



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 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

April 19, 2011

Givens Pursley, LLP
601 W BANNOCK STREET
BOISE, ID 83701

RE: WR Permits 63-12474, 63-12506, and 63-31243 and the Request for RAFN status.

Dear Mr. Chris Meyers,

You prepared two letters on June 16, 2010, the first of which requested that water right permit 63-12474 be licensed for a reasonably anticipated future needs (RAFN) municipal use, and the second letter requested the same for water right permit 63-12506. On August 3, 2010 you made this request a third time on behalf of water right permit 63-31243.

These letters indicate that it was the intent of the City of Nampa (City or applicant) during the preparation and submittal of all three applications that they were for RAFN municipal use. Although the intent may have been for the applications to be processed as RAFN, the Idaho Department of Water Resources' (Department) records do not support that use. Neither the applications nor the permits indicated that the water rights were intended for RAFN. Idaho Code § 42-202 requires that applications for RAFN must be accompanied by sufficient information and documentation to establish the reasonably anticipated future needs and the planning horizon of the municipal provider. No materials in support of the extra evidentiary burden associated with RAFN water rights were submitted by the applicant. The following excerpt from Application Processing Administrative Memo No. 18 (APM18) emphasizes this point.

Municipal providers can receive the full benefit of the 1996 Municipal Water Act if they file an application for RAFN and demonstrate future needs over an established planning horizon consistent with requirements in Chapter 2, Title 42, Idaho Code. The intent of a municipal provider to seek water for RAFN must be documented with the application for municipal use.

Since we cannot directly issue the water right licenses for RAFN, one might consider the option of amending the permits from non-RAFN to RAFN. Unfortunately, this is another option that cannot be

supported by the Department. Once again APM18 provides guidance regarding this specific matter as illustrated in the following except.

A permit issued to a municipal provider that does not provide for RAFN cannot be later amended to gain the benefits of an RAFN permit.

Included in the material submitted with your previous three letters was a letter-report by SPF dated July 28, 2009 addressing the "City of Nampa Potable Water Supply, Water Rights and Future Needs". Table 4 of this report identifies the contemporary peak hourly demand (PHD) for the City's potable water supply system as 25.02 cfs. Based on my analysis of the material submitted by SPF and the suite of water rights currently in the name of the City, I prepared a table summarizing all currently licensed and decreed municipal water rights that support the City's potable water system, see attached Table 1. In my analysis I identified a total of 35.21 cfs of available diversion rate. Because the combined total diversion rate of active licensed and decreed water rights exceeds the reported PHD need at the time beneficial use was submitted, I have not found an additional increment of beneficial use associated with water right permits 63-12474, 63-12506, and 63-31243.

With the foregone discussion in mind it is my intent to issue these water rights for non-RAFN municipal use, with the diversion rates recommended by the respective field exams, and the following condition.

The diversion rate associated with this water right in combination with all other water rights is limited to the combined diversion rate of all other City of Nampa water rights and the diversion rate of this water right shall not be included in any assessment of the combined diversion rate authority of the City of Nampa both prior and subsequent to the priority date of this water right.

Let me finally comment on your request to exclude the condition that, in paraphrasing your words, would limit the irrigation component of the municipal water use under these water rights to a supplemental use (condition code 102¹). While I appreciate the distinction that is made by the City regarding their separate non-potable and potable water distribution system, it is not necessarily a distinction shared by the Department. By means of a simple transfer the City of Nampa could modify the point of diversion(s) associated with any of their water rights, thereby taking a water right that they currently view to support the potable water system and modify it to support their non-potable system. Since annual volume limitations are not associated with the majority of the City's municipal water rights, the only thing that will prevent the possible enlargement of a water right in this scenario is the condition that you propose to remove. For this reason the Department cannot support the removal of the conditional language as requested.

¹ The following conditional language or some variation thereof, appears on water right permits 63-31243, 63-12506, and 63-12474 as conditions 7, 5, and 10 respectively. *"The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping."*

Please note that I have not completed my review of these water rights. I felt it important to make you aware of my intended direction as soon as possible. The City of Nampa's water right suite is large and complicated and it may very well be that I have overlooked a critical issue to this matter. As such I invite a discussion regarding these matters if you feel it is needed. However, if I have not heard from you within 14 days I will proceed in finalizing the water right licenses as described. I can be contacted by telephone at (208) 287-4914 or by electronic mail at Mathew.weaver@idwr.idaho.gov.

Respectfully,

A handwritten signature in black ink, appearing to be 'MW' followed by a long horizontal stroke.

Mathew Weaver, PE

cc: Roxanne Brown and Terry Scanlan, SPF Water Engineering, LLC.

Table 1 - City of Nampa Water Right Suite as of April 14, 2011
"Integrated Potable Water Delivery System"

WR No.	Type	Beneficial Use	RAFN Status	Diversion Rate	Source	Well Name
63-2779	Decree	Municipal	No	2.00	GW	No. 3
63-2781	Decree	Municipal	No	3.00	GW	No. 4
63-5258	Decree	Municipal	No	2.10	GW	No. 6
63-8324	Decree	Municipal	No	3.00	GW	No. 9
63-9180	Decree	Municipal	No	4.00	GW	No. 10
63-10212	Decree	Municipal	No	2.23	GW	No. 7
63-11511	License	Municipal	No	1.50	GW	No. 9
63-11729	License	Municipal	No	2.68	GW	No. 12
63-12463	License	Municipal	No	3.00	GW	No. 17
63-12543	License	Municipal	No	4.00	GW	No. 16
63-12591	License	Municipal	No	3.50	GW	No. 14
63-28219	Decree	Municipal	No	1.22	GW	No. 1 & No. 2
63-28220	Decree	Municipal	No	1.93	GW	No. 5
63-11894	License	Municipal	No	0.51	GW	Augusta Sub.
63-12322	License	Municipal	No	0.84	GW	Pheasant Hollow Sub.
Total:				35.51	cfs	

This table does not include pending applications or permits.

This table does not include WRs in the name of the city with beneficial uses other than municipal.

This table does not include WRs specifically conditioned to support the City's non-potable system.