



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

May 13, 2011

Angela Taylor, PE
Taylor Engineering, Inc.
245 E. Main St.
Pullman, WA 99163

RE: City of Potlatch Wastewater Improvement Project

Dear Ms. Taylor:

I have reviewed your letter requesting comment on the City of Potlatch's plan to land apply its treated wastewater. It does not appear that your selected alternative will require construction within the Palouse River. However, if your plans ultimately require an additional force main across the river or other construction in the river channel, a stream channel alteration permit from IDWR may be required. Application forms for the stream channel protection program may be obtained at:

<http://www.idwr.idaho.gov/RulesStatutesForms/StreamChannel/StreamChannelForms.htm>.

As for water right requirements for the project, the question is difficult to answer because the law regarding the use of wastewater by municipalities has not been fully developed in Idaho. IDWR recently received a request from an engineering firm working for Rockland Water & Sewer Association to comment on a proposal similar to your proposal for the City of Potlatch. The Rockland proposal was discussed at length by IDWR administrators and legal counsel. My comments are drawn largely from IDWR's response to Rockland.

Under current IDWR policy, a water right filing is not required if the land application of waste water is proposed on land with an existing water right for irrigation purposes. For example, a dairy does not need a water right to mix its wastewater with water from another source for land application on cropland, so long as the water from the other source is diverted pursuant to a valid water right. If the proposed land application site is not covered by a valid water right, a water right filing is required to authorize the land application. I find no record of a water right authorizing irrigation at the proposed Potlatch wastewater land application site. Therefore, IDWR will require a water right filing to cover the water use at the land application site. The primary purpose of the filing would be to enable IDWR to track the land application activity and distinguish it from unauthorized water uses. The City has a couple of filing options. It could update the service area for its existing water rights, or it could apply for a new water right.

For most water users, if the proposed land application of wastewater would occur on cultivated fields and a water right did not exist for the beneficial use at the proposed location, a water right

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transfer would be required to authorize the larger place of use for the water right from which the wastewater originates. A transfer to add the location of the land application of wastewater would not be considered an enlargement of the water right, which could not be authorized, but it would have to meet other statutory criteria for approval. For a municipal water right, however, a transfer may not be required to change the location of the place of use, but IDWR must be provided an updated map of the service area of the existing municipal water right(s), including the land application area. The City of Potlatch currently has two water right claims (87-4042 and 87-4043) and two water right licenses (87-7004 and 87-7124) totaling 0.70 cfs.

The difference in approach between municipal water rights and water rights for other purposes results from the statutory definition of municipal use. Idaho Code § 42-202B defines “municipal purposes” as:

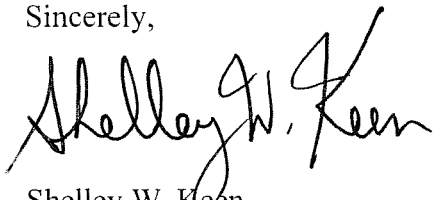
[W]ater for residential, commercial, industrial, irrigation of parks and open space, and related purposes, excluding use of water from geothermal sources from heating, which a municipal provider is entitled or obligated to supply to all those users within a service area, including those located outside the boundaries of a municipality served by a municipal provider.

IDWR interprets “related purposes” to include land application of wastewater from the municipal system since adequate disposal of the waste is an obligation of the city. This interpretation by IDWR applies only to wastewater; it does not include the direct application of water from the municipal system to grow crops on agricultural land.

Another option for Potlatch would be to file an application to establish a new water right for the beneficial use of wastewater at the land application site. Water right application forms are available at <http://www.idwr.idaho.gov/RulesStatutesForms/WaterRights/WaterRightForms.htm>.

If you have questions, please call or email.

Sincerely,

A handwritten signature in black ink, reading "Shelley W. Keen". The signature is fluid and cursive, with the first name being the most prominent.

Shelley W. Keen
Water Rights Section Manager