

MEMORANDUM

DATE: August 29, 2007

TO: Dave Tuthill

FROM: Shelley W. Keen SWK

RE: City of Eagle's Water Supply Bank Application

I understand that you will be meeting with officials from the City of Eagle to discuss the city's application to rent 2.4 cfs and 400 af from the Water Supply Bank. I have attached Aaron Marshall's response to the rental application. I have had a number of conversations with Bruce Smith about the City of Eagle's objectives, and I still concur with Aaron's analysis.

Gary Spackman is the hearing officer for two City of Eagle applications for permanent water rights. The applications describe the city's service area as the place of use, but they apparently are intended to provide capacity for two new developments, Eaglefield and Legacy, which will consist of 2000 homes. Water is to be diverted from new wells in the vicinity of the new developments. Gary issued a preliminary order last month, and the protestants petitioned for reconsideration. Gary's response -- probably a revised preliminary order -- is due any time. Gary is addressing questions of water supply and injury, although injury seems to be the main issue.

According to Bruce Smith, Eagle is concerned that appeals will tie up the applications for permanent water rights for years. The WSB application is intended to provide an interim supply of water to a proposed development called Lanewood, which is adjacent to Eaglefield and Legacy. Mr. Smith told me that the city intends to divert water for Lanewood from at least one of the points of diversion proposed in the applications that Gary is ruling on. He said the city could not accept a WSB approval limited to its existing PODs because it would require laying 3.5 miles of new distribution line.

In other situations IDWR has used the WSB for "bridge loans" until permanent water right or transfer applications could be processed.¹ However, those rentals typically occurred before the applications were advertised and protested. In this case, the protests to the permanent applications and the preliminary order show that there are real questions about the proposal to divert and use water in area.

We have two concerns about the WSB application. First, issuing a WSB approval for diversion from one of the wells proposed in the contested applications could appear to predispose IDWR to a particular stance and prejudice the outcome of the contested cases. At a minimum, it would

¹ Using the Water Supply Bank for "bridge loans" until permanent approvals can be issued is counterproductive because IDWR has to commit staff time to processing two applications for the same purpose.

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appear to circumvent Gary's pending decision. Second, it may not be in the public interest for subdivision development to be based on a temporary, tenuous source of water. I asked Mr. Smith if the developers would be building and selling homes in Lanewood during the time the city proposes serving it with WSB water. He said he did not know, but wouldn't rule it out. What would happen to homeowners if the WSB rights were no longer available and the new permanent rights were not approved?

In addition to these concerns, we also have not identified rights that are clearly suitable for rental to the City of Eagle. Most of the Basin 63 rights in the bank are either already rented, are from another source, or are for uses that may have been non-consumptive. It may be possible to cobble together a package of rights that will satisfy Eagle's request, but it will probably require fast-tracking some lease applications to get rights into the bank and also making a liberal interpretation of the potential connection of ground water historically diverted at locations distant from Eagle.