

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 82613 IN THE NAME OF THE
CITY OF WESTON

PRELIMINARY ORDER APPROVING
TRANSFER WITH CONDITIONS

On August 6, 2018, the City of Weston ("City") filed Application for Transfer no. 82613 ("Application") with the Idaho Department of Water Resources ("Department" or "IDWR"). The Department published notice of the Application in a manner set forth in Idaho Code § 42-203A. Jay Norman Fannesbeck ("Fannesbeck") filed a protest against the Application.

On November 28, 2018, the Department held a pre-hearing conference. The parties were unable to resolve the issues raised in the protest and requested a formal hearing to decide the contested case.

The Department conducted a hearing on February 28, 2019 in Preston, Idaho. The City of Weston was represented by attorney Steven Fuller of Fuller & Fuller PLLC, and the protestant, Jay Fannesbeck ("Fannesbeck"), represented himself.

The parties offered testimonial evidence, expert testimony, and other documents into the administrative record. Exhibits 1-18, 21-23, and 26 offered by Fannesbeck, and Exhibits 51-56 offered by the City were admitted into the administrative record. Exhibits 19, 20, 24, 25, and 28-40 offered by Fannesbeck were not admitted or were duplicative of other exhibits. The hearing officer also took official notice of certain documents found within the Department's records including the application file, protest, records associated with water rights 13-4070 and 13-7453, and well driller logs and reports on file with the Department. The transfer application, protest, and a copy of water right 13-4070 were identified as Exhibits IDWR 101-103.

The following individuals testified during the hearing: Greg Garner, Steven D Wood, Jay Fannesbeck, Sharalyn Fannesbeck, Lou Fannesbeck, Clint Buttars, and Leo Daley.

After carefully considering the evidence in the administrative record, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. The City of Weston owns water right 13-7453 which authorizes the diversion of 2.0 cfs from ground water for municipal use. Three points of diversion are currently authorized

under the water right: two points of diversion are located within the SWNE, Section 8, T16S, R38E, and a third point of diversion is located in NESW, Section 10, T16S, R38E¹.

2. The license for water right 13-7453 was issued on April 27, 1998. Transfer no. 73264 was approved on September 13, 2007 which authorized an additional point of diversion in NESW, Section 10.
3. The City of Weston's technical expert, Steven Wood ("Wood"), testified that test wells were drilled in 1988 at the locations of the existing City wells located in Section 8 ("existing wells", "Section 8 wells"). Well driller's reports on record with the Department confirm that the City drilled a test well in Section 8 on July 11-15, 1988, and a second test well on July 20-21, 1988. Exs. 54 and 55. During testimony, these wells were also referred to as the "East Well" and "West Well" respectively. Testimony by Fannesbeck.
4. The two points of diversion in Section 8 are currently operational; however, the well located in NESW, Section 10 produced "hot water" and was abandoned as it could not be tied into the City's water system. Testimony of Wood.
5. The City also owns water right 13-4070 which authorizes diversion of 1.75 cfs from a spring for domestic purposes. This water right is a claim filed pursuant to Idaho Code § 42-243 and has never been validated by the Department or by an adjudication court.
6. The protest filed by Fannesbeck states a concern that the East well in Section 8 does not meet minimum set back requirements as required under rules promulgated by the Idaho Department of Environmental Quality ("IDEQ"), IDAPA 58.01.08.510.02 and IDAPA 58.01.08.900.01, and asserts that the well should not have been tied to the City's water system and "gets overlooked as an illegal diversion." Ex IDWR 102. The protestant further indicates that abandonment of the East Well and/or a City water hookup to the Fannesbeck home would resolve the protest. *Id.*
7. The City submitted a Drinking Water Engineering Waiver Application ("Waiver Application") to the IDEQ on April 1, 2014. Exs. 51 and 52. The Waiver Application is a "process by which an engineer or a public water source can petition IDEQ for a particular waiver of a rule that is either unattainable or an additional burden on the system." Testimony of Wood. The application requested a waiver from IDAPA 58.01.08.510.02 Siting and Construction of Well Location which also references IDAPA 58.01.08.900.01 Minimum Distance from a Public Water System Well. These rules require a minimum of 50 feet separation between public drinking water system wells and surface water such as Weston Creek. Ex. 51.
8. According to a letter from IDEQ, dated August 25, 2014, the Waiver Application was approved with conditions, and IDEQ determined that if the specified conditions are met "...the existing condition of 25 feet of separation between the Weston East Well and Weston Creek will have no significant impact on public health or the environment." Ex. 51.

¹ Unless otherwise noted, all legal descriptions in this order are within Township 16 South, Range 38 East, B.M.

9. The City of Weston began the process to develop a “capital facilities master plan for its culinary water system” in 2016. Testimony of Wood. Analyses of the water system identified various deficiencies including a need for increased available storage (new concrete storage tank), and a reliable and redundant water supply.
10. Administrative rules for IDEQ (IDAPA 58.01.08.15) for public drinking water systems require ground water source redundancy for a new public water system or a public water system that receives a significant upgrade. Testimony of Wood. The referenced rules require additional source(s) capable of providing peak day demand. *Id.*
11. The City chose to drill a new well to meet IDEQ’s rule requirements rather than purchase or upgrade existing wells. Testimony of Wood. Application 82613 proposes to add a point of diversion to water right 13-7453 to meet these requirements. Ex. IDWR 101.
12. Two well locations were proposed by the City for the new point of diversion. Ex. 56. “Proposed Diversion Point no. 1” is located within the City in NWNE, Section 14. *Id.* A test hole drilled at this location confirmed that the location was unviable for the City of Weston’s water supply needs. Testimony of Wood. Idaho Code requires sealing of the first 60 feet of a public water well. *Id.* The test hole was drilled to an approximate depth of 224 feet. Sedimentary layers encountered at depths greater than 60 feet did not produce sufficient water and were not suitable to meet regulatory water quality standards. *Id.*
13. The City also drilled a test well at the location of “Proposed Diversion Point no. 2” in NWNE, Section 16. Ex 56. Testimony of Wood. The test well is located near Weston Canyon Road, east of the Fannesbeck property. *Id.* The site was selected by the City because it is located near the existing chlorination building that will be used for water treatment purposes and the property is owned by the City. *Id.*
14. The test hole at Proposed Diversion Point no. 2 was drilled to 520 feet and bedrock was present below approximately 200 feet. Testimony of Wood. Two productive zones were present at depths of approximately 160 and 180 feet. *Id.* This test well was determined to be viable for the City of Weston’s water supply system purposes and the City intends to pursue development of Proposed Diversion Point no. 2. *Id.* Wood stated that he notified the Department prior to submittal of the transfer application that one of the proposed points of diversion would be removed from the application based on the findings of the test holes.
15. A well driller’s report filed with the Department (Well Tag no. D0077668, Drilling permit no. 888530) details a test well drilled by the City in December 2018 in the NWNE, Section 16. The lithologic log documents water was encountered at depths in feet below surface: 20, 20–28, 90–95, 156–160, 160–174, and 198–216. The log also identifies “gray waxy shale” from 216 to 520 feet with no water present.
16. The City is pursuing the transfer to ensure system redundancy in the event of failure of one of the City’s water supply sources. Testimony of Garner. The City has built redundancy into the system in other areas such as operation of two chlorination facilities and backup power capability. *Id.* The new well is necessary to protect the

health and safety of the community. *Id.* Though the City may need more water to accommodate growth, it does not intend to divert more than 2.0 cfs under water right 13-7453. *Id.*

17. Production from the two wells in Section 8 has declined since they were drilled in 1988. Testimony of Wood. In total, the wells currently produce approximately 180 to 200 gallons per minute, though the discharge rates fluctuate. *Id.*
18. The City diverts water under water rights 13-4070 (spring) and 13-7453 (ground water). Testimony of Garner. The City uses spring water as much as possible, but the spring responds closely to surface water conditions and the amount of water available from the spring is limited at times due to periodic water quality problems and volume fluctuations. Testimony of Wood and Garner.
19. Department records for water right 13-7453 include a Beneficial Use Field Report, exam date January 19, 1995, that references pump tests performed on the two City wells by driller Jack Cushman. The pump tests document discharge rates of 350 gpm for the East Well and 900 gpm for the West Well.
20. The City did not provide any information about the impact of the new well on surrounding domestic and irrigation wells.
21. Fonnesbeck and his wife own a home with a 31-foot-deep domestic well (25 feet below the bottom of a concrete well enclosure). Testimony of Sharalyn and Jay Fonnesbeck.
22. Ground water levels drop in the Fonnesbeck domestic well during dry years and when flow is limited in Weston Creek. Testimony of Fonnesbeck. Parts of the Weston Creek Irrigation Company's distribution system have been piped which has affected the local aquifer levels. *Id.* The lack of releases from the Weston Creek Reservoir has reduced the amount of recharge and has affected all of the well owners in the area. *Id.* In recent years, Fonnesbecks have had to transport water during part of the winter months because their domestic well has gone dry. *Id.*
23. The Fonnesbecks drilled a second well after their domestic well went dry. The well is approximately 185 feet deep but does not produce potable water. Fonnesbeck testimony.
24. Fonnesbecks did not experience ground water level declines prior to operation of the City wells in Section 8. Testimony of Fonnesbeck. The City's wells operate during winter months when other irrigation wells are not in operation. *Id.*

GOVERNING LAW AND EVALUATION CRITERIA

Idaho Code § 42-222(1), in pertinent part, sets forth the criteria used to evaluate transfer applications:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or

upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter.

Idaho Code § 42-222(2), in pertinent part, establishes the time frame for forfeiture of water rights in the state of Idaho:

All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse of forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter except that any right to the use of water shall not be lost through forfeiture by the failure to apply the water to beneficial use under certain circumstances as specified in section 42-223, Idaho Code.

Burden(s) of Proof

The transfer applicant bears the burden of proof for all of the pertinent criteria listed in Idaho Code § 42-222. That statute requires the transfer applicant “to present sufficient evidence to the Department so that the director can make an informed determination as to [the applicant’s] transfer application.” *Barron v. Dept. of Water Resources*, 135 Idaho 414, 420, 18 P.3d 219, 225 (2000).

Substantial and Competent Evidence

Decisions of the Department must be based on substantial and competent evidence. *Id.* “Substantial and competent evidence is relevant evidence that a reasonable mind might accept to support a conclusion.” *Jarvis v. Rexburg Nursing Ctr.*, 136 Idaho 579, 583, 38 P.3d 617, 621 (2001). Substantial evidence does not need to be uncontradicted, or lead to a certain conclusion, “it need only be of such sufficient quantity and probative value that reasonable minds could reach the same conclusion” as the Department. *Mann v. Safeway Stores, Inc.*, 95 Idaho 732 736, 518 P.2d 1194, 1198 (1974).

ANALYSIS

Validity of the Water Right 13-7453

The Department must confirm that each water right, or portion thereof, included in a transfer application is valid as part of its review under Idaho Code § 42-222. Pursuant to Idaho Code § 42-222(2), a water right “shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated....” However, the Idaho Supreme Court has often repeated its position that forfeiture of water rights is not favored in Idaho. Forfeiture must be proven by clear and convincing evidence. *McCray v. Rosenkrance*, 135 Idaho 509, 515, 20 P.3d 693, 699 (2001). “Clear and convincing evidence is generally understood to be evidence indicating that the thing to be proved is highly probable or reasonably certain.” *In re Adoption of Doe*, 143 Idaho 188, 191 141 P.3d 1057, 1060 (2006) (quotation marks and citation omitted).

Water right 13-7453 was licensed by the Department based, in part, on the determination that the city system could produce up to 2.0 cfs. Transfer no. 73264 was approved on September 13, 2007 which authorized an additional point of diversion in NESW, Section 10 based on the same criteria considered in this transfer proceeding.

Wood testified that production from the two wells in Section 8 has declined since they were drilled in 1988. He stated that, based on available information, the two wells currently produce approximately 180 to 200 gpm, but can experience fluctuations. Wood and Garner also testified that the City’s general practice is to optimize the use of available spring water under water right 13-4070 and to only use the ground water wells to supplement spring water to meet the demands of its citizens. Ground water is used to offset fluctuations in both the volume of spring flow and periodic use constraints due spring water quality. *Id.* The City has accomplished its municipal beneficial use by relying on spring water and conserving municipal use as needed to avoid diverting ground water. *Id.* While Wood’s testimony suggests the City has not, at times, had the capacity to divert the full extent of water right 13-7453, this evidence is not substantive enough to meet the clear and convincing evidentiary standard to establish forfeiture.

At this time, the Department does not have clear and convincing evidence of forfeiture. Therefore, water right 13-7453 is a valid water right and Application 82613 should be evaluated under the criteria set forth in Idaho Code § 42-222.

Injury to Other Water Rights

The City currently operates two ground water wells for municipal supply located in Section 8. Application 82613 proposes to add a point of diversion to water right 13-7453 in Section 16. The Fannesbecks own property with a domestic well that is 31 feet deep and 25 feet below the concrete well enclosure. Though testimony about the distance between the City’s wells and the Fannesbeck well was unreliable, Department records show the existing City wells are located

approximately one mile northwest of the Fannesbeck general residence while the new well would be located less than one mile to the east, between the City and the Fannesbeck property.

According to Department records, there are several ground water diversions located within a two-mile radius around the Fannesbeck property, including irrigation wells. The City's wells are operated for municipal use, and unlike irrigation wells, operate to some extent throughout the year. Weston Creek also flows in the vicinity of the City's existing wells in Section 8 and the Fannesbeck property. The creek continues to flow southeast between the Fannesbeck residence and the new proposed City Well. There are also springs located near Weston Creek and the City's new proposed well location.

The test well logs for the City's existing wells, as well as driller logs in the Department's records for other wells in the vicinity, document water present at depths less than 30 feet below the surface, similar to the depth of the Fannesbecks' domestic well. The lithology described by well driller logs, the presence of springs in the area, and testimony regarding the response of Fannesbeck domestic well and the springs to surface water conditions support the existence of a shallow perched aquifer. The well logs also document the existence of as much as 100 feet of alternating layers of mostly "clay" between the upper shallow perched aquifer and deeper production zones at depths below 150 feet. This demonstrates the existence of a deeper aquifer system that is separated by non-permeable clay layers and well insulated from the upper shallow perched aquifer system.

Testimony was also provided during the hearing about a pipeline constructed by Weston Creek Irrigation Company to deliver water from Weston Creek Reservoir to irrigated acres within the company's service area. Fannesbeck testified the first section of the pipeline was constructed in 1996 and the section closest to the Fannesbeck residence, located approximately "two miles upstream", was constructed in 2002. Fannesbeck further testified that, prior to installation of the pipeline, water from the reservoir was run down the creek until it was used for irrigation purposes. Testimony from Wood and Fannesbeck indicated that local ground water levels and spring flows are influenced by flow in the creek.

Given the proximity of Weston Creek to the Fannesbecks property, the presence of springs in the area, and documentation of water at depths of less than 30 feet in lithological logs from a number of well driller reports, a shallow aquifer system may exist that is influenced by the amount of flow in the creek, incidental recharge through irrigation activity, and natural precipitation. A reduction in the amount of flow in the Weston Creek due to the piping and re-routing of water from Weston Creek Reservoir could also influence shallow ground water levels in the area. Available lithological data further suggests the existence of a deeper aquifer that is separated from and may respond to different hydrologic conditions than the shallow aquifer.

The Fannesbecks testified that in recent years, their domestic well has run dry during winter months, and argued the City's existing two wells in Section 8 diminish water levels in their domestic well. Idaho Code § 42-222 requires the applicant demonstrate that the proposed change

will not injure existing water rights but does not require the Department to evaluate existing well interference by existing water rights. The proper remedy for the Fonnesebecks' assertion that diversion from the City's wells is currently injuring their existing domestic well is through a delivery call. Through a delivery call, the Department can consider the effects of all ground water diversions in the area on the Fonnesebecks' well, including water users who are not parties in the pending contested case. The interaction between Weston Creek and the ground water system as well as influence of annual precipitation and seepage from irrigation activity may also be considered.

The transfer applicant bears the burden of proof for all of the pertinent criteria listed in Idaho Code § 42-222. That statute requires the transfer applicant "to present sufficient evidence to the Department so that the director can make an informed determination as to [the applicant's] transfer application." *Barron v. Dept. of Water Resources*, 135 Idaho 414, 420, 18 P.3d 219, 225 (2000). While the proposed transfer will not increase the authorized diversion rate under the current water right, the applicant did not provide substantive evidence of efforts to determine whether operation of a new well, if approved without condition, would influence surrounding wells and existing ground water appropriations. However, well driller logs admitted into evidence and in Department records, as well as testimony presented at the hearing demonstrate the likely existence of a shallow perched aquifer and separate or confined deep aquifer. The evidence also supports significant influence of surface water to the shallow aquifer system. Therefore, based on the evidence in the record, authorization of the construction of a new well through the transfer application can be conditioned to prevent injury to existing water rights by requiring the new well to be completed and sealed with unperforated casing to a depth that will protect the shallow aquifer.

Enlargement of Water Rights

Through this Application for Transfer the City proposes to add a point of diversion to meet IDEQ's public water system redundancy requirements and does not intend to expand water diversions beyond the amount authorized under its water rights. Approval of this transfer will not result in the enlargement of use under water right 13-7453.

Conservation of Water Resources

The purpose of transfer is add a point of diversion in provide redundancy in the City's supply system. The City does not propose in increase or exceed the diversion rate under its existing water right. Testimony indicates the City is taking steps to improve its water supply system and continues to utilize other water supplies, such a diversion from a spring under water right 13-4070 to the extent possible. The City's actions are consistent with conservation of water resources within the state of Idaho.

Effect on the Local Economy

The Applicant is not proposing to move its proposed place of use outside of the local watershed. Therefore, this review criterion does not pertain to Application 82613.

Local Public Interest

“Local public interest” is defined as “the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource.” (Idaho Code § 42-202B(3)).

Water users in the City benefit from a reliable safe public water supply system. According to testimony and evidence provided during the hearing, the City is taking steps to address deficiencies in the water supply system to comply with regulatory requirements and provide system redundancy and certainty of a reliable source of water. Approval of this transfer is consistent with the City’s efforts to improve its water supply system and is, therefore, in the local public interest.

Other Considerations

- 1) The license issued for water right 13-7453 authorized two points of diversion in SWNE, Section 8. In his protest and through testimony, Fannesbeck argued the East Well in Section 8 was only a test hole and should not have been included on the water right license.

The original water right application, permit, and license for water right 13-7453 described two points of diversion in SWNE, Section 8. Fannesbeck testified that he did not protest the original application. On September 13, 2007, the Department approved Transfer no. 73264 and authorized the addition of a point of diversion in NESW, Section 10. The original license was not contested and no protests were filed against transfer application no. 87364.

Fannesbeck also argues that, based on the discharge rates identified on the well driller reports, the wells were not capable of diverting 2.0 cfs and the water right license 13-7453 should not have authorized this diversion rate. Ex. 54 and 55. He testified that a new well would allow the City to divert more water than it was historically capable of diverting. At that time of licensing, the Department determined that the city system could produce up to 2.0 cfs.

Idaho Code § 42-220 (2) states, in part, that water right licenses “shall be binding upon the state as to the right of such licensee to use the amount of water mentioned therein.” Anyone wishing to challenge any element of the license may seek administrative, or judicial review if necessary, but must appeal the license when issued, in accordance with Idaho

law. The Department does not have the authority to reconsider the elements of the license after the appeal period has passed, except in the case of clerical errors, or licenses that include a term limit or conditions authorizing subsequent review. An attempt to appeal elements of a license in a subsequent judicial proceeding, such as the referenced contested case, would constitute a collateral attack on the license. *See Bone v. City of Lewiston*, 107 Idaho 844, 693 P.2d 1046 (1984). The Department will not revisit the elements of water right 13-7453 in this proceeding.

- 2) Fonnesbeck argues the City has not complied with set-back requirements for one its existing wells. The Department is not in a position to determine whether the City is in compliance with IDEQ requirements. Evidence available to the Department indicates that the City obtained a waiver for the well and that the waiver is still active. The Department will defer to IDEQ for enforcement of its rules and regulations.
- 3) Fonnesbeck testified that the City has not provided a hook-up to the city system as agreed upon during the development of the City's existing wells. This is an element of a private agreement between the City and the Fonnesbecks. The Department does not have the authority to enforce private agreements. If the Fonnesbecks believe the City has breached the terms of a private agreement, this issue should be brought forth before a tribunal with the authority to provide the relief being sought.

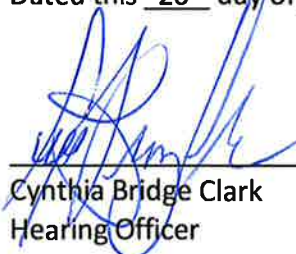
CONCLUSIONS OF LAW

The City of Weston has satisfied its burden of proof for the review criteria set forth in Idaho Code § 42-222 and Transfer no. 82613 should be approved with conditions. To ensure the Application will not result in injury to prior water rights appropriating water from the underlying shallow aquifer, the transfer approval must be conditioned to require the new well, located in NWNE, Section 16, T16S, R38E, to be constructed and maintained with unperforated casing and sealed into the first significant confining layer located 100 feet or more below ground surface.

ORDER

IT IS HEREBY ORDERED that Application for Transfer no. 82613 in the name of the City of Weston is APPROVED as set forth in the approval document issued in conjunction with this order:

Dated this 26 day of August 2019.



Cynthia Bridge Clark
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of August 2019, I served a true and correct copy of the foregoing document on the following by the method(s) indicated below:

City of Weston
PO Box 68
Weston ID 83286-0068
Applicant

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☐ Email

Steve Fuller
Fuller & Fuller PLLC
24 N State Street
Preston ID 83236
office@fullerlawonline.com
For City of Weston, Applicant

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

Sunrise Engineering Inc
Steve Wood
26 S Main
Smithfield UT 84335
sdwood@sunrise-eng.com
For City of Weston, Applicant

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

Jay Norman Fannesbeck
6022 W Hwy 36
Weston ID 83286
jnfannes@gmail.com
Protestant

- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email



Jean Hersley
Technical Records Specialist II

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**TRANSFER OF WATER RIGHT
TRANSFER NO. 82613**

This is to certify that: CITY OF WESTON
293 S 2ND E
PO BOX 68
WESTON, ID 83286

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Changes

<u>Water Right</u>	<u>Origin/Basis</u>	<u>Priority Date</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
13-7453	WR/LICENSE	7/11/1988	2.000 cfs	N/A	N/A	N/A	GROUND WATER

Purpose of Transfer (Changes Proposed)

<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
13-7453	NO	NO	NO	YES	NO	NO

Summary Of Water Rights After the Approved Change

<u>Existing Right</u>	<u>New No. (Changed Portion)</u>	<u>Transfer Rate</u>	<u>Transfer Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>New No. (remaining portion)</u>	<u>Remaining Rate</u>	<u>Remaining Volume</u>	<u>Remaining Acre Limit</u>	<u>Remaining Total Acres</u>
13-7453	13-7453	2.000 cfs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		2.000 cfs	N/A	N/A	N/A		N/A	N/A	N/A	N/A

This water right(s) is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources. Detailed Water Right Description(s) attached.

Dated this 26 day of AUGUST 2019

Cynthia Bridge Clark, Hearing Officer

Transfer No. 82613

WATER RIGHT NO. 13-7453
As Modified by Transfer No. 82613

In accordance with the approval of Transfer No. 82613, Water Right No. 13-7453 is now described as follows:

Right Holder: CITY OF WESTON
293 S 2ND E
PO BOX 68
WESTON, ID 83286

Priority Date: 7/11/1988

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>
MUNICIPAL	01/01	to 12/31	2.000 cfs 2.000 cfs

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	NESW	Sec 10 Twp 16S Rge 38E	FRANKLIN County
GROUND WATER	NWNE	Sec 16 Twp 16S Rge 38E	FRANKLIN County
GROUND WATER	SWNE	Sec 8 Twp 16S Rge 38E	FRANKLIN County
GROUND WATER	SWNE	Sec 8 Twp 16S Rge 38E	FRANKLIN County

CONDITIONS OF APPROVAL

1. Place of use is within the service area of the City of Weston municipal water supply system as provided for under Idaho Law.
2. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.
3. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
4. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
5. Right holder shall comply with the drilling permit requirements of Idaho Code § 42-235 and applicable Well Construction Rules of the Department.
6. The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.
7. This right does not grant any right-of-way or easement across the land of another.

Transfer No. 82613

WATER RIGHT NO. 13-7453
As Modified by Transfer No. 82613

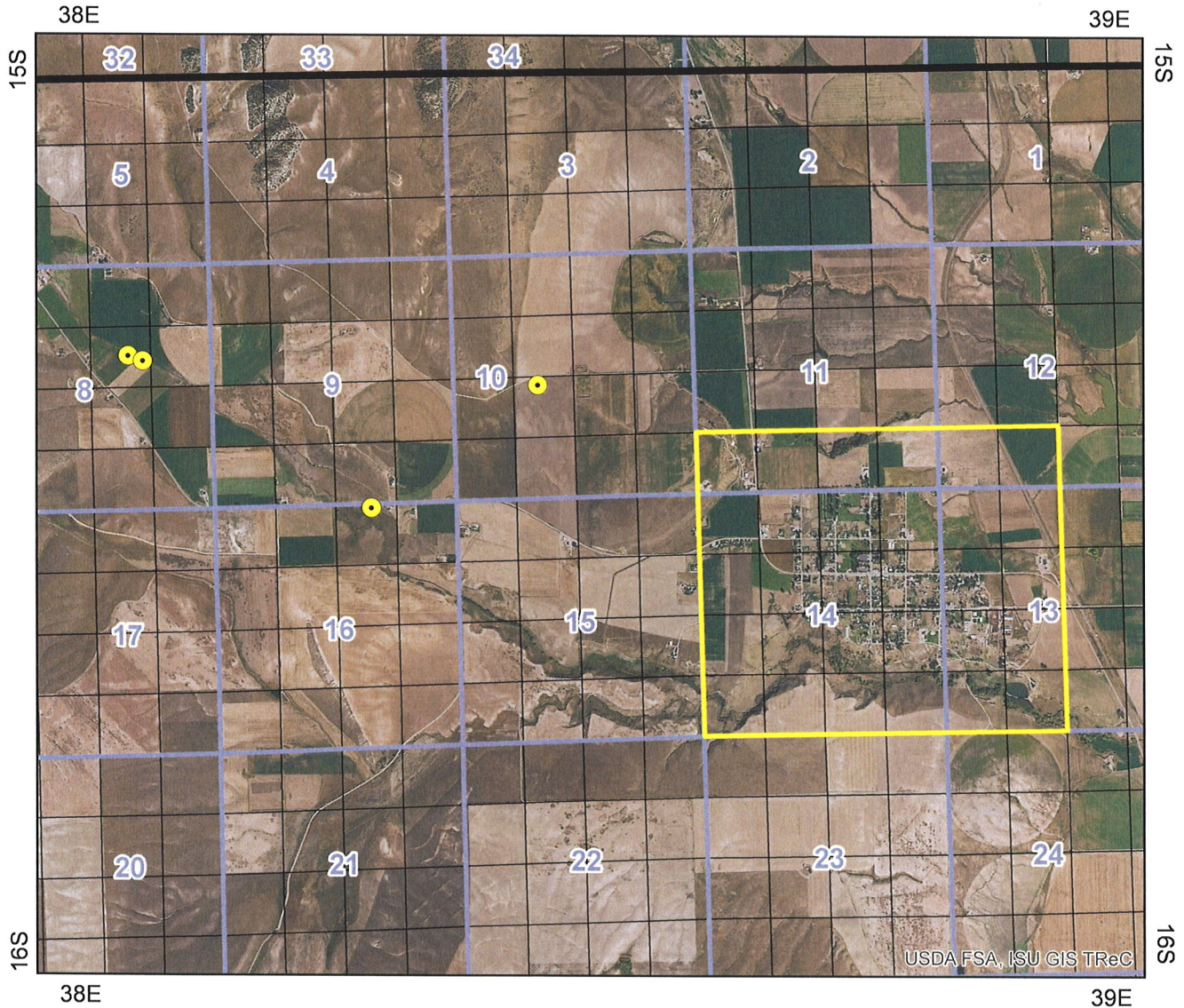
CONDITIONS OF APPROVAL

8. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.
9. To prevent injury to prior water rights appropriating water from the underlying shallow aquifer, the new well authorized by Transfer 82613, located in NWNE, Sec. 16, T16S, R38E, shall be constructed and maintained with unperforated casing and sealed into the first significant confining layer located 100 feet or more below ground surface.

Attachment to Transfer No. 82613

13-7453

This map depicts the MUNICIPAL place of use boundary for this water right at the time of this approval and is attached to the approval document solely for illustrative purposes.



-  Point of Diversion
-  Water Service Area Boundary
-  Townships
-  PLS Sections
-  Quarter Quarters

0 0.475 0.95 1.9 Miles



EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was held)

The accompanying order is a **Preliminary Order** issued by the Idaho Department of Water Resources (Department) pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and brief as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, request for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Department will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The Department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

Hersley, Jean

From: Hersley, Jean
Sent: Monday, August 26, 2019 10:11 AM
To: 'office@fullerlawonline.com'; 'sdwood@sunrise-eng.com'; 'jnfonnes@gmail.com'
Subject: Preliminary Order Approving Transfer 82613 in the name of City of Weston
Attachments: Preliminary Order Approving Transfer with Conditions

Attached is the Preliminary Order Approving Transfer 82613 with Conditions in the name of City of Weston. The hard copies went out in today's mail. Please contact the Department if you have any questions. Thank you.

Jean Hersley
Technical Records Specialist II
208-287-4942