

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

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

BACKGROUND

On January 11, 1984, the Director (“Director”) of the Idaho Department of Water Resources (“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 of concern that the artesian pressure in the thermal (low temperature) ground water aquifer underlying the TFGWMA was declining.

On July 24, 1987, the Director established a five 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. The Director 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 April 2013.

On June 11, 2013, the Director issued a *Final Order Extending Moratorium*, extending the moratorium through May 1, 2018. The extension prohibited appropriation of low temperature geothermal water, including the appropriation of low temperature geothermal ground water for “domestic purposes” defined in Idaho Code § 42-111.

On January 22, 2018, the College of Southern Idaho filed a petition seeking extension of the moratorium for an additional five-year period.

FINDINGS OF FACT

1. Hydrologic data document that artesian pressures in three wells monitored in the low temperature geothermal aquifer, located in the TFGWMA, show a decline of over 25 feet since 1995. *Twin Falls Low Temperature Geothermal Moratorium Area Update*,

2017, *Idaho Department of Water Resources* (Feb. 12, 2018), at 5, fig. 5. Despite an overall reduction of about 24% in total withdrawals from the Twin Falls geothermal system since 2008, water levels continue to decline at a rate of 2.1 feet per year. *Id.* at 1-2.

2. All of the monitoring data show 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. *Twin Falls Low Temperature Geothermal Moratorium Area Update, 2012, Idaho Department of Water Resources* (Mar. 4, 2013), at 3.

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

4. Prior to issuance of the April 17, 2008 *Final Order Extending Moratorium* in this matter, the Department issued drilling permits for domestic uses, defined by Idaho Code § 42-111, within the Twin Falls Moratorium Area of the TFGWMA that were to be developed pursuant to an exemption from a water right permit allowed under Idaho Code § 42-227. Low temperature geothermal water is diverted from some of the wells constructed pursuant to 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. The Department's Water Appropriation Rule 55 (IDAPA 37.03.08.055) authorizes the Director to cease approval of applications for permit in a designated geographical area to protect existing rights.

3. 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.

4. 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.

5. Artesian pressures in the low temperature geothermal aquifer underlying the TFGWMA have declined significantly since at least 1995. Recent data shows that water levels in the aquifer continue to decline despite a reduction in withdrawals from the geothermal system.

6. 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.

7. 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.

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

9. Extension of the moratorium is appropriate.

The Effect of the Moratorium on Domestic Uses

10. 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.

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

12. 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.

13. Idaho Code § 42-1805(7) and Water Appropriation Rule 55 authorize the Director to suspend the issuance of permits or actions on applications to appropriate water as necessary to protect existing water rights.

14. 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 . . .

15. 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.

16. 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 that, pursuant to Idaho Code § 42-1805(7) and Water Appropriation Rule 55, 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 May 2, 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" defined in Idaho Code § 42-111.

IT IS FURTHER ORDERED that the Department shall not issue drilling permits for "domestic purposes" 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, pursuant to Water Appropriation Rule 55, 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 in three (3) consecutive weekly issues of a newspaper of general circulation in the TFGWMA.

IT IS FURTHER ORDERED that this order shall be effective on **May 2, 2018**.

Any person aggrieved by this order shall be entitled to a hearing before the Director to contest the order. The person shall file with the Director, within fifteen (15) days after receipt of written notice of the order, or receipt of actual notice, a written petition stating the grounds for contesting the order and requesting a hearing. *See* Idaho Code § 42-1701A(3).

DATED this 1st day of May 2018.



GARY SPACKMAN
Director