

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION)	PRELIMINARY ORDER GRANTING
FOR PERMIT NO. 22-13265 IN THE)	PETITION FOR RECONSIDERATION
NAME OF THE CITY OF VICTOR)	AND ISSUING PERMIT
_____)	

This matter having come before the Department of Water Resources (Department) as a result of a petition for reconsideration of an order voiding an Application for Permit to Appropriate the Public Waters of the State of Idaho, the Department finds, concludes, and orders:

FINDINGS OF FACT

1. On March 12, 2003, the City of Victor (applicant) applied to the Department for a permit to appropriate 3.0 cubic feet per second of water from ground water located in the SE¼SE¼, Section 11, Township 3 North, Range 45 East, B. M., for municipal purposes. The Department designated the City of Victor's application as number 22-13265 (application).

2. A letter submitted by the applicant's representative, Eric Dursteler, P.E., of Sunrise Engineering, Inc., stated that the applicant's own water study suggested that it would need to divert approximately 2.39 cfs from ground water by the year 2022 to supply its projected needs for 1,900 equivalent residential connections.

3. The Department published notice of the application in the *Teton Valley News* on April 3 and April 10, 2003, in accordance with Idaho Code § 42-203A.

4. The Department did not receive a protest against approval of the application.

5. Idaho Code § 42-204 states that when the Department issues a permit to appropriate water, it "shall require that actual construction work and application of the water to full beneficial use shall be complete within a period of five (5) years from the date of such approval."

6. Idaho Code § 42-202B(8) states, in pertinent part:

"Reasonably anticipated future needs" refers to future uses of water by a municipal provider for municipal purposes within a service area which, on the basis of population and other planning data, are reasonably expected to be required within the planning horizon of each municipality within the service area not inconsistent with comprehensive land use plans approved by each municipality.

7. The applicant owns Water Right 22-7762, which authorizes the diversion of 2.23 cfs from ground water for municipal purposes.

8. On May 30, 2003, Department staff sent the applicant a letter asking for additional information to clarify the intent of the application relative to the “reasonably anticipated future needs” provision of Idaho Code § 42-202B(8). Because Water Right 22-7762 appears to meet more than 90% of the applicant’s projected needs through 2022, the Department sought to understand whether the applicant merely needed a second point of diversion for the ground water authorized for diversion under Right 22-7762, whether it needed to reserve water for “reasonably anticipated future needs” beyond five years, or whether it intended to use an additional 3.0 cfs of water within five years.

9. The Department did not receive a response to its May 30, 2003, letter to the applicant.

10. On January 5, 2004, the Department sent the applicant another letter asking for additional information about the application and notifying the applicant that the application would be voided if it did not provide the information.

11. On January 12, 2004, a representative of the applicant contacted the Department by electronic mail to explain the applicant’s delay in providing the additional information requested by the Department and to ask for additional time to respond to the Department’s request.

12. In July of 2004 Department staff corresponded with the representative of the applicant by electronic mail to determine whether the applicant would provide the additional information requested by the Department. In the final correspondence, Department staff provided the text of Rule 40.01.d. of the Water Appropriation Rules (IDAPA 37.03.03.040.01.d.), which says:

An applicant may request in writing that commencement of processing of his or her application be delayed for a period not to exceed one (1) year or that processing be interrupted for a period not to exceed six (6) months. The director at his discretion may approve the request unless he determines that others will be injured by the delay or that the applicant seeks the delay for the purpose of speculation, or that the public interest of the people of Idaho will not be served by the delay. The director may approve a request for delay for a shorter period of time or upon conditions, and may renew the approval upon written request.

13. The Department did not received a written request from the applicant to interrupt the processing of the application, nor did the Department received the additional information necessary to process the application.

14. On February 8, 2005, the Department issued a preliminary order voiding the application (order) because the applicant had not provided the additional information necessary to process the application.

15. Rule 730.02.a. of the Department's Rules of Procedure (IDAPA 37.01.01.730.02.a.) provides in pertinent part as follows:

Any party may file a petition for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of

this order. The hearing officer issuing this order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law.

16. On February 22, 2005, the Department received a petition for reconsideration of the order (petition) submitted by the applicant's representative, Eric Dursteler. In the petition, Mr. Dursteler requested that the application be reinstated and put on hold for one additional year. The request to delay processing for another year is apparently due to the fact that the applicant is not certain where to place the new well to be constructed as the point of diversion in connection with the application.

17. On February 25, 2005, the Department disposed of the petition in accordance with Rule 730.02.a. of the Department's Rules of Procedure (IDAPA 37.01.01.730.02.a.) by granting the applicant 30 days to provide the additional information necessary to process the application.

18. On March 18, 2005, Mr. Dursteler responded by stating that the City of Victor's growth has exceeded projections and that it expects to reach its projection of 1,900 equivalent residential connections by the end of 2006 instead of by 2022. Furthermore, he said that the applicant is seeking a right to water "that can be made available and applied to beneficial use within the next five years."

CONCLUSIONS OF LAW

1. The petition was submitted on time.
2. The Department's Rules of Procedure authorize the Department to grant the petition and to rescind the preliminary order voiding the application.
3. The applicant has provided the additional information required by the Department for issuance of a permit in connection with the application.
4. The Department should grant the petition for reconsideration.
5. Processing of the application already has been delayed by the time allowed by the Water Appropriation Rules. Therefore, the Department should not hold the application for an additional year.
6. The Department should rescind the preliminary order voiding the application and issue a permit to the applicant for the diversion and use of 3.0 cfs of water to be used within five years.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the petition for reconsideration of the order voiding Application for Permit No. 22-13265 in the name of the City of Victor is **GRANTED**.

IT IS FURTHER HEREBY ORDERED THAT the order voiding Application for Permit No. 22-13265 in the name of the City of Victor is **RESCINDED**.

IT IS FURTHER HEREBY ORDERED THAT a Permit to Appropriate Water shall be **ISSUED** to the City of Victor on this date in connection with this order.

Dated this 12th day of April, 2005.


GARY SPACKMAN

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 22-13265

Priority: March 12, 2003

Maximum Diversion Rate: 3.00 CFS

This is to certify, that CITY OF VICTOR
PO BOX 122
VICTOR ID 83455-0122

has applied for a permit to appropriate water from:

Source: GROUND WATER

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
MUNICIPAL	01/01 to 12/31	3.00 CFS

LOCATION OF POINT OF DIVERSION:

GROUND WATER SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 11, Twp 03N, Rge 45E, B.M., TETON County

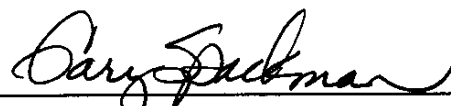
CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **April 01, 2010**.
2. Subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.
4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
5. Place of use is within the service area of the City of Victor municipal water supply system as provided for under Idaho Law.
6. In connection with the proof of beneficial use submitted for this permit, the permit holder shall also submit a report showing the total annual volume, the maximum daily volume, and the maximum instantaneous rate of flow diverted from the point of diversion authorized for this permit during the development period. The report shall also show the maximum instantaneous rate of diversion, either measured or reasonably estimated by a qualified professional engineer, geologist, or certified water rights examiner, for the entire City of Victor municipal water system. The report shall also describe and explain how water diverted under this permit provides an additional increment of beneficial use of water for the City of Victor municipal water system as opposed to an alternative point of diversion for prior water rights already held and used by the City of Victor for its municipal water system.
7. The daily diversion volume for non-domestic uses under this municipal right shall not exceed 2,500 gallons per use and the daily diversion volume for domestic uses under this right shall not exceed 13,000 gallons per dwelling in accordance with Section 42-111, Idaho Code.
8. Irrigation of large projects such as parks, golf courses, or sports activities fields is not authorized under this right.

State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 22-13265

9. The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.
10. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.
11. The use of water under this right shall not give rise to any claim against the holder of a senior water right based upon the theories of forfeiture, abandonment, adverse possession, waiver, equitable estoppel, estoppel by laches or customary preference.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 12th day of April, 2005.



KARL J DREHER, Director

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION	)	PRELIMINARY ORDER REFUSING
FOR PERMIT NO. 22-13265 IN THE	)	ISSUANCE OF A PERMIT AND
NAME OF THE CITY OF VICTOR	)	VOIDING APPLICATION FOR PERMIT
_____	)	

This matter having come before the Department of Water Resources (Department) as a result of an Application for Permit to Appropriate the Public Waters of the State of Idaho, the Department finds, concludes, and orders:

FINDINGS OF FACT

1. On March 12, 2003, the City of Victor (applicant) applied to the Department for a permit to appropriate 3.0 cubic feet per second of water from ground water located in the SE¼SE¼, Section 11, Township 3 North, Range 45 East, B. M., for municipal purposes. The Department designated the City of Victor's application as number 22-13265 (application).

2. The Department caused notice of the application to be published in the *Teton Valley News* on April 3 and April 10, 2003, in accordance with Idaho Code § 42-203A.

3. The Department did not receive a protest against approval of the application.

4. On May 30, 2003, Department staff sent the applicant a letter asking for additional information to clarify the intent of the appropriation of water requested in the application relative to the "reasonably anticipated future needs" provision of Idaho Code § 42-202B(8).

5. The Department did not receive a response to its May 30, 2003, letter to the applicant.

6. On January 5, 2004, the Department sent the applicant another letter asking for additional information about the application and notifying the applicant that the application would be voided if it did not provide the information.

7. On January 12, 2004, a representative of the applicant contacted the Department by electronic mail to explain the applicant's delay in providing the additional information requested by the Department and to ask for additional time to respond to the Department's request.

8. In July of 2004 Department staff corresponded with the representative of the applicant by electronic mail to determine whether the applicant would provide the additional information requested by the Department. In the final correspondence, Department staff provided the text of Rule 40.01.d. of the Water Appropriation Rules (IDAPA 37.03.03.040.01.d.), which says:

An applicant may request in writing that commencement of processing of his or her application be delayed for a period not to exceed one (1) year or that

processing be interrupted for a period not to exceed six (6) months. The director at his discretion may approve the request unless he determines that others will be injured by the delay or that the applicant seeks the delay for the purpose of speculation, or that the public interest of the people of Idaho will not be served by the delay. The director may approve a request for delay for a shorter period of time or upon conditions, and may renew the approval upon written request.

9. The Department has not received a written request from the applicant to interrupt the processing of the application, nor has the Department received the additional information necessary to process the application.

10. Idaho Code § 42-204 says, in pertinent part:

If upon such examination the application is found defective, it shall be the duty of the department of water resources to return the same for correction or to correspond with the applicant to obtain the needed information or amendments. If the application is returned to the applicant or the department shall request additional information and the applicant fails to return the corrected application or to supply the needed information within thirty (30) days, the department may void the record of said application and notify the applicant of such action.

CONCLUSIONS OF LAW

1. Idaho Code § 42-204 authorizes the Department to void an application if the applicant fails to supply requested information within 30 days.

2. The Department notified the applicant that additional information is needed before the application can be processed.

3. The applicant has not provided the additional information required by the Department.

4. More than 30 days has elapsed since the Department notified the applicant of the need for additional information to support the application.

5. The Department should void the application pursuant to Idaho Code § 42-204.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that issuance of a permit to appropriate water as proposed in Application for Permit No. 22-13265 in the name of the City of Victor is **REFUSED** and the application is **REJECTED** as provided in Idaho Code § 42-203A(5).

Dated this 8th day of February, 2005.


GARY SPACKMAN

RECEIVED

MAY 27 2003

FORM 202
12/99

Department of Water Resources

Ident. No. 22-13265

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of Applicant City of Victor Phone 208-787-2940
 Mailing address P.O. Box 122, 32 Elm Street, Victor, ID 83455

2. Source of water supply groundwater which is a tributary of N/A

3. Location of point of diversion is Township 3N Range 45E Sec. 11, in the SE $\frac{1}{4}$,
SE $\frac{1}{4}$, Govt. Lot N/A, B.M., Teton County;
 additional points of diversion if any: N/A

4. Water will be used for the following purposes:

Amount 3 CFS for municipal purposes from Jan. 1 to Dec. 31 (both dates inclusive)
 (cfs or acre-feet per annum)
 Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
 (cfs or acre-feet per annum)
 Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
 (cfs or acre-feet per annum)
 Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
 (cfs or acre-feet per annum)
 Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
 (cfs or acre-feet per annum)
 Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
 (cfs or acre-feet per annum)

5. Total quantity to be appropriated is (a) 3 CFS and/or (b) 2172
 cubic feet per second acre feet per annum

6. Proposed diverting works:

a. Describe type and size of devices used to divert water from the source The diverting works consist of a deep well & pump which discharge through an 8" pipe to a 1.0 million gallon storage reservoir of the dist. sys.

b. Height of storage dam N/A feet; active reservoir capacity 3.06 acre-feet; total
 reservoir capacity 3.14 acre-feet

c. Proposed well diameter is 12 inches; proposed depth of well is 500 feet

d. Is ground water with a temperature of greater than 85°F being sought? No

e. If well is already drilled, when? No; Drilling firm N/A;
 Well was drilled for (well owner) N/A; Drilling Permit No. N/A

7. Time required for completion of works and application of water to proposed beneficial use is 2 years (minimum 1 year)

8. Description of proposed uses (if irrigation only, go to item 9):

a. Hydropower; show total feet of head and proposed capacity in kW. N/A
 b. Stockwatering; list number and kind of livestock. N/A
 c. Municipal; show name of municipality. City of Victor, Idaho
 d. Domestic; show number of households. N/A
 e. Other; describe fully. N/A

3. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

City of Victor

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
3N	45E	11		M	M	M	M	M	M	M	M				M	M	M	M	
3N	45E	2	M	M	M	M					M				M	M	M	M	
3N	45E	14		M	M														
3N	45E	10	M	M	M	M										M			

Total number of acres to be irrigated N/A

10. Describe any other water rights used for the same purposes as described above. 22-7762, 22-122

11. a. Who owns the property at the point of diversion? City of Victor

b. Who owns the land to be irrigated or place of use? See remarks.

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: N/A

12. Remarks: (11.b) The place of use is within the City limits of Victor.

General: This source is preeminent to the existing other sources as it is an integral part of the civic culinary water master plan improvements.

13. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

BE IT KNOWN that the undersigned hereby makes this application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Don R. Thompson (Mayor)
Signature of Applicant (and title, if applicable)

Fee Received by HWT Date 3-12-03 Time _____ Preliminary check by _____
Fee \$ 320.00 Receipted by HWT # E028558 Date 3-12-03
Publication prepared by SC Date 4/3 & 4/10/03 Published in Teton Valley News
Publication approved SC Date 5/14/03

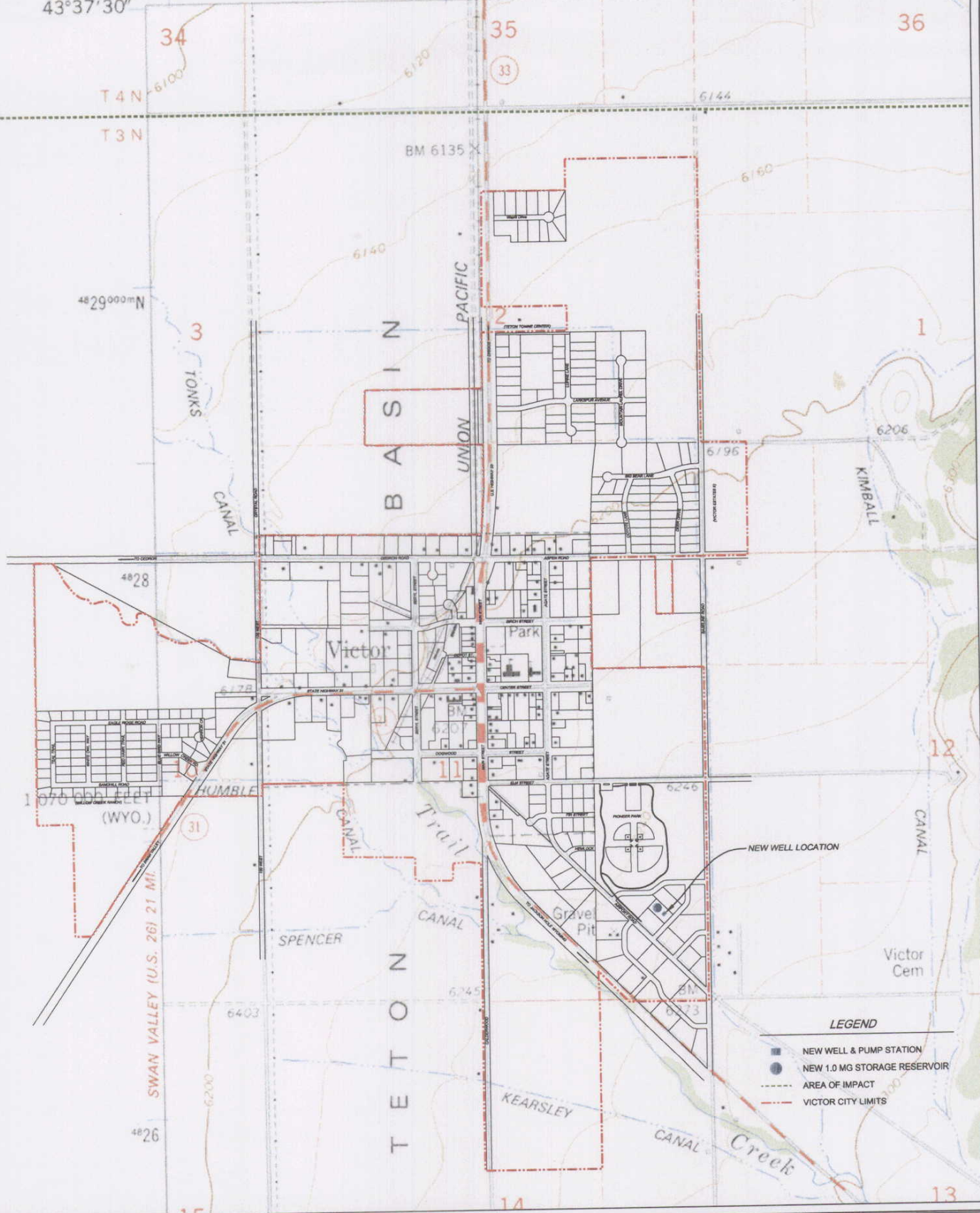


371111 MW
(BATES)

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY



111°07'30" 491000mE DRIGGS 7 MI. 230 000 FEET (WYO.)
43°37'30"



CITY OF VICTOR

WELL LOCATION MAP

UNITS SCALE
1" = 800'

SUNRISE ENGINEERING, INC.
CONSULTING ENGINEERING & LAND SURVEYING
2000 W. 10th St., Suite 100, Victor, WY 82801

CITY OF VICTOR



WATER SYSTEM FACILITIES PLANNING STUDY

AMENDMENT

LEGEND

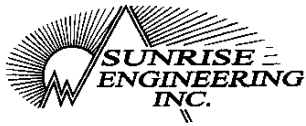
- _____ 2" DIAMETER PIPE
 _____ 4" DIAMETER PIPE
 _____ 6" DIAMETER PIPE
 _____ 8" DIAMETER PIPE
 _____ 10" DIAMETER PIPE
 ● WATER MAIN VALVE
 ■ NEW WELL & PUMP STATION
 ● NEW 1.0 MG STORAGE RESERVOIR
 _____ AREA OF IMPACT
 - - - - - VICTOR CITY LIMITS

ALTERNATIVE B

VERIFY SCALE
 1" = 1/2"
 BAR IS ONE HALF INCH
 ON ORIGINAL DRAWING.
 IF NOT ONE HALF INCH
 ON THIS SHEET, ADJUST
 SCALES ACCORDINGLY.

SUNRISE ENGINEERING, INC.
CONSULTING ENGINEERS & LAND SURVEYORS
47 EAST 45TH AVE., APTON VT. 05610





SUNRISE ENGINEERING, C.

47 East 4th Avenue • P.O. Box 609 • Afton, Wyoming 83110
Tel (307) 885-8500 • Fax (307) 885-8501

OFFICES IN
UTAH
IDAHO
ARIZONA
WYOMING

March 4, 2003

Mr. Ronald D. Carlson
Idaho Department of Water Resources
900 No. Skyline Dr.
Suite A
Idaho Falls, ID 83402

RECEIVED
MAR 10 2003
Department of Water Resources
Eastern Region

RE: 00947 Victor Water Improvements

Dear Ron:

The City of Victor located in Teton County recently completed a Water System Facilities Planning Study in the fall of 2002. It was identified therein that several source, storage, and distribution improvements are required to bring their culinary water system up-to-date and into IDEQ compliance as well as meet State fire protection standards.

The Water System Facilities Planning Study was essentially a first effort at creating a culinary water master plan for the City of Victor. As such, the recommendations were not intended to provide for all the capital improvements required to meet the projected populations and development densities; however, they do include the following:

- A second source of groundwater (well);
- A new 1.0 MG storage tank;
- A new pumpstation with standby generator and chlorination system;
- Construction of base network mainlines; and,
- Upgrading and upsizing several existing lines.

Of the several system improvements recommended in the study, construction of a new well was identified as a priority in that it would provide not only a second source of water to the City, but also water for reasonably anticipated future needs. The design period addressed in the study was for 20 years beginning in 2002.

Population growth projections estimate that by the year 2022 the number of equivalent residential connections (ERCs) within the City would reach approximately 1,930, an increase of 1,390 over the existing 540. The study indicated that water sources should provide approximately 800 gallons per day per ERC equating to 1,544,000 gallons per day (2.39 cfs) by the year 2022. At present the City has three Water Rights for the following appropriated flows:

<u>Water Right No.</u>	<u>Source Name</u>	<u>Appropriated Flow, cfs</u>
22-7762	Willow Creek Well	2.23
22-566A	Trail Creek	1.6
22-122	Trail Creek Springs	3.2

Although it appears that there are sufficient Water Rights to handle the anticipated future 2022 year needs, water flow from the springs has experienced a downward trend with increased decline due to the recent drought-ridden years. Additionally, water diverted under Water Right #22-566A is being diverted for the purposes of municipal and domestic irrigation.

Funding for the water system improvements will be via loan through the Idaho Department of Environmental Quality and is being coordinated through East Central Idaho Planning and Development Agency. It has been demonstrated under conservative growth rates that the project can be paid for by future development and that an increase in the base water rates would not be necessary for some time.

Consequently, the City is requesting a Water Right Permit to appropriate an additional 3.0 cfs from a new groundwater source which will be located on City property. The City is actively pursuing construction of the improvements during the summer of 2003; however, where the well is an integral part of the culinary water system, any expedited efforts in assisting the City in procuring a not only additional but also dependable second source of water would be greatly appreciated.

For your reference, a plan showing the City's preferred alternative's water system improvements has been attached hereto.

Should you have any questions, please feel free to call me at 307-885-8500.

Sincerely,



Eric E. Dursteler, P.E.
Project Engineer

EED/js

xc: Don L. Thompson, Mayor
Willie Teuscher, IDEQ

Now
Starting
Right Side
of file.



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

April 13, 2005

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

CITY OF VICTOR
PO BOX 122
VICTOR ID 83455-0122

RE: Preliminary Order in the Matter of Application for Permit No. 22-13265

Dear Permit Holder(s):

The accompanying order is a "**preliminary order**" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the department unless a party petitions for reconsideration within fourteen (14) days after issuance as described in the enclosed information sheet.

Also enclosed is a copy of the Approved Permit as referenced in the Preliminary Order.

If you have any questions regarding this matter, please call me at 208-327-7940.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeff Peppersack', is written over a horizontal line. To the left of the signature, there is a small, stylized mark that looks like a lowercase 'j' or 'JP'.

Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

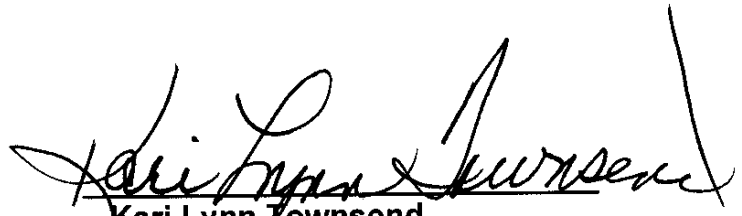
Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on **April 13, 2005** I mailed a true and correct copy, certified, postage prepaid, of the foregoing **PRELIMINARY ORDER** to the person(s) listed below:

RE: Preliminary Order in the Matter of Application for Permit No. 22-13265

CITY OF VICTOR
PO BOX 122
VICTOR ID 83455-0122



Kari Lynn Townsend
Secretary

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources (department) unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the department or the Idaho Water Resource Board (Board) is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

Comment Report

22-13265

1. skeen 2/8/2005 10:28:32 AM Explanatory Comment

Comment: This permit was drafted but never issued. The application was rejected.

2. scox 3/26/2003 Legal Notice Remarks

Comment: The place of use is the City of Victor for Municipal purposes.

3. dgibson 5/29/2003 Permit Review

Comment: This municipal application shows that the water will be held in a storage reservoir with total reservoir capacity of 3.14 acre-feet (active reservoir capacity 3.06 acre-feet).

This right is being developed as a backup well and for anticipated future needs. Three other water rights provide water to the city. Rights 22-566A & 22-122 are for irrigation, and 22-7762 is for municipal use.

4. skeen 2/8/2005 10:28:32 AM Explanatory Comment

Comment: Rejected by IDWR because additional information about reasonably anticipated future needs was not provided.

5. kwalker 4/4/2005 Permit Review

Comment: Applicant has indicated in correspondence of 3/16/2005 that this right would be for future needs but is for water that can be made available and applied to beneficial use within the next 5 years. In light of this I have removed the future needs condition and recommend we approve with conditions that water will be put to use within a 5 year period for development. Place of use overlaps with claims & rights of Trail Ck. Sprinkler Irrigation Co. Recommend condition requiring use of surface water for irrigation purposes.

MAR 18 2005

**DEPARTMENT OF
WATER RESOURCES**

March 16, 2005

Shelley W. Keen
Water Rights Supervisor
Idaho Department of Water Resources
322 East Front Street
Boise, ID 83720-0098

RE: Disposition of Petition for Reconsideration of Application for Permit No. 22-13265

Dear Mrs. Keen:

I am in receipt of your letter dated February 25, 2005, regarding our petition for reconsideration of the preliminary order voiding the referenced application. You also provided therewith a letter dated May 30, 2003 discussing "reasonably anticipated future needs" being defined as "water that is not needed for municipal development within the very near future, but will be needed to sustain growth over a "planning horizon" longer than five years.

In the City of Victor's Water System Facilities Planning Study completed by Forsgren Associates Inc in May of 2002, the 20 year planning horizon value for equivalent residential connections (ERCs) was 1,930 based on an annual growth rate of 6.5%. Over the past two years, however, the City has experienced some of the highest growth rates seen across the State of Idaho and they anticipate, or rather expect, to reach nearly 1,900 ERCs by the end of 2006, if not sooner. Consequently, the City will be utilizing approximately 2.35 cfs or 105% of Water Right #22-7762 in the near future. I have attached hereto a City Zoning Map with the developments or areas under construction (bold outline) since the spring of 2003 for your reference.

In my previous letter, I stated that, "the City anticipates a cooperative effort in locating and developing a new groundwater source, yet the commencement of such efforts, although anticipated, may not be realized for some time." It was not my intention to give the impression of time being several years only that such effort may not be rewarded this year. Furthermore, the City is currently working with several entities in an attempt to locate a reliable groundwater source which can be established and integrated into the City's current and planned culinary water system's infrastructure.

Being cognizant of the City's previous two-year's growth and the real potential for future development, it is not the City's intention to "obtain a permit to appropriate water without the intention of applying the water to beneficial use." However, it is their intention to obtain a permit for "reasonably anticipated future needs" such that water can be made available and applied to beneficial use within the next five years.

Additionally, the City has recently completed a 2.1 million dollar culinary water improvement project wherein the aforementioned permit was to have been used for a new water source; however, groundwater proved to be more illusive than what the hydrogeological reports had indicated. The failure to find groundwater at their preferred location coupled with the intense growth rate has caused some pandemonium in their planning efforts; however, this pandemonium should not be construed as premeditated delay or speculation.

The City is using due diligence in their search for a new water source and they are hopeful of procuring a site, or at least negotiating an agreement, such that a water well can be constructed by the fall of 2006. This new well would then become an integral part of the already constructed water system infrastructure as well as play an important role in future planning.

I appreciate your patience and assistance in delaying the processing of the City's application for the past two years as they have experienced challenging growth rates and intensified development. If you should need more information to support the need for the permit, or have any comments or questions, please call me at 307-885-8500.

Sincerely,

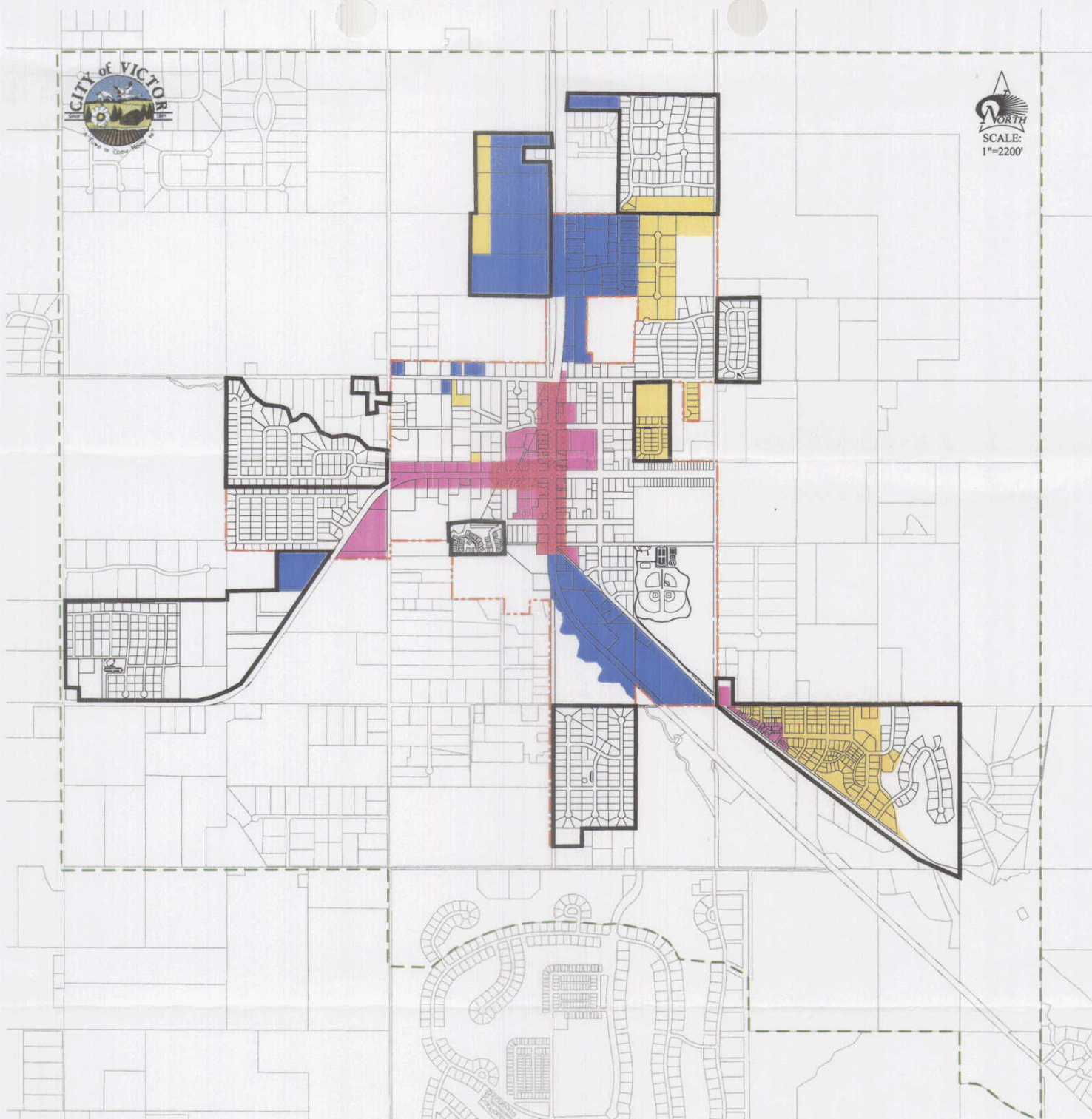
A handwritten signature in black ink, appearing to read "Eric Dursteler", with a stylized flourish at the end.

Eric Dursteler, P.E.
Sunrise Engineering Inc

EED/jc

Enclosures

xc: Craig Sherman, City of Victor
Stephanie Bonney, City Attorney



OFFICIAL ZONING MAP OF THE CITY OF VICTOR (REV 01-06-2005)

MAYOR

DEPUTY CLERK

LEGEND

	CENTRAL BUSINESS DISTRICT		PLANNED COMMERCIAL
	TRAIL CREEK OVERLAY		PLANNED RESIDENTIAL
	VILLAGE CENTER		CITY LIMITS
	VILLAGE RESIDENTIAL		IMPACT AREA





State of Idaho

DEPARTMENT OF WATER RESOURCES

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

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov.

February 25, 2005

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

ERIC DURSTELER
SUNRISE ENGINEERING
PO BOX 609
AFTON WY 83110

Disposition of Petition for Reconsideration

RE: Petition for Reconsideration of the Preliminary Order Voiding Application 22-13265
(City of Victor)

Dear Mr. Dursteler:

The Department of Water Resources (IDWR) has received your petition for reconsideration of the preliminary order voiding Application for Permit No. 22-13265. In response to your petition, IDWR grants you 30 days to support the petition by providing the information described below.

- As explained in IDWR's May 30, 2003, letter to the City of Victor, the data you provided with the application does not seem to support the need for a water right for reasonably anticipated future needs. A copy of the letter is enclosed. Your projected need of 2.39 cfs for the year 2022 barely exceeds the 2.23 cfs authorized under the city's existing ground water right, 22-7762. To support your petition, please explain whether the city will need to divert and use 3.00 cfs (the amount applied for) more water by 2022 than it does now, or if the city simply needs another well as an alternative diversion point for its existing water right. If the city believes it needs to reserve water for future use in addition to the 2.23 cfs currently authorized, then please provide a planning study or other documentation demonstrating the basis for the request. If the need is not for a second point of diversion, then the appropriate filing is an application for transfer to change the city's existing water right by adding a second point of diversion (another well) to it.
- Your petition for reconsideration states that the city's development of a new ground water source "may not be realized for some time." Idaho Code §42-203A(5) authorizes IDWR to reject applications that are "made for delay or speculative purposes." According to Rule 45.01.c. of IDWR's Water Appropriation Rules

Eric Dursteler
February 25, 2005
Page 2

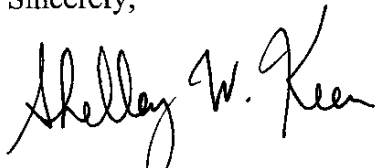
(IDAPA 37.03.08.045.01.c.), "Speculation . . . is an intention to obtain a permit to appropriate water without the intention of applying the water to beneficial use with reasonable diligence." Idaho Code §42-204 requires permit holders to start construction within one year from the date the permit is issued and to proceed diligently to completion. Most water appropriation permits require the permit holder to divert the permitted amount of water and apply it to beneficial use within a short time period, usually one to five years. When a permit is issued to a municipal provider for reasonably anticipated future needs, the entire system capacity does not have to be constructed right away. However, the system components constructed during the initial phase must be significant, and the remainder of the project must be supported by substantial planning, design, and investment. The water appropriation rules allow for the postponement of processing an application for up to one year and for a delay in processing of up to six months. The processing of the city's application has already been delayed informally for nearly two years. To support your petition and your request for a delay in the processing of your application, please explain your timetable to IDWR to show that your application is not speculative.

IDWR will evaluate your response when determining whether to grant or deny the petition for reconsideration. If you do not respond in writing within 30 days, your petition for reconsideration will be denied.

Please note that if IDWR does not grant your petition for reconsideration of the order voiding the application, the city may still file a new water right application or an application for transfer when its timetable is better defined.

If you have any questions, please call me at 208-327-7946, or email me at skeen@idwr.state.id.us.

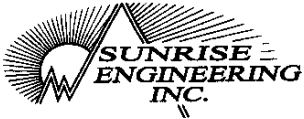
Sincerely,

A handwritten signature in black ink that reads "Shelley W. Keen". The signature is written in a cursive, flowing style.

Shelley W. Keen
Water Rights Supervisor

Enclosures

cc: City of Victor



SUNRISE ENGINEERING, INC.

47 East 4th Avenue • P.O. Box 609 • Afton, Wyoming 83110
Tel (307) 885-8500 • Fax (307) 885-8501

OFFICES IN
UTAH
IDAHO
ARIZONA
WYOMING

February 22, 2005

RECEIVED

FEB 25 2005

**DEPARTMENT OF
WATER RESOURCES**

Jeff Peppersack, Manager
Water Right Permits Section
Idaho Department of Water Resources
322 East Front Street
Boise, ID 83720-0098

RE: Preliminary Order in the Matter of Application for Permit No. 22-13265

Dear Mr. Peppersack:

The City of Victor has requested that I respond with a petition of reconsideration regarding the Preliminary Order in the Matter of Application for Permit No. 22-13265, certified February 9, 2005.

The Victor City Council convened last Thursday evening and after some discussion decided unanimously to pursue retention of the aforementioned water right application. The City had intended to process this application in the spring of 2004; however, due to their construction of a dry test well, they deferred any further source development until additional hydrogeologic information could be obtained, or had the opportunity of acquiring other land which had potential of being located over a promising source of groundwater.

As extensive groundwater research is generally cost prohibitive, and in light of the astounding growth rate the City of Victor is currently experiencing, the City anticipates a cooperative effort in locating and development of a new groundwater source. Nevertheless, the commencement of such efforts, although anticipated, may not be realized for some time.

It is then herewith, that the City would like to petition the Department of Water Resources for reconsideration of the Preliminary Order and for an additional one (1) year delay in the commencement of processing the application.

We appreciate your help and consideration. If you should have any comments or questions, please call me at 307-885-8500.

Sincerely,

Eric Dursteler, P.E.
Sunrise Engineering Inc

EED/jc

xc: Craig Sherman, City of Victor
Stephanie Bonney, City Attorney

**SUNRISE ENGINEERING, INC.**

47 East 4th Avenue • P.O. Box 609 • Afton, Wyoming 83110
Tel (307) 885-8500 • Fax (307) 885-8501

OFFICES IN

UTAH
IDAHO
ARIZONA
WYOMING

February 22, 2005

Jeff Peppersack, Manager
Water Right Permits Section
Idaho Department of Water Resources
322 East Front Street
Boise, ID 83720-0098

RE: Preliminary Order in the Matter of Application for Permit No. 22-13265

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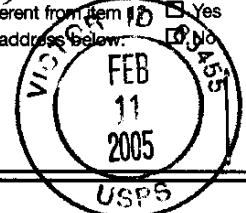
We appreciate your help and consideration. If you should have any comments or questions, please call me at 307-885-8500.

Sincerely,

Eric Dursteler, P.E.
Sunrise Engineering Inc

EED/jc

xc: Craig Sherman, City of Victor
Stephanie Bonney, City Attorney

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. - Print your name and address on the reverse so that we can return the card to you. - Attach this card to the back of the mailpiece, or on the front if space permits.		A. Received by (Please Print Clearly) <u>Craig Sherman</u> B. Date of Delivery <u>2/11/05</u> C. Signature <u>[Signature]</u> ☐ Agent ☐ Addressee D. Is delivery address different from item #1? ☒ Yes ☐ No If YES, enter delivery address below: _____	
1. Article Addressed to: CITY OF VICTOR PO BOX 122 VICTOR ID 83455-0122			
		3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
		4. Restricted Delivery? (Extra Fee) ☐ Yes	
2. Article Number (Copy from service label)		7003 0500 0003 1969 2553	

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

U.S. Postal Service™	
CERTIFIED MAIL™ RECEIPT (Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage \$ _____ Certified Fee _____ Return Receipt Fee (Endorsement Required) _____ Restricted Delivery Fee (Endorsement Required) _____ Total Postage & Fees \$ _____	Postmark Here MAILED ON 2.9.05
Sent To CITY OF VICTOR PO BOX 122 VICTOR ID 83455-0122	
PS Form 3800, June 2002 See Reverse for Instructions	



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov.

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

February 9, 2005

CITY OF VICTOR
PO BOX 122
VICTOR ID 83455-0122

RE: Preliminary Order in the Matter of Application for Permit No. 22-13265

Dear Interested Parties:

The accompanying order is a "**preliminary order**" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the department unless a party petitions for reconsideration within fourteen (14) days after issuance as described in the enclosed information sheet.

If you have any questions regarding this matter, please call me at 208-327-7940.

Sincerely,

for 
Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

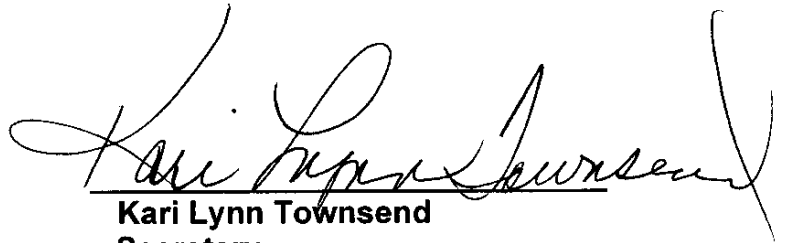
Enclosures

CERTIFICATE OF SERVICE

I hereby certify that on **February 9, 2005** I mailed a true and correct copy, certified, postage prepaid, of the foregoing **ORDER** to the person(s) listed below:

RE: Application for Permit No. 22-13265

**CITY OF VICTOR
PO BOX 122
VICTOR ID 83455-0122**



Kari Lynn Townsend
Secretary

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources (department) unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the department or the Idaho Water Resource Board (Board) is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

IDAHO DEPARTMENT OF WATER RESOURCES

Water Application Report 22-13265

WATER RIGHT NUMBER: 22-13265

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	CITY OF VICTOR PO BOX 122 VICTOR, ID 83455-0122 (208)787-2940

Priority Date: 03/12/2003

Basis:

Status: Rejected

SourceTributary

GROUND WATER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
MUNICIPAL	01/01 to 12/31	3.000 CFS	
	<u>Total Diversion:</u>	3.000 CFS	

Location of Point(s) of Diversion

GROUND WATER	SE1/4SE1/4	Sec. 11, Twp 03N, Rge 45E, B.M.
TETON County		

Place of UseConditions of Approval:Remarks:Comments:

1. scox 3/26/2003 Legal Notice Remarks
Comment: The place of use is the City of Victor for Municipal purposes.

2. dgibson 5/29/2003 Permit Review
Comment: This municipal application shows that the water will be held in a storage reservoir with total reservoir capacity of 3.14 acre-feet (active reservoir capacity 3.06 acre-feet).

This right is being developed as a backup well and for anticipated future needs. Three other water rights provide water to the city. Rights 22-566A & 22-122 are for irrigation, and 22-7762 is for municipal use.

3. skeen 2/8/2005 10:28:32 AM Explanatory Comment
Comment: Rejected by IDWR because additional information about reasonably anticipated future needs was not provided.

Dates and Other Information:

IDAHO DEPARTMENT OF WATER RESOURCES

Water Application Report 22-13265

Application Received Date: 3/13/2003
Application Denied Date:
Last Date of Beneficial Use:
Extension End Date:
Protest Deadline Date: 4/21/2003
Number of Protests: 0
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
State or Federal:
Owner Name Connector:
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Application Type: New Appropriation
Applicant Remarks: The place of use is the City of Victor for Municipal purposes
Other Water Rights: 22-7762 & 22-122
Time to Complete Works: 2
Transfer Affected Description:
Transfer Affected Contracts:
Old Transfer Number:
Transfer Reason:
Transfer Return Flows:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

Combined Use Limits:

Keen, Shelley

To: Eric Dursteler

Subject: RE: Victor City - Water Rights Application #2213265

Eric,

Rule 40.01.d of the Water Appropriation Rules provides for a one-year processing delay. It says:

An applicant may request in writing that commencement of processing of his or her application be delayed for a period not to exceed one (1) year or that processing be interrupted for a period not to exceed six (6) months. The director at his discretion may approve the request unless he determines that others will be injured by the delay or that the applicant seeks the delay for the purpose of speculation, or that the public interest of the people of Idaho will not be served by the delay. The director may approve a request for delay for a shorter period of time or upon conditions, and may renew the approval upon written request.

IDWR will need a written request from the city.

Please call or email if you have additional questions.

Shelley Keen
Water Right Permits Section
Idaho Dept. of Water Resources
208-327-7946
skeen@idwr.state.id.us

-----Original Message-----

From: Eric Dursteler [mailto:edursteler@sunrise-eng.com]

Sent: Monday, July 26, 2004 11:14 AM

To: 'Keen, Shelley'

Subject: RE: Victor City - Water Rights Application #2213265

Shelly,

The City Council (Victor) would like to "extend the application for another year". Is this possible?

Eric

From: Keen, Shelley [mailto:SKEEN@idwr.state.id.us]

Sent: Monday, July 19, 2004 9:04 AM

To: 'Eric Dursteler'

Subject: RE: Victor City - Water Rights Application #2213265

Eric,

Thanks for your response. I will look forward to hearing from you within a few days after July 21, 2004.

Shelley Keen
Water Right Permits Section
Idaho Dept. of Water Resources

8/3/2004

Keen, Shelley

To: Eric Dursteler

Subject: RE: Victor City - Water Rights Application #2213265

Eric,

Thanks for your response. I will look forward to hearing from you within a few days after July 21, 2004.

Shelley Keen
Water Right Permits Section
Idaho Dept. of Water Resources
208-327-7946
skeen@idwr.state.id.us

-----Original Message-----

From: Eric Dursteler [mailto:edursteler@sunrise-eng.com]

Sent: Monday, July 19, 2004 9:01 AM

To: skeen@idwr.state.id.us

Cc: Craig Sherman

Subject: Victor City - Water Rights Application #2213265

Shelley,

You inquired about the water rights application #2213265 for the City of Victor on Wednesday, July 14th. Before I give you any direction, I would like to approach the City Council on Wednesday, July 21st for their response on whether we should cancel the application or not. If this is amenable, please let me know.

Thanks for your help,

Eric Dursteler, P.E.
City Engineer
Sunrise Engineering Inc
307-885-8500

7/19/2004

Keen, Shelley

From: Eric Dursteler [edursteler@sunrise-eng.com]
Sent: Monday, January 12, 2004 9:52 AM
To: skeen@idwr.state.id.us
Subject: City of Victor - Water Right Application No. 22-13265

Dear Shelley,

I am writing in response to your letter to the City of Victor dated January 5, 2004, regarding the proposal to divert 3.0 cfs from a ground water source.

The City drilled a test well last May to a depth of 300' which proved to be a dry hole; consequently, the project was put on hold until a more likely location could be identified. IDEQ would still like the City to pursue a new well source and the City is currently engaged in securing a new well location. We anticipate drilling another test hole this spring.

Should you require any further information, such that the City may retain their current application, please either call or email me at your earliest convenience.

Thank you for your help,

Eric Dursteler, P.E.
Sunrise Engineering Inc.
307-885-8500

7/13/2004

This morning I left
Eric Dursteler a voicemail
message asking him to
update me with any progress
related to this application.

If no progress, the app.
may need to be voided
as speculative.

S. Keen

1/12/2004



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

January 5, 2004

CITY OF VICTOR
PO BOX 122
VICTOR ID 83455

RE: Water Right Application No. 13265

Dear Applicant:

On May 30, 2003, I wrote you to request additional information in connection with Application No. 22-13265, in which you propose to divert an additional 3.0 cfs from ground water for municipal purposes. A copy of my letter is enclosed. To date IDWR has not received the requested information.

Section 42-204, *Idaho Code*, authorizes IDWR to void applications if the applicant does not respond to a request for additional information within 30 days. Therefore, if IDWR does not receive the information requested in the May 30, 2003, letter within 30 days, your application will be voided.

If you have any questions, please call me at 208-327-7946, or email me at skeen@idwr.state.id.us.

Sincerely,

Shelley W. Keen
Water Rights Supervisor

Enclosure



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 30, 2003

CITY OF VICTOR
PO BOX 122
VICTOR ID 83455

RE: Water Right Application No. 22-13265

Dear Applicant:

The Department of Water Resources (IDWR) is reviewing your application to appropriate 3.0 cfs from ground water for "reasonably anticipated future needs" for the City of Victor. Reasonably anticipated future needs refers to water that is not needed for municipal development within the very near future, but will be needed to sustain growth over a "planning horizon" longer than five years. Most applications for municipal water rights do not include a future-needs component because the new water use will be established within five years, which is the maximum amount of time IDWR can grant a permit holder to complete the beneficial use requirement for establishing a new water right. For that reason, IDWR wants to be sure the intent of your application is clear.

According to Eric Dursteler's letter enclosed with your application, the City of Victor completed a Water System Facilities Planning Study that indicates the city will grow from 540 to 1,930 equivalent residential connections (ERCs) over a planning horizon of 20 years. According to Mr. Dursteler, the study shows that the city will require a water right of 2.39 cfs, along with appropriate storage, to serve 800 gallons per day to all of the 1,930 ERCs. Over the course of a year, the 2.39 cfs demand equates to a volume of 1730 acre-feet. Mr. Dursteler also points out, however, that the City of Victor already has Water Right 22-7762, which authorizes a diversion of 2.23 cfs from ground water. Over the course of a year, this existing water right can provide 1611 acre-feet, or 93% of the projected requirement for the end of the 20-year planning horizon.

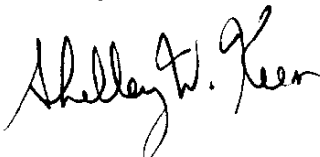
Because your existing water right is nearly equivalent to your long-term projected needs, IDWR is wondering if you really need to appropriate additional water, or are you actually seeking a backup well to serve as an alternative point of diversion for your existing 2.23 cfs ground water right? If a backup well is your sole objective, and you can limit the combined instantaneous diversion rate from both wells to 2.23 cfs, then you should file an application for transfer to add a point of diversion to your existing water right. However, if you will need to meet your peak demand by pumping both wells at a rate greater than a combined total of 2.23 cfs, then applying for the new permit would be the correct course of action. A new permit would also be appropriate if you will require more than the 1611 acre-feet already provided under Water Right 22-7762.

If you determine that you wish to proceed with your application for permit rather than an application for transfer, the "reasonable anticipated future needs" concept may or may not apply to your situation. If you intend to drill the new well, install the full pumping capacity, connect to your water mains, and begin pumping water in excess of your existing water right, within the two years you requested for development, then the beneficial use requirement for establishing a new water right will have been met during the authorized development period, and "reasonably anticipated future needs" is irrelevant. (Please note that you can request up to five years for development.) If, however, you intend to phase in the use of additional water over longer than two (or five) years, then your permit must be for reasonably anticipated future needs. When water has been appropriated for reasonably anticipated future needs, compliance with the beneficial use requirement is confirmed by the existence of a well-documented plan to develop the full amount permitted, by installation of some key components of the new diversion and distribution system, and by clear documentation that the need for the water will occur within a reasonable planning horizon.

I will hold your application to give you some time to determine how you want to proceed. In case you want to file an application for transfer instead of your application for permit, I have enclosed a transfer form and a form for withdrawing your application. If you want to proceed with the application for permit without a component for reasonably anticipated future needs, please notify me in writing. You may also write to request that the development period be extended to five years instead of the two-year period you requested. If you need a permit for reasonably anticipated future needs because you will not use the 3.0 cfs amount within two (or five) years, please submit a copy of your Water System Facilities Planning Study so that IDWR can verify that your population growth projections and planning horizon are reasonable.

If you have any questions, please call me at 208-327-7946, or email me at skeen@idwr.state.id.us.

Sincerely,

A handwritten signature in black ink, reading "Shelley W. Keen". The signature is written in a cursive, flowing style.

Shelley W. Keen
Water Rights Supervisor

Cc: Harold Jones, IDWR Eastern Region

22-13265

AFFIDAVIT OF PUBLICATION

RECEIVED
MAY 14 2003
Department of Water Resources
Eastern Region

State of Idaho)
)ss
County of Teton)

I, Bob Reece, being first duly sworn, depose and say that I am the Art Dir of the Teton Valley News, a newspaper as defined by Idaho Codes Annotated, Section 58-106, as amended, and that said newspaper is a weekly newspaper printed and published at Driggs, in Teton County, Idaho, having a general circulation in said county, and that said newspaper has been printed in said county for more than 78 consecutive weeks prior to the first publication of the attached notice, advertisement, or publication of Teton Valley News

And affiant further says that said attached notice, advertisement, or publication, as per clipping attached, was published in said newspaper, in the regular and entire issue thereof, and not in any supplement issue thereof, for 2 consecutive issues thereof; first publication having been made on the 3rd day of April, 2002. And affiant further says that at the times herein mentioned said newspaper was made up of at least eight pages of at least five columns each, printed from typed matter, of at least sixteen inches deep.

Bob Reece

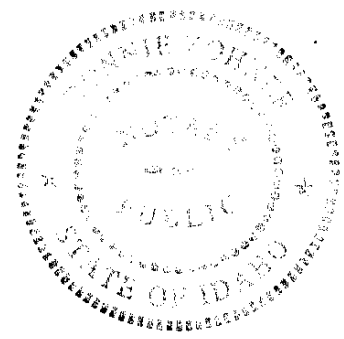
Signature

State of Idaho)
)
County of Teton)

On this 12th day of may, 2003, before me, a Notary Public, personally appeared Bob Reece known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements there-in are true, and acknowledged to me that he/she executed the same.

Bonnie Zolner

Notary Public for Idaho
Residing at Driggs Idaho
My commission expires 12/01/2004



April 3rd, 2003

NOTICE OF ASSESSMENT

Teton West Irrigation Company, Inc., Driggs, Idaho
Notice is hereby given that at a meeting of the Directors held on February 19, 2003, an assessment of \$60.00 per share was levied upon the capital stock of the corporation payable to Teton West Irrigation Company, Inc., on or before April 15, 2003 at the following address: TWIC, c/o Sharyn Hastings, P.O. Box 234, Driggs, ID 83422. Any shares upon which the assessment remains unpaid on April 16, 2003, will be delinquent and advertised for sale at public auction, and unless payment is made before, will be sold on June 11, 2003, to pay the delinquent assessment, together with interest thereon at the rate of eight percent (8%) per annum, from the date of delinquency, costs of advertising and expenses of sale. No water will be delivered during the delinquency period until such assessment is paid or reasonable security, satisfactory to the Board of Directors, is given therefor. Dated this 1st Day of March, 2003.
Lauren Sompayrac, Secretary
Teton West Irrigation Company, Inc.
Driggs, ID

Published in the Teton Valley News
March 13, 20 and 27, and April 3, 2003

NOTICE OF SHERIFF'S SALE

Dale P. Thomson, Esq.
THOMSON LAW OFFICES, CHTD.
Attorneys at Law
115 East Main
P.O. Box 609
Rexburg, Idaho 83440-0609
Telephone: (208) 356-9000
Facsimile: (208) 356-9336
Idaho State Bar #2643

Attorney for Plaintiff

NOTICE OF TRUSTEE'S SALE

PLEASE TAKE NOTICE, that on Wednesday, the 30th day of July, 2003, at the hour of 10:00 a.m., on said date, at the offices of FIRST AMERICAN TITLE COMPANY, at 81 N. Main Driggs, County of Teton,

2002, as instrument No. 149119, in the records of Teton County, Idaho. THE ABOVE GRANTOR IS NAMED TO COMPLY WITH SECTION 45-1506(4)(a), IDAHO CODE. NO REPRESENTATION IS MADE THAT SAID GRANTOR EITHER IS OR IS NOT PRESENTLY RESPONSIBLE FOR THE SUBJECT OBLIGATION. The default for which this foreclosure sale is to be made is failure to pay monthly installments in the amount of \$8,575.61, due under said Deed of Trust and the Adjustable Rate Promissory Note dated June 1, 2002, for the month of November 2002, and each and every month thereafter. Additional instances of Default include:
Failure to pay the sum of \$100,000.00 due on or before December 1, 2002, in accordance with the subject Note and related Extension Agreement dated September 26, 2002.
Failure to timely pay applicable property taxes and/or assessments.
The principal sum owing on the obligation secured by said Deed of Trust is \$914,769.83, plus late charges, collection fees, accrued and accruing interest as provided in said Note according to the terms thereof and said Deed of Trust, together with all costs of foreclosure, attorney fees and the fees of the Successor Trustee herein and together with all sums properly advanced or expended under the terms of such Deed of Trust to protect the value of the security.
DATED this ____ day of March, 2003.
SUCCESSOR TRUSTEE

GREGORY L. CROCKETT
HOPKINS RODEN CROCKETT
HANSEN & HOOPES, PLLC
428 Park Avenue
P.O. Box 51219
Idaho Falls, ID 83405-1219
(208) 523-4445

EXHIBIT "A"

Blackburne & Brown Mortgage Fund I, a California Limited Liability Partnership as to an undivided 52.803% interest;

Samuel H. Stephenson and Tula F. Stephenson, Co-Trustees of the

H.B. Scammon, Jr., Trustee of the H.B. Scammon, Jr. Revocable Living Trust dated April 6, 1988, as to an undivided 1.875% interest;

Ronald John Smith and Florine Smith, husband and wife, as joint tenants, as to an undivided 1.250% interest;

Carroll Edward Meserve and June Meserve, husband and wife, as to an undivided 1.255% interest;

Terron A. Leonard and Lynn R. Leonard as Trustees of the Leonard Revocable Trust, as to an undivided 1.875% interest;

Jon W. Bell, M.D. Profit Sharing Plan, as to an undivided 6.250% interest whose address is 4811 Chippendale Drive, Suite 101, Sacramento, CA 95841, herein called Beneficiary.

Published in the Teton Valley News
April 17, 24, May 1, 8 2003

NOTICE OF TRUSTEE'S SALE

Trustee's Sale No. 02-WG-32559
Notice is hereby given that, Fidelity National Title Insurance, the duly appointed Successor Trustee, will on July 18, 2003, at the hour of 10:00 AM, of said day, at the main entrance to Alliance Title & Escrow, 78 North Main Street, Driggs, ID, sell at public auction to the highest bidder, for cash, in lawful money of the United States, all payable at the time of sale, the following described real and personal property (hereafter referred to collectively as the "Property"), situated in the County of Teton, State of Idaho, to-wit: Lot 4 in Block 2 of Fox Creek Subdivision, Teton County, Idaho, as per the Recorder Plat thereof. The Trustee has no knowledge of a more particular description of the above-referenced Property but, for purposes of compliance with Section 60-113 of Idaho Code, the Trustee has been informed that the address of 517 Fox Creek Hollow, Victor, ID 83455, is sometimes associated with said real property. Said sale will be made without covenant or warranty regarding title, possession or encumbrances to satisfy the obligation secured by and pursuant to the following instrument:

30

LEGAL NOTICE

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

22-13265
CITY OF VICTOR
PO BOX 122
VICTOR ID 83455-0122
Point(s) of Diversion SESE S11
T03N R45E, TETON County
Source GROUND WATER

Use: MUNICIPAL
01/01 To 12/31 3 CFS
Total Diversion: 3 CFS
Date Filed: 03/13/2003
Remark: The place of use is the City of Victor for Municipal purposes.

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code.

Any protest against the approval of this application must be filed with the Director, Dept. of Water Resource, Eastern Region, 900 N Skyline Dr Ste A, Idaho Falls ID 83402 together with a protest fee of \$25.00 for each application on or before April 21, 2003. The protestant must also send a copy of the protest to the applicant.
KARL J DREHER, Director

Published in the Teton Valley News
April 3 and 10, 2003

NOTICE OF TRUSTEE'S SALE

On July 29, 2003, at the hour of 3:00 o'clock PM of said day, in the lobby of First American Title Co., 81 North Main Street, Driggs, Idaho, CHARLES C. JUST, ESQ., Attorney at Law, as Successor Trustee, will sell at public auction to the highest bidder, for cash, in lawful money of the United States, all payable at the time of sale, the following described real property, situated in the County of Teton, State of Idaho, and described as follows to wit:

A part of the SW 1/4 NW 1/4 Section 26, Township 4 North, Range 45 East, Boise Meridian, Teton County, Idaho, being further described as:
Commencing at the W 1/4 Corner of

amount due under the certain Promissory Note and Deed of Trust, in the amounts called for thereunder as follows:

Monthly payments in the amount of \$4072.67 for the months of November 2002 through and including to the date of sale, together with late charges and monthly payments accruing. The sum owing on the obligation secured by said Deed of Trust is \$431274.99 as principal, plus service charges, attorney's fees, costs of this foreclosure, any and all funds expended by Beneficiary to protect their security interest, and interest accruing at the rate of 8.625% from October 1, 2002, together with delinquent taxes plus penalties and interest to the date of sale.

The Beneficiary elects to sell or cause the trust property to be sold to satisfy said obligation.

Dated this 25th day of March, 2003.

Paula Peterson
Trust Officer for
Charles C. Just, Esq.

Published in the Teton Valley News
April 3, 10, 17 and 24, 2003

CITY OF TETONIA, IDAHO

NOTICE OF SPECIAL LOCAL ELECTION

NOTICE IS HEREBY GIVEN that a special election will be held in and for the City of Teton, Teton County, Idaho, on Tuesday, May 27th, 2003, for the purpose of voting on the following question:
SHALL THE CITY OF TETONIA, IDAHO, AUTHORIZE THE RETAIL SALE OF LIQUOR BY THE DRINK PURSUANT TO IDAHO CODE, SEC. 23-917

The polls will be open at the hour of 12:00 noon until 8:00 p.m.

Published in the Teton Valley News
April 3, 2003

LEGAL NOTICE

One trustee for Valley of the Teton District Library for the term of five years, to-wit: May 27



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

March 26, 2003

STATE OF IDAHO
DEPT OF ENVIRONMENTAL QUALITY
900 N SKYLINE DR STE B
IDAHO FALLS, ID 83402

Application to Permit No. 22-13265

STATE OF IDAHO :

The Department of Water Resources is seeking written comment and/or recommendations from your agency regarding the above referenced water right application. A copy of the application is enclosed for your reference.

This office can complete the processing of an unprotested application as soon as the protest period is past; therefore, your prompt response to this request is appreciated. If your agency desires to file a formal protest against the approval of this application, your written protest along with a \$25.00 filing fee must be received in this office by April 21, 2003.

Please contact this office if you have any questions regarding the application.

Sincerely,


Harold W Jones
Water Right Supervisor

Enclosure(s)

HWJ:sc



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION
March 26, 2003

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

CITY OF VICTOR
PO BOX 122
VICTOR ID 83455-0122

RE: Application for Permit No 22-13265

Dear Applicant(s):

The Department of Water Resources acknowledges receipt of your water right application. Please refer to the above referenced number in all future correspondence regarding this application.

A legal notice of the application has been prepared and is scheduled for publication in the Teton Valley News on April 3 and 10, 2003. Submittal of protests to this application will be allowed for a period ending ten days after the second publication.

If the application is protested you will be sent a copy of the protest(s). All protests must be resolved before the application can be considered for approval. If the protest(s) cannot be resolved voluntarily, the Department will conduct a conference and/or hearing on the matter.

If the application is not protested, it will be forwarded to our State Office in Boise for final processing. The State Office will notify you of any action taken on the application and will send you a copy of the permit if approved.

Please feel free to contact this office if you have any questions.

Sincerely,

Harold W Jones
Water Right Supervisor

HWJ:sc



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, ID 83402-1718 • Phone: (208) 525-7161 FAX: (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

March 26, 2003

Legal Notice Department
Teton Valley News
80 E LITTLE AVE
DRIGGS ID 83422

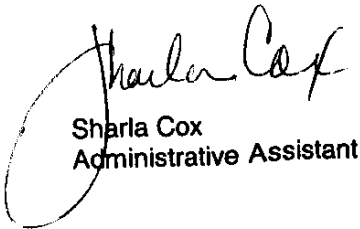
RE: Application for Permit No. 22-13265

Dear LEGAL NOTICE DEPARTMENT:

Enclosed you will find a legal notice which we wish to have published in your newspaper on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before April 21, 2003. Your cooperation is appreciated.

Sincerely



Sharla Cox
Administrative Assistant

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

22-13265

CITY OF VICTOR

PO BOX 122

VICTOR ID 83455-0122

Point(s) of Diversion SESE S11 T03N R45E, TETON County

Source GROUND WATER

Use: MUNICIPAL 01/01 To 12/31 3 CFS

Total Diversion: 3 CFS

Date Filed: 03/13/2003

Remark: The place of use is the City of Victor for Municipal purposes.

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code.

Any protest against the approval of this application must be filed with the Director, Dept. of Water Resource, Eastern Region, 900 N Skyline Dr Ste A, Idaho Falls ID 83402 together with a protest fee of \$25.00 for each application on or before April 21, 2003. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director

Published on April 3 and 10, 2003