

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION	)	ORDER DENYING PETITION
FOR TRANSFER NO. 81271 IN THE	)	FOR RECONSIDERATION
NAME OF THE CITY OF RATHDRUM	)	

This matter having come before the Department of Water Resources ("Department") as a petition to reconsider a preliminary order approving a transfer application, the Department finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On November 23, 2016, the Department issued a preliminary order ("order") approving Application for Transfer No. 81271 ("transfer") in the name of the City of Rathdrum ("applicant").

2. On December 7, 2016, the applicant submitted a petition for reconsideration and notice of withdrawal of a portion of the transfer. The petition requested deletion of the phrases "municipal water supply system" in condition no. 1 and "for the water right at the time of this approval" in condition no. 2 on the approved transfer to ensure consistency with Idaho Statutes. The notice withdrew water right nos. 95-4403, 95-10175, 95-11426, 95-16371, 95-16378, 95-16386, and 95-16466 from Application for Transfer No. 81271.

3. Rule 730.02.a. of the Department's Rules of Procedure (IDAPA 37.01.01) states in pertinent part that "Any party may file a petition for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law." The petition was timely filed.

4. On December 14, 2016, the applicant submitted a statement in support of the petition for reconsideration. The statement asserted that the language in condition no. 1 is inconsistent with Idaho statutes because it may incorrectly deem the service area co-extensive with the municipal supply system. The statement also asserted that the language in condition no. 2 is inconsistent with Idaho statutes because it could be interpreted to mean that the place of use is static, rather than flexible and therefore inconsistent with the subsequent "for illustrative purposes" language.

ANALYSIS

Condition nos. 1 and 2 are standard conditions currently included on all municipal water rights approved by the Department. The Department uses standard conditions to ensure consistency and to prevent time spent word smithing conditions to the satisfaction of various water users. The Department has often modified its standard conditions after weighing the need to clarify vs. the

desire to maintain consistency over time.

Condition no. 1 currently reads as follows:

Place of use is within the service area of the City of Rathdrum municipal water supply system as provided for under Idaho law.

The condition simply acknowledges that the service area includes anywhere the City of Rathdrum provides water, or will provide water, for municipal purposes, if consistent with Idaho law. The applicant incorrectly interprets the phrase “municipal water supply system” to mean the current constructed delivery system. Even if the condition is interpreted to mean the service area is co-extensive with the municipal water supply system, the phrase “as provided for under Idaho law” addresses the city’s ability to enlarge its system in the future.

Condition no. 2 currently reads as follows:

A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustrative purposes.

The phrase “at the time of this approval” acknowledges that the city’s system is likely to grow in the future. It does not mean, as the applicant suggests, that the place of use is static.

CONCLUSIONS OF LAW

1. The petitioner has not provided sufficient reason to alter standard conditions of the Department.
2. The Department should deny the petition pursuant to Rule 730.02.a of the Department’s Rules of Procedure (IDAPA 37.01.01).
3. The Department acknowledges the withdrawal of water right nos. 95-4403, 95-10175, 95-11426, 95-16371, 95-16378, 95-16386, and 95-16466 from Application for Transfer No. 81271 and will issue an amended transfer approval (attached) for water right nos. 95-7047 and 95-7881.

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration of the preliminary order approving Transfer No. 81271 is **DENIED** and the Transfer is **AMENDED** to exclude certain water rights as set forth in the attached approval document.

Dated this 16th of December, 2016.



Morgan Case
Northern Regional Manager

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AMENDED**AMENDED**

TRANSFER OF WATER RIGHT
TRANSFER NO. 81271

This is to certify that: CITY OF RATHDRUM
8047 W MAIN ST
RATHDRUM, ID 83858-9287

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Changes

<u>Water Right</u>	<u>Origin/Basis</u>	<u>Priority Date</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
95-7047	AR/LICENSE	3/18/1969	1.300 cfs	N/A	N/A	N/A	GROUND WATER
95-7881	AR/LICENSE	12/1/1978	2.000 cfs	N/A	N/A	N/A	GROUND WATER

Purpose of Transfer (Changes Proposed)

<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
95-7047	NO	NO	NO	YES	NO	NO
95-7881	NO	NO	NO	YES	NO	NO

Summary Of Water Rights After the Approved Change

<u>Existing Right</u>	<u>New No. (Changed Portion)</u>	<u>Transfer Rate</u>	<u>Transfer Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>New No. (remaining portion)</u>	<u>Remaining Rate</u>	<u>Remaining Volume</u>	<u>Remaining Acre Limit</u>	<u>Remaining Total Acres</u>
95-7047	95-7047	1.300 cfs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
95-7881	95-7881	2.000 cfs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		3.300 cfs	N/A	N/A	N/A		N/A	N/A	N/A	N/A

This water right(s) is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources. Detailed Water Right Description(s) attached.

Dated this 16th day of December, 2016.

Morgan Case
Morgan Case, Northern Regional Manager

AMENDED

WATER RIGHT NO. 95-7047
As Modified by Transfer No. 81271

AMENDED

In accordance with the approval of Transfer No. 81271, Water Right No. 95-7047 is now described as follows:

Right Holder: CITY OF RATHDRUM
8047 W MAIN ST
RATHDRUM, ID 83858-9287

Priority Date: 3/18/1969

Source: GROUND WATER

BENEFICIAL USE

MUNICIPAL

From 01/01 **To** 12/31

Diversion Rate

1.300 cfs
1.300 cfs

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	NWSW	Sec 5	Twp 51N Rge 04W KOOTENAI County
GROUND WATER	SENE	Sec 6	Twp 51N Rge 04W KOOTENAI County
GROUND WATER	L1 (NENE)	Sec 1	Twp 51N Rge 05W KOOTENAI County
GROUND WATER	SENE	Sec 12	Twp 51N Rge 05W KOOTENAI County
GROUND WATER	NESW	Sec 31	Twp 52N Rge 04W KOOTENAI County

CONDITIONS OF APPROVAL

1. Place of use is within the service area of the City of Rathdrum municipal water supply system as provided for under Idaho Law.
2. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustrative purposes.
3. This right authorizes the diversion of ground water within the Rathdrum Prairie Ground Water Management Area (RPGWMA). Use of water under this right shall be subject to the provisions of the RPGWMA management plan approved by the director, including its conservation goals.
4. When notified by the Department, the right holder shall install and maintain a measuring device of a type acceptable to the Department as part of the diverting works.
5. When notified by the Department, the right holder shall record the quantity of water diverted and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code, and/or the management plan for the Rathdrum Prairie Ground Water Management Area.
6. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
7. This right does not grant any right-of-way or easement across the land of another.

Transfer No. 81271

AMENDED

WATER RIGHT NO. 95-7047
As Modified by Transfer No. 81271

AMENDED

CONDITIONS OF APPROVAL

8. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
9. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
10. Approval of this transfer does not preclude the opportunity for review of the validity of this water right in the ongoing Coeur d'Alene-Spokane River Basin Adjudication.



AMENDED

WATER RIGHT NO. 95-7881
As Modified by Transfer No. 81271

AMENDED

In accordance with the approval of Transfer No. 81271, Water Right No. 95-7881 is now described as follows:

Right Holder: CITY OF RATHDRUM
8047 W MAIN ST
RATHDRUM, ID 83858-9287

Priority Date: 12/1/1978

Source: GROUND WATER

BENEFICIAL USE

MUNICIPAL

From
01/01

To
to 12/31

Diversion Rate

2.000 cfs
2.000 cfs

LOCATION OF POINT(S) OF DIVERSION

GROUND WATER	NWSW	Sec 5	Twp 51N Rge 04W KOOTENAI County
GROUND WATER	SENE	Sec 6	Twp 51N Rge 04W KOOTENAI County
GROUND WATER	L1 (NENE)	Sec 1	Twp 51N Rge 05W KOOTENAI County
GROUND WATER	SENE	Sec 12	Twp 51N Rge 05W KOOTENAI County
GROUND WATER	NESW	Sec 31	Twp 52N Rge 04W KOOTENAI County

CONDITIONS OF APPROVAL

1. Place of use is within the service area of the City of Rathdrum municipal water supply system as provided for under Idaho Law.
2. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustrative purposes.
3. This right authorizes the diversion of ground water within the Rathdrum Prairie Ground Water Management Area (RPGWMA). Use of water under this right shall be subject to the provisions of the RPGWMA management plan approved by the director, including its conservation goals.
4. When notified by the Department, the right holder shall install and maintain a measuring device of a type acceptable to the Department as part of the diverting works.
5. When notified by the Department, the right holder shall record the quantity of water diverted and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code, and/or the management plan for the Rathdrum Prairie Ground Water Management Area.
6. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
7. This right does not grant any right-of-way or easement across the land of another.

Transfer No. 81271

AMENDED

WATER RIGHT NO. 95-7881
As Modified by Transfer No. 81271

AMENDED

CONDITIONS OF APPROVAL

8. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
9. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
10. Approval of this transfer does not preclude the opportunity for review of the validity of this water right in the ongoing Coeur d'Alene-Spokane River Basin Adjudication.



AMENDED

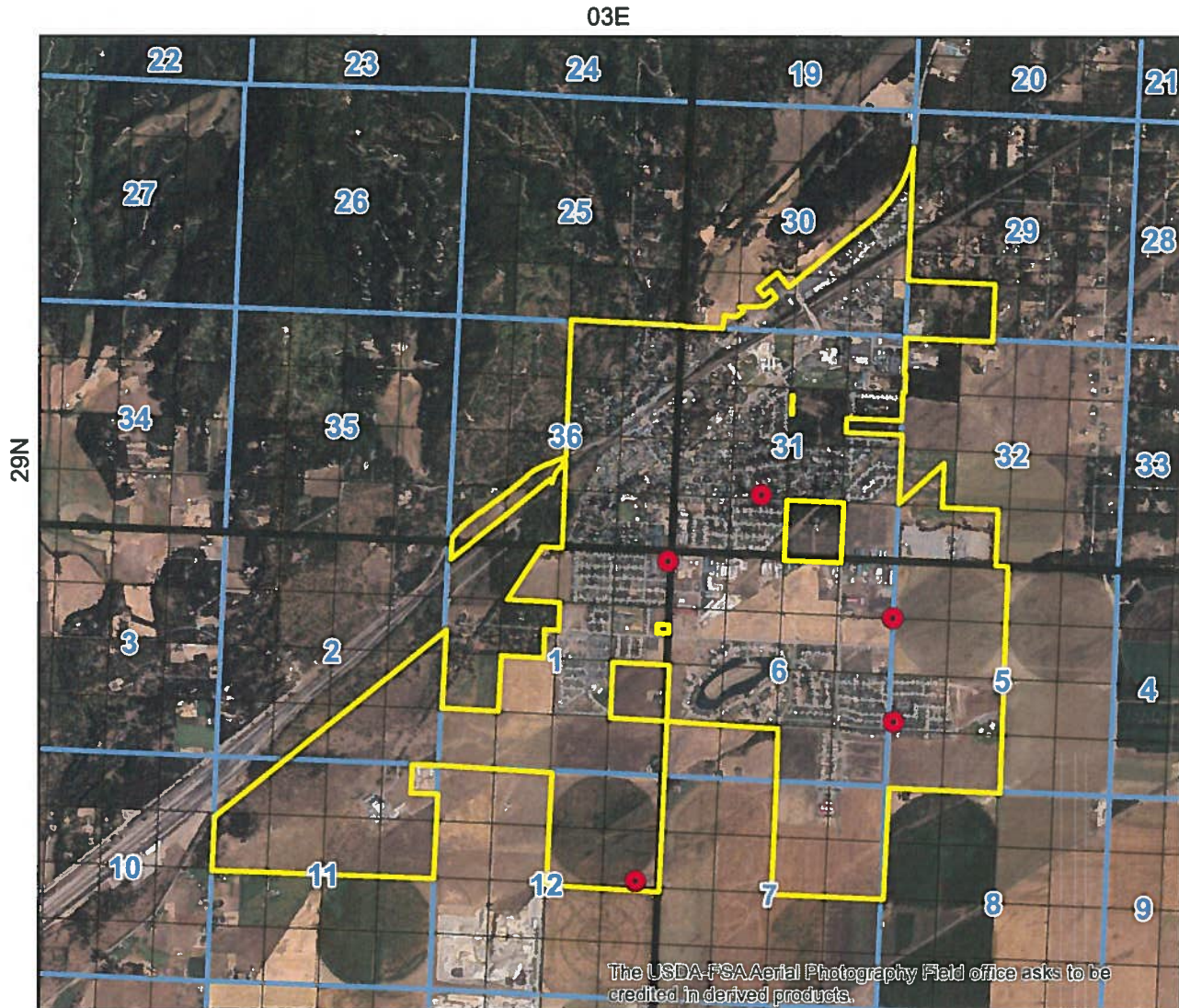
State of Idaho
Department of Water Resources

AMENDED

Attachment to Transfer # 81271

Rights 95-4403 and 95-7047.

This map depicts the MUNICIPAL place of use boundary for these water rights at the time of this approval and is attached to the approval document solely for illustrative purposes.



0 0.5 1 2 Miles

- Point of Diversion
- Place of Use Boundary
- Townships
- PLS Sections





State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

December 17, 2016

COPY

CITY OF RATHDRUM
8047 W MAIN ST
RATHDRUM ID 83858-9287

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Re: Transfer No: 81271
Water Right No(s): 95-7047 & 95-7881
Order Denying Petition for Reconsideration &
Amended Transfer Approval Notice

Dear Interested Parties:

The Department of Water Resources has issued the enclosed Order and amended approved Transfer of Water Right(s). Please be sure to thoroughly review the conditions of approval and remarks listed on the transfer approval document.

Both documents are preliminary orders issued by the Department pursuant to section 67-5243, Idaho Code. They can and will become final orders without further action of the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

ANY PERSON aggrieved by any decision, determination, order or action 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 Department and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

If the transfer approval includes a condition requiring measuring and recording devices, such devices shall comply with specifications established by the Department. Detailed specifications are available on the Department's home page on the Internet, or you can request a copy by contacting any office of the Department. Please be sure to thoroughly review the specifications to avoid unnecessary costs for reinstallation or modification due to non-conforming or improperly installed devices.

Please note that water right owners are required to report any change of water right 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. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at (208)762-2800.

Sincerely,

A handwritten signature in cursive script that reads "Morgan Case".

Morgan Case

Northern Regional Manager

Enclosures