

## MEMORANDUM

To: Steve Lester *SL*  
From: Gary Spackman *Gary*  
Date: January 22, 1998

Re: Transfer no. 5180 in the Name of Capitol Water Corporation: Change to Municipal Use

Capitol Water Corporation filed an application seeking to change the place of use, the nature of use, and add diversion points for the following six water rights:

| <u>Water right</u> | <u>Priority</u> | <u>Nature of Use</u> | <u>Flow (cfs)</u> | <u>Volume (afa)</u> |
|--------------------|-----------------|----------------------|-------------------|---------------------|
| 63-03002           | 9/01/54         | Irrigation           | 0.32              | None                |
|                    |                 | Domestic             | None              | None                |
|                    |                 | Fire Protection      | <u>0.566</u>      | None                |
|                    |                 |                      | 0.866             |                     |
| 53-03071           | 12/27/55        | Municipal            | 0.80              | None                |
| 63-03152           | 3/25/59         | Domestic             | 0.92              | None                |
| 63-03166           | 8/25/59         | Municipal            | 3.34              | None                |
| 63-07108           | 5/21/68         | Domestic             | 4.90              | 960.0               |
| 63-11528           | 5/01/91         | Municipal            | 3.40              | None                |
|                    |                 | Fire Protection      | <u>3.40</u>       | None                |
|                    |                 |                      | 3.40              |                     |

Capitol Water asks that the nature of use for all of the water rights be changed to municipal use and fire protection. It also implicitly asks that the annual volume limitation described by water right 63-07108 be lifted. Finally, it asks that a fire protection water right, which is essentially dormant most of the time, be licensed as an unrestricted municipal use.

While IDWR has approved municipal water rights for Capitol Water in the past, the change in the water laws governing water rights for municipalities impose on IDWR a responsibility to insure that an application qualifies as a municipal provider when a change in nature of use to municipal use is proposed. Capitol Water should submit proof that it is a

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“corporation or association holding a franchise to supply water for municipal purposes, or a political subdivision of the state of Idaho authorized to supply water for municipal purposes, and which does supply water for municipal purposes to users within its service area . . . .” Idaho Code § 42-202B(2)(b). It should also submit a map of its certificated service area. I have verbally requested this information from Capitol Water.

I agree with Lori Graves (see her memo in the file) that the 0.566 cfs fire protection component of water right no. 63-03002 not be incorporated into the general municipal water right, but that it be separately described as fire protection to prevent an enlargement of use.

I think the most important consideration has been overlooked, however. The water rights sought to be transferred may have been licensed without considering the total capacity of the system. When an application for transfer is filed by a municipal provider seeking to change the nature of use to municipal purposes, IDWR should seek information about the historical use of the water. Records of peak diversions should be analyzed by IDWR prior to approval. In addition, the municipal provider should submit information about the maximum capacity of the system if it is different than the measured peak. When approving the transfer, the water rights changed by the municipal provider should be limited to at least the capacity of the system, and perhaps the peak diversion rate and volume because the service area of Capitol Water is limited as a result surrounding development served by other providers. Unless Capitol Water provides evidence of an expanding service area, this application for transfer should limit the flow rate authorized and perhaps the annual volume.

Please have someone request the information from Capitol Water.

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