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Sent: Tuesday, April 7, 2020 3:28 PM
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Cc: Dana Hofstetter; William Fletcher
Subject: Water Right Permit 63-34326 [IWOV-IMANAGE.FID796903]
Attachments: Letter to Gary L. Spackman - April 7, 2020.pdf

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

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April 7, 2020

VIA U.S. MAIL AND FACSIMILE (208) 287-6700

Gary Spackman
Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

Re: *Response to the City of Boise's Request to Increase its Production Limit to 370
MG/yr commencing in Water Year 2021 under Water Right Permit 63-34326*

Dear Director Spackman:

Please accept this letter on behalf of Edwards Family, LLC, responding to the City of Boise's pending request to increase its authorized combined production limit under Water Right Permit 63-34326 from 355 MG/yr in water year 2020 to 370 MG/yr in water year 2021. This letter responds to both the City's February 13, 2020, letter and its March 23, 2020, Supplemental Report. Edwards Family, LLC requests that this letter be included in the IDWR record for Permit 63-34326.

As set forth below, the Department should deny the City's request for a geothermal production limit increase from 355 MG/yr to 370 MG/yr 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).

In its Supplemental Report, the City referenced language in the Stipulated Agreement for Water Right Permit 63-34326 ("Stipulated Agreement") stating that it "fully intends to continue to do its part to collaborate with IDWR and the other 2017 [Stipulated] Agreement parties respecting *increasing production at a deliberate and incremental pace*, while monitoring effects as good stewards of the Aquifer and in consideration of senior water rights." (Supplemental Report at 2; *see also* Stipulated Agreement at 2.) By its own calculations, though, the City only produced 263.9 MG/yr in water year 2019, a decrease of 48.6 MG/yr from water year 2018. The City's calculations also show a two year HDD adjusted average of only 298.3 MG/yr for water

years 2018 and 2019.¹ Moreover, the City's own production need projection for water year 2021 (based on the addition of a number of buildings to the System and using an HDD adjustment for the coldest winter in the past ten years) amounts to 330MG/yr. Even if the City's projection proves accurate, this level of production would fall 40 MG/yr short of its requested production level even in an unseasonably cold winter, a fact which the City acknowledges. Accordingly, the currently authorized production limit of 355 MG/yr is more than sufficient to meet this 330 MG projected need for 2021.

The City's projected 330MG/yr of actual total System production also would mark a 31.7 MG/yr increase over the City's 2018—2019 actual production volume average. Actual production of 370 MG/yr in water year 2021 would constitute a 71.7 MG/yr increase over this average. Such a 25 percent increase in production hardly constitutes increased production "at a deliberate and incremental pace" consistent with the acknowledged objectives of the Stipulated Agreement. The City's own figures leave little doubt that, absent a historically very cold winter which would drive up production needs beyond even 370 MG/yr (and which statistically is highly unlikely), its present production limit of 355 MG/yr will be more than adequate to meet its anticipated increased production needs of 330 MG (which projection itself is generous).

A production level increase to 370 MG/yr also is unnecessary given the City's acknowledgement that it has back up heating sources available that are capable of effectively reducing its System production needs by approximately 168 MG/yr. Even under the City's calculations involving an HDD adjustment for the coldest winter in the past 50 years (and with its maximum growth projections realized), with 268MG/yr of available backup production, the City's needs will be more than sufficiently met under its present production limit.

Additionally, the general decline in water levels in the Boise Front Geothermal Area provides further reason to adhere to the Agreement's cautious approach. Given this general decline in water levels, maintaining the Agreement's cautious approach is necessary to ensure that the decline does not become part of a statistically significant trend where increased production by junior water rights would potentially further threaten senior water rights. *See* McVay, Review of Boise Front Low Temperature Geothermal Monitoring Data for Water Year 2019 (February 14, 2020) at 4 ("Water levels in the Downtown Boise Front Geothermal Area generally declined in WY19. The BLM well is located near the City, State and VA wellfields, which makes it a good indicator of system water levels. Both the maximum and minimum water levels declined 0.3 feet from WY18 to WY19.") In this regard, the Stipulated Agreement requires that IDWR only approve an increase in production limit if "The IDWR determines, after review and consideration of the IDWR Report and any additional information provided by any of the parties ... 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. . . ." (Stipulated Agreement at 5-6)

¹ Although IDWR's calculated figures are slightly higher, they do not significantly differ from the City's figures.

Further, there can be no disputing that the City's requested production increase is based on speculative, rather than genuine, need. The City has placed great weight on recent and anticipated additional building connections to the System to justify its 370 MG/yr production request. However, these recent and proposed future connections hardly warrant such an increase at this time. For example, the City's recent connections only amount to an additional 8.1 MG/yr. Additional committed building connections only account for an additional 5.3 MG/yr in production needs. And future possible building connections beyond 2021 amount to an additional 23.3 MG/yr. This total potential growth of an additional 36.7 MG/yr, even if all of these projected additions and are in fact connected to the system by water year 2021, would not even increase the City's production past 355 MG/yr based on its actual WY 2018 and 2019 production figures. Only by using HDD adjustments for a historically 50 year cold winter could the City meet or exceed this present production limit. But again, even if the City were to experience production needs adjusted for the coldest winter in the past 50 years, the City's back up production capabilities are more than adequate to meet such a hypothetical production need under its present 355 MG/yr production limit.

CONCLUSION

Like the City, Edwards Family, LLC remains committed to continuing to collaborate with the parties to the Stipulated Agreement, for the purpose of ensuring that production limit increases occur at "a deliberate and incremental pace." For the reasons discussed above, Edwards Family, LLC requests that the City's request be denied and that the currently authorized production level of 355 MG/yr remain in place through water year 2021.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY LLP

A handwritten signature in blue ink, appearing to read "W. K. Fletcher", is written over the printed name.

William K. Fletcher

WF:th

email cc: Shelley Keen
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Garrick Baxter
Robert A. Maynard
Lyndon Nguyen
Julie Weaver
Charles Honsinger
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