



State of Idaho

DEPARTMENT OF WATER RESOURCES

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May 15, 2009

RECEIVED

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

JAMES R HALL, DIRECTOR
BOISE PARKS & RECREATION
1104 ROYAL BOULEVARD
BOISE ID 83706-2840

MAY 18 2009

WATER RESOURCES
WESTERN REGION

Re: Application for Transfer No. 69327, Water Right No. 63-9276

Dear Director Hall:

This letter is a response to your letter to Gary Spackman dated March 24, 2009 for the application referenced above. The application proposes to change the point of diversion for Water Right No. 63-9276 from a low temperature geothermal ground water source to a cold water ground water source which is tributary to the Boise River.

As indicated in prior correspondence, IDWR has concluded that water in the production zone for the low temperature geothermal well is not hydraulically connected to the shallow, cold water well. As a result, it is likely that the proposed change in point of diversion would result in a net reduction in flows of the Boise River. IDWR cannot approve a transfer that would injure other water rights.

In your letter you noted that License No. 63-9661, diverted from the same well proposed in the application for transfer, includes a condition precluding deepening the well to avoid injury to senior rights. The condition was included with the approval of the amended permit, issued in January 1996, to protect senior ground water users in the SE Boise Ground Water Management Area. You correctly noted that there is no condition to address protection of existing Boise River water rights. IDWR did not generally begin approving applications for permit with conditions requiring mitigation for use of ground water to protect existing Boise River rights below Lucky Peak until later in 1996 (a guidance document was issued to IDWR staff following a letter from the Director of IDWR in March, 1996). As you noted, IDWR issued the water right license for Permit No. 63-9661 just recently; however, the purpose of a license is to confirm beneficial use established under authorization of a permit, so IDWR would not impose specific mitigation requirements on a license unless required under the permit.

I appreciate your suggestion to resolve the injury concern identified for Transfer No. 69327 through recharge using ponds to provide replacement water to the Boise River. The Department would consider a mitigation plan for recharge to the shallow aquifer to resolve the injury concern if the mitigation plan properly identifies the right(s) and its

availability to be used for mitigation and addresses authority to use the water as proposed. Since use of Boise City Canal Co. water is proposed, a water right transfer filed under authority of the canal company to change the nature of use of a portion of their right(s) to ground water recharge would be necessary to provide authority to use the water for recharge instead of irrigation. In addition, the transfer would require identification of specific acres under the canal company water right(s) to be dried up to accomplish the change to recharge.

If you have questions about this process, you may contact me at 287-4948. Gary Spackman's offer to conduct a conference on this matter is still available to you or your staff if that would be helpful.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeff Peppersack', is written over the typed name.

Jeff Peppersack, Chief
Water Allocation Bureau

Cc: ✓ Steve Lester, Western Region
Gary Spackman, Administrator