

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

| | | |
|---------------------------------|---|-----------------------------|
| IN THE MATTER OF THE TWIN FALLS |) | FINAL ORDER |
| GROUND WATER MANAGEMENT |) | EXTENDING MORATORIUM |
| AREA MORATORIUM |) | |
| |) | |
| _____ |) | |

On March 21, 2013, the Idaho Department of Water Resources (“Department”) issued a *Recommended Order Extending Moratorium* (“Recommended Order”) in the above captioned matter. On March 21, 2013, the Department served a copy of the Recommended Order by certified mail to the holders of applications and permits proposing to appropriate water in the Twin Falls Ground Water Management Area (“Twin Falls GWMA”). The Department published notice of the Recommended Order in the *Times-News* on March 28, April 4, and 11, 2013.

Any party thereafter had fourteen (14) days under the Department’s Rules of Procedure in which to file a petition for reconsideration or exceptions to the Recommended Order with the Director of the Department or fifteen (15) days to request a hearing pursuant to Idaho Code §42-1701A(3).

No petitions, exceptions, or requests for hearing were filed to the Recommended Order. In accordance with Rule 720 of the Department’s Rules of Procedure, a recommended order will become final only after review and issuance of a final order by the Director. In accordance with Rules 720 and 740 of the Department’s Rules of Procedure, and after review, the Director hereby adopts the Recommended Order in its entirety.

ORDER

IT IS HEREBY ORDERED that the Recommended Order of the Department entered on March 21, 2013, as attached hereto as Attachment A, is adopted as a Final Order of the Department.

IT IS FURTHER ORDERED that the Department shall publish notice of this order in three (3) consecutive weekly issues of a newspaper of general circulation in the Twin Falls GWMA.

DATED this 11th day of June, 2013.



Gary Spackman
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of June, 2013, a true and correct copy of the document(s) described below were served by placing a copy of the same in the United States mail, certified with return receipt, postage prepaid and properly addressed to the following:

Document(s) Served: Final Order Extending Moratorium
Explanatory Information to Accompany a Final Order

| | | | |
|--|--------------------|---|---------|
| TWIN FALLS SCHOOL DISTRICT #411 201 MAIN AVE W TWIN FALLS ID 83301-6103 | 47-7964 | CITY MANAGER CITY OF TWIN FALLS PO BOX 1907 TWIN FALLS ID 83303-1907 | 47-7969 |
| EUGENE W WALKER 624 PIERCE ST TWIN FALLS ID 83301 | 47-7929 | WESTERN HYDROPOWER INC PO BOX 101 TWIN FALLS ID 83301 | 36-8137 |
| MAGIC GARDENS 560 FILER AVE TWIN FALLS ID 83301 | 47-7966 | BETASEED INC PO BOX 858 KIMBERLY ID 83341 | 47-8024 |
| GARY STONE 394 FAFNIR DR KIMBERLY ID 83341 | 47-7714 | FIRST CHURCH OF THE NAZARENE 1231 WASHINGTON ST N TWIN FALLS ID 83301 | 47-7745 |
| HYDROTUBE OF IDAHO 2285 ADDISON AVE E TWIN FALLS ID 83301 | 47-7872 | MICHAEL & NORA KESTLER 4139 SHOSHONE FALLS GRADE PO BOX 1183 TWIN FALLS ID 83303 | 47-7492 |
| MIKE MASON COLLEGE OF SOUTHERN IDAHO PO BOX 1238 TWIN FALLS ID 83303-1238 | 47-7478 47-7606 | JOHN A ROSHOLT, TRAVIS L THOMPSON, PAUL L. ARRINGTON BARKER ROSHOLT & SIMPSON LLP 195 RIVER VISTA PL STE 204 TWIN FALLS ID 83301-3029 | |
| J D MCCOLLUM PO BOX 5492 TWIN FALLS ID 83303-5492 | 47-7758 47-7813 | THOMAS M ROBERTSON COLEMAN RITCHIE & CLUFF 156 2 ND AVE WEST PO BOX 525 TWIN FALLS ID 83303-0525 | |
| LYNDEN S WILLIAMS KANAKA RAPIDS RANCH HOA 1240 RIVER RD BUHL ID 83316 | | CHARLES E BROCKWAY BROCKWAY ENGINEERING 2016 N WASHINGTON ST STE 4 TWIN FALLS ID 83301 | |
| PRISTINE SPRINGS INC C/O FRITZ X HAEMMERLE PO BOX 1800 HAILEY ID 83333 | 36-8669 | C TOM ARKOOSH ARKOOSH LAW OFFICES CHTD PO BOX 2900 BOISE, ID 83701-2900 | |

HARRIET HENSLEY
OFFICE OF THE ATTORNEY GENERAL
700 W STATE ST 2ND FLOOR
PO BOX 83720
BOISE ID 83720-0010

HAND DELIVERED TO:

IDAHO WATER RESOURCE BOARD 36-7130
322 E FRONT STREET 36-8094
BOISE ID 83720-0098

Emalee Rushing
Emalee Rushing
Administrative Assistant

Attachment A

BEFORE THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

| | | |
|---------------------------------|---|-----------------|
| IN THE MATTER OF THE TWIN FALLS |) | RECOMMENDED |
| GROUND WATER MANAGEMENT |) | ORDER EXTENDING |
| AREA MORATORIUM |) | MORATORIUM |
| _____ | |) |

On January 11, 1984, the Director of the Idaho Department of Water Resources (“IDWR” or “Department”) designated an area in Twin Falls and Jerome Counties as the Twin Falls Ground Water Management Area (“TFGWMA”) pursuant to Idaho Code § 42-233b. The Department created the TFGWMA because the artesian pressure in the thermal (low temperature) ground water aquifer underlying the TFGWMA was declining.

On July 24, 1987, the Director of the Department established a five (5) year moratorium for a portion of the TFGWMA, prohibiting approval of applications to appropriate water and limiting development under existing permits to divert and use water from the artesian, thermal ground water aquifer. The Twin Falls Moratorium Area is that portion of the TFGWMA lying within Townships 9 and 10 South and Ranges 16, 17, and 18 East, Boise Meridian. IDWR issued the moratorium order because the artesian pressure in the low temperature geothermal aquifer continued to decline.

The Department extended the five-year moratorium for additional five-year periods through June 2007.

On April 17, 2008, the Director of the Department issued a *Final Order Extending Moratorium*, extending the moratorium through April 1, 2013. The extension prohibited appropriation of low temperature geothermal water, including the appropriation of low temperature geothermal ground water for domestic purposes under Idaho Code § 42-111.

On February 21, 2013, the College of Southern Idaho filed a petition seeking extension of the moratorium for an additional five-year period. Also on February 21, 2013, the Estate of J.D. McCollum joined in the College of Southern Idaho’s petition to extend the moratorium.

FINDINGS OF FACT

1. Hydrologic data document that artesian pressures in three wells completed in the low temperature geothermal aquifer, located in the TFGWMA, show a decline of about 63 feet over the past 25 years. Since early 2009, artesian pressures in the three wells have increased, likely responding to a significant decrease in withdrawals from the Pristine Springs well.

2. Based on the relatively short duration of data collection since the withdrawal from the Pristine Springs well was reduced in early 2009, and on the uncertainty associated with the accuracy of the withdrawal measurements, it is unclear whether the system has reached a new ground water level equilibrium, or that water levels will continue to decline.

3. All of the monitoring data indicate that the low temperature geothermal aquifer system is highly transmissive and interconnected, and that any additional increases in withdrawal will ultimately result in further deteriorations in wellhead pressures.

4. Existing water right holders rely on the low temperature geothermal aquifer's pressure for delivery of the water to the right holders' facilities.

5. The Department has issued drilling permits, both by written approval and by start cards, for domestic uses, as defined by Idaho Code § 42-111, within the Twin Falls Moratorium Area of the TFGWMA. Low temperature geothermal water is diverted from some of the wells constructed under these domestic drilling permits.

CONCLUSIONS OF LAW

Grounds for Extending Moratorium

1. Idaho Code § 42-1805 states, in part:

...the director of the department of water resources shall have the following powers and duties:

* * *

(7) After notice, to suspend the issuance or further action on permits or applications as necessary to protect existing vested water rights or to ensure compliance with the provisions of chapter 2, title 42, Idaho Code...

2. Idaho Code § 42-233 states, in part:

(1) The right to the use of low temperature geothermal resource of this state shall be acquired by appropriation. The appropriation may be perfected by means of the application, permit and license procedure as provided in this chapter for ground water, provided that low temperature geothermal resources shall be utilized primarily for heat value and secondarily for the value as water. Usage of a low temperature geothermal resource primarily for reasons other than heat value is not a beneficial use of the resource, unless the director of the department of water resources exempts the proposed use. The director may exempt a proposed use if the director finds that the proposed use satisfies the following criteria: (i) there is no feasible alternative use of the resource; (ii) there is no economically viable source of water having a bottom hole temperature of eighty-five (85) degrees or less in a well available; (iii) the exemption is in the public interest.

3. Idaho Code § 42-226 states, in part:

Prior appropriators of underground water shall be protected in the maintenance of reasonable ground water pumping levels as may be established by the director of the department of water resources as herein provided. In determining a reasonable ground water pumping level or levels, the director of the department of water resources shall consider and protect the thermal and/or artesian pressure values for low temperature geothermal resources and for geothermal resources to the extent that he determines such protection is in the public interest.

4. Artesian pressures in the low temperature geothermal aquifer underlying the TFGWMA have declined significantly over the last 25 years. Recent data is inconclusive regarding a trend towards an equilibrium, or balance, in the withdrawals and the recharge to the aquifer.

5. Maintaining the artesian pressures in the low temperature geothermal artesian aquifer underlying the TFGWMA will prevent the costly replacement of free flowing wells with pumps and motors. Additional appropriations of water for any purpose, including domestic, will result in deteriorations in wellhead pressures. Declining water levels/pressures may ultimately result in a loss or significant reduction in the continuing availability of the low temperature geothermal resource. In the future, the Director may be required to restrict withdrawals from the aquifer by existing right holders. It is not in the public interest to allow additional, later in time appropriations.

6. The legislature has instructed the Director, when determining reasonable pumping levels, to protect artesian pressures of low temperature geothermal aquifers if protection is found to be in the public interest.

7. It is in the public interest to protect the existing low temperature geothermal aquifer pressures.

8. Extension of the moratorium is appropriate.

The Effect of the Moratorium on Domestic Uses

9. Idaho Code § 42-233 separately and specifically requires a prospective appropriator to file an application for and obtain a water right prior to beneficially using low temperature geothermal water in the state of Idaho.

10. Idaho Code § 42-227 does not exempt prospective appropriators of low temperature geothermal water for domestic uses, as defined by Idaho Code § 42-111, from the application and water right requirements of Idaho Code § 42-233.

11. A domestic ground water right from low temperature geothermal water cannot be perfected by beneficial use, but must be established by the filing of an application with the Department and subsequent approval by the Department as a water right.

12. Idaho Code § 42-1805(7) authorizes the Director to suspend the issuance of permits or actions on applications to appropriate water as necessary to protect existing water rights. Low temperature geothermal water rights must be established by an approved permit, and the Director has the authority to suspend action on applications to appropriate low temperature geothermal water for domestic use.

13. Idaho Code § 42-235 states in part:

Prior to beginning construction of any well or changing the construction of any well, the driller or well owner shall obtain a permit from the director of the department of water resources to protect the public health, safety and welfare and the environment . . .

14. Idaho Code § 42-231 states, in part:

It shall likewise be the duty of the director of the department of water resources to control the appropriation and use of the ground water of this state as in this act provided and to do all things reasonably necessary or appropriate to protect the people of the state from depletion of ground water resources contrary to the public policy expressed in this act.

15. To protect the artesian pressures of the low temperature geothermal aquifer underlying the Twin Falls Moratorium Area, the Director should not approve drilling permits for any purpose in the Twin Falls Moratorium Area, including domestic use, unless the applicant for a drilling permit holds a water right authorizing diversion of low temperature geothermal water from a point of diversion at the proposed well site.

ORDER

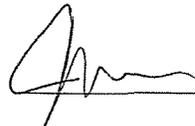
IT IS HEREBY ORDERED, pursuant to Idaho Code § 42-1805(7) and IDAPA Rule 37.03.08055 (Water Appropriation Rule 55), that the order dated July 24, 1987, establishing a moratorium on approval of applications to appropriate and limiting development of existing permits to use the thermal-artesian ground water source in the Twin Falls Moratorium Area **is extended for five (5) years, from the date this order becomes final through May 1, 2018,** unless rescinded or modified by order of the Director or a court of competent jurisdiction.

IT IS FURTHER ORDERED that the moratorium prohibits appropriation of low temperature geothermal water, including the appropriation of low temperature geothermal ground water for “domestic purposes” under Idaho Code § 42-111.

IT IS FURTHER ORDERED that the Department shall not issue drilling permits for domestic purposes as defined by Idaho Code § 42-111, or for any other purpose, to construct a well proposing a production zone within the low temperature geothermal aquifer underlying the Twin Falls Moratorium Area unless the proposed well is described as a point of diversion by a valid, existing water right or water right permit authorizing the appropriation of low temperature geothermal ground water.

IT IS FURTHER ORDERED that the Department shall serve a copy of this order upon holders of applications and undeveloped permits proposing appropriation in the Twin Falls Moratorium Area and shall publish notice of this order as required by IDAPA Rule 37.03.08055 (Water Appropriation Rule 55).

DATED this 21 day of March, 2013.



JEFF PEPPERSACK
Chief, Water Allocation Bureau

EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: The petition must be received by the Department within this fourteen (14) day period.** 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 67-5246(4), Idaho Code.

REQUEST FOR HEARING

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. See section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter 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: a) the service date of the final order, b) the service date of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.