



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

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January 13, 2009

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

THOMAS J BUDGE
RACINE OLSON NYE BUDGE & BAILEY CHTD
PO BOX 1391
POCATELLO ID 83204-1391

RE: Water Right Permit No. 29-8171

Dear Mr. Budge,

I received your letter dated December 3, 2008, requesting that the license for water right permit no. 29-8171 ("permit"), for the City of American Falls ("City"), be issued with a maximum diversion rate of 3.21 cfs. You indicated that this flow rate can be diverted from a combination of the City's wells and is necessary to meet the reasonably anticipated future needs of the City. You asked that I contact you if additional information was needed to issue the license with a diversion rate of 3.21 cfs.

The well developed under this permit is commonly referred to as Well No. 6. IDWR records indicate that the maximum rate of diversion used from this well prior to submission of the Proof of Beneficial Use statement for the permit was 2.67 cfs. The City holds five other water rights for municipal purposes; 29-2460 (4.68 cfs), 29-2510 (2.42 cfs), 29-4421 (0.68 cfs), 29-7821 (3.12 cfs), and 29-7822 (0.81 cfs). The total combined diversion rate authorized by these rights, from 9 points of diversion, is 11.71 cfs. IDWR records indicate the sum of the maximum diversion rate from each of the City's points of diversion is 14.92 cfs. However, the sum of the well capacities does not necessarily represent the capacity of the municipal water delivery system nor does it suggest that this flow rate has been beneficially used by the City for municipal purposes. As described in the licensing amendment cover letter, IDWR will issue a license with a maximum diversion rate of 2.67 cfs unless you can show that the City's municipal supply system is capable of distributing and using more than this rate in addition to the City's prior water rights. If available, please provide evidence of the water delivery system capacity such as records of peak customer demand.

While Idaho Law allows for the appropriation of water for reasonably anticipated future needs ("RAFN") for municipalities, this permit was not issued or amended to provide water for RAFN within a planning horizon. For your reference, I have enclosed a copy of IDWR Administrative Memorandum, Application Processing No. 63, regarding municipal water rights. A question occasionally posed to IDWR regarding the 1996 Municipal Water Rights Act ("1996 Act") is whether a municipal provider can amend an existing permit for the purpose of providing water for RAFN. An existing permit held by

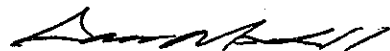
a municipal provider can be amended to provide water for RAFN over a planning horizon if the permit was issued prior to the effective date of the 1996 Act and proof of beneficial use has not already been submitted for the permit. Permits issued after the effective date of the 1996 Act may not be amended to provide water for RAFN because the permit holder had the opportunity to use the provisions of the 1996 Act when the permit was obtained.

The Department will issue a license with a maximum diversion rate of 2.67 cfs, the maximum diversion rate used from Well No. 6, unless you can show that the City's municipal supply system is capable of distributing and using more than this rate in addition to the City's prior water rights for municipal use. If such evidence is available, please provide it within thirty (30) days.

The City is in receipt of the Application for Amendment form which depicts the elements of the water right as they will appear on the license when it is issued. If you concur with the information presented, please return the signed amendment form and the requisite \$50.00 filing fee.

If you have any questions, please contact me at (208) 287-4943.

Sincerely,



Aaron Marshall
Sr. Water Resource Agent

Enclosure(s)

C: Pete Cortez – City of American Falls