



State of Idaho

DEPARTMENT OF WATER RESOURCES

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GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

October 25, 2017

CHRISTOPHER H MEYER
GIVENS PURSLEY LLP
PO BOX 2720
BOISE ID 83701

RE: Permit No. 63-32835 (City of Nampa)

Dear Chris:

I'm writing in response to your September 5, 2017, letters seeking reinstatement of Permit no. 63-32835 ("Permit") on behalf of the City of Nampa ("City"). In your letters, you ask IDWR to reinstate the Permit and issue a water right license for reasonably anticipated future needs ("RAFN"). You also suggest that if a RAFN license cannot be issued, IDWR could instead issue the license as a non-RAFN water right. IDWR has reviewed the information submitted with your request and concluded that it does not meet all of the Idaho Code §§ 42-217 and 42-218a requirements for reinstating the Permit as either a RAFN or non-RAFN appropriation.

Reinstating this permit and issuing a license for a non-RAFN water right:

Per your letters, the City has historically operated separate potable (domestic) and non-potable (irrigation) delivery systems. The City has ample groundwater rights to serve the potable system, but has unmet needs for its non-potable system. The City took steps toward interconnecting its two systems starting in 2014, but the City did not physically connect the potable and non-potable delivery systems to each other prior to submitting the statement of completion for the Permit on September 22, 2015 (proof of beneficial use was due on October 1, 2015). Thus, no additional water was diverted from the potable system wells and applied to beneficial use prior to the proof submittal date for the Permit. Because no additional beneficial use occurred during the development period of the Permit, there is no "reasonable cause" for IDWR to reinstate the Permit for a non-RAFN appropriation.

Reinstating this permit and issuing a license for a RAFN water right:

The information you provided is helpful to better understand how the City's water delivery systems currently operate. We understand the City's position to be that its construction of the well to distribute water through established trunk lines is consistent with the guidance articulated in Application Processing Memorandum No. 74, authored by Mat Weaver, for evaluating the "full capacity of the system constructed or used" for a RAFN appropriation. Idaho Code § 42-219(1). The City also believes that its water system development is consistent with the guidance articulated in Application Processing Memorandum No. 63, authored by Karl Dreher in 1999 and since repealed, for evaluating the development of a RAFN water right. When it submitted its statement of completion, if the City had already constructed the new well and had the complete system already in place for distributing the water diverted from the well, and only lacked a physical connection of the two, the City's development probably meets the system capacity standard for establishing a RAFN water right. However, before the Department can further

consider issuing a license for a RAFN water right, the City needs to submit the information necessary to get the permit reinstated and evaluate the development that occurred.

To review the City's assertion that it constructed the full capacity of the permit prior to submitting its statement of completion, IDWR must first have the entire package of information required by Idaho Code § 42-217 for RAFN permits. Please provide the following items as a package, or explain how prior submittals meet the requirements:

- **Revised description of the City's service area:**
Idaho Code § 42-217(4) requires the permit holder to submit "a revised description of the service area." Prior submittals did not include a map or shapefile or any other description of the municipal service area as defined by Idaho Code § 42-202B(9). It is unclear whether the service area changed since the application was first filed and how combining the potable water supply and the irrigation water distribution system may affect the service area.
- **Revised planning horizon:**
Idaho Code § 42-217(4) requires the permit holder to submit "a revised planning horizon." The original planning horizon was 21 years (2009-2030). If the City has already (as of today) diverted the permitted quantity of water from the well drilled in connection with the permit and used the water in its potable or non-potable water system to meet current demands, there is no need to revise the planning horizon. A beneficial use field report should confirm whether diversion and beneficial use has occurred. If diversion and use has not occurred, then a revised planning horizon based on formal planning studies is required. An email from your representative specifies 2030 as the continued planning horizon, but does not provide any justification for that date. Furthermore, it is not clear how the irrigation master plan completed by Keller and Associates in 2014, or the other documents you provided, affect the City's planning horizon.
- **Updated analysis of reasonably anticipated future needs, including a gap analysis comparing an updated summary of all the water rights belonging to the City to the updated estimate of reasonably anticipated future needs:**
Idaho Code § 42-217(4) requires the permit holder to submit "a revised estimate of the reasonably anticipated future needs." You have submitted a document purporting to show that even with the Permit, the City currently has unmet needs in its non-potable water system. However, you did not provide supporting documentation showing the data and analysis used to reach your conclusion. Idaho Code § 42-217(4) requires submittal of the required information "together with appropriate supporting documentation." The supporting documentation must include a gap analysis comparing the City's water needs to its portfolio of water rights.

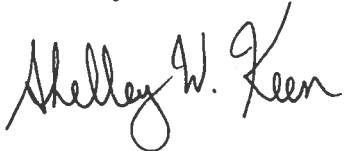
Chris Meyer
October 25, 2017
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Because the City did not submit all the information needed to satisfy the requirements of Idaho Code §§ 42-217 and 42-218a within 60 days of the July 7, 2017, lapse notice, the permit remains lapsed, and reinstatement can occur only upon submittal of the information listed above plus submission of a report prepared by a certified water right examiner as outlined in Idaho Code § 42-218a(2). The report must describe in detail, with supporting documentation, the "full capacity of the system constructed or used" by the time the City submitted its statement of completion for the Permit. The report should also address the extent of use established since the statement of completion was submitted, as it will affect the need for a revised planning horizon. The City must also submit the following:

- A statement of reasonable cause for filing a late proof of beneficial use.
- A reinstatement fee of \$250.¹

I hope this information is helpful to the City. If you have any questions, please let me know.

Sincerely,



Shelley W. Keen, Manager
Water Rights Section

Cc: City of Nampa
Roxanne Brown

¹ A Statement of Completion for Submitting Proof of Beneficial Use is also required. However, the City has submitted one already, and IDWR does not deem it necessary to require another.