

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

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

**ORDER GRANTING
PETITION FOR
RECONSIDERATION**

On July 26, 2007, the Director of the Department issued an *Order Extending Moratorium*. The order stated that petitions for reconsideration, or requests for a hearing regarding the *Order Extending Moratorium* must be received on or before August 31, 2007.

On August 30, 2007, the Department received a *Petition for Reconsideration and Exception* from Larry Anderson (Anderson), represented by C. Tom Arkoosh, Attorney at Law. Because the July 26, 2007 *Order Extending Moratorium* was executed by the Director, and exceptions are only filed with the Director following the issuance of a preliminary or recommended order signed by a hearing officer other than the Director, the Department will view the *Petition for Reconsideration and Exception* solely as a petition for reconsideration of the Director's order.

PETITION FOR RECONSIDERATION

Petitioner's Statement of Issues

Anderson contests the *Order Extending Moratorium* by raising the following issues:

1. The designated ground water management area does not qualify within the terms of Idaho Code § 42-233b.
2. No permits are required in a ground water management area for a domestic use and a domestic use "qualifies for exemption."

Expanded Issues

3. Whether it is appropriate for the Department to issue a moratorium order within the Twin Falls Ground Water Management Area.
4. Whether the Department has the authority to prohibit the establishment of a ground water right for a domestic use, as defined by Idaho Code § 42-111, through diversion and beneficial use of ground water (without filing an application and obtaining permit approval as authorized by Idaho Code § 42-227) in areas where the underlying ground water levels or pressures are declining, and appropriation by the application, permit, and license process is prohibited.
5. Whether the Department has the authority to prohibit the establishment of a low temperature geothermal ground water right for a domestic use, as defined by Idaho Code § 42-111, through diversion and beneficial use of low temperature geothermal ground water (without filing an application and obtaining permit approval as authorized by Idaho Code § 42-227) in areas where the underlying artesian pressures in the low temperature geothermal aquifer are declining, and appropriation by the application, permit, and license process is prohibited.
6. Whether the Idaho Code § 42-227 exemption from the water right filing requirements of Idaho Code § 42-229 for a domestic use as defined by Idaho Code § 42-111, diverted from ground water, also applies to the domestic use of water from a low temperature geothermal aquifer.
7. Whether a prospective user of low temperature geothermal ground water for domestic purposes is required to file an application to appropriate water and obtain a permit prior to diverting and beneficially using the low temperature geothermal ground water. In other words, does the domestic exemption of Idaho Code § 42-227 apply to low temperature geothermal ground water resources, or does the separate and specific discussion of the method of appropriation contained in Idaho Code § 42-233 remove low temperature geothermal water from the extension?
8. Any other issues that may be raised by or in response to the petition for reconsideration.

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration filed by Larry Anderson is **Granted**.

IT IS FURTHER ORDERED that the holders of low temperature geothermal ground water rights in the Twin Falls Ground Water Management Area, the applicant's with pending applications to appropriate low temperature geothermal ground water in the Twin Falls Ground Water Management Area, and other interested persons and entities are granted until October 19, 2007 to submit legal briefs regarding the issues stated above. Following submittal of legal briefs, the Department will issue a final order determining whether the moratorium prohibiting appropriations of water in the Twin Falls Ground Water Management Area should be extended.

Dated this 20th day of September, 2007.

David R. Tuthill, Jr.
for: David R. Tuthill, Jr.
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of September, 2007, a true and correct copy of the document described below was served by placing a copy of the same in the United States mail, postage prepaid, and properly addressed to the following:

Document(s) Served: Order Granting Petition for Reconsideration

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