ADMINISTRATIVE MEMORANDUM

Adjudication No. 54
Application Processing No. 69
Well Construction No. 7

DATE: February 26, 2010

TO: Water Management Division

FROM: Jeff Peppersack

RE: Permitting Requirements for Low Temperature Geothermal Wells Used for Domestic Purposes

This memo supersedes Adjudication No. 54, Application Processing No. 69 and Well Construction No. 7 dated August 5, 2008.

On April 17, 2008, the Director extended a five-year moratorium for a portion of the Twin Falls Ground Water Management Area (TFGWMA). The moratorium order prohibits approval of applications to appropriate water and limits development under existing permits to divert and use water from the artesian, thermal ground water aquifer. In addition to extending the moratorium, the Director ordered that the moratorium applies to domestic purposes as defined by Section 42-111, Idaho Code based on the following conclusions:

> 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.
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> Low temperature geothermal water rights must be represented by an approved water right, and the Director has authority to refuse to process applications to appropriate low temperature geothermal water for domestic use.

The conclusions from the order are based on requirements in Section 42-233, Idaho Code. Section 42-233 recognizes the validity of domestic water rights for use of low temperature geothermal water perfected by beneficial use prior to July 1, 1987. Section 42-233 requires the filing and approval of a domestic water right for low temperature geothermal water when the use of water was completed after July 1, 1987.

This memo is intended to inform staff of the requirements for filing an application for permit to appropriate water from a low temperature geothermal well for domestic purposes. In the past, the Department has issued well drilling permits for low temperature geothermal wells to be used for domestic purposes without a water right permit, based on the exception provided under Section 42-227, Idaho Code. Staff should work with owners of those domestic wells constructed after July 1, 1987 to ensure that they file an application for permit to appropriate water if the use is not authorized by an existing water right. In addition, the Department should notify the general public through news releases, the Department's website and/or other available means of the requirement to file an application.

For low-temperature geothermal wells, the following shall apply for domestic uses statewide:

- A valid water right permit, license or decree is required to divert and use water from any low temperature geothermal well, except for rights based on beneficial use established prior to July 1, 1987. Note that deferrable domestic uses not claimed in the Snake River Basin Adjudication ("SRBA") qualify for the exception; however, deferrable uses were limited to those currently defined under Section 42-111(1a), Idaho Code.

- Domestic rights from low temperature geothermal wells that were decreed in the SRBA are valid rights decreed by the court; however, the Department should no longer recommend domestic water rights from low temperature geothermal wells based on beneficial use established on or after July 1, 1987.

- An application to appropriate water from a low temperature geothermal well shall include documentation to demonstrate that the use will be primarily for heat value pursuant to Section 42-233, Idaho Code, or shall include a request to exempt the proposed use with documentation demonstrating that the exemption is warranted based on the statutory criteria.

- Water right or permit holders authorized to divert and use water from a well in a cold water aquifer, who "un-intentionally" encounter a low temperature geothermal resource during construction, modification, or replacement of a well, must cease construction of the well and seek further instruction from the Department regarding measures to protect the resource while any water right issues are pending. Except for those measures required to protect the resource, the water right or permit holder may only resume construction after obtaining authorization to appropriate water from the low temperature geothermal resource or an exemption from the requirement to use the water primarily for heat value pursuant to Section 42-233, Idaho Code.

- A valid water right or permit authorizing a well for diversion and use of a low temperature geothermal resource must exist prior to issuance of a well drilling permit to construct a new well or modify or replace an existing well. Bonding and typically more stringent well construction provisions are applicable for construction for low temperature geothermal wells pursuant to Section 42-233, Idaho Code and Rule 30 of IDAPA 37.03.09.

- Start cards are not valid to construct, modify or replace a well seeking to appropriate a low temperature geothermal resource, or encountering a low temperature geothermal resource during construction. In addition, use of start cards may be prohibited for specific areas that may encounter low temperature geothermal resource as designated by the Department. An incidental or unintentional encounter of low temperature geothermal water while drilling a well authorized by a start card will require the filing of a new drilling permit application. A drilling permit upgrade fee of $125 must accompany the drilling permit application.

Applications to appropriate water from a well using a low temperature geothermal resource for domestic purposes within a moratorium area or other area limiting or prohibiting further development of the resource can only be approved in accordance with the order governing the designated area. An exception will be provided for moratorium areas or other areas limiting or prohibiting further development of the resource that were established or are actively extended or modified by order dated prior to April 17, 2008. In those restricted areas, for situations where development of a domestic use

was commenced prior to April 17, 2008, the Department will only consider a new application to appropriate water from a low temperature geothermal well provided that each of the following requirements are met:

- Development of the domestic use proposed under the new application was commenced prior to April 17, 2008 (for example, this may include a situation where a well was drilled just prior to April 17 and development has continued uninterrupted even though water was not diverted and used from the well for domestic purposes until shortly after April 17; however, it would not include a situation where the domestic use was not at least in initial stages of construction prior to April 17)
- The use is limited to domestic use as defined in Section 42-111, Idaho Code; the domestic use must be primarily for heat value and within the limits of parts A or B of the domestic definition, unless the domestic use qualifies for an exemption from the heating requirements pursuant to Section 42-233, Idaho Code.
- The well complies with drilling permit requirements for wells drilled on or after July 1, 1987

Applications that meet these requirements and are otherwise acceptable for processing shall be advertised and may be approved if the criteria in Section 42-203A, Idaho Code are satisfied. Note that current moratorium areas prohibiting further development of a low temperature geothermal resource may also be subject to other moratoriums or restrictions such as the Eastern Snake River Plain moratorium area; however, those areas may provide exceptions for domestic purposes and will require review on a case by case basis for applications in each area.

Any low temperature geothermal water use or well construction for domestic purposes, not authorized by a water right permit, license or decree (unless right based on beneficial use established prior to July 1, 1987) and/or well drilling permit shall be subject to an administrative enforcement action and/or abandonment of the well pursuant to Chapter 2, Title 42, Idaho Code and Rules of the Department. Department staff are instructed to work with water users to ensure that the appropriate applications are filed to obtain permits or authorization for existing uses.