

State of Idaho
Department of Water Resources
Permit to Appropriate Water
No. 63-34713

Priority: April 15, 2019

Maximum Diversion Volume: 41.3 AF

This is to certify that

CITY OF GARDEN CITY CITY HALL 6015 GLENWOOD ST GARDEN CITY ID 83714-1347

has applied for a permit to appropriate water from:

Source : GROUND WATER

Tributary: BOISE RIVER

and a permit is APPROVED for development of water as follows:

Beneficial Use

AESTHETIC STORAGE

Period of Use

01/01 to 12/31

Annual Volume

41.3 AF

Location of Point(s) of Diversion

GROUND WATER SW¼ SW¼, Sec. 24, Twp 04N, Rge 01E, B.M. ADA County

Place of Use: AESTHETIC STORAGE

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
04N	01E	23																	
04N	01E	24											X L5					X	

Conditions of Approval

1. Proof of application of water to beneficial use shall be submitted on or before **September 1, 2024**.
2. Subject to all prior water rights.
3. This right authorizes the total annual storage volume of 41.3 acre-feet, 30.0 acre-feet to be used for the initial filling or carryover storage of the pond and 11.3 acre-feet for the replacement of losses caused by evaporation.
4. The one pond established by the storage of water under this right shall not exceed a total capacity of 30.0 acre-feet or a total surface area of 5.0 acres.
5. Water bearing zone to be appropriated is 0 to 15 feet.
6. To mitigate for the depletion of water resulting from the use of water under this right and to prevent injury to senior water right holders, the right holder shall cease diverting and using water as authorized by the following water rights for the purposes and amounts specified below. Moreover, the official record for the following water right will be changed to show that diversion and use of water is not authorized because the rights, or portion thereof, are being dedicated to mitigation by non-use. The mitigating right may also include a condition stating that the mitigation by non-use is for the benefit of this right.

Right No.	Use Changed to Mitigation	Mitigation Mitigation by Non-Use	Mitigation Rate (cfs)	Mitigation Acres
63-30130	Irrigation		0.10	5.0

State of Idaho
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No. 63-34713

The land that will no longer be irrigated under this right is located within the authorized boundary of Thurman Mill Ditch Company.

If the specified mitigation right, or portion thereof, is sold, transferred, leased, used on any place of use, or is not deliverable due to a shortage of water or a priority call, then the amount of water authorized for diversion under this right approval shall be reduced by the same proportion as the reduction to the mitigation rights.

7. Water stored under this right is subject to fluctuations of the water table caused by changes in the flow of local streams and by diversions under prior ground water rights. This right does not guarantee the maintenance of any particular ground water level.
8. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
9. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.

This permit is issued pursuant to the provisions of Idaho Code § 42-204.

Signed this 21st day of August, 2019.


NICK MILLER

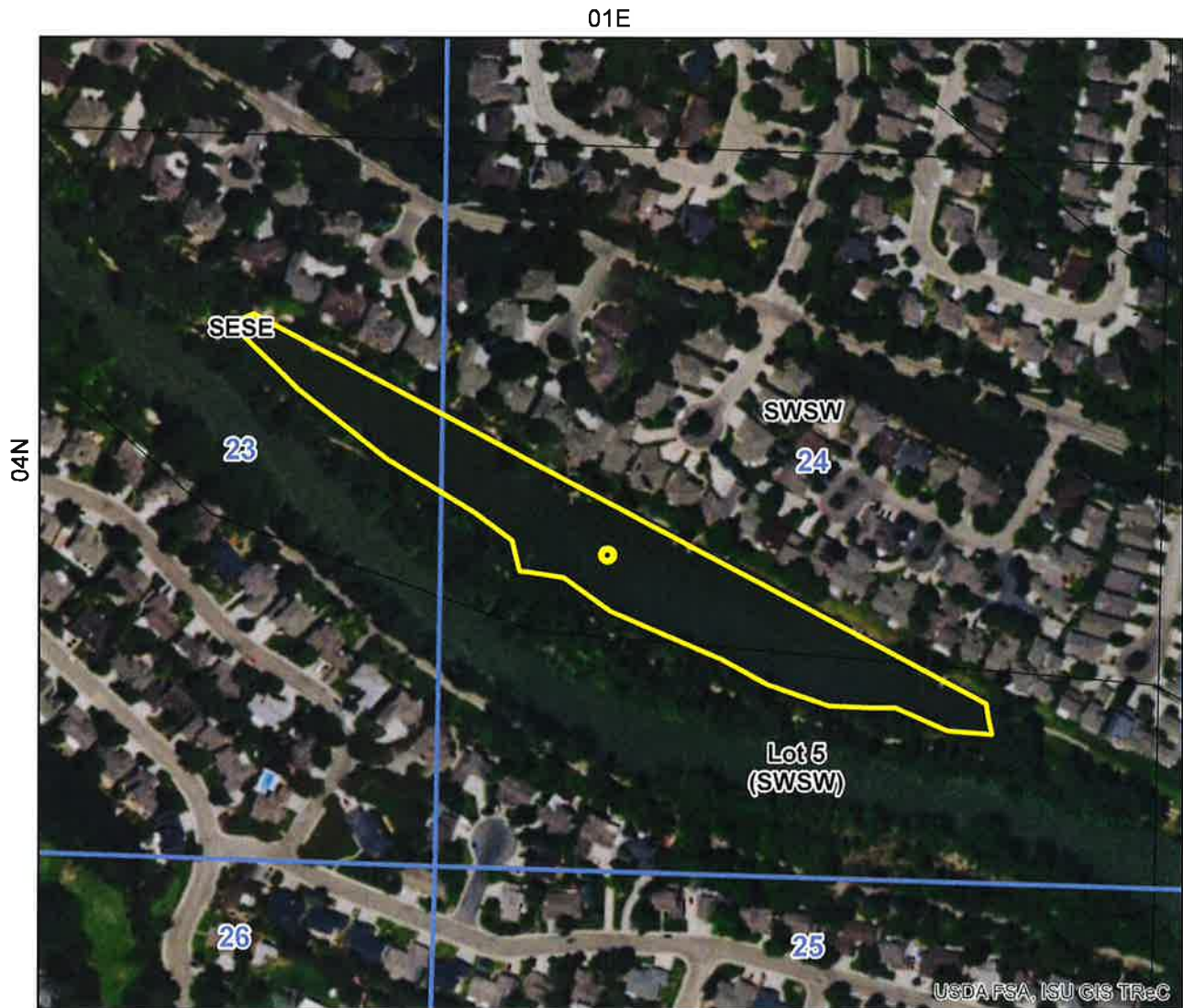
Manager, IDWR Western Region

State of Idaho
Department of Water Resources

Attachment to Permit to Appropriate Water

63-34713

This map depicts the AESTHETIC STORAGE 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
- Place Of Use Boundary
- Townships
- PLS Sections
- Quarter Quarters

0 0.04 0.08 0.16 Miles





State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 W AIRPORT WAY • BOISE, ID 83705-5082

Phone: (208)334-2190 • Fax: (208)334-2348 • Website: www.idwr.idaho.gov

Brad Little
Governor

Gary Spackman
Director

August 21, 2019

CITY OF GARDEN CITY
CITY HALL
6015 GLENWOOD ST
GARDEN CITY ID 83714-1347

RE: Permit No. 63-34713 & 63-34714

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources ("Department") has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review all the conditions of approval listed on your permit. The conditions include requirements that you must accomplish, such as timely submittal of proof of beneficial use or installation of a measuring device, as well as information about how your water use may be administered, such as regulation by a watermaster in a water district. Failure to comply with the conditions of approval may result in your permit lapsing or being canceled.

The permit is a PRELIMINARY ORDER issued pursuant to Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730). It can and will become a final order without further action by the Department unless a party petitions for reconsideration, files exceptions, or requests a hearing as described in the enclosed information sheet.

The final step in the water right process is issuance of a water right license. To receive a water right license, you must first commence the excavation or construction of your diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is complete. In addition, you must divert and use water to the full extent intended and submit a *Statement of Completion for Submitting Proof of Beneficial Use* by the date shown in condition no. 1 of your permit. The Department will send you a *Proof Due Notice* approximately 60 days prior to the date listed in condition no. 1 of your permit.

You may also require approvals from other Department programs, such as Ground Water Protection, Safety of Dams, or Stream Channel Protection, to accomplish your proposed development. Please call or visit any Department office or see the Department's website at idwr.idaho.gov for more information about these programs.

Also, please note that permit holders are required to report any change of ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Forms to assign ownership or update your address are available from any office of the Department or on the Department's website.

If you have any questions concerning the enclosed information, please contact me at (208) 334-2190.

Sincerely,



Anna Kaiser

For

Nick Miller
Western Regional Manager

Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2019, I served a true and correct copy of Permit to Appropriate Water No. 63-34713 by U.S. Mail, postage prepaid, to the following:

CITY OF GARDEN CITY (Current Owner)
CITY HALL
6015 GLENWOOD ST
GARDEN CITY ID 83714-1347

SPF WATER ENGINEERING LLC (Representative)
300 E MALLARD DR
STE 350
BOISE ID 83706



Anna Kaiser
Administrative Assistant 1

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

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

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department 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 with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

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, requests 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 IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director 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.



ATTORNEYS AND COUNSELORS

Hawley Troxell Ennis & Hawley LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, Idaho 83701-1617
208.344.6000
www.hawleytroxell.com

DANA L. HOFSTETTER
MAIL: DHOFSTETTER@HAWLEYTROXELL.COM
DIRECT DIAL: 208-388-4867
DIRECT FAX: 208-954-4867

RECEIVED

JUL 09 2019

WATER RESOURCES
WESTERN REGION

July 8, 2019

VIA U.S. MAIL AND FACSIMILE (208-334-2348)

Director
c/o Nick Miller
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082

Re: *Application for Permit No. 63-34713*

Dear Mr. Miller:

On behalf of Edwards Family LLC, I hereby submit the following comment in lieu of a formal Protest regarding Application for Permit No. 63-34713 (the "Application"). The Application proposes diversions from ground water within the boundaries of the Boise Front Low Temperature Geothermal Resource Ground Water Management Area. If the Application is approved, it should be conditioned to prevent the diversion of geothermal water and to assure that only cold water is diverted and to require monitoring to assure no geothermal water is diverted.

Please contact me if you have any further questions or need further information. Thank you.

Sincerely,

HAWLEY TROXELL ENNIS & HAWLEY LLP

Dana L. Hofstetter

DH:tas
cc: City of Garden City
SPF Water Engineering LLC

AFFIDAVIT OF PUBLICATION

Account #	Ad Number	Identification	PO	Amount	Cols	Depth
263892	0004261117	The following applications have been filed to appropriate the public waters of the State of Idaho:	63-34702	\$508.48	2	16.22 In

Attention: Anna Kaiser

JENNINGS LYN

12663 W FREEDOM DR

BOISE, ID 837130007

The following applications have been filed to appropriate the public waters of the State of Idaho:

63-34702
CITY OF BOISE
DEPT OF PARKS & RECREATION
1104 ROYAL BLVD
BOISE, ID 83706-2898
Point of Diversion NESE S36 T04N R01E ADA County Source
GROUND WATER
Use: AESTHETIC STORAGE 01/01 to 12/31 8.8 AF
Use: DIVERSION TO STORAGE 01/01 to 12/31 0.32 CFS
Use: IRRIGATION 03/01 to 11/15 0.32 CFS
Use: IRRIGATION FROM STORAGE 03/01 to 11/15 4 AF
Use: IRRIGATION STORAGE 03/01 to 11/15 4 AF
Total Diversion: 0.32 CFS 8.8 AF
Date Filed: 4/5/2019
Place Of Use: IRRIGATION, IRRIGATION STORAGE, AESTHETIC STORAGE, IRRIGATION FROM STORAGE
T04N R01E S36 NESE
Total Acres: 16
Water bearing zone to be appropriated is from 200 to 400 feet.

63-34713
CITY OF GARDEN CITY
CITY HALL
6015 GLENWOOD ST
GARDEN CITY, ID 83714-1347
Point of Diversion SWSW S24 T04N R01E ADA County Source
GROUND WATER Tributary BOISE RIVER
Use: AESTHETIC STORAGE 01/01 to 12/31 41.3 AF
Total Diversion: 41.3 AF
Date Filed: 4/15/2019
Place Of Use: AESTHETIC STORAGE
T04N R01E S23 SESE
T04N R01E S24 L5(SWSW)
Water bearing zone to be appropriated is from 0 to 15 feet.
Mitigation is proposed for consumptive use.

63-34714
CITY OF GARDEN CITY
CITY HALL
6015 GLENWOOD ST
GARDEN CITY, ID 83714-1347
Point of Diversion NWNE S25 T04N R01E ADA County Source
GROUND WATER Tributary BOISE RIVER
Use: AESTHETIC STORAGE 01/01 to 12/31 24.8 AF
Total Diversion: 24.8 AF
Date Filed: 4/15/2019
Place Of Use: AESTHETIC STORAGE
T04N R01E S24 SWSE
T04N R01E S25 NWNE
Water bearing zone to be appropriated is from 0 to 15 feet.
Mitigation is proposed for consumptive use.

63-34737
GERALD CARLSON
SHERRON CARLSON
912 W HEATHER WOODS DR
NAMP, ID 83686-2679
Point of Diversion L1(NENE) S1 T02N R01W ADA County Source
GROUND WATER Tributary
Use: DOMESTIC 01/01 to 12/31 0.04 CFS
Date Filed: 5/31/2019
Place Of Use: DOMESTIC
T02N R01W S1 L1(NENE)
Water bearing zone to be appropriated is from 138 to 210 feet.

63-34717
EG JOHNSON FARMS INC

VICTORIA RODELA, being duly sworn, deposes and says: That she is the Principal Clerk of The Idaho Statesman, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in The Idaho Statesman, in conformity with Section 60-108, Idaho Code, as amended, for:

2 Insertions

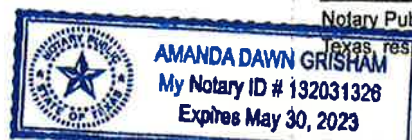
Beginning issue of: 06/20/2019

Ending issue of: 06/27/2019

V. Rodela
(Legals Clerk)

On this 9th day of July in the year of 2019 before me, a Notary Public, personally appeared before me Victoria Rodela known or identified to me to be the person whose name subscribed to the within instrument, and being by first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Notary Public in and for the state of Texas, residing in Dallas County



Notary Public for lost or duplicate affidavits. Legal document please do not destroy!

2400 / HIGHWAY 20/2b
 PARMA, ID 83660-7221
 Point of Diversion SENE S3 T05N R04W PAYETTE County Source
 GROUND WATER
 Point of Diversion NESW S3 T05N R04W PAYETTE County Source
 GROUND WATER
 Point of Diversion SESW S3 T05N R04W PAYETTE County Source
 GROUND WATER
 Point of Diversion NENE S3 T05N R04W PAYETTE County Source
 GROUND WATER
 Point of Diversion NWSE S3 T05N R04W PAYETTE County Source
 GROUND WATER
 Point of Diversion SWSE S3 T05N R04W PAYETTE County Source
 GROUND WATER
 Point of Diversion NWSW S3 T05N R04W PAYETTE County Source
 GROUND WATER
 Point of Diversion SESE S3 T05N R04W PAYETTE County Source
 GROUND WATER
 Point of Diversion NENE S10 T05N R04W CANYON County Source
 GROUND WATER
 Point of Diversion SWNE S10 T05N R04W CANYON County Source
 GROUND WATER
 Point of Diversion SENW S10 T05N R04W CANYON County Source
 GROUND WATER
 Point of Diversion NENW S11 T05N R04W CANYON County Source
 GROUND WATER
 Point of Diversion NWNW S11 T05N R04W CANYON County Source
 GROUND WATER
 Use: IRRIGATION 03/01 to 11/15 11 CFS
 Total Diversion: 11 CFS
 Date Filed: 4/18/2019
 Place Of Use: IRRIGATION
 T05N R04W S3 SWNE SENE SWNW SENW NESW NWSW
 SESW NESE NWSE SWSE SESE
 T05N R04W S10 NENE NWNE SWNE NENW SENW
 T05N R04W S11 NENW NWNW
 Total Acres: 691.8

Water bearing zone to be appropriated is from 300 to 1000 feet.

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

TRANSFER NO. 83159

TOLL SOUTHWEST LLC, 3103 W SHERYL DR STE 100, MERIDIAN, ID 83642-5674, has filed Application No. 83159 for changes to the following water rights within ADA County(s): Right No(s): 63-10536, 63-11060, 63-25981, 63-25982, 63-31725; to see a full description of these rights and the proposed transfer, please see www.idwr.idaho.gov/apps/wr/QueryNewTransfers/QueryNewTransfers.aspx. The purpose of the transfer is to change a portion of the above rights as follows: The purpose of the transfer is to convert the stockwater and commercial uses to irrigation for a new subdivision being developed 0.8 miles east of intersection Hwy 16 and W Beacon Light Rd. The user proposes to utilize existing wells with potential to drill one new well. Water bearing zone is from 66 to 620 feet.

TRANSFER NO. 83320

NEW DRY CREEK DITCH CO, C/O KARI ROSTI

1460 N POLLARD LN, STAR, ID 83669, has filed Application No. 83320 for changes to the following water rights within ADA County(s): Right No(s): 63-125K, 63-126G, 63-161L, 63-205, 63-206, 63-258B, 63-263, 63-286, 63-288B, 63-28977, 63-31778, 63-31806; to see a full description of these rights and the proposed transfer, please see www.idwr.idaho.gov/apps/wr/QueryNewTransfers/QueryNewTransfers.aspx. The purpose of the transfer is to change a portion of the above rights as follows: The purpose of the transfer is to change the place of use increase the service area of New Dry Creek Ditch Co (company) by 167 acres. All rights owned by the company will remain limited to 2,964 acres and is not an application to increase water diverted or acres irrigated. The increased service boundary will be used at the proposed place of use 0.8 miles east of State Hwy 16, south of Beacon Light Rd. Permits will be subject to all prior water rights. For additional information concerning the property location, contact Western Region office at 208-334-2190; or for a full description of the right(s) or proposed transfer (s) please see www.idwr.idaho.gov. Protests may be submitted based on the criteria of Idaho Code §§ 42-203A and 42-222. Any protest against the approval of the application(s) must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise, ID 83705 together with a protest fee of \$25.00 for each application on or before 7/8/2019. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMANN, Director

Published on 6/20/2019 and 6/27/2019

000426111701

Jok
 AK
 7/19/19

Jok
 AK
 7/9/19

Shearer, Justin

From: Terry Scanlan <TScanlan@spfwater.com>
Sent: Friday, June 28, 2019 9:35 AM
To: Miller, Nick; Shearer, Justin
Cc: Kelly, Patrick; Lori Graves
Subject: RE: City of Garden City Applications for Permit 63-34713 and 63-34714

Follow Up Flag: Follow up
Flag Status: Flagged

Nick and Justin – Thank you for reconsidering. I'll buy celebratory beers on this one. Let me know when and where. We typically have beer 30 here in the office at 4 pm on Fridays if that is of interest.

Justin – How do you want to proceed? Is our current filing sufficient? If not, please give Lori a call with suggested modifications

Last, I have to confess that in showing Lori the Thurman Mill diversion records just this morning, I noticed that Thurman Mill is up to 20 cfs in 2019; I hadn't seen that previously. In other recent years, diversions have been running at 15 cfs.

Terry

From: Miller, Nick <Nick.Miller@idwr.idaho.gov>
Sent: Thursday, June 27, 2019 9:29 PM
To: Terry Scanlan <TScanlan@spfwater.com>; Shearer, Justin <Justin.Shearer@idwr.idaho.gov>
Cc: Kelly, Patrick <Patrick.Kelly@idwr.idaho.gov>; Lori Graves <LGraves@spfwater.com>
Subject: RE: City of Garden City Applications for Permit 63-34713 and 63-34714

Terry,

Justin forwarded your email to me and... well... there could still be some life in that horse!

I think one of the reasons this issue has taken so long to come to a resolution is that the Department works in water rights and the canal companies work in "shares". If a share is "worth" 0.02 cfs/acre, then it stands to reason that the canal company would divert a full inch to the acre, since that is what they apparently "owe" their patrons (the owners of the share)... That is one of the pitfalls of trying to convert between water rights and shares. I see your argument that, if they are not diverting a full 0.02 cfs per irrigated acre, and they are not supplementing their diversions and only diverting Stewart Decree rights, then the issue of enlargement due to the 60% cut goes away – the natural flow right bears all of the consumption, rather than a portion being born by the supplemental source.

I also think much of the mitigation confusion goes away if we (to the extent possible when dealing with the Department) cease talking in terms of shares and simply deal in acres and a specific water right. Putting the mitigation plan in these terms allows the Department to evaluate the mitigation plan as if it is a transfer and otherwise use established Department guidelines, terminology, and underlying concepts to evaluate the proposal. In this case, we can view the mitigation plan as a proposal to unstack an 8-acre portion of water right 63-30130 and change the nature of use to aesthetic storage. I know that doesn't sound easier, but it puts it in terms we can work with. Your point #7 in your email effectively illustrates this. The answer is that, no, we wouldn't deny the transfer on the basis that the new place of use does not have a supplemental right, but if the proposal included a nature of use is change, then we would certainly look more closely at consumptive use enlargement, "the haircut", etc.. And this is how we, or at least I, have been viewing these proposals. Of course, in an attempt to keep things "simple" I made some assumptions, one of which is that the

company does, did, or will, divert a full 1" to the acre, since that is the value of their "share". Given that they, 1) hold water rights well in excess of an inch to the acre (if we include the WW rights), 2) are largely protected from forfeiture, and 3) may or may not be irrigating all of the acres they are entitled to, then evaluating a mitigation plan and/or a transfer could be either easier or far more difficult than other kinds of rights. So far, I have chosen to assume that the rights are valid and that we do not need to identify which acres are "dried up", but also that we should evaluate enlargement relative to them fully exercising their rights, which I have assumed means they divert a full 1" all season, even if they currently do not do so.

However, it does seem like it does not add much value to the process to try to look too far in the past or speculate about the future, so if they have not relied on any supplemental sources (WW or storage) recently, then I don't see that we should limit the amount available for a "nature of use change" based on some assumption of what they used to do or that they might do in the future.

I will leave off here and ask that you (or Lori) and Justin haggle over the correct PDef numbers, but I believe you that, in this situation, 1:1 acres will be sufficient to cover the consumptive use from the ponds.

I hope this helps us move toward a better place as far as understanding where the Department is coming from, but I am sure the horse is still far from dead...

Nick.

From: Shearer, Justin

Sent: Tuesday, June 25, 2019 5:00 PM

To: Kelly, Patrick <Patrick.Kelly@idwr.idaho.gov>; Miller, Nick <Nick.Miller@idwr.idaho.gov>

Subject: FW: City of Garden City Applications for Permit 63-34713 and 63-34714

Thought I would share SPF's response from Terry that I got today in regards to their proposed mitigation plan that we have been going back and forth on. Perhaps we can meet tomorrow morning and discuss.

Thanks, have a good night!

-Justin

From: Terry Scanlan [<mailto:TScanlan@spfwater.com>]

Sent: Tuesday, June 25, 2019 1:16 PM

To: Shearer, Justin <Justin.Shearer@idwr.idaho.gov>

Cc: Lori Graves <LGraves@spfwater.com>

Subject: RE: City of Garden City Applications for Permit 63-34713 and 63-34714

Justin –

Thanks for your thoughtful response in the email below. It sounds like this horse is pretty dead, but I'll beat it just a bit more. While I understand some of your concerns, I still believe that our mitigation approach of using 1 share of Thurman Mill for 1 acre of pond surface is adequately conservative to prevent injury to other water rights. Here are some specific (albeit somewhat random) thoughts.

1. There seems to be an assumption that irrigation requires a full miners inch per acre. However, I don't believe that is true or even typical within the Treasure Valley. Part of the basis for the Stewart Decree was that irrigation can be accomplished successfully with less than a full miners inch. As an example, Nampa & Meridian Irrigation District's standard delivery, all season, is 5/8th of an inch (0.625 inches) per acre. A 1-inch right that delivers 60% for a portion of season, and 75% and 100 % for the remainder, is actually a better delivery than 0.625 inches all season.

2. The assumption that Thurman Mill relies on storage water to trim out their supply is incorrect. Although Thurman Mill holds a contract for Lucky Peak storage water, review of Basin 63 storage reports show that the storage water is rarely, if ever, used.
3. Similarly, although the drain rights are fully available, they don't seem to be needed. Review of diversion records show that with only a few exceptions, Thurman Mill's maximum diversion rate over the past 5 years has generally been 15 cfs. Thurman Mill has natural flow rights senior to 1877 that deliver 14.86 cfs at 60% cut. This is without the drain rights. So it appears that nearly all of their irrigation, and nearly all of the consumption, is currently being accomplished with just the senior-priority Stewart Decree rights.
4. *"Since the NF right was cut to 60% - its contribution to the consumptive use for irrigation is likewise cut to 60% as the remainder is provided by supplemental sources".* Again, I don't think this is correct. The natural flow rights are providing all of the consumption – Thurman Mill doesn't need to use the supplemental sources. If we leave the natural flow right in the river, even at 60% delivery, it is providing 150% of the consumption from the ponds during the peak month. Simplistically, we are leaving in the river 0.02 cfs of water right per acre of pond. At a 60% cut, that is 0.012 cfs per acre of pond. The peak month consumption from the ponds is 0.008 cfs per acre. So we are over mitigating by 50%.
5. It should also be recognized that the percentage of delivered water that is consumed by crops varies throughout the irrigation season. This is particularly true in gravity irrigation systems. Early in the season, when supplies are plentiful and consumptive irrigation requirements are relatively low, irrigation efficiencies are low. At such times, much of the water that is applied to crops soaks through the soil profile (leaching salts as a benefit) and is lost to the groundwater system. As the irrigation season progresses, the efficiency of irrigation increases. It is not because the method of irrigation changes appreciably, but rather because the crop utilizes a higher percentage of the applied irrigation water. In some instances, crop consumptive use approaches or exceeds 100% of the applied irrigation water because the crop is drawing water from both applied irrigation water and stored moisture in the soil profile. This is how crops can be successfully grown on gravity systems with 60% deliveries. As a result, reduction to 60% delivery does not equal a reduction to 60% consumptive use.
6. We are reducing the irrigated area within the service area by one share for each acre of pond surface. I suppose we could have taken a slice out of each natural flow water right to do so, but that would be taking tiny fractions of eleven separate rights. It seems much simpler administratively to utilize a single, senior-priority right for this purpose, and then reduce the irrigated area under all of the rights. Ultimately, it is the reduction in irrigated area that provides the mitigation. For each acre of pond, we are drying up an acre of irrigation (which consumes more water than an acre of pond).
7. Lastly, would the Department deny a transfer of this water right (0.16 cfs, 1868 priority, for irrigation of 8 acres), to a new POD and POU for irrigation use, without accompanying storage or drain rights but with an 8-acre reduction to the existing POU? If denied, why? If not denied, then how is this mitigation proposal different?

Terry

From: Shearer, Justin <Justin.Shearer@idwr.idaho.gov>

Sent: Tuesday, June 18, 2019 5:31 PM

To: Lori Graves <LGraves@spfwater.com>

Cc: Terry Scanlan <TScanlan@spfwater.com>

Subject: RE: City of Garden City Applications for Permit 63-34713 and 63-34714

Hi Lori,

Yes, the overall volume you are offering up would seem to be enough to mitigate because irrigation has a higher consumption than ponds, so it would seem to be over-mitigating. However, the natural flow (NF) is supplemented with waste water (WW) and storage water (SW), so we need to proportion the consumptive uses appropriately. Yes,

Thurman Mill water right 63-30130 is not expected to be fully curtailed, however all rights are cut to 75%, then 60 % at the same time, senior rights are not delivered at 100% at any time the juniors are delivered at less than 100%; so yes we can expect all rights to be cut to 60% by late June. As for the table provided by you below, yes the 8 shares will provide in excess of 50 af annually, but the new use uses more natural flow than was provided by the NF water right when it was irrigating during the late summer. Since the NF right was cut to 60% - its contribution to the consumptive use for irrigation is likewise cut to 60% as the remainder is provided by supplemental sources.

The point to take away here is that the purpose of mitigation is to protect senior users by providing "make up" water at the time and place it is depleted. So, simply looking at the diversion volume is not sufficient, nor is looking at the total consumptive use volume alone. It is almost like looking at it like a nature of use change, but attention to the timing aspects of when more water will be needed at critical times during the season. So, ensuring the ponds do not consume more water during the peak months than the natural flow rights being reduced, used to provide.

At a 1:1 ratio, idling of 8 shares frees up 19.9 AF of water that would have been consumptively used. This is more than the total volume needed for the pond of 18.2 AF, but it does not provide it at the right times, during the peak months. Bumping the ratio up to 1.2, idles 9.6 acres and increases the consumptive volume provided for mitigation up to 23.9 AF, much more than is needed on a whole-year basis, but critically, it provides the correct amount during the peak months. This is really the key here, because by idling only 1:1, the river is short about 2 acre feet during the critical months.

I should say that no, the ratio doesn't wind up being exactly 60% cut since the two uses have different consumptive rates. In this particular case, the ponds have a slightly lower Pdef than turf grass, so you wind up not needing to idle as many acres as you would if the Pdef was the same. Essentially you are replacing the natural flow that is evaporating from the pond by ceasing an irrigation use that previously consumed an equal or greater amount of natural flow at the time. Since the peak pond evap happens in July, we need to look at how many acres consumed an equivalent amount of NF, and NF is only supplying 60% of the demand. So since we know that the NF rights are only supplying 60% of the consumptive use and that is what we need to replace, the math works out as the inverse of 0.6 times the ratio of irr Pdef to Pond Pdeffor July. In this case, the July Pdef was 6.49 for the idled ares and that of the pond evap is 4.68, thus the ratio is about 1.38 so $1/(0.6 * 1.38) = 1.2$. At a 1.2 ration to a pond surface area of 8 ac the number of acres needed to be idled is 9.6 ac, or 2 more shares.

Hopefully this helps make sense of why the current proposed mitigation plan falls short of providing enough water to mitigate for the consumptive evap losses of the proposed ponds.

Thanks and regards,

Justin Shearer
Water Resource Agent, Sr.
(208)-334-2190

From: Lori Graves [<mailto:LGraves@spfwater.com>]
Sent: Thursday, June 13, 2019 11:32 AM
To: Shearer, Justin <Justin.Shearer@idwr.idaho.gov>
Cc: Terry Scanlan <TScanlan@spfwater.com>
Subject: RE: City of Garden City Applications for Permit 63-34713 and 63-34714

Hi Justin,

We believe the mitigation plan provided for Long Lake and Glenwood Lake applications is more than sufficient based on the following:

1. Mitigation is being provided based on a 1 to 1- acre swap; 1 acre of irrigation for 1 acre of pond area. Eight shares of Thurman Mill water are being provided to mitigate eight acres of total pond surface area. Each Thurman Mill share is equivalent to 1 acre of irrigation.
2. Irrigation has a higher consumption than ponds, consequently we are over-mitigating.
3. Thurman Mill water right 63-30130, proposed for mitigation, is considered a senior water right in the Stewart Decree with a 6/1/1868 priority date.
4. Based on priority, this senior right is fully delivered longer than the junior rights exemplified in Figure 1 of the Stanaway memo dated October 30, 2015 and is subject to 60% curtailment for only a portion of the irrigation season.
5. Figure 1 indicates that even the most junior priority Stewart Decree rights are delivered at 100% from April to mid-June on poor water years.
6. As shown in the table below, assuming 100% delivery of senior right 63-30130 until June 15, delivery associated with 8 acres of irrigation will provide in excess of 50 af annually, more than 250% of the evaporative loss associated with 8 acres of pond surface.

<image001.png>

Please let us know if you have additional questions. Thanks Justin.

From: Shearer, Justin <Justin.Shearer@idwr.idaho.gov>

Sent: Wednesday, June 12, 2019 9:41 AM

To: Lori Graves <LGraves@spfwater.com>

Subject: City of Garden City Applications for Permit 63-34713 and 63-34714

Good morning Lori,

In review of the proposed mitigation plan for City of Garden City's proposed ponds "Long Lake" and "Glenwood Lake" I am finding that the proposed 8 shares of Thurman Mill Ditch Company will not be sufficient to cover the proposed consumptive use of the ponds. Together, the evaporative losses of the two ponds equal 18.2 af. Calculating what volume would be necessary to account for the Stewart Decree 60% curtailment, 30.4 af would need to be mitigated to account for the 18.2 af of proposed evaporative losses. The 8 shares from Thurman Mill Ditch Company only comes out to be 25.8 af, 4.6 af short of the volume needed to mitigate at the 60% curtailment. Historical use of turf grass at approximately 3.1 af per share would require 2 more shares to fully mitigate the proposed applications for permit.

Feel free to let me know if you have any questions or concerns.

Thanks and regards,

Justin Shearer

Water Resource Agent, Sr.

(208)-334-2190