



State of Idaho

DEPARTMENT OF WATER RESOURCES

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February 10, 2012

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

Tony Hancock
City of Downey
PO Box 204
Downey, ID 83234

RE: Proposed Transfer / Permit Review

Dear Mr. Hancock:

Enclosed is a draft transfer application proposing to correct the point of diversion description for the city's primary ground water right, 29-12525. As you can see from the well logs, the 1979 well and 1995 well are both located in the SESE of Section 27. Evidence suggests that the original ground water well was located in the same immediate area. The current well house is visible in aerial photos and is clearly located in the SESE of Section 27.

For some reason, the city listed the point of diversion as the NESE of Section 27 in its SRBA claim, 29-12525. The department did not catch the error in its review of the water right. Consequently, the Snake River Basin Adjudication (SRBA) decree for right 29-12525 listed the point of diversion in the NESE of Section 27. The decree was issued by the SRBA court in 2004. At this point, it is simpler to correct the error by filing a water right transfer, rather than going back to the SRBA court to set aside the decree. This transfer corrects the error and lists the point of diversion as the SESE of Section 27. I have included a map showing the correct point of diversion.

Because no water is actually moving as part of this transfer, the transfer fee will be kept to the minimum fee, \$200. In other words, the physical point of diversion is not changing. The ground water well is still located where it has always been located, in the SESE of Section 27. This transfer simply updates the paper water right to agree with the actual water use.

I have also included a Relinquishment of Permit form with this letter. We recently reviewed existing permits in the Portneuf River drainage to determine whether any could be licensed. In July 1994, the City of Downey filed an application for permit, seeking an additional 900 gpm (2.00 cfs) of ground water for municipal use. It's possible that the city filed the 1994 permit application as a safeguard, in case its pending SRBA claim was unsuccessful. We have come across a number of permit applications that essentially represent the same beneficial use as an SRBA claim.

Permit 29-8145 was issued to the city in October 1994. The point of diversion listed in Permit 29-8145 was the well in the SESE of Section 27, the main city well. A new well was completed in March 1995. According to you, the old well was abandoned because of poor production. The well log for the 1995 well indicates that the well is able to pump 1200 gpm (2.67 cfs) for a limited amount of time.

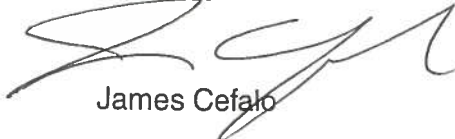
In October 1996, the city filed proof of beneficial use for Permit 29-8145. The proof stated that the city had diverted 750 gpm (1.67 cfs) under the permit. In July 2000, the department conducted a beneficial use field exam for Permit 29-8145. Because the city's senior water right (29-12525) was still pending in the SRBA and listed the wrong point of diversion, the field examiner was not aware that there was another water right being pumped out of the main city well. Therefore, the field examiner found that Permit 29-8145 had been fully developed. Now that we have uncovered the error with water right 29-12525, it seems unlikely that Permit 29-8145 was ever developed.

In our phone conversation, you mentioned that the city's main well typically diverts around 900 gpm. Because water right 29-12525 and permit 29-8145 have historically been diverted from the same well, the city must demonstrate that during the permit development period (October 1994 to September 1996) the city diverted more than 1160 gpm (2.58 cfs) for municipal purposes. I recognize that diversion records from the mid-1990s may not exist. Therefore, I would also accept evidence that the city has ever diverted more than 1160 gpm (2.58 cfs) at any point in the past for municipal purposes.

If our analysis is correct and Permit 29-8145 has never been diverted for municipal use, please complete the relinquishment of permit form. I would guess that it needs to be signed by the mayor or the city council. It should also be noted that, even if Permit 29-8145 is relinquished or voided, the city is not foreclosed from pursuing a similar permit in the future as diversion demand increases. If, however, you feel that Permit 29-8145 was actually developed, please provide evidence supporting that use, as described above.

You may file the transfer at any time. Please file the relinquishment of permit or, in the alternative, provide evidence of diversion by March 10, 2012. At that time, the department will move forward with a final review of Permit 29-8145. Feel free to call if you have any questions.

Sincerely,



James Cefalo