

November 30, 2017

Robert A. Maynard
RMaynard@perkinscoie.com**HAND DELIVERY VIA MESSENGER**Idaho Department of Water Resources
ATTN: Mr. Jeff Peppersack
Chief, Water Allocation Bureau
322 East Front Street
PO Box 83720
Boise, Idaho 83720-0098**RECEIVED****NOV 30 2017****DEPARTMENT OF
WATER RESOURCES****Re:** City of Boise Geothermal Water Right Permits 63-9138 and 63-9139; Response to
September 29, 2017 Notices: Statement of Completion Due

Dear Mr. Peppersack:

This letter and its enclosures respond on behalf of the City of Boise ("City") to the Idaho Department of Water Resources ("IDWR") September 29, 2017 "Notice: Statement of Completion Due" letters sent to the City for each of the above two referenced Permits ("Notice" or "Notices").

Permit 63-9139:

In response to the Notice received regarding Permit 63-9139, enclosed is a Statement of Completion for Submitting Proof of Beneficial Use, with a Beneficial Use Field Report prepared by a certified water right examiner, Mr. Terry Scanlan, P.E., P.G. of SPF Water Engineering, LLC ("Statement of Completion").

As you know, development of the City Geothermal Heating System ("System") and beneficial use of water under Permit 63-9139 has proceeded now for many years under: 1) the IDWR June 10, 1988 Boise Front Low Temperature Geothermal Resource Ground Water Management Area Moratorium Order, as most recently amended and extended to May 5, 2019 by the IDWR April 29, 2014 Final Order Extending Moratorium (the "Moratorium"), and 2) the 2002 Stipulated Agreement for Settlement in Part and Stay of Proceedings Regarding Remainder of Petition ("2002" Stipulation"), as amended by the 2010 Second Stipulated Agreement for Settlement in Part of Petition and Stay of Further Proceedings, as amended (the "2010 Stipulation") (collectively, the "2002/2010 Stipulation"), reached among the City and other interested senior water right holders and accepted by IDWR in the contested Matter of Petition for Order Authorizing Additional Use Under Existing Permits and Moratorium Order for Water Rights 63-

9138 & 63-9139 in the Name of the City of Boise (the "Petition Proceeding"). The 2002/2010 Stipulation has allowed for phased, monitored, and conditioned further development and increased beneficial use City System diversion well pumping production up to a limit of 310 million gallons per year ("mmg/yr") (951.4 acre feet per annum ("afa")) under Permits 63-9138 and 63-9139.

As indicated in the attached Statement of Completion, actual System beneficial use production under Permit 63-9139 reached 292.4 mmg/yr in WY 2017. As also indicated in the attached Statement of Completion, adjustment of actual production to allow for heating use needs of the existing developed System in colder winters, pursuant to IDAPA 37.03.02.035.01(j), yields adjusted production in WY 2017 of 369.3 mmg/yr and 374 mmg/yr in WY 2015 (for the existing developed System during that WY), far in excess of 310 mmg/yr. However, to remain consistent with the Stipulation, and since the IDWR has now issued final Permit 63-34326 to the City for System needs in excess of 310 mmg/yr up to a total combined production limit of 385 mmg/yr with Permits 63-9138 and 63-9139, under an updated Stipulated Agreement among the parties to the 2002/2010 Stipulation as accepted by IDWR in an October 16, 2017 Order ("Permit 63-34326 Stipulated Agreement"), the City requests that IDWR issue a license for Permit 63-9139 with a diversion/production volume limit of 310 mmg/yr (951.4 afa).

Please note that the Third Amendment to the 2010 Stipulation, accepted by IDWR August 6, 2017, does not restrict IDWR from issuing a license for Permit 63-9139 with a production limit of 310 mmg/yr. The Third Amendment addition of Section II.7.f to the 2010 Stipulation by its own express terms states: "This provision and any actual City production in Water Years 2017 or 2018 under the existing City Permits in excess of 300 mmg/yr pursuant to this provision shall not be a basis for any final IDWR decision regarding existing City Permit license production limits, or otherwise alter the terms of [the 2010 Stipulation]." As indicated above and in the attached Statement of Completion, the City is not basing its request for a license production limit of 310 mmg/yr on this Third Amendment provision or any actual production in excess of 300 mmg/yr in WY 2017 or the just commencing WY 2018. Instead, among other factors described in the Statement of Completion, proof of beneficial use and the request is based on actual production of less than 300 mmg/yr in WY 2017 that was authorized under the 2010 Stipulation prior to and without respect to the Third Amendment, adjusted for cold weather year needs under the provisions of the IDWR proof of beneficial use regulations to a number far exceeding 310 mmg/yr, and also actual production in WY 2015, likewise adjusted for cold weather year needs to a number much higher than 310 mmg/yr. The Third Amendment was agreed to among the Stipulation parties as a contingency to allow the City to produce up to 310 mmg/yr under Permit 63-9139 rather than being limited to 300 mmg/yr in WY 2017 or 2018, if needed, due to cold weather, and to avert switching Boise State University buildings to gas heat to stay at or below 300 mmg/yr pending issuance of a license. It has not been necessary to use for WY 2017, and it remains to be seen if it may be needed for WY 2018 in advance of issuance of a license.

Upon or if you prefer before issuance by IDWR of a draft license for City review, we will be available to discuss with IDWR and the other parties to the 2002/2010 Stipulation conditions in a license for Permit 63-9139 that will be acceptable to the City for continued protection of the Boise Front Low Temperature Geothermal Resource Ground Water Management Area aquifer system ("Aquifer") and other existing Aquifer users. I expect acceptable conditions to include:

A) Continued required reinjection back to the Aquifer via the existing City injection well, in combination with any production and reinjection under Permit 63-34326, of all but an average of 35 mmg/yr for any five-year period of the water pumped from the City System production wells and 50 mmg/yr in any single year, with the limited exceptions as described in Section II.B of the Permit 63-34326 Stipulated Agreement.

B) Provision for IDWR to take action within its authority, including but not limited to ordering a decrease in System actual production, to remedy: 1) depletion or other adverse effects on the Aquifer; 2) increased pumping lift or decreased pressure in an existing prior user well; or 3) temperature decline causing an existing user system operating at reasonable efficiency to no longer operate.

After issuance of a final license for Permit 63-9139, IDWR and the parties to the Stipulation can consider and seek agreement regarding termination of the Petition Proceeding and 2002/2010 Stipulation. The Permit 63-34326 Stipulated Agreement with its annual Aquifer and user monitoring, reporting, and collaborative meetings among IDWR and Stipulated Agreement parties and other protective provisions will continue in effect during the development period for Permit 63-34326 and beyond, until such time as the parties agree to termination of that Stipulated Agreement.

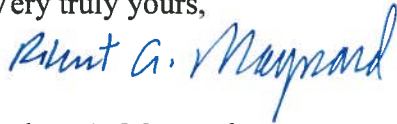
Permit 63-9138:

In response to the Notice received regarding Permit 63-9138, the City has for the past many years during the Moratorium and pendency of the Petition Proceeding deferred any separate or additional development under this Permit in favor of focusing development of the City System under Permit 63-9139. We believe the City is eligible for a further extension of time for development of Permit 63-9138 based on the continued pendency of the Moratorium and Petition Proceeding. Accordingly, a precautionary Request for Extension is enclosed for Permit 63-9138, along with a check for the applicable \$50 fee. However, as indicated in the enclosed Request for Extension, the City requests that IDWR defer any processing or decision regarding the Request pending its review and decision regarding issuance of a license for Permit 63-9139, and the City will confirm relinquishment of Permit 63-9138 and withdraw the Request for Extension upon IDWR issuance of a final acceptable license for Permit 63-9139 with a 310 mmg/yr production limit.

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We look forward to meeting with IDWR to address next steps and any questions or items for discussion that you may have.

Very truly yours,



Robert A. Maynard

RAM/rgm

Enclosures

cc (via first class mail with enclosures except fees):

Garrick Baxter, Idaho Department of Water Resources
Angela Schaer Kaufman, State of Idaho Attorney General's Office, Department of Lands
Julie Weaver, State of Idaho Attorney General's Office, Department of Administration
Boise Warm Springs Water District, c/o Lyndon Nguyen, Moore, Smith, Buxton & Turcke
Edwards Family LLC, c/o Dana L. Hofstetter, Hawley Troxell Ennis & Hawley
The Terteling Company, Inc., c/o Charles L. Honsinger, Honsinger Law PLLC
Jon Gunnerson, City of Boise, Public Works Department
Abigail Germaine, City of Boise, Office of the City Attorney