

used for domestic purposes rather than solely for irrigation purposes. This petition is supported by the records for water right nos. 63-11671 and 63-7307 located in IDWR's online database.

FACTS

Water right no. 63-7307 was originally applied for on March 10, 1970 by Meridian Heights Subdivision dba Southwest Development Company, Inc. for domestic purposes. Water right no. 63-7307 was licensed to Southwest Development Company, Inc. on May 27, 1975 for domestic purposes with an annual volume limitation of 68.4 AFA. On December 17, 1996 water right no. 63-7307 was assigned to Meridian Heights Sewer and Water Association, Inc. The water right was decreed to Meridian Heights Sewer and Water Association, Inc. on February 16, 2007 for domestic purposes with an annual volume limitation of 68.4 AFA.

Water right no. 63-11671 was originally licensed to Meridian Heights Sewer and Water Association on March 19, 1996 for 181.1 AFA (83.3 AFA for irrigation, and 97.8 AFA for domestic purposes).

On November 7, 2013, IDWR changed its records to reflect that both water right no. 63-7307 and water right no. 63-11671 had changed ownership from Meridian Heights Sewer and Water Association to Meridian Heights Sewer and Water District. At approximately the same period (autumn, 2013), the District and the City of Meridian entered into an agreement to dissolve the District and transfer its assets (including water rights and their diversion and distribution systems to the City). On September 28, 2017, IDWR changed its records to reflect that water right nos. 63-7307 and 63-11671 had changed ownership from Meridian Heights Sewer and Water District to the City of Meridian.

Petitioner City of Meridian filed the Application for Transfer of Water Right Nos. 63-11671

and 63-7307 on March 16, 2018. The application was submitted to: (1) change the place of use of both rights to the City's municipal supply system service area; (2) add all wells that are part of the City's municipal supply system as points of diversion for both water rights; (3) change the nature of use of the water rights to "municipal"; and (4) change the season of use of the irrigation portion of water right no. 63-11671 to year 'round.

On April 26, 2018, IDWR Water Rights Agent Chelsey Serrano wrote to the City requesting data to support the volume of water requested in the transfer application. The City responded via a May 15, 2018 letter enclosing its delivery records showing the volume of water delivered to the place of use during 2015, 2016 and 2017. In a July 12, 2018 email message to the City of Meridian's attorney, Ms. Serrano stated that the volume limitations would be 51.9 AFA for 63-11671 and 18.2 AFA for 63-7307. She also explained that the volume limitations on the water rights were calculated "by multiplying crop consumptive use for grass by the acres irrigated in the subdivision."

DISCUSSION

IDWR approved Transfer Application No. 82259 with the volume limitations of 51.9 AFA on water right no. 63-11671 and of 18.2 AFA on water right no. 63-7307, presumably pursuant to provisions in IDWR's December 21, 2009 Transfer Processing Memorandum No. 24. The specific language under which (presumably), IDWR imposed volume limitations is the following:

An application for transfer, which proposes to convey an established water right to a municipal provider and change the nature of use to municipal purposes, as defined in Section 42-2028, *Idaho Code*, shall not be approved without limiting the volume of water divertible under the right to the historic consumptive use under the water right prior to the proposed change.

Transfer Processing Memorandum No. 24, §5.d.(12), pp. 31-32.

1. IDWR Must Re-Calculate Volumes by Determining Consumptive Use Under the Domestic Purposes Portion of the Rights

IDWR determined the volume limitations imposed pursuant to the Preliminary Order “by multiplying crop consumptive use for grass by the acres irrigated in the subdivision.” Thus, the Preliminary Order presumes that the water rights subject to the transfer application were used solely for irrigation purposes. However, the water rights were used for domestic purposes as well. In fact, water right no. 63-7307 was authorized solely for domestic purposes. Accordingly, it is error for IDWR to not consider the consumptive use for the domestic portion of these water rights. It is the City’s understanding that IDWR considers domestic water rights to be fully consumptive. Thus, at a bare minimum, IDWR should re-calculate the consumptively used portions of the water rights using a presumption that the domestic portions of the rights are fully consumptive. The City would prefer to be involved in any discussions of the same, rather than simply being made aware of IDWR’s determination when it again first receives the next Preliminary Order in this matter.

2. Volume Limitations on the Water Rights Should be as Licensed, or at a Minimum as Delivered by the City

§5.d.(13) of Transfer Processing Memorandum No. 24 provides as follows:

An application for transfer, which proposes to change the nature of use to municipal purposes for a water right established and held by a municipality that lists the purpose(s) of use as some combination of domestic, commercial, industrial, or irrigation, where those uses have historically been essentially for municipal purposes, as defined in Section 42-2028, *Idaho Code*, will not be presumed to be an enlargement of the right and will not require limitation to the historic consumptive use under the right. However, the change will be subject to the annual diversion volume, if specifically stated on the water right license or decree.

The City understands that these water rights were originally established and held by a developer and/or a homeowners association. However, the water rights were established to be used in developments just as municipal water rights would be used - for all purposes incidental to residential homes, including irrigation. Thus these water rights were established and used for

domestic purposes (although 63-11671 also has an irrigation component), exactly as they would have been used had the City established and held them for the entirety of their existence. Both water rights have continued to be used by the City in the exact same manner on the original place of use.

Transfer Processing Memorandum No. 24 gives IDWR staff guidance in evaluating whether a particular transfer results in an enlargement of the subject rights. The language in the memo includes the following:

Enlargement will occur if the total diversion rate, annual diversion volume, or extent of beneficial use (except for nonconsumptive water rights), exceeds the amounts or beneficial use authorized under the water right(s) prior to the proposed transfer.

Transfer Processing Memorandum No. 24, §5.d., p. 28. The City has provided information establishing the quantity of water it delivered to the place of use of these water rights in 2015, 2016 and 2017. That quantity is remarkably similar in each of the three years. The use of water in 2015, 2016 and 2017 is no different than how the water rights were historically used, nor is it any different than how they are used now. Accordingly, at a bare minimum, if IDWR cannot place the original licensed volume limitations on these rights pursuant to §5.d.(13) of Transfer Processing Memo 24, it should recognize that the volume of water diverted under these rights has not and will not change and impose volume limitations based on the City's delivery records rather than those placed pursuant to the Preliminary Order.

3. Summary

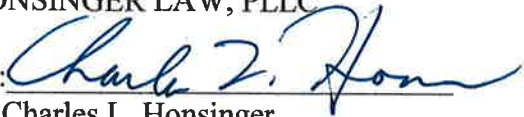
For the reasons discussed above, the City hereby requests that IDWR reconsider its Preliminary Order approving Transfer Application No. 82259 and: (1) impose the volumes established by the City's delivery records if not the original licensed volume limitations on the rights subject to the application; or, alternatively (2) re-calculate the volume limitations on the water rights

subject to this transfer using the consumptive use values for the domestic portions of the water rights
(with the City's assistance and/or input).

Respectfully submitted this 9th day of October, 2018.

HONSINGER LAW, PLLC

By:

A handwritten signature in blue ink, appearing to read "Charles L. Honsinger", is written over a horizontal line.

Charles L. Honsinger

Attorney for Petitioner/Applicant