

Lary



State of Idaho

DEPARTMENT OF WATER RESOURCES

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May 22, 1998

RECEIVED

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KARL J. DREHER
DIRECTOR

MAY 27 1998

WATER RESOURCES
WESTERN REGION

Mr. Christopher H. Meyer
Givens Pursley & Huntley LLP
P.O. Box 2720
Boise, Idaho 83701

COPY

Re: Your Letter Dated March 26, 1998 Concerning Permits for Appropriating Water in Basin 63

Dear Chris:

Norm and I have reviewed your letter of March 26 wherein you inquired about the circumstances under which the Department of Water Resources would resume processing non-domestic applications for permits to appropriate water in Basin 63 and whether the "Domestic Only" condition could now be removed from thirteen permits presently held by United Water Idaho. As you correctly point out, my predecessor lifted the moratorium on new appropriations in Basin 63 on May 3, 1995, and my reason for placing an administrative hold on processing new permit applications in Basin 63 has largely been satisfied with the completion of the first phase of the Treasure Valley Hydrologic Project.

Based on the information gained from the first phase of the Treasure Valley Hydrologic Project, the Department is preparing proposed management strategies for Basin 63. Included are draft orders for management designations which are currently being reviewed internally to assure compliance with applicable law and consistency with known hydrogeologic characteristics of the basin. We anticipate conducting public information meetings to solicit comments and suggestions regarding these proposals in one to two months. I then plan to issue notice of proposed adoption of appropriate designations, after which processing of pending and new applications for permits could be resumed accordingly.

Regarding removal of the "Domestic Only" condition from the thirteen permits to appropriate water currently held by United Water, we do not share your opinion that this condition should be removed administratively without providing the public notice and the opportunity to have objections heard. We understand the accounting burden and administrative complexity this condition imposes, and your conclusion that it may no longer be necessary to maintain this condition to protect against injury to other users may have merit. However, we believe that a determination to remove this condition from each of the permits previously issued should only be made in accordance with the procedures provided under Section 42-211, Idaho

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Code. Because removing the "Domestic Only" provision could constitute a change in the nature of the intended use or other substantial change in the proposed use of water under the right, we believe applications to amend the previously issued permits are required. Following receipt of applications to amend, the Department would provide notice of the applications so that other water users and the public would have the opportunity to be heard. Although United Water could choose to initiate this process at any time, waiting until the Department issues the notice of proposed adoption of management designations for Basin 63 may be appropriate.

In reviewing the thirteen permits currently held by United Water, we note that proof of beneficial use has already been filed for three of the permits (Nos. 63-11950, 63-11951, and 63-12363). We do not believe that these three permits need to be treated differently than those for which proof of beneficial use has not been filed. However, United Water may want to request that the Department withhold licensing for these rights until United Water has attempted to amend the permits.

I trust the above is responsive to your questions. If I have not addressed an issue that needs consideration, please give me a call.

Sincerely,



Karl J. Dreher
Director

cc: Ed Squires
Gary Spackman
Phillip Rassier
Glen Saxton

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OF COUNSEL

March 26, 1998

RECEIVED

MAR 27 1998

Department of Water Resources

Mr. Karl J. Dreher
Mr. Norman C. Young
Idaho Department of Water Resources
1301 N. Orchard Street
Boise, ID 83706-2237

Re: United Water Idaho - Moratorium
GPH No. 30-74

Dear Messrs. Dreher and Young:

I am writing on behalf of United Water Idaho ("UWID") to inquire about the status of the moratorium on the processing of ground water permit applications in the Boise River Drainage Area. (A chronological summary of the Snake River Basin Moratorium is attached as Appendix A.) We understand that this issue is before the Department now, and wish to offer our thoughts in a constructive manner.

We raise two issues. First, UWID would like to discuss when and under what circumstances the Department will resume processing of non-domestic permit applications in Basin 63. Second, UWID is interested in exploring whether "domestic only" conditions imposed on permits issued during the moratorium may now be removed.

End of Informal Moratorium

As you know, Director Higginson lifted the Snake River Basin Moratorium with respect to Basin 63 on May 3, 1995. Nonetheless, the Department has continued the suspension of processing of permit applications within the Boise area pending completion of the Phase I of the Treasure Valley Hydrologic Project and

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the sub-project on the Boise Valley Water Budget. UWID has not objected to this temporary administrative action. Indeed, as an active participant in the Project, UWID appreciates the need for a detailed understanding of the local hydrology. Based on the results of Phase I of the Project, it appears to us that it is time to bring this temporary administrative measure to a conclusion. We would like to hear the Department's thinking on this subject.

"Domestic Only" Conditions on Recent Permits

UWID has identified thirteen current permits that the Department has issued to UWID since the moratorium went into effect. (No licenses were issued during this period.) They are listed in Appendix B. In each case, "domestic only" conditions were included in the permits in order to allow them to be issued during the moratorium.

The four conditions from water right number 63-12055 (the Marden Street Plant Surface Water Right) are typical:

11. The domestic use occurring under this municipal right shall not exceed 13,000 gallons per day per dwelling in accordance with Section 42-111, Idaho Code.
12. The daily diversion volume for the non-domestic uses under this municipal right shall not exceed 2,500 gallons per day in accordance with the provisions of Section 42-111, Idaho Code.
13. This permit authorizes irrigation of up to 1/2 acre within each platted subdivision lot upon which a domestic dwelling has been constructed.
14. Use of water for large projects such as irrigation of parks, golf courses, or sports activities fields is not authorized under this permit.

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UWID has managed to operate under these conditions on a temporary basis. However, making these conditions permanent is problematical for two reasons.

First, they present an increasingly complex accounting problem for the company. Were it ever necessary to administer these rights in time of shortage, keeping track of all these conditions would be a substantial challenge.

Second, the conditions cannot always be satisfied simply through accounting. In one case, at least, the Department has required costly operational changes to satisfy "domestic only" conditions. That example is UWID's Ten Mile Ridge well field in which all wells are restricted to "domestic only" purposes.

This well field was commenced in response to water level declines in the Southeast Boise Ground Water Management Area. As part of a collective effort to solve management problems, UWID agreed, prior to the imposition of the moratorium, to stop pumping its Oregon Trail and Gowen wells. This, in turn, entailed replacing that water with water from new wells along Ten Mile Ridge. As these wells were drilled pursuant to this cooperative agreement, they were subjected to the moratorium restrictions (imposed after the agreement was entered into). UWID accepted these restrictions on the understanding that they would be temporary.

As a result of these restrictions, water from Ten Mile Ridge cannot be delivered directly to Micron and other "nondomestic" customers. Instead, industrial and commercial demand in that area must be met by delivering the Ten Mile Ridge water down to the lower Gowen Reservoir (where it mixes with water from older wells at the lower service level) and then boosting (re-pumping) water from non-restricted water rights up to the higher service level for commercial and industrial use. In other words, the Department will not allow UWID to engage in an accounting process unless it first makes a physical connection to its larger integrated system, and then pumps back from that system. This exercise creates no new water, but contributes to higher costs and rates.

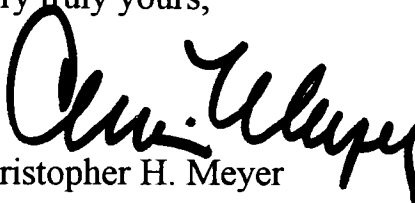
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It is UWID's view that, with the lifting of the moratorium, these conditions should be removed from UWID's existing water right permits.

This can be done without enlargement or injury to other users. The applications and public notices for these water rights identified the rights as municipal rights with specifically identified diversion rates. Lifting the conditions will eliminate complex accounting and operational requirements in UWID's administration of its various water rights within its integrated water distribution system, but will not result in any enlargement. The diversion rate will remain unchanged. The Department imposed the "domestic only" restrictions in connection with a moratorium that was plainly identified to the public as temporary. Moreover, these are permits only, not licenses. Thus, there is no historical pattern of use that must be adhered to. Consequently, we feel the Department may lift these permit conditions prior to proof, so long as the quantity limit on the diversion rate in the permit are not enlarged.

United Water Idaho would appreciate an opportunity to discuss these issues with you at your convenience.

Very truly yours,


Christopher H. Meyer

Encl: Appendices A and B

cc: Gary Spackman
Phillip J. Rassier
Edward Squires

CHM:baf

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APPENDIX A

Chronology of the Snake River Basin Moratorium

SNAKE RIVER BASIN MORATORIUM		
5/15/1992	Snake River Basin Moratorium	Applies to surface and ground water. The moratorium indefinitely suspends the processing of any pending or new application for permit. On the other hand, if a permit already has been issued, that right may proceed to license. The moratorium contains exceptions for (1) domestic use (section 42-111), (2) supplemental rights, (3) nonconsumptive use (section 42-605A), (4) drilling permits for well deepening, and (5) transfers. (Presumably amendments of permits are also allowed, but this is not spelled out. It is spelled out in the later moratorium for the trust water area.)
1/6/1993	Amended Snake River Basin Moratorium	Split off the "non-trust water area" and eliminated it from the Snake River Basin Moratorium. This was issued pursuant to a settlement agreement entered into by the IDWR and various litigants.
1/6/1993	Trust Water Moratorium	Set up a separate moratorium for the trust water area above Milner dam. Unlike the indefinite Snake River trust, this one was sunsetted for 12-31-1997. This moratorium also does not contain the exception for supplemental water.
4/30/1993	Eastern Snake River Plain and Boise River Drainage Area Moratorium	This moratorium rescinded the two prior Snake River moratoria (plus two specialized moratoria for Mud Lake and the Big Lost River which predated the Snake River Basin moratorium). It established a new moratorium of indefinite duration, but geographically limited to the Eastern Snake River Plain (upstream of King Hill) and the Boise River Drainage Area (basin 63). It contains exceptions for (1) domestic use (section 42-111), (2) nonconsumptive use (section 42-605A), (3) deepening of wells, (4) transfers, (5) case-by-case exceptions.
4/11/1994	Idaho Code § 42-1806.	Codified the IDWR's April 30, 1993 amended moratorium on new ground and surface water rights, and mandated that it stay in effect until December 31, 1997. The full citation is Act of Apr. 11, 1994, 1994 Idaho Sess. Laws, ch. 449, pp. 1433-34 (H.B. 982), codified at Idaho Code § 42-1806.
5/3/1995	Boise River Drainage Area Moratorium Lifted	IDWR lifts moratorium within the Boise River Drainage Area (basin 63). It provided that applications previously subject to the moratorium now would be processed at the rate of 30 per month. Ground water applications are to be given special

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		scrutiny, and special conditions may be attached. Surface diversions upstream of Star Bridge will require a mitigation plan. The Eastern Snake River Plain Moratorium remains in effect until 12/31/1997.
Approx. 1996	Boise Area Informal Moratorium	Although the moratorium affecting the Boise area was formally lifted by Director Higginson on 5/3/1995, Director Dreher has imposed an unwritten, de facto moratorium on the processing of permit applications in basin 63 pending completion of the Phase I of the Treasure Valley Hydrologic Project and the sub-project on the Boise Valley Water Budget.
12/31/1997	Eastern Snake River Moratorium	The moratorium expired on this date, pursuant to the Legislature's sunset provision.

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APPENDIX B
List of UWID Permits Issued During Moratorium

1.	63-12055	Marden Street Plant	Permit
2.	63-11878	Redwood Creek	Permit
3.	63-11951	Overland	Permit
4.	63-11950	Taggart #3	Permit
5.	63-12140	McMillan	Permit
6.	63-12143	Gary Lane	Permit
7.	63-12310	Veterans	Permit
8.	63-12192	Floating Feather	Permit
9.	63-12363	Cassia #2	Permit
10.	63-12432	Island Woods	Permit
11.	63-12138	Tenmile ¹	Permit
12.	63-12139	Pleasant Valley ¹	Permit
13.	63-12043	Raptor ¹	Permit

¹ Ground water underneath these wells is thought to be tributary to the Snake River. Consequently, these wells may be subject to different moratorium rules.