

APR 20 2020

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DEPARTMENT OF
WATER RESOURCES

April 17, 2020

Robert A. Maynard
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VIA U.S. MAIL

Gary Spackman, Director
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

Re: City of Boise Request to Increase its Geothermal System Production Limit to 370 MG/yr
Commencing in Water Year 2021 under Water Right Permit 63-34326

Dear Director Spackman:

We represent the City of Boise (the "City") in this matter. This letter is a reply to the April 7, 2020 letter addressed to you from counsel for Edwards Family, LLC ("Edwards") in this matter ("April 7 letter"). We are emailing a copy of this letter to Mr. Shelley Keen, IDWR Chief, Water Allocation Bureau, the lead representative for IDWR in this matter, as well as the other IDWR staff and parties participating in this matter shown in the "cc" list at the end of this letter, and ask that this letter be included along with the April 7 Letter in the IDWR record for Permit 63-34326.

We respectfully submit the following comments in reply to the April 7 Letter:

1. The requested increase meets the criteria in and is otherwise entirely consistent with the Stipulated Agreement.

As set out in the City's March 23, 2020 Supplemental Report submitted in this matter and referenced in the April 7 Letter ("Supplemental Report", attached to this letter for ease of reference), the City meets the criteria set out in the 2017 stipulated agreement referenced in Permit 63-34326 ("Stipulated Agreement") for an incremental increase in the City geothermal heating system ("System") combined production limit under the Permit and City License 63-9139 from the current limit of 355 million gallons/year ("MG/yr") to 370 MG/yr, starting in Water Year ("WY") 2021. Accordingly, IDWR should issue an order authorizing the increase, subject to all of the protective conditions in the Permit and Stipulated Agreement, as it did in May 2019 for the increase to 355 MG/yr.

This increase will merely keep the City on track for further increasing beneficial use during the five-year term currently allowed for development under the Permit, in accordance with the Permit and Stipulated Agreement terms. The City has consistently emphasized to Edwards and the other parties to the Stipulated Agreement that, as the City engages additional geothermal heat

customers within the production limit, and particularly in average or warmer than average years, actual production will likely lag behind the production limit.

The interruptible customer and alternative heating system capacity of approximately 168 MG/yr referenced in the April 7 Letter is not a means for the City to attain geothermal heating beneficial use within the incremental increases in production limits authorized under the Permit and Stipulated Agreement. It is instead one of the contingency measures available in the event that actual harm to the Boise Front geothermal aquifer system (“Aquifer”) or other senior user wells or heating systems develop, enabling City System actual production to be adjusted downward if warranted, irrespective of the production limit. Stipulated Agreement, Sec. II.D and Exhibit D.

The April 7 Letter does not provide any indication of such harm. It references only a statement at the top of page 4 of the February 14, 2020 IDWR annual report reviewing geothermal monitoring data for WY 2019, regarding a minor decrease of 0.3 feet in the maximum and minimum depths of the BLM Well water level from WY 2018 to 2019. The chart referenced by this statement in the IDWR report, Figure 2 on page 5 of the report, shows an overall increasing or stable water level trend for the BLM Well level over many years, including the most recent few years. As stated at the bottom of page 4 of the same report: “Water levels in the Downtown Boise Front Geothermal Area have generally risen over the past 14 years, with statistically significant rising trends in 4 of 5 wells analyzed.” (The City notes that, from its perspective, the reinjection of most of the production from the City System wells back to the Aquifer during that time period can be considered a substantial contributor to this positive trend.) None of the downtown senior water right holders who are parties to the Stipulated Agreement have indicated problems with their wells or systems.

2. The requested increase is not for speculative purposes.

Contrary to the assertion in the April 7 Letter, the requested increase does not violate Idaho Code Section 42-203(5). This statutory provision applies as part of the criteria when IDWR 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 IDWR regulations 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.

The incremental increase in the City System production limit to 370 MG/yr is within the maximum combined production limit with License 63-9139 of 385 MG/yr that may be authorized under the Permit, which remains under development. A production limit that falls

Gary Spackman, Director
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within the incremental increases provided for in the Stipulated Agreement cannot credibly be labeled speculative. Likewise, a production limit of 370 MG/yr, which as indicated in Section 2 in the Supplemental Report would be within the adjustment for the potential for cold winters allowed for proof of beneficial use determinations for heating uses under IDAPA 37.03.02.035.01(j), cannot be considered speculative. As indicated in Section 2 of the Supplemental Report, 370 MG/yr is lower than the 396 MG/yr estimated maximum near-term System actual production needs for the coldest winter in the past 50 years. While the statistical likelihood of a winter that cold occurring in any given year may be relatively small, it can occur at any time, and particularly in this context, the production limit is for maximum needs under the Permit that may occur in WY 2021 or a subsequent year, and not average year needs.

The City respects the concerns of Edwards but disagrees with the April 7 Letter in opposition to the requested increase in the City System production limit under Permit 63-34326. No party to the Stipulated Agreement other than Edwards has objected to the City's request to increase the City System production limit to 370 MG/yr, subject to the continued protective conditions in the Permit and Stipulated Agreement. The City is confident that Edwards, the other parties to the Stipulated Agreement, and the Aquifer will continue to be adequately protected by the terms and conditions of the Permit and the Stipulated Agreement. Based on the criteria in the Stipulated Agreement, and for the reasons stated in this letter and previous City submittals, the City requests that IDWR authorize the requested increase to 370 MG/yr commencing in WY 2021.

Very truly yours,



Robert A. Maynard

RAM/rgm

Attachment: March 23, 2020 City Supplemental Report

cc: Shelley Keen
Mike McVay
Garrick Baxter
William Fletcher
Dana Hofstetter
Lyndon Nguyen
Julie Weaver
Charles Honsinger
Angela Kaufmann

March 23, 2020

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

This report is a follow-up to the March 10, 2020 annual meeting ("March 10 Meeting") among representatives of the Idaho Department of Water Resources ("IDWR") and the parties to the Stipulated Agreement regarding the City of Boise application for Water Right Permit 63-34326, accepted in an IDWR October 16, 2017 Order ("2017 Agreement" or "Agreement"). This report summarizes points in support of the City's request under the Agreement for an increase in the City Geothermal Heating System ("System") production limit from the current 355 million gallons ("MG")/year ("yr") to 370 MG/yr, commencing for water year ("WY") 2021. These points track the points presented and discussed at the March 10 meeting.

1. The criteria in the 2017 Agreement for IDWR to authorize an increase in the System production limit to 370 MG/yr are met.

a. As indicated in the City's February 13, 2020 letter report emailed to IDWR and each of the 2017 Agreement parties under Section II.C.4 of the Agreement, the System actual production, adjusted using the Heating Degree Day ("HDD") formula in the Agreement, easily exceeded the minimum threshold of 270 MG average for the prior two water years (WY 2018 and 2019) under Section II.C.5.a of the Agreement. The City calculation showing this two-year average to be 298.3 MG is attached for ease of reference.

b. At the March 10 meeting, IDWR and the Agreement parties reviewed the IDWR annual reports regarding Boise Front geothermal aquifer system ("Aquifer") monitoring for WY 2019, provided under Section II.C.3 of the 2017 Agreement: 1) the Annual Watermaster Report for WD 63-S (Stewart Gulch area), and 2) Annual Review of the Downtown Boise-East Boise area. The IDWR report documents and the discussion at the March 10 meeting indicate no adverse Aquifer, user well, or system temperature effects attributable to City System operations, and that the criteria for an increase in the production limit under Section II.C.5.b of the 2017 Agreement are met. That is, increasing the City Geothermal System production within the requested increased production limit 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.

c. The increase in the production limit to 370 MG/yr will remain subject to all of the protective conditions in the 2017 Agreement, City License 63-9139, and Permit 63-34326, including but not limited to IDWR authority, based on continued monitoring and evaluation of data and other information, to subsequently order a decrease in the System production limit to remedy Aquifer, user well, or temperature problems described in Section II.D.2 of the Agreement. The City continues to have the capability with interruptible customers and backup heating sources to reduce System actual production by approximately 168 MG/yr if necessary, as described in Exhibit D of the Agreement. Thus, the means continue to exist under the Agreement to help assure that the criteria in Section II.C.5.b of the Agreement continue to be met and to remedy any Aquifer, user well, or system problems that might arise.

d. Accordingly, the criteria for IDWR to authorize an increase in the System production limit in Section II.C.5.b of the 2017 Agreement are met and the chart in Section II.C.6 specifies that the increase “shall be” to 370 MG/yr, commencing in WY 2021.

2. The City has a continuing, genuine need for an increase in the System production limit to at least 370 MG/yr.

a. As indicated by Jon Gunnerson at the March 10 meeting, the City has recently added the Boise State University Fine Arts Building and Idaho State History Museum to the System, with two more downtown area buildings expected to soon be added and four additional downtown buildings in discussion for adding as System customers. These buildings are listed in a sheet attached to this paper, and total 36.7 MG/yr of estimated additional System production need. As Jon indicated, based on the additional buildings currently expected be included in the System by WY 2021 (the first four buildings on the attached list, totaling an additional 13.4 MG/yr), and using an HDD adjustment for the coldest winter in the past ten years, he estimates actual total System production needs to be approximately 330 MG/yr. We note also that if an HDD adjustment for the coldest winter in the past 50 years is used (1985, with 7055 HDD), the estimated total maximum System production needs would be approximately 396 MG/yr. (Such an adjustment is allowed for proof of beneficial use determinations under IDAPA 37.03.02.035.01(j).)

b. Within a 370 MG annual production limit, this leaves a buffer of only a bit more than 10% (40 MG/yr) to meet total System production needs in WY 2021 in the event of a much colder year than in the past ten years, and/or if the additional buildings that are the subject of current City discussions (totaling an additional 23.3 MG/yr) or other customers come on line sooner than currently predicted.

c. The City has recently established ambitious energy goals, including 100% clean electricity by 2035 and achieving an annual electricity reduction of approximately 2% by 2030. The City’s sustainability goals reflect the comments and feedback received from the citizens of Boise City in the course of the City’s various community engagement processes. Geothermal plays a role in achieving these broad goals of renewable and sustainable energy sources. Continued and increased interest in geothermal heating by owners and developers of existing and new buildings within the City System service area is expected near-term and beyond.

3. The City will continue to collaborate with IDWR and the other 2017 Agreement parties.

The City fully intends to continue to do its part to collaborate with IDWR and the other 2017 Agreement parties respecting increasing System production at a deliberate and incremental pace, while monitoring effects as good stewards of the Aquifer and in consideration of senior water rights, in accordance with the 2017 Agreement. As provided in the Agreement, there will be updated monitoring data, annual City and IDWR reports, and a meeting in March 2021 to review and discuss further updated data and any concerns. The City will remain available to meet with IDWR and any of the Agreement parties in the meantime.

City of Boise Geothermal Heating System

Water Right Permit 63-34326

Heating Degree Day Calculations

	2018	2019 (City Calculated Volume)	2019 (IDWR Calculated Volume)
Actual Production Volume	312.5 MG	263.9 MG	276.4 MG
Recorded Heating Degree Days	5063	5184	5184
Average Heating Degree Days	5297	5297	5297
Adjusted Production Volume	326.9 MG	269.7 MG	282.4 MG

- City Calculated Volume (263.9 MG):
 - Two Year Average = 288.2 MG
 - Two Year Average (HDD Adjusted) = 298.3 MG
- IDWR Calculated Volume (276.4 MG):
 - Two Year Average = 294.5 MG
 - Two Year Average (HDD Adjusted) = 304.7 MG

Recent Building Connections:

- BSU Fine Arts Building (7.0 MG/Y)
- Idaho State History Museum (1.1 MG/Y)

Total Recent Connections = 8.1 MG

Upcoming / Committed Building Connections:

- USGS Building 4 (1.3 MG/Y)
- Borah Post Office Building (4.0 MG/Y)

Total Committed Connections = 5.3 MG

Sub Total = 13.4

Future Building Connections:

- Cathedral of the Rockies (6.0 MG/Y)
- 13th and Main (0.8 MG/Y)
- Grove Hotel (15 MG/Y)
- 132 & 140 Main Street (1.5 MG/Y)

Future Connection = 23.3 MG

Total System Growth = 36.7 MG

Keen, Shelley

From: Keen, Shelley
Sent: Tuesday, April 21, 2020 7:24 AM
To: 'Maynard, Robert (Perkins Coie)'; Tina Shull; McVay, Michael; Baxter, Garrick; 'lyndonlegal@gmail.com'; 'julie.weaver@ag.idaho.gov'; 'honsingerlaw@gmail.com'; 'angela.kaufmann@ag.idaho.gov'; Dana L. Hofstetter (DHofstetter@hawleytroxell.com); William Fletcher
Subject: RE: Water Right Permit 63-34326 [IWOV-IMANAGE.FID796903]

Bob,

IDWR has received the hardcopy of your letter. We will add it to the file for Permit 63-34326.

Regards,

Shelley Keen
Water Allocation Bureau Chief
Idaho Dept. of Water Resources
208-287-4947
shelley.keen@idwr.idaho.gov

From: Maynard, Robert (Perkins Coie) [mailto:RMaynard@perkinscoie.com]
Sent: Friday, April 17, 2020 4:17 PM
To: Tina Shull <TShull@hawleytroxell.com>; Keen, Shelley <Shelley.Keen@idwr.idaho.gov>; McVay, Michael <Michael.McVay@idwr.idaho.gov>; Baxter, Garrick <Garrick.Baxter@idwr.idaho.gov>; 'lyndonlegal@gmail.com' <lyndonlegal@gmail.com>; 'julie.weaver@ag.idaho.gov' <julie.weaver@ag.idaho.gov>; 'honsingerlaw@gmail.com' <honsingerlaw@gmail.com>; 'angela.kaufmann@ag.idaho.gov' <angela.kaufmann@ag.idaho.gov>; Dana L. Hofstetter (DHofstetter@hawleytroxell.com) <DHofstetter@hawleytroxell.com>; William Fletcher <WFletcher@hawleytroxell.com>
Subject: RE: Water Right Permit 63-34326 [IWOV-IMANAGE.FID796903]

Attached please find my letter on behalf of the City of Boise that is being mailed hardcopy to IDWR Director Spackman today, in reply to the April 7, 2020 letter sent to Director Spackman in this matter on behalf of the Edwards Family LLC.

Thanks, --Bob Maynard

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From: Tina Shull <TShull@hawleytroxell.com>

Sent: Tuesday, April 07, 2020 3:28 PM

To: 'Shelley.Keen@idwr.idaho.gov' <Shelley.Keen@idwr.idaho.gov>; 'Michael.McVay@idwr.idaho.gov' <Michael.McVay@idwr.idaho.gov>; 'Garrick.Baxter@idwr.idaho.gov' <Garrick.Baxter@idwr.idaho.gov>; Maynard, Robert (BOI) <RMaynard@perkinscoie.com>; 'lyndonlegal@gmail.com' <lyndonlegal@gmail.com>; 'julie.weaver@ag.idaho.gov' <julie.weaver@ag.idaho.gov>; 'honsingerlaw@gmail.com' <honsingerlaw@gmail.com>; 'angela.kaufmann@ag.idaho.gov' <angela.kaufmann@ag.idaho.gov>

Cc: Dana Hofstetter <DHofstetter@hawleytroxell.com>; William Fletcher <WFletcher@hawleytroxell.com>

Subject: Water Right Permit 63-34326 [IWOV-IMANAGE.FID796903]

Please see the attached letter responding to the City of Boise's pending request to increase its authorized combined production limit under Water Right Permit 63-34326. Thank you.

TINA SHULL

Legal Assistant to Kenneth C. Howell, Richard G. Smith, Andrea J. Rosholt, Cydni Waldner, Dana Hofstetter and Brian Ballard

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