



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

November 21, 2016

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 letter asking about the updated reasonably anticipated future needs ("RAFN") information due for Permit No. 63-32835 ("permit"), which is owned by the City of Nampa. As you correctly noted, Idaho Code § 42-217 states that a municipal provider's proof of beneficial use statement shall include "a revised estimate of the reasonably anticipated future needs, a revised description of the service area, and a revised planning horizon, together with appropriate supporting documentation." IDWR received the City of Nampa's proof of beneficial use statement on September 28, 2015, but the required RAFN information was not included. When processing the proof statement, IDWR did not identify the deficiency, and it issued a proof acknowledgment letter on October 30, 2015. Since that time, both Roxanne Brown of SPF Water Engineering ("SPF") and you have contacted me to discuss a timeline for submitting the RAFN information.

As we discussed, I believe Idaho Code § 42-217 is clear that the RAFN information must accompany the proof statement, which must be submitted "on or before the date set" for proof. Under ordinary circumstances, I would conclude that a proof statement for a RAFN permit is not complete and cannot be accepted by IDWR without the required RAFN information. In this case, however, I agree with you that extenuating factors that must be considered. First, neither the permit issued in 2009 nor the amended permit issued in 2013 has an approval condition requiring submittal of the RAFN information with proof of beneficial use statement.¹ Second, the form for submitting proof of beneficial use does not ask for the RAFN information. Instead, it asks if the approval conditions on the permit require additional information to be submitted. As noted previously, the permit approval conditions do not restate the reporting requirements of Idaho Code § 42-217. Third, as noted above, IDWR did not identify the need for the updated RAFN information when it processed the City's proof statement and acknowledged receiving it.

¹ IDWR's current practice is to issue RAFN permits with an approval condition stating the requirement to submit the updated RAFN material "with the proof of application of water to beneficial use." The standard condition also states, "Proof of beneficial use shall be deemed incomplete and returned to the permit holder if all material required by this condition is not provided."

Christopher H. Meyer
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Due to these extenuating factors, I do not think IDWR should backtrack and find the proof of beneficial use deficient, causing the permit to lapse. Instead, I suggest getting the permit back on track so IDWR can conduct an examination and evaluate whether a water right license should be issued in connection with the permit.² To that end, this letter will serve as IDWR's official notice that additional information is needed for the proof of beneficial use statement for Permit 63-32835. The information needed is the material Idaho Code § 42-217 requires municipal providers to submit with the proof of beneficial use statement for a RAFN permit. Specifically, IDWR needs the following items:

- A revised description of the City's service area
- A revised planning horizon
- An 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

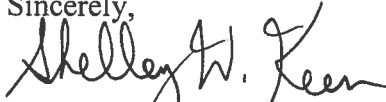
For more on IDWR's perspective regarding the updated RAFN material, see Section 4 (pages 18-20) of License Processing Memorandum No. 13 issued by Mat Weaver on March 16, 2015.

In your letter, you suggest IDWR should extend the time for submitting the required information to April 29, 2017, but you do not provide a reason for requesting such a lengthy extension. Since considerable time has already passed during which, I presume, the City has been working to assemble the necessary information, three additional months seems reasonable. Please submit the information by February 21, 2017.

Also, please note that while IDWR perceives that extenuating factors seem to justify additional time to submit the required RAFN information, someone aggrieved by this approach could seek a hearing pursuant to Idaho Code § 42-1701A(3) to present a different perspective.

If you have any questions, please call or email.

Sincerely,



Shelley W. Keen, Manager
Water Rights Section

² Your letter states the City of Nampa has retained SPF to conduct a beneficial use field examination for Permit 63-32835. However, when it submitted its proof of beneficial use statement, the City also paid an examination fee to IDWR. Therefore, IDWR is obligated to conduct the examination. If the City intends for SPF to conduct the examination, it should notify IDWR immediately, and it should submit the completed beneficial use field report with the City's updated RAFN information. Regardless of who conducts the examination, the examiner must describe the infrastructure constructed up to the proof date, September 28, 2015, to accommodate delivery of water throughout the service area. Also, because the examination fee contributed the acceptability of proof of beneficial use statement on the date it was submitted, the examination fee is not refundable.