II.C.5 and 6 of the agreement list specific criteria for authorizing a deliberate and incremental increase to the Permit's production limit. Section II.C.5 of the agreement provides, in relevant part:

5. A further increase in System production limit commencing in the following water year shall be authorized if:

- a. average annual System production for the prior two water years exceeds 270 mmg/yr . . . .
- and
- b. The IDWR determines, after review and consideration of the IDWR Report and any additional information provided by any of the parties at the meeting, that increasing the City Geothermal System production will not: 1) deplete or otherwise adversely affect the Aquifer; 2) increase pumping lift or decrease pressure to existing prior user wells; or 3) reduce temperature to existing users causing systems operating at reasonable efficiency to no longer operate. A determination under this provision shall not be a final IDWR decision regarding license production limits.

The City Report states that the City produced 312.5 mmg in Water Year 2018 and 263.9 mmg in Water Year 2019. The City's two-year system average for Water Years 2018 and 2019,

the prior two water years, exceeded 270 mmg/year.

Furthermore, after review and consideration of the Department's annual report and discussions of the parties at the annual meeting, the Department concludes that increasing the production limit will not: 1) deplete or otherwise adversely affect the aquifer underlying the Boise Front Low Temperature Geothermal Resource Ground Water Manager Area; 2) increase pumping lift or decrease pressure to existing prior user wells; or 3) reduce temperature to existing users causing systems operating at reasonable efficiency to no longer operate.

Section II.C.6 of the Agreement provides, in relevant part:

6. The amount of increase in the System production limit under the Permit authorized if the criteria in C.5.b above are met shall be, in combination with any production under the Existing Permits:

Water Year	Combined Production Limit (mmg/yr)
2018 (commencing 10-1-2017)	325
2019	340
2020	355
2021	370
2022	385

Provided: The City shall not be authorized to actually produce at a level of 325 mmg/yr or more once an increase in the production limit is authorized in accordance with the above until such time as the System has actually produced at a level of at least 310 mmg/yr in a prior single Water Year. Provided further: No increase in the production limit above 370 mmg/yr shall be authorized in accordance with the above until such time as the System has actually produced at level of at least 340 mmg/yr in a prior single Water Year.

Pursuant to the table in Section II.C.6, because the criteria in Section II.C.5.b are met, the authorized combined production limit for the City for Water Year 2021 is 370 mmg/yr.

### **ORDER**

IT IS HEREBY ORDERED that:

1. Based on the Agreement, the Department authorizes an increase in the production limit (diversion pumping) for use under the City's Permit in combination with its Existing License to 370 mmg/yr in Water Year 2021.

2. Consistent with Section II.D.2 of the Agreement, the City remains subject to an order decreasing the production limit if the Department determines a reduction is necessary to remedy:

1) depletion or other adverse effects on the aquifer underlying the Boise Front Low Temperature Geothermal Resource Ground Water Manager Area; 2) increased pumping lift or decreased pressure in an existing prior user well; or 3) temperature decline causing an existing user system operating at reasonable efficiency to no longer operate.

3. This authorization is not a final Department decision regarding license production limits.

4. This is an interlocutory order issued pursuant to IDAPA 37.01.01.710.

Dated this 5<sup>th</sup> day of May, 2020.

  
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Shelley Keen, Chief  
Water Allocation Bureau

## CERTIFICATE OF SERVICE

I hereby certify that on May 7th, 2020, the above and foregoing, was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

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