



State of Idaho

DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

October 28, 2005

Josephine Beeman, Esq.
Beeman and Associates PC
409 W Jefferson St.
Boise, ID 83702-6049

Re: *Pocatello's Biosolids Well (Water Right 29-7770)*

Dear Jo:

I am responding to your letter dated April 28, 2005 relative to the City of Pocatello well described by Water Right No. 29-7770. At a meeting this summer I mentioned the results of our analysis in this matter, but this letter provides a written response. I apologize for the lateness of this reply.

After receiving your letter, I requested from Mr. Jeff Peppersack of this office an analysis of the proposal, posing the question: "Did IDWR err in issuing 29-7770 with an irrigation use?" A copy of his reply, dated June 23, 2005, is enclosed. Jeff's assessment is that IDWR did not err in issuing water right no. 29-7770 with an irrigation use. In our earlier discussions we had indicated a willingness to review this matter with the potential of issuing an amended license if an error had been made. Based on this follow-up analysis, we are not planning to issue an amended license.

During our meeting this summer I indicated that an alternative to the issuance of an amended license for this water right is modification of the nature of use via a water right transfer. Such a transfer would entail continuance of the acre-foot limitation established by the license, but if approved it would broaden the uses to which the water could be applied. From our perspective, to avoid competing processes, it would be preferable to wait until a partial decree is issued to file the application for transfer.

If you have questions relative to this letter, feel free to contact me at 208-287-4800.

Sincerely,

David R. Tuthill, Jr., Ph.D., P.E.
Administrator, Water Management Division

Enclosure: Memo from Jeff Peppersack dated June 23, 2005

MEMORANDUM

Date: June 23, 2005

To: Dave Tuthill

From: Jeff Peppersack

Re: Review of License 29-7770

This memo addresses your question "Did IDWR err in issuing 29-7770 with an irrigation use. I have reviewed the water right file and found the following:

The application for permit was received in May, 1984 from the City of Pocatello with a proposed use of irrigation from a ground water source. The remarks on the application indicated that the permit is necessary to supply irrigation water for a farming operation. The remarks also indicated that treated sludge will be applied to the farmland as fertilizer and soil conditioner and the well is necessary to irrigate crops.

On July 1, 1987, the department received a letter from the city that included the following statements:

"...please be aware that the proposed use for waters described in the permit application is for irrigation of 286 acres of farmland. The farm is owned and will be operated by the City of Pocatello. The purpose of the farming operation is to provide a crop and soil system which will allow for utilization of stabilized domestic sewage sludge to be transported from our municipal wastewater treatment plant and be applied to the land as a crop nutrient source and soil conditioner.

Because of the intended use of the land and water we would request your assignment of our water application as a DCMI as defined in the State Water Plan."

The department responded with a letter dated July 28, 1987 and indicated that the use cannot be considered domestic, commercial, municipal or industrial (DCMI) as requested. The department's letter did not provide reasons for the decision. However, the department's Administrator's Memorandum, dated November 15, 1979 (Application Processing No. 18), defined municipal use to include irrigation and other uses within the corporate limits of a municipality. That policy may have been the basis for the decision to maintain the description as irrigation use.

The permit was issued in December, 1989 for irrigation use. Proof of beneficial use was received in March, 1990 indicating irrigation use.

At the time of licensing, "municipal purposes" was more clearly defined by statute (Section 42-202B, *Idaho Code*) and includes "irrigation of parks and open space." That definition has generally been interpreted by the department to exclude irrigation for agricultural crop production purposes. That interpretation may be debated, but the time for debate would be at the time of permitting or licensing.

Although the primary purpose for the city's farming operation may have been for the disposal of treated solid waste, it is clear that the primary use of water under the water right was for irrigation of agricultural crops. In 1997, the department approved a transfer filed by the City of Boise for a similar solid waste disposal project; the purpose of use was described as irrigation.

License 29-7770 was issued in January, 2003 for irrigation use. The license was issued as a preliminary order of the department; no appeal or petition for reconsideration was submitted and the approval order became a final order of the department.

The department considers requests to amend licenses based on a clear showing of computational or clerical errors that the department was unaware of at the time of licensing. The determination of purpose of use is often a matter of judgment, especially when two or more recognized uses may describe the actual beneficial use of water developed by a permit holder. The purpose of use associated with 29-7770 was raised as an issue prior to permit approval and considered by the department at that time. It would be difficult to characterize that judgment call as a computational or clerical error. In addition, the decision could have been debated at the time of licensing through a petition for reconsideration; it was not.

My conclusion is that IDWR did not err in licensing 29-7770 as irrigation use.