

AUG 04 2010

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August 3, 2010

John Westra
Manager
Western Regional Office
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

Re: *City of Nampa - Water Right No. 63-31243 (Belmont Heights)*

Dear Mr. Westra:

I am writing on behalf of the City of Nampa (the "City") to submit to the Idaho Department of Water Resources ("IDWR" or the "Department") the *Beneficial Use Field Report* for Water Right No. 63-31243 dated July 16, 2010. This right previously served a separate delivery system for the Belmont Heights subdivision. The points of diversion for this right were recently connected to the City's integrated water delivery system for potable water. The City's *Statement of Completion for Submitting Proof of Beneficial Use* (dated June 30, 2010) is attached to the report as part of Attachment A. This report and proof is being submitted in advance of the proof due date, which was extended to October 1, 2011.

This cover letter addresses (1) whether the license should be issued as a reasonably anticipated future needs ("RAFN") water right and (2) removal of the supplemental use condition. This letter basically tracks two similar letters dated June 16, 2010 regarding the licensing of Water Right No. 63-12506 (Coventry Place) and Water Right No. 63-12474 (Well #11).

The enclosed field report was prepared by SPF Water Engineering. Please feel free to communicate directly with SPF and/or City staff, particularly as to technical matters regarding the field report.

RAFN

Water Right No. 63-31243 is a post-SRBA permit issued to United Water Idaho ("UWID") on September 24, 2001. UWID assigned the permit to the City on October 17, 2008 and the assignment was filed with IDWR on December 10, 2008.

The PODs associated with this water right are the City's two Belmont Heights wells (Belmont Well #1 and Belmont Well #2). The beneficial use field exam shows that the wells are capable of producing 2.60 cfs, which corresponds to the authorized diversion rate.

The permit application form did not inquire as to whether this was intended as an RAFN water right, and the Department did not request information on this point from either the City or UWID. However, as explained in the Affidavits of Michael Fuss and Greg Wyatt (which are attached to the *Beneficial Use Field Report*), the permit was originally sought for current and future need purposes by UWID, and the City continues to intend for this water right to be held, along with other water rights in its portfolio, for both current and reasonably anticipated future needs. Accordingly, on behalf of the City, I ask that this water right be licensed as an RAFN right at the permitted quantity of 2.60 cfs.

The City of Nampa has established a planning horizon pursuant to the Municipal Water Rights Act of 1996. This planning horizon was established in connection with Water Right Nos. 63-32835 (Coyote Springs) and 63-33022 (Well #16, 2nd right) in response to a January 20, 2009 letter from you to Roxanne Brown of SPF Water Engineering (the City's water rights engineers). To our knowledge, this was the first time the Department sought clarification from the City as to whether its permits were sought for RAFN purposes.

On March 5, 2009, I responded on behalf of the City to the January 20, 2009 letter. My letter confirmed that "the City wishes to bring all of its water rights within the protection of the 1996 Municipal Water Supply Act" and that "the City does intend to seek additional appropriations under these applications to serve RAFN." March 5, 2009 letter at page 2.

On July 28, 2009, I wrote again providing detailed information about the City's potable water rights portfolio. That letter relied on a report of the same date by the City's water rights engineers, SPF Water Engineering, which was included as an attachment.

The July 28, 2009 letter and report documented the City's 2030 planning horizon and quantified RAFN through the year 2030 at 58.38 cfs. The July 28, 2009 letter and report also quantified the City's current portfolio of potable rights for purposes of comparison to its future needs. The potable water right portfolio (including the two permits then being sought) totaled 56.13 cfs (53.45 cfs for the then integrated system plus 2.68 cfs for components that might be integrated later).¹ This comparison demonstrated that the City's future needs through the year

¹ Permit 63-31243 was included in Table 2 of the SPF report as one of the City's "isolated wells" totaling 2.68 cfs. This number, added to the total from Table 1 of the SPF report listing 43.95 cfs of integrated system wells, plus 9.50 cfs sought for Permit Nos. 63-32835 and 63-33022, produces a total of 53.45 cfs.

2030 exceeded what was available under its potable system portfolio, and that Water Right Nos. 63-32835 and 63-33022 would be needed to meet that future need. On this basis, the Department issued permits for those rights formally recognizing them as RAFN rights.

It bears emphasis that the quantification of future needs in my July 28, 2009 letter expressly included Water Right Nos. 63-12474 (Well #11), 63-31243 (Coventry Place), and 63-31243 (Belmont Heights) and identified them as part of the portfolio of rights held by the City for RAFN.² In other words, these rights were included as water rights available to meet future needs.

Accordingly, a license for Water Right 63-31243 would recognize this water right as an incremental supply for the City's RAFN within the already recognized 2030 planning horizon for the City.

The City of Nampa has worked diligently to update its water supply and water right master plans. Because the permit does not refer to RAFN, the City lacks certainty concerning the development of Water Right No. 63-31243. For this reason, the City respectfully requests a license be issued for Water Right No. 63-31243 as soon as possible. This will clarify the status of the water right for RAFN and allow the City to proceed with its planning process, which includes a contemplated application for transfer to integrate points of diversion for the City's water rights.

Condition No. 7

Permit condition number 7 of Water Right No. 63-31243 provides: "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." The effect of this condition is to declare this right to be "supplemental use only" with respect to irrigation.

We believe this condition was included in the permit in error and that it should not be included in the license. This water right is used in the City's potable water rights system and would not ordinarily be used for lawn or other irrigation. Obviously, the City cannot allow untreated surface water into its potable water system. Instead, irrigation needs within the City are served by a separate irrigation system supported by a separate portfolio of surface water rights and other entitlements. The City has no way to control what uses a customer might make

² The quantification set out in the July 28, 2009 letter and report noted that Water Right No. 63-31243 (Belmont Heights) at that time was not part of the City's integrated potable water system. The well associated with that right was subsequently connected to the City's potable system. The July 28, 2009 letter quantified the Belmont Heights right and two other very small ones, Nos. 63-11339 (Model Airplane Club) and 63-63-20264 (unnamed well), separately, noting that they were not then part of the integrated potable water delivery system. That letter, nevertheless, noted that they may be made part of the integrated system in the future and included them in the RAFN calculation. As stated above, the Belmont Heights wells have now been integrated into the City's potable water system.

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of its potable water system, and the City should not be expected to monitor or regulate incidental irrigation uses that conceivably might occur. Inclusion of this condition could lead to confusion in the future, particularly in the event of conjunctive administration. It could also be a complicating factor in future efforts by the City to further integrate its points of diversion, to quantify its water supply, and to undertake longer-term RAFN planning exercises.

I thank you for meeting with SPF and me on April 23, 2010 to discuss this and other City water rights, and I thank you and your staff for your ongoing efforts to assist the City in managing its water rights. SPF remains the City's lead consultant for water rights matters, while I serve as the City's special water rights counsel. We would appreciate IDWR's continued efforts to provide copies of correspondence concerning the City's water rights to both me and Roxanne Brown of SPF. We will do our best to coordinate our communications with each other, the City, and the Department.

Sincerely,



Christopher H. Meyer

Encl: *Beneficial Use Field Report* (dated July 16, 2010), including as attachments thereto:
 Statement of Completion for Proof of Beneficial Use (dated June 30, 2010)
 Affidavit of Michael J. Fuss (dated June 14, 2010)
 Affidavit of Gregory P. Wyatt (dated June 11, 2010)
Copy of my letter to John Westra (dated July 28, 2009), including as an attachment thereto:
 SPF letter report on future demands (dated July 28, 2009)

cc: Michael J. Fuss, Director, Public Works Department
 Lenard Grady, City Engineer
 Kim Lord, Superintendent, Waterworks Division
 Roxanne Brown, Stuart Hurley, and Terry Scanlan, SPF Water Engineering, LLC

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