



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

June 4, 2014

NORTH KOOTENAI WATER AND SEWER DISTRICT
ATTN MIKE GALANTE
PO BOX 2290
HAYDEN ID 83835

RE: Water Right Permits 95-9129, 95-9244, and 95-10019 and Transfer Application 79275

Dear Mr. Galante:

Thank you again for meeting with me, Garrick Baxter, Carter Fritschle, and Meghan Carter in February to discuss the licensing of Water Right Permits 95-9129, 95-9244, and 95-10019. As you indicated in your April 2, 2014, letter to me, I felt like the discussion was positive. I am writing today to continue our discussion and also to open a dialogue about a matter discovered in IDWR's evaluation of the transfer application recently filed by North Kootenai Water and Sewer District (NKWSD). I apologize for not writing earlier.

I will address the licensing matters first, then the transfer application.

LICENSING

When we met on February 13, 2014, we discussed a range of issues and options, including the possibility of using NKWSD's integrated monitoring system (SCADA) as a means to monitor and possibly regulate NKWSD's diversion of water in accordance with its water rights. Since that meeting, IDWR has received Chris Meyer's memo dated February 14, 2014, and your letter of April 2, 2014. Recently, I have had opportunity to discuss NKWSD's water right situation with my colleagues within IDWR. Our discussions centered on the same four water right elements – water use, place of use description, authorized points of diversion, and annual diversion volume limit – that you and I discussed in our February meeting. I will address each of these elements below.

Water Use

NKWSD requests that all of its new water right licenses be for municipal use. IDWR agrees that NKWSD qualifies as a municipal provider under Idaho Code § 42-202B(5)(b). In fact, each of the three permits -- 95-9129, 95-9244, and 95-10019 – is already for municipal use. IDWR proposes to issue water right licenses for municipal use as well.

Place of Use Description

Idaho Code § 42-202B (9) states:

For a municipal provider that is not a municipality, the service area shall correspond to the

area that it is authorized to serve, including changes therein after the permit or license is issued.

Based on this statute, the service areas for most of the NKWSD's water rights and permits have already been made consistent through the water right permitting, licensing, and transfer processes. They generally say:

Place of use is within the service area served by the public water supply system of North Kootenai Water District.

IDWR concurs that the service area for each of the three licenses, when they are issued, should be the NKWSD's generally described service area, including all its discrete components located across the Rathdrum Prairie. Because Permit 95-9129 is still limited to the Sylte Development LLC place of use, NKWSD will have to request that the permit be amended to authorize the entire service area before the right can be licensed that way. IDWR will draft the proposed amendment and present it to the NKWSD for submittal.

Authorized Points of Diversion

The point of diversion question received the most discussion time in our meeting. Because it is very difficult to administer a single water right from separate, distinct water systems, IDWR normally requires separate applications and issues separate permits and licenses for separate water diversion/delivery systems. In contrast, NKWSD wants its water right licenses issued with all of its wells as alternative points of diversion (APODs) so that it has options for responding to a curtailment order. As you explained when we met in February, during a curtailment NKWSD would rather reduce use among all its customers than have some customers curtailed while others experience no regulation at all. NKWSD's request is part of an ongoing trend. In recent years, more and more municipal providers have sought to establish multiple wells as APODs on the water rights used in their municipal water systems. IDWR has approved many such proposals. What distinguishes NKWSD's proposal from others, however, is that NKWSD manages 15 separate water systems spread far apart.

In the past, IDWR has authorized APODs for NKWSD. In 2004, a water right transfer on four of NKWSD's water rights -- 95-7827, 95-8522, 95-7713, and 95-7138 -- authorized each of the rights to be diverted from any of NKWSD's wells, even though the systems are not all physically connected. The Department allowed this change via the transfer either under the impression that the systems would be integrated or under the impression that the flexibility in the service area also applies to points of diversion, given that they all withdraw water from a single source, the Rathdrum Prairie aquifer. Full integration of NKWSD's water systems has not happened in the intervening years. Three newer water right licenses -- 95-8639, 95-9199, and 95-9217 -- also have most or all of the NKWSD wells authorized as points of diversion, and in 2010, the Department approved an amendment for Permit 95-10019 to include all of the NKWSD's wells as APODs. Because NKWSD's water systems are not all interconnected, the authorization of its APODs is not consistent with longstanding IDWR practice.

In our meeting we recognized that NKWSD could achieve some “cross-leveling” of its priority dates among its water systems by transferring pieces of more senior water rights to systems with junior rights, and vice-versa. However, you expressed concern that the number of water rights and water systems involved would make such an effort a complicated and expensive record-keeping exercise for you and for IDWR.

During our meeting, you also explained that NKWSD uses electronic telemetry and a SCADA (integrated data collection) system to monitor real-time diversions from each of its wells, except for four. The remaining four will be connected to the SCADA system by the end of this calendar year. While we were talking about APODs, it occurred to us that if all PODs are included, it might be possible to use the SCADA system to monitor and enforce a curtailment, if necessary. We speculated that if it had access to the SCADA system, IDWR could observe the total instantaneous diversion from all NKWSD’s water systems to ensure that it does not exceed the sum of the rates for the rights remaining in priority. I felt this possibility was worthy of discussion, and we spent quite a bit of time on it.

Shortly after our meeting, Chris Meyer sent IDWR a draft condition that he believes IDWR could employ on each NKWSD water right to require access to the SCADA system for water right administration purposes. In addition, Chris also proposed employing IDWR’s standard APOD condition on NKDW water rights:

To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right at [name of well] located in [quarter-quarter description].

A few weeks later, IDWR received your letter and a sample of the data collected through the monitoring system.

Following our discussion, I discussed extensively with my colleagues the idea of using NKWSD’s SCADA system as the virtual connection between distinct water systems, thus providing the basis for APODs on NKWSD’s water rights. Many of my colleagues expressed serious reservations that had not fully occurred to me during our discussion. The concerns included:

- Recognizing that a water right may be used only in a single water system is one of the essential ways individual water rights are distinguished from each other. Allowing the use of a single water right in unconnected systems may make it very difficult for IDWR to track the “movement” of the water right and to regulate it in a way that will prevent enlargement and injury to other water right holders. While NKWSD’s extensive SCADA system could theoretically allow for the necessary regulation during a curtailment, IDWR is reluctant to set a precedent that might lead to regulation difficulties with others over large areas of Idaho.
- Water rights are limited by volume as well as by diversion rate. Among NKWSD’s water rights are some with volume limits and some without volume limits. If APODs are authorized on all those rights, how would the water rights with volume limits be regulated?

With APODs, pumped volumes could almost always be attributed to one or more of the rights without volume limits, which could lead to enlargement in use.

- In a time of curtailment, is it appropriate for the oversight agency to employ and trust the right holder's monitoring system, as opposed to being in the field observing actual curtailment?
- In 1996 the Idaho Legislature amended the Idaho Code to provide opportunity for municipal water providers to establish water rights for reasonably anticipated future needs. At that time, the legislature could also have explicitly given municipal providers the opportunity to establish APODs, but it did not do so.

Given these reservations, IDWR is not inclined to provide further authorizations for APODs that represent water systems not connected to each other. Therefore, the licensing choices for NKWSD's PODs are:

- Use each permit to cover the beneficial use produced from just one diversion and delivery system. This choice seems appropriate for Permit 95-9129 because it was originally permitted to cover a specific water system with a discrete place of use. Covering more than was intended by the permit would result in enlargement. This option also seems appropriate for Permit 95-10019. Prior to being amended, it was for a specific water system, and it has a small diversion rate. This approach might not work as well for Permit 95-9244, which has a relatively large diversion rate and which has always had a long list of APODs.
- Split each right into multiple separate water right licenses, one for each system. As noted above, this option would not likely work for Permit 95-9129 or for Permit 95-10019. As for Permits 95-9244, its larger diversion rate, many points of diversion, and broad service area may allow it to be split more easily.

IDWR is willing to work with NKWSD to determine how these options might best be applied for each permit.

Annual Volume Limit

The volume limit for a permit is usually implied by the beneficial use. The actual numerical limit is usually added by IDWR at licensing when the beneficial use is confirmed. In most cases, municipal water rights for incorporated municipalities and water purveyors serving incorporated municipalities do not get annual volume limits because of common law practices allowing for appropriation of water and acquisition of water rights for some long-term growth. This common law practice is sometimes termed the Growing Communities Doctrine. Municipal water rights for providers not serving municipalities do not benefit from the Growing Communities Doctrine, and they have annual volume limits. For them, even when the service area is changed via amendment or transfer to serve a municipality, the implied or actual annual volume limit is retained to prevent enlargement of the right.

Because Permits 95-9129 and 95-10019 were not originally permitted to serve a municipality, they must be licensed with volume limits to prevent enlargement. The volume limits will be based on the actual use of water during the authorized development period for the water system or systems to be covered by the licenses. As for Permit 95-9244, its permitted service area, the NKWSD's service area, is mostly outside municipal boundaries, but a small part is within municipal boundaries. Because of this duality, it was not initially clear what approach should be taken regarding an annual volume limit. However, at this point it seems like the decision regarding the authorized points of diversion will provide the answer. If the permit becomes a license or licenses for water systems not serving municipalities, volume limits will be required. If the permit is used to license water systems serving Hayden and/or Hayden Lake, then an annual diversion volume will not be required.

As I indicated above, IDWR is willing to discuss how each of the three permits should be licensed. In order to open the discussion, IDWR suggests the licenses be drafted as follows:

95-9129 (Originally issued to Sylte Development Company for Selkirk Meadows Subdivision)

- The water use will be Municipal.
- The place of use will be the service area for the NKWSD.
- The points of diversion will be limited to the wells supplying water to the Selkirk Meadows Subdivision system (AKA Atlas Acres System).
- The annual diversion volume limit will be based on the average daily demand for the 48 lots in the Selkirk Meadows Subdivision. $(960 \text{ gpd} \times 365 \text{ days} \times 48 \text{ lots}) / 325850 \text{ gallons per af} = 51.6 \text{ acre feet per year}$.
- Based on Attachment 5 of the beneficial use field report submitted by Welch Comer in 2011, the two system wells have diversion capacities of 0.18 cfs and 0.53 cfs, for a total of 0.71 cfs. However, in her June 11, 2008, letter regarding Permit 95-9129, Necia Maiani estimated a peak day demand of 1.83 gpm per connection. For 48 connections, that would be 0.20 cfs. Since 0.20 cfs apparently represents the actual beneficial use, it will be the diversion rate on the draft license.

95-10019 (Originally permitted to East Seasons Acres Homeowner's Association for East Seasons Acres Subdivision)

- The water use will be Municipal.
- The place of use will be the service area for the NKWSD.
- The point of diversion will be limited to the well supplying water to the East Seasons Acres Subdivision system.
- The annual diversion volume limit will be based on the average daily demand for the 48 lots in the East Seasons Acres Subdivision. $(731 \text{ gpd} \times 365 \text{ days} \times 22 \text{ lots}) / 325850 \text{ gallons per af} = 18 \text{ acre feet per year}$.
- The diversion rate will be 0.04 cfs based on the measured flow rate in Attachment 5 of the beneficial use field report submitted by Necia Maiani in 2011.

95-9244 (Permitted to NKWSD for its entire service area)

NKWSD filed this water right to increase its overall diversion rate and volume across its many water systems. The best option for this permit may be to split it into multiple licenses for the individual systems where beneficial use was established in addition to the existing water rights.

For each license:

- The water use will be Municipal.
- The place of use will be the service area for the NKWSD.
- The points of diversion will be limited to the wells supplying water to the individual system being covered.
- The diversion rate and volume will vary for each split of this water right based on the system and water use for each split.

TRANSFER

IDWR is also reviewing Transfer Application 79275, which proposes to add a single new point of diversion to Water Right 95-8639. While I was composing this letter, IDWR received your May 27, 2014, providing additional background about the need for the transfer.

Water Right 95-8639 already has 23 APODs or 26 APODs, depending on whether you are looking at the water right license or the adjudication claim, respectively. Simply adding an additional point of diversion to the right would perpetuate the number of APODs for unconnected water systems. The proposed new well will actually be connected to NKWSD's Rimrock system, which employs three existing points of diversion. In order to relate this water right to a single system, IDWR proposes to include only the Rimrock system points of diversion (AKA Lancaster 1, 3, 4, and 5) on the approval, should it be granted. As an alternative, NKWSD could designate a portion of the 1.00 cfs water right to be limited to the Rimrock system, and the water right would be split in the transfer.

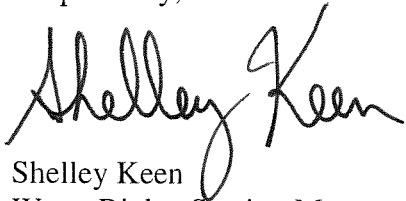
NKSWD may also consider adding other water rights with PODs on the Rimrock system to the transfer application so that they all authorize the use of the new POD. In addition to Right 95-8639, the water rights involved could be all or portions of 95-7138, 95-7713, 95-7827, 95-8522, 95-9199, and 95-9217. As with Right 95-8639, the points of diversion authorized on the rights, or portions of rights, in the transfer would be only those for the Rimrock system.

SUMMARY

I will look forward to hearing from you soon on these matters. If I have not heard from you by July 4, 2014, IDWR will move forward with the licensing of Rights 95-9129 and 95-10019 as described above. IDWR will also process Transfer Application 79275 with the intent of limiting the points of diversion to the Lancaster wells in the Rimrock system. IDWR will also review Permit 95-9244 and make a licensing suggestion at that time.

I would also be glad to discuss ideas regarding any other transfers that may be needed to distribute NKWSD's water rights among its water systems.

Respectfully,

A handwritten signature in black ink that reads "Shelley Keen". The signature is fluid and cursive, with the first name "Shelley" and last name "Keen" clearly distinguishable.

Shelley Keen
Water Rights Section Manager

cc: Chris Meyer
Keith Franklin