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RECEIVED

MAR 06 2015

DEPARTMENT OF  
WATER RESOURCES

March 6, 2015

Via Email and U.S. Mail

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Re: North Kootenai Water & Sewer District — Water Right Permits 95-9129,  
95-9244, and 95-10019 and Transfer Application 79275

Dear Mat and Shelley:

My client, North Kootenai Water & Sewer District ("NKWD" or "District")<sup>1</sup> has had an extended correspondence with the Department on the subject of the above-captioned water right licenses and transfer.<sup>2</sup> That correspondence addresses NKWD's objection to the Department's reversal of longstanding policy and practice in two areas: (1) reversing its prior recognition of alternative points of diversion ("APODs") serving 13 ground water delivery system components across the District's service area and (2) reversing its prior recognition that NKWD is entitled to the same treatment as any other traditional municipal provider with respect to annual volume limits.

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<sup>1</sup> As noted previously, NKWSD and NKWD are one and the same.

<sup>2</sup> Today's letter continues the discussion initiated by Daniel Nelson's letter of June 10, 2013 to Mike Galante, which was followed by my response dated July 10, 2013, our meeting at IDWR on February 13, 2014, my proposed license conditions dated February 14, 2014, Mike Galante's letter on SCADA telemetry dated April 2, 2014, Mike Galante's letter of May 27, 2014 dealing with the transfer, your letter of June 4, 2014, Mike Galante's letter of June 18, 2014 noting the need for additional time to respond, and my letter to Shelley Keen of August 8, 2014. For some reason, the August 8, 2014 letter does not appear on the Department's website.

APODs

On January 27, 2015, NKWD submitted a public records request seeking guidance and precedent relevant to the Department's change in policy with respect to APODs. The Department's response demonstrates that there is no guidance or precedent (from either the Department or the Idaho Water Resource Board) supporting this policy change. Rather, it appears to be an *ad hoc* decision that arose solely in the context of NKWD's water rights.

It boils down to this. NKWD is a statutorily recognized governmental entity that provides municipal water to residents in the Hayden Lake area north of Coeur d'Alene. NKWD's service area is composed of 13 ground water delivery systems in close proximity to each other (in addition to two systems served by surface water). The fact that they are geographically distinct and not connected by pipes reflects NKWD's purpose and mission of providing municipal water to smaller communities that are not served by larger municipal systems. (Map enclosed.) In short, NKWD fills the interstices—a vital public role.

This municipal service is supported by ground water rights from a variety of wells all pumped from a common source, the Rathdrum Prairie Aquifer. The effect on the aquifer and on other water users is identical whether that water is pumped and used in one delivery system or another.<sup>3</sup>

As described in earlier communications, these systems, though not connected by pipes, are operated in a coordinated and centralized fashion through a single operations building employing a sophisticated SCADA electronic telemetry system that monitors and controls pumping from each point of diversion.<sup>4</sup>

The reason that APODs are needed is simple. The system is supported by a portfolio of water rights with a mix of priority dates. In the event of curtailment in time of shortage—or, for that matter, in the event of system failure or other emergency—it may be necessary for the District to operate with fewer than all its water rights. If that happens, the District needs the

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<sup>3</sup> The possibility of individual well interference is addressed and resolved by the proposed "APOD condition" that NKWD submitted on February 14, 2014. This is the same condition that was developed by IDWR, imposed on municipal water rights throughout the SRBA, and approved by the SRBA Court and the Idaho Supreme Court. *In Re SRBA*, Case No. 39576, Subcase Nos. 29-00271 *et al.* (Idaho, Fifth Judicial Dist., Nov. 9, 2009 and April 12, 2010) (Melanson, J.), *aff'd*, *City of Pocatello v. Idaho*, 152 Idaho 830, 275 P.3d 845 (2012) (Eisemann, J.) (upholding position of *amici curiae* regarding alternative points of diversion in City of Pocatello municipal water rights litigation).

<sup>4</sup> To date, the SCADA system has been installed in 12 of the District's 15 delivery systems. The District's second proposed condition submitted on February 14, 2014 commits the District to expansion of the SCADA system to all of its delivery system components. NKWD will commit to extend the SCADA system to the remaining three systems if IDWR approves system-wide APODs.

flexibility to distribute that water with maximum flexibility. For example, it might be necessary to move available water rights from system to system on a rotating daily basis.

Locking in the most senior rights to those systems that happen to have the oldest wells would make that impossible. Allowing some systems to continue to operate at full tilt, while shutting down others served by junior rights, would serve no useful purpose. It would result in the same draw on the resource and have the same impact on other water users as would a more equitable rotation system in which all of the District's customers shared the pain.

The Department's suggestion that sufficient flexibility can be achieved by splitting up the senior rights and transferring a piece of each right to each delivery system is a make-work project that creates new headaches and fails to solve the problem. Whatever division is made today may not fit the circumstances of the future. The District will be called upon periodically to re-transfer its entire portfolio to adjust to shifts in demographics and other factors. Given the pressing challenges faced by Idaho, this shuffling exercise hardly seems a useful undertaking for the Department or its customers. Nor can it be reconciled with the clear language of the 1996 Municipal Water Rights Act which recognizes a flexible, expanding, and unified service area covering the entire area that the provider "is authorized or obligated to serve." Idaho Code § 42-202B(9). In any event, this kludge of divvying up senior water rights does not meet the flexibility goal. If the District found it necessary, for instance, to rotate its senior rights on a daily or other basis, it would not be possible to transfer the rights back and forth with every shift in the lawn irrigation schedule.

#### Annual volume limits

The second area of contention is the Department's inexplicable decision to treat NKWD as a second class municipal water provider. As discussed extensively in prior correspondence, there is no basis under law and no good reason to allow municipalities and water utilities to obtain non-RAFN water rights based on installed capacity without an annual volume limit while refusing to do the same for NKWD. NKWD is a legislatively recognized public entity whose responsibility to serve municipal customers is no different from other traditional municipal providers. This departure from prior practice appears not to be based on water law, but on the Department's newfound distaste for economic development outside of city boundaries.

#### Request for meeting

The District's Board of Directors is, to say the least, frustrated that this debate has dragged on for years without resolution. This is all the more disappointing in light of the recognition by the Idaho Water Resource Board ("IWRB") of the importance of allowing Idaho water users—particularly in North Idaho—to establish and document the full extent of their water rights prior to inevitable conflict with out-of-state interests. Indeed, the IWRB has

Mathew Weaver  
Shelley W. Keen  
March 6, 2015  
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encouraged municipal providers in North Idaho to apply for long term RAFN water rights. An IWRB study conducted by the Idaho Water Resources Research Institute ("IWRRI") confirms that NKWD will be one of the largest growth entities in the next 30 years in Kootenai County.

The Board has instructed me to request a face-to-face meeting with you and, we would hope, the Director to see if some progress cannot be made in finding an accommodation. If that cannot be achieved, so be it. But we would like to try one more time before deciding what course of action to take.

The District's Manager, Mike Galante, will make himself available for such a meeting in Boise at your convenience. Our only block-out dates (through April) are March 16 and April 1, 8, 13-27. We each have a number of other appointments, but they can be changed to suit your schedule.

I look forward to hearing from you and remain optimistic that further discussion will bring us closer together.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Meyer".

Christopher H. Meyer

Encl: Map of NKWD's service area

cc: Idaho Water Resource Board  
Gary L. Spackman, Director, Idaho Department of Water Resources  
Jeff Peppersack, Water Allocation Bureau Chief, Idaho Department of Water Resources  
Carter Fritschle, Adjudication Section Manager, Idaho Department of Water Resources  
Clive J. Strong, Natural Resources Division Chief, Office of the Attorney General  
Garrick L. Baxter, Deputy Attorney General, Idaho Department of Water Resources  
Keith E. Franklin, Northern Regional Manager, Idaho Department of Water Resources  
Mark Solomon, Idaho Water Resources Research Institute  
Mike Galante, District Manager, North Kootenai Water & Sewer District  
Necia Maiani and Ashley Williams, Welch Comer Engineers

# NKWD Service Area

