

File Review for: 47-7492 Kestler
By: Sandy Hemenway
Date: 1/28/2013

1/28/2013 Memo from Ken Neeley and Sean Vincent/IDWR, re: relationship of ground water in a well in Twin Falls County to the Snake River

"Based on these hydrogeologic observations, and on the internal IDWR notes indicating that a seal had been placed from about 525 ft to 1,173 ft, we believe that the low-temperature geothermal producing zone in this well is not tributary to the Snake River."

1/18/2013 Memo, phone conversation w/Shelley Keen and Mike Kestler; assured Kestler Dept. received req, and would be reviewed

1/10/2013 Letter (Ltr) from Kestler, requesting a hearing before the Director; w/address: PO Box 1183, Twin Falls, ID 83303

Grounds for continuance of Kestler's permit:

- (1) Kestler received the 12/14/2012 letter on 1/8/2013 when he returned from trip to Arizona.
- (2) Kestler stated that he never received the 1st ltr referenced in the 12/14/2012 ltr
- (3) well's priority date, 1979; extension; substantial work and investment completed
 - (a) \$500 initial consulting fee w/Brockway
 - (b) \$12,000 in well pipe casing and valves
 - (c) \$2,000 backhoe trenching
 - (d) \$1,000 in 8" and 6" schedule 80 poly pipe
 - (e) intensive ground work done, due to canyon's rocky environment
- (4) the geothermal aquifer is a separate aquifer from the cold water aquifer (per Brockway Engineering)
- (5) use is primarily non-consumptive use, and benefits Idaho Power
- (6) Kestler stated that he did not have adequate time to respond to the 2nd ltr or obtain adequate counsel (former attorney, Lloyd J. Walker, who handled water right issues passed away)

12/14/2012 Ltr from the Director, ref prev ltr giving opportunity to file an objection w/SRBA; records show nothing has been filed
12/14/2012 Final Order Adding Clarifying Language to Assist the Dept. in Adm. Of WRs Entitled to Qualified Subordination (App. B List)

4/27/2011 Certificate of Service Appendix B, Page 10 (Michael Kestler PO Box 1183, Twin Falls, ID 83301) Subcase #00-91013

Court took proper steps to notify (same name and address)

3/12/2008 Issuance of License Ltr from the Dept.

3/11/2008 License, date of approval Recreation 0.02 cfs, Irrigation 0.08 cfs (2.5 acres), Heating 0.31 cfs, total: 0.31 cfs, 22.5 af
10/12/2007 Beneficial Use Field Exam Conducted, Irrigation 2.5 acres; Recreation (2)-500 gallon hot tubs; Heating (1)-home, 3-shops,

1-greenhouse, and 2-hot tubs

6/29/1999 Ltr from Lloyd J. Walker, attny., ref to commercial use.

5/17/1999 Third Field Exam Notice, from the Dept

5/3/1999 Field Exam Notice, to schedule a field examination

4/27/1999 Georgia Satterlee/IDWR, left a message w/secty./Nora
 12/29/1998 Field Exam Notice, to schedule a field examination
 8/9/1995 typed note in the file: 1 household (1400 sq ft), shop (3000 sq ft) that are heated; 4 acres w/60 adult tree & 40 young trees
 8/1/1995 Proof Acknowledgment Letter
 no date hand written field notes indicate well dug in 1968 - 1969
 4/30/1995 Proof Due Notice
 7/31/1992 Extension of Moratorium Memo
 4/13/1992 Ltr from Lloyd J Walker, attny, ref Permit No 47-7492, and question: if this is conditional moratorium & will the added burden affect the evaluation
 4/1/1992 Ltr from Dept to Lloyd J Walker, attny, ref: 5 yr moratorium is almost up, & dept is eval. Info. For approp. Action
 3/2/1992 Ltr from Lloyd J Walker, attny, ref: requesting Dept to prepare a proposed plan for development which recognizes the case and statutory law that has developed; decline in pressure and water availability from the aquifer;
 that Kestler was not a party to the CSI agreement and considers it of no force and effect
 5/2/1990 Ltr from Lloyd J Walker, attny, ref: received cost assessment for the monitoring well and will mail check opposed to cc: John Rosholt (CSI)
 the agreement must be explained by the Dept, or he must have it explained in court.
 4/27/1990 Cost Assessment for Monitoring Geothermal Wells (\$4.10)
 4/19/1990 Ltr from Lloyd J Walker, attny, ref: suggesting that Kestler should file suit against the Dept to have the agreement declared invalid.
 4/18/1990 Ltr from Dept to Lloyd J Walker, attny, ref: received Trust Water Questionnaire and \$20 readvertisement fee
 Kestler did not sign the agreement dated 7/22/1987, therefore isn't entitled to further development under permit until moratorium is lifted; no continuation order will be issued until moratorium is lifted
 irrigation purposes only after it has been used for some other use which utilizes the heat in the water
 4/11/1990 Ltr from Lloyd J Walker, attny, ref: failure to mail \$20, and check is enclosed w/ltr
 4/9/1990 **Trust Water Information Questionnaire; date Kestler signed form**
 Kestler marked "no" that land was not irrigated prior to October 1, 1984.
 Kestler stated error on permit, that it should be 0.75 cfs and not 0.31 cfs
 Kestler stated he had utilized water from well to irrigate landscaping on 6-acres, since land purchased in 1987
 4/5/1990 Ltr from Lloyd J Walker, attny, ref: returning form signed by Kestler; error on permit, that it should be 0.75 cfs not 0.31 cfs
 use of well since 1987 for landscaping on the 6 acres
 requesting legal status of this well in relation to the moratorium, and ability to correct clerical error
 3/26/1990 Notice of Pending Order Cancelling Permit
 2/20/1990 notice that due to Swan Falls litigation, dev. Proposed may have been delayed; complete questionnaire & submit \$20
 9/18/1989 Agreement Signed 7/22/1987 - Low Temperature Geothermal Water Source Near Twin Falls

copy of the agreement

9/6/1989 Ltr from Lloyd J Walker, attny, ref: did not receive agreement; his position has not changed, that the agreement doesn't

comply with Water Laws of the State of Idaho; why the moratorium? Walker stated that Kestler is not bound by the agreement nor by an unenforceable order, & CSI doesn't have ability to allocate the use of a natural resource.

8/30/1989 Ltr from Dept to Lloyd J Walker, attny, ref: review of 8/3/1989 ltr in connection w/Agreement signed 7/22/1987

& use of low temperature geothermal water in the Twin Falls area

On 7/24/1987 Director issued an Order Establishing a 5-yr Moratorium for a portion of TF Grd. Water Mgmt. Area.

Copy of the Order---some qualified dev. can occur.

Dev under permit 47-7606 doesn't appear to conflict w/moratorium or the agreement

8/9/1989 Ltr from Dept. ref: approved request for extension of time, beneficial use extended to 7/1/1995.

8/2/1989 Request for Extension of Time approved, proof of beneficial use extended to 7/1/1995

6/19/1989 Ltr from Dept. ref: receipt of request for extension, and that \$15 filing fee is still required to process

5/17/1989 Memo from Phil Rassier to Glen Saxton, ref Kestler Permit 47-7492

Subject to 5-yr moratorium order entered on 7/24/1987, for a portion of the Twin Falls Ground Water Mgmt. Area

Permit is for 0.31 cfs; since Kestler did not sign Agreement he is not entitled to further develop his right during the pendency of the moratorium.

Kestler is entitled to an extension, to allow him reasonable time to complete dev. After the moratorium is lifted.

Potential difficulty: if Jr. water rights to Kestler are dev. Pursuant to the Agreement during the moratorium period.

The result could be a lack of water available for Kestler to complete his development aft moratorium is lifted.

Kestler might then be required to challenge the validity of the Agreement to acquire a supply of water to complete his dev.

12/28/1988

Ltr from Lloyd J Walker, attny, ref: diff. understanding letter ref School Dist No 411 and its legal significance

Walker advised Kestler not to sign the proposed agreement of 7/22/1987. That it is unenforceable (paragraph 2)

That Kestlers well continues to decline during the period of moratorium because of dev. Of CSI and City of Twin Falls.

That the CSI agreement is in violation of State's statutes and case law. Their position is the agreement is in violation of State

Water Law and established no rights of any kind in the aquifer.

10/31/1988 Proof Due Notice

10/3/1988 Note in file by lgs, ref: "before taking action on this file, refer to moratorium agreement dated 7/22/1987, copies in 47-7606."

no date Agreement (copy)

7/24/1987 Order Establishing a Five Year Moratorium for a Portion of the Twin Falls Ground Water Management Area

2/25/1987 Ltr from the Dept. to Blaine Boley, ref: surface seal and casing waiver is granted

2/19/1987 Memo from John Beal to Glen and Norm, ref: approved a drilling plan for well in 1986. Waiver for surface seal (no problem)

2/17/1987 Hand written notes from JDE in reference to the well

2/3/1987 Hand written note from Leah Street to John Beal, ref the wells, and using the "Blaines Haliburton Method" ; examining casing

1/12/1987 Waiver request from Blaine Boley; additional information on the Kestler well

1/1/1987 Well Log completion date; geothermal, 10" casing, 1300 ft deep, 108 degree, artesian closed in pressure 78 psi; est 20 gpm

10/8/1986 Hand written note from J. Beal, ref: Leah Street indicated that the well is already 700 ft, 100 degrees and increasing.

10/8/1986 Ltr from the Dept to Blaine Boley, ref: drilling plan for the Kestler well is approved.

9/30/1986 Ltr from Boley & Henry Well Drilling (Blaine Boley Jr.), ref: proposal for drilling the well

9/30/1986 Cover Letter to Boley & Henry Well Drilling proposal, to John Beal, from Blain Boley Jr.

no date Hand written note from John Beal, ref: he's not aware of any hot wells within 2-3 miles (cold wells <300 ft)

9/1/1985 Ltr from Dept that Proof was not received before 7/1/1985

3/8/1985 Ltr from the Dept. ref: calling attention to undev. Water right; reports of declining pressure and temperatures; GWMA dept. monitoring, and continuing to monitor

6/15/1984 Extension of Time Approved, and extended to 1/1/1989

3/22/1984 Ltr from the Dept., ref: receipt of the Request for Extension of Time

3/8/1984 Receipt of \$15 extension fee

3/8/1984 Request for Extension of Time approved, proof of beneficial use extended to 1/1/1989

Brockway retained to investigate groundwater geology of area, & det. Feasibility of dev. Proposed hot-water well.

Cost: \$500 paid to Brockway.

1/4/1984 Lapse Notice

10/31/1983 Proof Due Notice

1/9/1979 Cover ltr from Dept. for approved application for permit

1/9/1979 Permit 47-7492 approved, with proof due on or before 1/1/1984

home heating 0.31 cfs (2-homes and garage), commercial 0.31 cfs (hot baths & swimming pool), irrigation 0.13 cfs (6.3 acre)

10/16/1978 Legal Notice

10/11/1978 Application for Permit submitted w/fees

CONCLUSION OF FINDINGS:

Filed prior to 6/30/1985: Yes. 1/9/1979 Permit 47-7492 1 was approved, with proof due on or before 1/1/1984.

<10/25/1984 Beneficial Use: No. Extension approved 3/8/1984; well drilled and completed on 1/1/1987

Prior to 10/25/1984:

Investment of \$15,000: No. \$1,000 pipe, \$2,000 trench, \$500 engineer = \$3,500 (cost of well, casing & valves = \$12,000, with no specific dates, and well was completed on 1/1/1987)

or 25% of the Project: No. 25% of the project would equal \$3,875 (this total included the cost of the well, casing & valves).

Trust Water:

No. See Memo written from Ken Neeley (not tributary to Snake, therefore not Trust Water)
1/28/2013 Memo from Ken Neeley and Sean Vincent/IDWR, re: relationship of ground water in a well in Twin Falls County to the

Snake River. "Based on these hydrogeologic observations, and on the internal IDWR notes indicating that a seal had been placed from about 525 ft to 1,173 ft, we believe that the low-temperature geothermal producing zone in this well is not tributary to the Snake River."

Response to correspondence within 15 days of notification (Idaho Statue 42-1701.a.3): Yes.

1/10/2013 Letter (Ltr) from Kestler, requesting a hearing before the Director; w/address: PO Box 1183, Twin Falls, ID 83303

Kestler received the 12/14/2012 letter on 1/8/2013 when he returned from trip to Arizona.