

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

**IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 69327 FOR WATER RIGHT)
NO. 63-9276 IN THE NAME OF CITY OF)
BOISE PARKS & RECREATION DEPT.)**

**PRELIMINARY ORDER
REJECTING APPLICATION**

FINDINGS OF FACT

1. Application for Transfer No. 69327 ("application") was filed on March 15, 2001 by the City of Boise, Parks and Recreation Dept. ("applicant") to change the point of diversion and place of use for water right 63-9276.
2. Water right 63-9276 authorizes the use of ground water for municipal purposes. The applicant proposes to change the point of diversion from a low temperature geothermal well, the Gamble Well, approximately three miles to a cold water source, the Warm Springs Golf Course ("WSGC") Well. The application described the reason for the change as a "New point of diversion and place of use at Warm Springs Golf Course. Water will be utilized for supplemental irrigation and recreation/aesthetic uses."
3. The WSGC Well was originally drilled and cased to a depth of about 470 feet. Sometime prior to the mid-1990s the well partially collapsed, resulting in a well about 192 feet deep. This well is therefore considered to intercept shallow ground water tributary to the Boise River within the fully appropriated reach of the river.
4. There is no information available to IDWR to support a hydraulic connection between the Gamble Well and the cold water aquifer associated with the WSGC well or between the Gamble Well and the Boise River.

5. On August 26, 2008, the Idaho Department of Water Resources (IDWR) sent a letter to the applicant requesting additional information to demonstrate a hydraulic connection between the low-temperature geothermal well and the cold water aquifer associated with the WSGC Well. The letter also indicated that ground water shallower than 200 feet in the vicinity of the WSGC well is considered tributary to the fully appropriated reach of the Boise River. The letter indicated that without a timely reply, IDWR will issue a preliminary order to deny the application.
6. The applicant responded with a September 12, 2008 letter. The applicant did not provide information to support a hydraulic connection between the low-temperature geothermal well and the cold water aquifer associated with the WSGC Well and did not provide information addressing injury to rights from the Boise River. The applicant made additional written requests through January 21, 2009 for the application to be approved without providing the information previously requested by IDWR.
7. IDWR denied the requests in a February 24, 2009 letter to the applicant, reiterating the issues regarding a hydraulic connection between the two aquifer sources and again noting injury issues relating to the fully appropriated reach of the Boise River.
8. The applicant responded in a March 24, 2009 letter. The letter discussed IDWR policy decisions and alluded to possible mitigation for Boise River water rights without providing enough information for IDWR analysis.
9. IDWR replied with a May 15, 2009 letter. The reply summarized the issues and the lack of information from the applicant to adequately address the issues. IDWR sent another letter on January 5, 2010 in this regard, noting a previous example of successful mitigation for Boise River issues.
10. The applicant provided a mitigation plan on January 27, 2010. Proposed mitigation would include annual leases from the Boise River Rental Pool whenever the WSGC well would be used.

11. IDWR has not issued water right approvals based on mitigation plans in which mitigation water could not be assured to be available for at least a significant amount of time. IDWR summarized that policy in a February 19, 2010 letter to the applicant. The applicant replied with a March 9, 2010 letter. The applicant rejected the IDWR policy determinations for this application. The applicant repeated its plan to lease rental pool water to mitigate the Boise River.

12. IDWR made numerous requests for additional information from the applicant to demonstrate a hydraulic connection between the Gamble Well and the WSGC Well and to adequately address mitigation for the Boise River. The applicant failed to provide sufficient information.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, controls the authority to change the point of diversion and place of use of a water right in pertinent part as follows:

“The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby...In the event the director of the department of water resources determines that a proposed change shall not be approved as provided in this section, he shall deny the same and forward notice of such action to the applicant...”

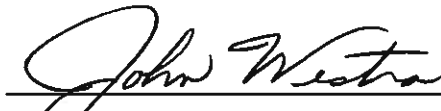
2. Without the additional information requested from the applicant, IDWR cannot ascertain if injury would occur to other water right holders due to the changes proposed in the application.

3. The application should be rejected due to insufficient information to support the application.

ORDER

IT IS HEREBY ORDERED that Application for Transfer No. 69327 is **REJECTED**. The application can be re-filed based on information demonstrating (a) a hydraulic connection between the low-temperature geothermal well and the cold water aquifer associated with the WSGC Well, and (b) that proposed diversion from the WSGC Well will not injure other water rights hydraulically associated with the shallow ground water source.

DATED this 16th day of March 2010.



John Westra
Western Regional Manager

CERTIFICATE OF MAILING

I hereby certify that on the 17th day of March 2010 I mailed a true and correct copy, postage prepaid, of this Preliminary Order to the applicant listed:



Denise Buffington
Administrative Assistant

**ATTN MARIA MINICUCCI
BOISE PARKS & RECREATION
1104 ROYAL BLVD
BOISE ID 83706-2840**