

MEMORANDUM

TO: Gary Spackman and Jeff Peppersack

FROM: Steve Lester 

DATE: May 26, 2005

RE: Policy Questions for Municipal Transfers

This is a request for guidance on municipal transfer questions. This might involve allocation, adjudication and/or legal issues. The request comes from a couple cases pending or proposed to Western Region. I discussed this with John W. and it was agreed to seek your advice before responding to applicants.

Unresolved issues include separate aquifer sources and enlargement of use.

Case 1 - existing transfer application for City of Boise – change P/D, P/U & Aquifer

Boise City now owns a municipal license associated with United Water's 86° F. Gambel Well in Hulls Gulch. UW retired the well about 10+ years ago. City seeks to transfer the right to the cold water well at Warm Spring Golf Course (WSGC) for a discrete municipal P/U at the golf course. Use at WSGC will mostly supplement primary irrigation provided by Boise City Canal Co. plus minor other uses at WSGC. Apparently UW has not provided municipal water to WSGC in the past (Maria Minicucci for Boise Parks verbally confirmed that UW lines have not been available for the golf course). I've already coordinated with Jeff and Dave T. regarding other parallel processing issues (right is valid, okay to have limited municipal P/U etc.).

Transfer Policy Memo item 5c(7) concludes that a transfer cannot be approved to change to a separate aquifer. However, the 6/3/1988 Boise Front GWMA management policy encourages if not requires that uses from low temperature geothermal wells be replaced with cold water wells¹ ... clearly separate aquifers. The Gambel Well is hot while the WSGC well is not. Perhaps the Boise Front policy should trump the transfer policy in this instance (local public interest, conservation/highest use of resources), allowing cold water to replace hot water although to serve a site within the UW service area not previously covered by the latter source.

The remaining issue concerns enlargement of use. Presumably some portion of municipal use within UW service area would be retired to provide water for the golf course. Of course, there probably will not be any reduction. Even if reduction did occur, the retired uses could be made whole under other UW municipal rights. So the issue of enlargement might not be a critical factor

¹ Objective A3 from page 9 of the management policy states that "IDWR will require the substitution of cold water resources for existing uses that do not need the heat value of the low temperature geothermal resource, wherever practical." Heating is not part of municipal use according to I. C. § 42-202B(6). Therefore, municipal use from the Gambel Well should be discontinued if practical.

← T. 69327

due to the uniqueness of municipal use. Another take on it is this: UW customers did not retire any use but UW retired use of the Gambel Well, providing sufficient "reduction in use" under the municipal idea to allow the transfer to proceed (weak?).

On the other hand, can a municipal right be enlarged in a transfer simply because of its unique character? Might the answer be determined by who gets the benefit: another municipal provider vs a private party? How should enlargement be evaluated in this case?

Case 2 -possible transfer for Terteling – change P/D, P/U, Nature & Period of Use

This is a pitch from Honsinger & Squires for Terteling. Terteling will acquire a UW municipal right as part of an IMAP settlement of Terteling's protest. The municipal right is associated with the Cartwright Well located below Simplot's hill next to Cartwright Road. That is a warm water well (about 81° F.) with poor water quality. They said UW records show that the well has only been used during the irrigation season. The right provides 0.52 cfs or the equivalent of 26 acres of full irrigation.

Terteling wants to transfer the right to his nearby cold water wells at "Cartwright Road homestead" to serve a proposed PPU to be created under another possible but more traditional transfer. If successful, the Cartwright Well right will add 26 acres to the PPU. None of Terteling's hot water wells in/near Water District 63-S will be involved with any of this.

Assuming reliable data exists and that UW has used this right only to serve peak irrigation season demands, applicant can probably make a good case to transfer the right from municipal to irrigation use. A side benefit would be retiring the use of an "almost hot water well" within the Boise Front.

[Incidentally, Charlie/Ed said this municipal right was deliberately excluded from IMAP since UW knew it would not rely on this well in the future. According to the IMAP file as far as I can tell, the *well was excluded* (IMAP Tab N pg. 3) but the *right was included* (IMAP Tab J pg. 3). Obviously, UW would have to amend IMAP to exclude this right. That amendment would trigger comment letters to IMAP parties.]

Assume that validity, ownership etc. issues are successfully addressed. The separate aquifer issue is probably not germane since the Cartwright Well is almost but not quite a low temperature geothermal resource. The same enlargement question exists: what is retired within UW service area? Does anything beyond the use of the Cartwright Well have to be retired? Can a party not qualified as a municipal provider benefit from the unique nature of a municipal right in a transfer?

Thanks for the help. I suspect we might see more of this based on UW's less desirable wells. Please let me know if you need more information.