

MEMORANDUM

DATE: March 19, 2012

TO: Water Right File 29-7936

FROM: Shelley W. Keen 

RE: Beneficial Use

The evaluation of beneficial use in connection with Permit 29-7936 presents an unusual dilemma for IDWR.

On one hand, it is not certain that water from Chicken Soup Spring has been used to heat buildings within the city of Lava Hot Springs. A single motel appears to be the only hookup authorized by the city in the past, and the motel is not using the water for heating now. It is not clear whether the motel used the city system for heating in the past.

On the other hand, it is clear the city constructed a diversion and distribution system, diverted water, and made it available to its customers. The city argues that it is not its fault if few, if any, customers took advantage of the water for heating purposes.

The permit has at least one unique characteristic. Although the use is heating, the place of use was describes as being within the city limits of Lava Hot Springs. At the time the permit was issued, only municipal water uses typically received such a generally described place of use. I can only conclude that IDWR thought of the proposed water use as at least akin to a municipal water use.

Also at the time the permit was issued, municipal water rights could be established by constructing diversion capacity. Full beneficial use of that capacity was not required. (See Application Processing Memo # 28.) If the city believed its water right was essentially a municipal water use, of which heating was one possible component¹, then it may have believed that installation of a diversion system would be the standard for beneficial use.

In this case, neither choice sits well. There is no clear evidence that the heating use stated on the permit was accomplished. However, denying that beneficial use occurred would deprive the people of Lava Hot Springs the benefits of their collective investment and would fail to acknowledge the special status municipal water uses held under Idaho water law during the development period for the permit. Recognizing the dilemma, in issuing a water right license I choose to give the permit holder the benefit of the doubt.

¹ The exclusion of heating from the definition of "municipal purposes" in Idaho Code §42-202B(6) was added later.