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Attorneys for City of Rathdrum

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER NO. 81271)

IN THE NAME OF: CITY OF RATHDRUM)

STATEMENT IN SUPPORT OF
PETITION FOR RECONSIDERATION

The City of Rathdrum ("Rathdrum"), by and through its attorneys of record, HAWLEY TROXELL ENNIS & HAWLEY LLP, hereby respectfully submits this Statement in Support of Petition for Reconsideration in the above-referenced matter.

With respect to Water Right Nos. 95-7047 and 95-7881, Rathdrum requested reconsideration of the following matters in Transfer Approval No. 81271:

1. Condition no. 1 be revised as follows to ensure consistency with Idaho statutes:
“Place of use is within the service area of the City of Rathdrum ~~municipal water supply system~~ as provided for under Idaho law.”
2. Condition no. 2 be revised as follows to ensure consistency with Idaho statutes: “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 bases for these requested revisions are discussed further below.

1. Condition no. 1 be revised as follows to ensure consistency with Idaho statutes: “Place of use is within the service area of the City of Rathdrum ~~municipal water supply system~~ as provided for under Idaho law.”

The basis for this requested revision is to ensure that the service area is not incorrectly deemed co-extensive with the municipal water supply system, as this language suggests. A “service area” pursuant to Idaho Code 42-202B(9) is not simply based on the extent of a City’s water delivery system. Specifically, pursuant to Idaho Code 42-202B, a municipal service area, generally corresponds to “its corporate limits, or other recognized boundaries.” A water distribution system only comes into play in determining a municipality’s service area when the service area includes areas outside the municipality’s corporate limits or other recognized boundaries: “The service area for a municipality may also include areas outside its corporate limits, or other recognized boundaries, that are within the municipality’s established planning area if the constructed delivery system for the area shares a common

water distribution system with lands located within the corporate limits.” Idaho Code 42-202B(9). Thus, to avoid an inconsistent interpretation with Idaho statute, it is requested that the words “municipal water supply system” are deleted.

2. Condition no. 2 be revised as follows to ensure consistency with Idaho statutes: “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 reference to “at the time of this approval” is requested for deletion because it could be interpreted to be inconsistent with the subsequent “for illustrative purposes” language. The phrase “at the time of this approval” suggests that the place of use boundary is being “approved” as part of the transfer approval. However, the language “for illustrative purposes” indicates that the map is not intended to be a binding representation of the place of use boundary. The place of use in this instance is flexible pursuant to Idaho Code 42-201B(9) which indicates that a municipal service area can change “after the permit or license is issued,” and thus by extension after a transfer approval issues. Accordingly, the suggestion that the place of use has been “approved” suggests that it is static, rather than flexible, as provided pursuant to statute in this situation.

DATED THIS 13th day of December, 2016.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By 
Dana L. Hofstetter,
Attorneys for City of Rathdrum

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13 day of December, 2016, I caused to be served a true copy of the foregoing STATEMENT IN SUPPORT OF PETITION FOR RECONSIDERATION by the pre-paid method indicated below, and addressed to each of the following:

Morgan Case (*original*)
Northern Regional Manager
Idaho Department of Water Resources
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- ☒ Telecopy

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FROM: Ka'Tina Artis

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Re: Statement in Support of Petition for Reconsideration

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