

Weaver, Mathew

From: Jill Stevenson [jillstevenson@givenspursley.com]
Sent: Wednesday, January 18, 2012 12:35 PM
To: Weaver, Mathew
Cc: Spackman, Gary; Westra, John; Peppersack, Jeff; Baxter, Garrick; 'fussm@cityofnampa.us'; 'Lenard Grady (gradyl@cityofnampa.us)'; 'Kim Lord (lordk@cityofnampa.us)'; 'RBrown@spfwater.com'; 'shurley@spfwater.com'; 'TScanlan@spfwater.com'; 004628_0001 _ Water Rights Review E_Mail _ 004628_0001 <{F388186}.GPDMS@GP.DMS>
Subject: City of Nampa - Licensing of Water Right No. 63-31243 [IWOV-GPDMS.FID388186]
Attachments: CHM Ltr to Mat Weaver - responding to 12-23-11 email.PDF

Good afternoon Mr. Weaver:

Please find attached correspondence, dated January 18, 2012, from Chris Meyer relating to the above-referenced matter. If you encounter any difficulties accessing the attachment please do not hesitate to contact me. Thank you.

Jill Stevenson

Assistant to Christopher H. Meyer, Michael C. Creamer,
and Kelsey J. Nunez

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January 18, 2012

Mathew Weaver, P.E.
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mathew.weaver@idwr.idaho.gov

Re: City of Nampa — Licensing of Water Right No. 63-31243

Dear Mat:

Thank you for your email of December 23, 2011 (copy enclosed), which followed our prior correspondence of August 3, 2010 (my letter to John Westra), April 19, 2011 (your letter to me), and May 16, 2011 (my letter to you).¹

Although the Department has not been persuaded by some of the points I urged, it is important that we now focus on the path forward. Allow me to set out my further thoughts and questions below.

Non-RAFN vs. RAFN classification

As I see it, a central premise of the 1996 Act was to move away from the right-by-right approach to licensing, which resulted in a proliferation of water rights unconnected to projected needs. The 1996 Act instead mandates a portfolio-wide approach to RAFN quantification, as reflected in the AP Memo #18 guidance. Consequently, I should have thought it would follow that, once the quantification of the portfolio and future needs is completed, the Act's future needs protection would apply to all rights in that portfolio. I fear that labeling some rights within that

¹ In a separate email of January 13, 2012, you proposed an *Application for Amendment (for Licensing Purposes)* that would change the place of use to reflect Nampa's service area as identified in the *Beneficial Use Field Report*. This is necessitated by the fact that this right was originally permitted to United Water Idaho with a different place of use. That application and accompanying fee will be provided separately.

portfolio as "RAFN rights" and others as "non-RAFN rights" may lead to confusion in times of administration. Be that as it may, the City will follow the Department's approach.

What is most important is that we share a common understanding of how the Act will apply moving forward. As you know, the City of Nampa is contemplating filing, at some point, a system-wide transfer application covering all of its water rights. The intent would be to make every point of diversion an alternative point of diversion for every other water right (presumably divided into separate potable and non-potable systems). In doing so the City would undertake a new system-wide RAFN quantification with a longer planning horizon. Let us suppose that the evidence produced in that proceeding showed that the City's current and future demand had grown beyond what it demonstrated in 2009 in connection with the RAFN approval of Nos. 63-32835 and 63-33022. Assuming the Department approved this new quantification and approved the transfer, it is my understanding that the City's entire portfolio of rights—all of which would have been part of the transfer application, including No. 63-31243—would be entitled to be held for future needs. Would you please confirm that this is also the Department's understanding?

Additional increment of beneficial use analysis

I appreciate your decision to eliminate the quantity condition set out on page 2 of your April 19, 2011 letter. This will enable the right to be licensed in accord with the *Beneficial Use Field Report* for 2.60 cfs. This condition, had it been imposed, would essentially convert this into a zero-quantity appropriation. I agree with your conclusion that the AP Memo #18 guidance allows application of the pre-2009 policy of licensing this right based on installed capacity of the diversion works.

Water right condition 102 (the supplemental use only condition)

Thank you for providing the staff guidance regarding condition 102. I had not been aware of this guidance. One could debate the wisdom of this guidance, but this is not the time to do so. The more important issue for the City is understanding the effect of this condition.

I take comfort from your response in that, at least by implication, it appears that the condition is aimed at constraining which delivery system (potable versus non-potable) the right serves. That is, the condition is not intended to limit the uses that individual potable water customers might make of the water.

In any event, I trust we agree that this condition constrains how the right may be used today and is not intended to prohibit future transfers, which would be subject to injury and enlargement analysis at that time. Given that the City operates discrete potable and non-potable delivery systems today, the condition poses no practical problem as the systems are now configured. It is difficult, however, to predict the future and how conditions might change. The day may come when the City would need to adapt to changing circumstances and reconfigure its

Mathew Weaver, P.E.
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water delivery systems. The dual systems that make sense today may or may not make sense seventy-five years from now. I trust that the Department does not intend by this license condition to prevent the City from engaging in a lawful transfer process and using this municipal water right as needs dictate. At that time, and not before, the Department would evaluate whether the change would result in injury or enlargement.

I am sorry that we have not seen eye to eye on each of the issues presented in this licensing. In any event, I continue to appreciate, as does the City, the Department's cordial and professional approach to this discussion. We look forward to continuing to work with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Meyer", followed by a horizontal line.

Christopher H. Meyer

Encl: Mat Weaver's email of December 23, 2011

cc: Gary Spackman, Interim Director
Jeff Peppersack, Water Allocation Bureau Chief
John Westra, Manager, Western Regional Office
Garrick L. Baxter, Deputy Attorney General
Michael J. Fuss, Director, Public Works Department
Lenard Grady, City Engineer, Engineering Division
Kim Lord, Water Superintendent, Waterworks Division
Roxanne Brown, Stuart Hurley, and Terry Scanlan, SPF Water Engineering, LLC

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