

April 18, 2012

To: Water Right File

From: Mathew Weaver 

RE: RAFN review analysis of water right permit 63-33022

Introduction

I have prepared this memo to summarize my review of the sufficiency of material submitted by SPF Water Engineering (SPF) and Givens Pursley, LLP (GP), on behalf of their client the City of Nampa, for the licensing of water right permit 63-33022 (permit). The permit authorizes the diversion of 4.50 cfs of groundwater for reasonably anticipated future needs (RAFN) municipal use. The permit was issued on October 5, 2009, with a two year development period. SPF submitted proof of beneficial use along with a field exam on December 3, 2010. Proof was submitted less than 14 months after the permit was issued, and less than 18 months after the permit RAFN planning analysis was completed.¹

At the time of submittal of proof, the complete improvements associated with the permit were not constructed and configured to meet the permitted diversion rate of 4.50 cfs. In addition, my review of the initial field exam report and attachments found that insufficient material and evidence was submitted to determine if, and to what extent, beneficial use consistent with the full RAFN had occurred. My previous correspondence with SPF and my memo dated January 17, 2012, detail my initial concerns. Since that time supplemental material has been submitted by both SPF and GP.

Compliance with Statutes

Idaho Code §42-217 Proof of Application to Beneficial Use, governs the requirements associated with providing a statement and proof of beneficial use for a permit. Item (4) details additional information, specific to RAFN municipal use, which must be included with the submittal of proof—it states the following:

In the case of a municipal provider, 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.

The following list describes the City of Nampa's compliance with §42-217 (4).

1. **Revised estimate of RAFN:** Due to the brief elapsed turnaround time between issuance of permit and submittal of proof, a detailed revised evaluation of RAFN has not been undertaken by the City of Nampa. It is GP's position that because of the short turnaround time there is no reason to believe that the RAFN will be less than projected at the time of permitting and they

¹ The turnaround time from issuance of permit to filing of proof is unusually short in this instance. Due to the adoption of condition 236 it is unlikely that proof associated with RAFN permits would be submitted in less than five years for future RAFN permits.

have indicated that there should be no change in the projected RAFN value. GP provides a single piece of evidence in support of their position. A planning study² conducted by the city, following the issuance of the permit, references the same demographics forecast used to project RAFN. The planning study contains this key point as emphasized by GP: The most recent census data shows that the projections in the demographics forecast are proving accurate or even a bit low. Refer to Chris Meyer's (GP) letter dated April 9, 2012. The implications being that one of the key factors in projecting RAFN is a projection of future population. Therefore, if the population projections have under predicted population, we can infer that RAFN was likely under predicted as well and thereby assume that the RAFN value is still valid at this time.

2. Revised description of service area: SPF and GP confirmed that the service area of the City of Nampa had not changed during the 14 months that elapsed from the issuance of the permit and the submittal of proof of beneficial use. Refer to Roxanne Brown's (SPF) letter dated March 20, 2012 and Chris Meyer's (GP) letter dated April 9, 2012.
3. Revised planning horizon: SPF and GP confirmed that the planning horizon of the City of Nampa had not changed during the 14 months that elapsed from issuance of the permit and the submittal of proof of beneficial use. The end of the planning horizon remains December 31, 2030, approximately 21 years from the date of the permit. Refer to Roxanne Brown's (SPF) letter dated March 20, 2012 and Chris Meyer's (GP) letter dated April 9, 2012.
4. Appropriate supporting documentation: Refer to discussion in the following section.

Compliance with AP Processing Memo #63

Administrative Memo Application Processing No. 63 (AP63) provides some guidance to Department staff when reviewing the beneficial use associated with RAFN municipal water rights. AP63 specifically outlines seven types of evidentiary documentation that can be submitted by the permit holder to support RAFN, in the likely event that full and complete beneficial use does not occur during the development period. The list included in AP63 is recreated in abbreviated form as follows.

1. Completion of detailed design supporting the full RAFN system
2. Financing plans demonstrating ability to pay for the full RAFN system
3. Completed environmental studies needed to support some or all of the RAFN system
4. Acquisition of lands needed to facilitate the construction of some or all of the RAFN system
5. Substantial construction of distribution mains needed for some or all of the RAFN system
6. Construction of the distribution system or storage needed for some or all of the RAFN system
7. Development of operations protocol needed to support the full RAFN system

² The City of Nampa adopted the *Nampa 2035 Comprehensive Plan* on February 6, 2012. News of the adopted plan was published on the City of Nampa's webpage in 2012. <http://www.ci.nampa.id.us/pages/departement-portal.php?deptid=21>

The list was not meant to be exhaustive and other types of evidence can be considered by the Department. AP63 clearly states that any *single* piece of evidence is probably not sufficient to determine that the full RAFN beneficial use requirement has been satisfied. Rather, the constructed capacity along with *multiple* examples of evidence should be considered as a whole, to determine if the beneficial use requirement has been met.

With the previous discussion in mind, the following list outlines my review of the constructed capacity and various forms of evidence submitted by SPF and GP. Evidence which SPF and GP feel demonstrates that the full RAFN beneficial use requirement has been satisfied.

1. SPF has sufficiently established that the constructed capacity of the well associated with this permit can produce a diversion rate equal to or greater than 8.50 cfs.³ A diversion rate of 8.50 cfs represents the combined diversion rate of this permit (4.50 cfs) and municipal water right 63-12543 (4.00 cfs), both of which identify the well under consideration as the point of diversion. Refer to Terry Scanlin's (SPF) letter dated February 14, 2012.
2. SPF has sufficiently established that the constructed capacity of water treatment facilities at the well site, and distribution system mains associated with the permit, have been designed and constructed to facilitate the full RAFN diversion amount. Refer to Roxanne Brown's (SPF) letter dated March 20, 2012.
3. Since construction of the well and appurtenances has already occurred, it is self evident that the land acquisition necessary to support the RAFN anticipated under this permit has also occurred.

Conclusions & Recommendations

It is my opinion that the permit holder has complied with the spirit and intent of Idaho Code §42-217 (4) and AP63. The permit holder, through their consultants and legal counsel, have addressed each of the specific items detailed in §42-217 (4). Although a detailed revisit of RAFN was not conducted, they have provided some evidence to validate the position that RAFN has not change since issuance of the permit— and if anything is under predicted. Due to the extremely short turnaround time between issuance of the permit and submittal of proof, it would seem unreasonable of the Department to require a detailed and potentially costly revised planning and engineering analysis of RAFN at this time.

The permit holder has also provided multiple forms of evidence and documentation consistent with AP63 indicating that acquisition of land, in addition to planning, design, and construction of improvements associated with the municipal water distribution system, have occurred consistent with meeting the needs of the full RAFN. I believe that the permit holder has satisfied the full RAFN beneficial use requirement as described in AP63.

It is therefore my recommendation that water right permit 63-33022 be licensed for the full RAFN diversion amount of 4.50 cfs.

³ Note, the capacity of the well should not be confused with the capacity of the pump(s). The capacity of the current pumping configuration is something closer to 3.12 cfs as established in my previous memo dated January 17, 2012. However, the current pumping configuration can be modified to support a larger diversion rate, consistent with the full RAFN build out, when required at some future date.