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March 13, 2017

Director, Gary Spackman
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

Gary,

As per our recent meeting at your office in Boise, I promised to send you a summary of what you and I discussed as well as the chronological order of events which have transpired between the City of Driggs' applications dealing with its wells, including the rights received from Huntsman. I have requested that Rocky Mountain Environmental Associates prepare the summary for me and am including it below. I am also attaching the documentation which is referred to in RMEA's summary:

Recently, the Eastern IDWR office has been working with the City of Driggs and Rocky Mountain Environmental Associates, Inc. on licensing of two permit #s 22-13589 and 22-13979. At your [Jerry's] request, RMEA is providing a summary of the two permits and the licensing issues associated with them.

In 1996, the City of Driggs applied for permit #22-7790 to develop the High School well and additional diversion rate. They developed a productive well and began using the water at full capacity. During licensing, however, the water right was reduced in diversion rate based on the original pump curves and theoretical calculations. The difference was based on pump equipment maintenance that allegedly occurred resulting in additional pumping capacity. The license was issued in August 27, 2009. The High School well could produce more than the reduced licensed amount, so the City submitted a new Application for Permit to capture the additional diversion rate already developed. Application #22-13979 for Municipal purposes was submitted on September 2, 2010.

Huntsman Springs submitted Application for Permit #22-13589 in September 2006 for a domestic water right for 694 homes. A development agreement with the City outlined that they would develop a large well with extra capacity that the City could use to deliver municipal water rights. The well was developed and the water right permit was assigned to the City. With a favorable policy of licensing municipal water rights in early 2009, and at the recommendation of an IDWR agent, the City submitted an application to amend the permit to a municipal water right. This would have allowed the right to be licensed based on installed capacity at that time. Due to Huntsman Springs' uncertainty with annexation, the application was withdrawn until an agreement was accomplished with the City. Once the agreement was in place, the City again submitted an application to amend the permit to a municipal water right and included the whole water supply system. The second application for amendment was submitted on September 9, 2010.

In the middle of the processes of both of these permits, IDWR issued a new policy on the licensing of non-RAFN municipal water rights in Administrator's Memorandum, Licensing No. 1, titled Processing Applications and Amendments and Determining Beneficial use for Non-RAFN Municipal Water Rights, dated October 19, 2009. This memo explains clearly the former policy of licensing a non-RAFN municipal water right (based on installed capacity) and the new policy (based on beneficial use). The timing of this new policy change occurred while the City was making important decisions relative to their existing water rights and water supply system. Unfortunately, the policy change was not public knowledge, and therefore, the City and its advisors were not aware of the change until much later after the applications were submitted and approved. This was a significant detriment to the new applications/amendments and would have influenced the approach the City made in its applications had it been known beforehand.

Both permits were approved on October 7, 2011 with the condition that requires well-documented beneficial use during the development period to be submitted at the time Proof is due. To aid the licensing process, the City had a field examination performed for the Huntsman Permit #22-13589 in 2016. Since Proof of Beneficial Use was also due at about the same time for the High School permit #22-13979, the field examination was applicable to both permits. Unfortunately, the City had many complications within their new measurement system, and some of the recorded information was found to be unreliable for the field examination. The field examination did show, however, that the City's system has the capacity to delivery all of the water rights and permits. After much

discussion with the City and Rocky Mountain Environmental Associates, James Cefalo sent a licensing analysis identifying what he thinks could be licensed under both water rights, based upon the conditions of the permit, the field examination, the measurement failures, and the available records from the City. Overall, the analysis shows that the new permits would, at best, become supplemental to the City's springwater rights. Unless the spring rights became unavailable, they would not contribute any additional diversion rate to the City. Had Huntsman Springs or the City of Driggs known of these changes, they would have never agreed to annexation and would have proceeded towards development independently.

Attached are two Timelines, one for each permit, briefly listing the order of events that occurred from the date of the first application. The timelines also include scenarios for how the water rights would have been licensed under either the domestic stub-in policy (for the Huntsman Permit #22-13589 only), the former municipal licensing policy, and the new municipal licensing policy (according to the licensing analysis by IDWR). It is apparent that because of the timing of the applications, even though they were in the process prior to the unknown policy change, the licensed amounts under the new policy for the two permits are recommended by IDWR to be greatly diminished from the other original scenarios.

Also attached are copies of documents, obtained from the IDWR backfiles and the City's records, referenced in the timelines.

In speaking with other municipalities, it does not appear that there are others in the same predicament as the City of Driggs. The City is unique in the timing of their permits and their location, and there would be no precedent set by re-evaluating the licensing scenarios. We feel that the City has been dealt an unjust hand in regards to these two permits and request intervention by the Director for a more favorable licensing.

Sincerely,

RMEA

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Thanks again for meeting with me and allowing us to present this issue to you.

Sincerely

Jerry

Jerry R. Rigby

JRR/md

Enclosures

sb/driggs lt4

City of Driggs – Huntsman Well

Licensing of Permit #22-13589

Timeline of Events

<u>Date</u>	<u>Event</u>
19-Sep-06	Submitted Application for Permit (Huntsman)
13-Feb-07	Permit Approved for Domestic Use
16-Jul-07	Assignment of Water Right to City of Driggs (Huntsman)
1-Oct-08	Submitted Application for Amendment of Permit to add Wells and increase Service Area under Domestic Use (RMEA)
1-Dec-08	IDWR recommended we change the right to Municipal (letter from Arave)
28-Jan-09	Submitted Application for Amendment of Permit to change to Municipal (RMEA)
19-Oct-09	IDWR Memorandum that Changes the Licensing Policy on Municipal Water Rights (not supplied to either attorneys or consultants)
10-Dec-09	Withdrawal of Amendment of Permit to change to Municipal (Huntsman)
5-May-10	Huntsman and City signed Stipulation for Huntsman Springs Well
9-Sep-10	Submitted 2nd Amendment of Permit to change to Municipal (RMEA)
10-Sep-10	RMEA is made aware of the 2009 Municipal Licensing Memo sometime after this date
7-Oct-11	Amendment of Permit is approved with new conditions not found in original permit (i.e. Data to be submitted showing increase in overall diversion of the entire municipal system)
3-Jan-12	Proof of Beneficial Use received by IDWR
4-Oct-16	Beneficial Use Field Report submitted to IDWR (RMEA)
17-Jan-17	IDWR sends licensing analysis for our review

Policy Change →

Scenarios for Permit #22-13589

Licensing the Original Domestic Right

Based on Stub-in Rule

368 connections: 0.78 cfs
As of 2012 220.8 AFA

Limited to Huntsman Well

DEQ would have required secondary well

Licensing the Municipal Right

Under the Original Policy

All developed capacity: 1.1 cfs
416.4 AFA

Licensing based upon developed capacity of City's system. All ground water rights combined could have allowed 9.24 cfs + Springs (2.5 cfs) (assuming 22-13979 is also licensed under old policy)

Licensing the Municipal Right Now

Under the New Policy

Beneficially Used 1.1 cfs

SUPPLEMENTAL

Conditions make this right fully supplemental to the Spring Rights; Adds no benefit until Springs are off; All rights combined limited to 8.28 cfs

February 21, 2017



City of Driggs – High School Well

Licensing of Water Right #22-7790 and Permit #22-13979

Timeline of Events

Date	Event
21-Feb-96	Submitted Application for Permit 22-7790 for 2.25 cfs Municipal (City)
26-Apr-96	Permit Approved for Municipal 2.25 cfs
28-Feb-97	Submitted Application for Amendment to change POD of 22-7790 (City)
10-Jul-97	Permit Amendment Approved for 22-7790
26-May-98	Lapse Notice on Permit 22-7790 (proof was late)
11-Jun-98	Proof of Beneficial Use Submitted for 2.25 cfs
13-Jul-98	Order Reinstating Permit and Advancing Priority Date to April 3, 1996 (41 days).
5-Aug-01	Beneficial Use Field Report was performed (by IDWR). No measurements were taken.
7-Aug-09	Licensing Memorandum from Michelle Edl explaining reduction in diversion rate for 22-7790
27-Aug-09	License Approved for 22-7790 reducing diversion rate from 2.25 cfs to 1.84 cfs based on theoretical calculations rather than use current measurements.
19-Oct-09	IDWR Memorandum that Changes the Licensing Policy on Municipal Water Rights (not supplied to either attorneys or consultants)
2-Sep-10	Submitted Application for Permit 22-13979 to capture lost diversion rate and capacity of 0.61 cfs (RMEA)
10-Sep-10	RMEA learns about the 2009 Municipal Licensing Memo sometime after this date
7-Oct-11	Permit 22-13979 Approved with conditions (i.e. Data to be submitted showing increase in overall diversion of the entire municipal system)
4-Oct-16	Beneficial Use Field Report for 22-13589 submitted to IDWR (RMEA)
25-Oct-16	Proof of Beneficial Use is submitted with an understanding that it would be reviewed in conjunction with the field exam for 22-13589
18-Nov-16	Permit Lapse Notice is sent out due to a miscommunication between Eastern and Boise.
19-Dec-16	Permit 22-13979 is reinstated
17-Jan-17	IDWR sends licensing analysis for our review

Policy Change

Scenarios for Permit #22-13979

Licensing the Municipal Right

Under the Original Policy

All developed capacity: 0.61 cfs

Licensing based upon developed capacity of City's system. All ground water rights combined could have allowed 9.24 cfs + Springs (2.5 cfs)

Licensing the Municipal Right Now

Under the New Policy

Beneficially Used 0.12 cfs

SUPPLEMENTAL

Conditions make this right fully supplemental to the Spring Rights; Adds no benefit until Springs are off; All rights combined limit to 8.28 cfs

February 21, 2017

