

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

**IN THE MATTER OF THE TWIN FALLS
GROUND WATER MANAGEMENT
AREA**

**ORDER EXTENDING
MORATORIUM**

BACKGROUND

On January 11, 1984, the Director of the Idaho Department of Water Resources (“Department”) designated an area in Twin Falls, Jerome, and Gooding 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 geothermal (low temperature) aquifer underlying the TFGWMA was declining.

On July 24, 1987, the Director issued an order establishing a five-year moratorium for a portion of the TFGWMA. *Order Establishing a Five Year Moratorium* (hereafter “*Twin Falls Moratorium*”) at 3. The *Twin Falls Moratorium* prohibited approval of applications to appropriate water and limited development under existing permits to divert and use water from the artesian, low temperature thermal aquifer. *Id.* at 2. The Twin Falls Moratorium Area is the portion of the TFGWMA lying within Townships 9 and 10 South and Ranges 16, 17, and 18 East, Boise Meridian. *Id.* at 3. A map of the geographical area of the TFGWMA and the Twin Falls Moratorium Area within the TFGWMA is attached to this order as Appendix 1. The Director issued the order establishing the Twin Falls moratorium because the artesian pressure in the low temperature geothermal aquifer continued to decline. *Id.* at 1.

The Department subsequently issued orders extending the five-year moratorium in 1992, 1997, and 2002. The 2002 order extended the moratorium through July 2007.

On July 27, 2007, the Director again issued an order extending the moratorium. A *Petition for Reconsideration* was filed and subsequently granted on September 20, 2007. On April 17, 2008, the Director issued an order extending the moratorium through April 1, 2013. *Final Order Extending Moratorium* at 8. The extension prohibited appropriation of the low temperature geothermal resource, including the appropriation of the low temperature geothermal resource for “domestic purposes” defined in Idaho Code § 42-111. *Id.*

The Department extended the five-year moratorium again in 2013 and 2018. The 2018 order extended the moratorium through May 1, 2023.

On October 21, 2022, the Director issued the *Amended Snake River Basin Moratorium Order* (“*Amended Snake River Moratorium*”). The TFGWMA is located within the Amended Snake River Moratorium Area. The *Amended Snake River Moratorium* states that within the TFGWMA, the provisions of the TFGWMA moratorium shall apply to all applications to appropriate the low temperature geothermal resource and to applications for drilling permits.

FINDINGS OF FACT

1. The Department manages a monitoring network within the Twin Falls Moratorium Area known as the Twin Falls Low-Temperature Geothermal Moratorium Area (“Twin Falls GTMA”) network. The Department monitors withdrawals from the low temperature geothermal aquifer in the area as well as water levels in three wells, CSI #1, CSI #2, and the Filer Test well.

2. Twin Falls GTMA network data indicates that water levels in CSI #1, CSI #2, and the Filer Test well “exhibit statistically significant decreasing trends during the 1995-2023 and 2009-2023 periods. Regionally, water levels in the Twin Falls GWMA are declining at a median rate of 1.2 feet/year for the period 1995-2023 and 1.9 feet per year for the period 2009-2023.” *Twin Falls Low-Temperature Geothermal Moratorium Area Monitoring Update, 2023, Idaho Department of Water Resources* (May 2024), at 12.

3. Twin Falls GTMA network data indicates that monitored withdrawals “exhibit statistically significant increasing trends during the 1995-2023 and 2009-2023 periods of 112.4 and 302.3 acre-feet/year.” *Id.*

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. 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 that were to be developed pursuant to an exemption from a water right permit allowed under Idaho Code § 42-227. The low temperature geothermal resource 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 action on applications for permit or stay further development of permits for

which the permit holder has not submitted proof of beneficial use in a designated geographical area to protect existing rights.

3. Idaho Code § 42-233(1) states, in part:

The right to the use of low temperature geothermal resources 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 concludes:

- (a) The proposed use will not detrimentally affect existing water rights, including water rights for low temperature geothermal water;
- (b) The proposed use will not diminish the temperature of or artesian pressure of the low temperature geothermal aquifer;
- (c) There is no economically viable source of water having a bottom hole temperature of eighty-five (85) degrees or less in a well available.

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 Twin Falls Moratorium Area continue to decline. In contrast, recent data show that monitored withdrawals are increasing.

6. Maintaining the artesian pressures in the low temperature geothermal 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. Because water level declines now span a period of at least 28 years, with greater declines observed over the most recent 14 years, the moratorium order should be extended indefinitely until such time as water level data demonstrates significant recovery in the resource.

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 resources in the state of Idaho.

11. Idaho Code § 42-227 does not exempt prospective appropriators of low temperature geothermal resources 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 a low temperature geothermal resource 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 TFGWMA, the Director should not approve drilling permits to withdraw ground water from the low temperature geothermal aquifer 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 the low temperature geothermal resource 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 low temperature geothermal resource in the Twin Falls Moratorium Area is extended indefinitely, 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 the low temperature geothermal resource, including the appropriation of the low temperature geothermal resource 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 the low temperature geothermal resource.

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 of the low temperature geothermal resource 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 Twin Falls Moratorium Area.

Pursuant to Idaho Code § 42-1701A(3), any person aggrieved by any decision, determination, order, or other 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.

Dated this 11th day of July 2024.



MATHEW WEAVER
Director

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APPENDIX 1

Map of the Twin Falls Moratorium Area within the Twin Falls Ground Water Management Area

