

BEFORE THE DEPARTMENT OF WATER RESOURCES
FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR)
AMENDMENT FOR WATER RIGHT PERMITS)
75-7052 AND 75-7589 IN THE NAME OF)
WILLIAMS LAKE RECREATIONAL)
WATER & SEWER DISTRICT)
_____)

PRELIMINARY ORDER

PROCEDURAL BACKGROUND

On August 2, 1974, the Idaho Department of Water Resources (“IDWR” or “Department”) approved permit to appropriate water no. 75-7052 in the name of Williams Lake Water and Sewer District (Now “Williams Lake Recreational Water & Sewer District” or “applicant”). Permit no. 75-7052 authorized the appropriation of 0.50 cubic feet per second (“cfs”) from Williams Lake for domestic purposes for potentially 442 family units within portions of Section 3, Township 19 North, Range 21 East and Section 34, Township 20 North, Range 21 East in Lemhi County, Idaho. Permit no. 75-7052 required that the permit holder file proof of beneficial use on or before September 1, 1976. On September 10, 1976 IDWR notified the applicant that Permit no. 75-7052 had lapsed since proof of beneficial use had not been filed. On March 23, 1990 the applicant filed a late proof of beneficial use. On June 4, 1990 IDWR reinstated permit no. 75-7052 advancing the priority to March 23, 1990 and limiting the domestic use to 66 households.

On June 29, 1992 Williams Lake Water and Sewer District (Now “Williams Lake Recreational Water & Sewer District” or “applicant”) filed applications for permit no. 75-7589 and 75-7590 for development of springs for domestic use of 100 households within the same location of the place of use identified for permit 75-7052. Each application identified a separate spring and each requested 0.50 cfs. These applications were protested. After a hearing was conducted and a preliminary order was issued, IDWR issued on March 1, 1993 a final order approving Permits no. 75-7089 and 75-7090. The approvals allowed conditioned use of these springs and required that proof of beneficial use be filed on or before March 1, 1995. On March 2, 1995 IDWR extended the date required for proof of beneficial use to March 1, 1998. On January 23, 1998 the applicant filed proof of beneficial use for these permits.

On December 2, 2004 IDWR conducted a field examination of the Williams Lake facilities for licensing purposes for Permits 75-7052, 75-7589 and 75-7590. During the licensing process it was proposed that the development resulting from permits 75-7589 and 75-7590 be combined and licensed as 75-7589 with multiple points of diversion for a common developed delivery system. Also during the examination and licensing process, licensing amendments were proposed to change the nature of use of all of these permits from domestic to municipal.

On September 2, 2005 Williams Lake Recreational Water & Sewer District (“applicant”) filed applications for licensing amendments (“amendments”) for Permits no. 75-7052 and 75-7589. Notice of these amendments were published and protested by Gary M. Mulkey, James Edward Kingston, Kathleen Gliksman, Leslie May Shumate and Thomas James Thompson as individuals. Also Gary and Linday Hawkins filed a joint protest. Valeea Steinbruegge and William Steinbruegge III filed a joint protest. Christine Smith and the Bureau of Land Management (“BLM”) intervened in this contested case. On April 24, 2006 Christine Smith withdrew participation in these matters.

On June 26, 2007, IDWR conducted a hearing in consideration of these applications and the protests of same. The applicant appeared by and through its attorney, Milton Slavin. Gary M. Mulkey, Kathleen Gliksman, Leslie May Shumate, and Thomas James Thompson appeared and represented themselves. The BLM was represented by David Logan. James Edward Kingston did not appear and was reported to be deceased. Gary and Linday Hawkins did not appear at the hearing nor did Valeea Steinbruegge and William Steinbruegge III.

At the hearing, the applicant offered one exhibit into the record. The protestants stipulated to the admission of this exhibit. The exhibit considered by the hearing officer is listed as follows:

Applicant’s Exhibits	Description
1	Forsgren Letter

At the hearing, the protestants offered seven exhibits into the record. The applicant stipulated to the admission. The exhibits considered by the hearing officer are listed as follows:

Protestant’s Exhibits	Description
A	Gliksman Statement
B	IDWR Comment Report
C	Kingston Comments
D	Slavin Letter
E	Warner Memo
F	Saxton Letter
G	Feasibility Study

At the conclusion of the hearing, the hearing officer took official notice of the subject amendment files including the permit files subject of the amendments, holdings in past decisions and orders by IDWR as they may apply to these protested matters, IDWR water right records, records of stream flows and water measurements, and well logs. Also at the conclusion of the hearing the record was left open for 10 days to allow for the submission of an additional exhibit by Gary Mulkey, if found and circulated to the applicant. This potential exhibit was never submitted and the record is considered closed.

After considering the evidence and testimony, the hearing officer finds, concludes, and orders as follows:

FINDINGS OF FACT

1. All facts set forth in the above "Procedural Background" are incorporated as Findings.
2. Domestic use of water diverted from Williams Lake was established pursuant to permit 75-7052 prior to and/or during the authorized development period of the permit.
3. The initial diversion system from Williams Lake was constructed in approximately 1958 and enlarged thereafter. The diversion consisted of a floating pumping platform with ultimately two pumps on the platform on the lake with a capacity of diversion of 0.30 cfs delivering to a pipeline system with storage tank. The point of diversion from the lake was located within SENWSW¹ (Lt 2), Section 34, T20N, R21E.
4. The established domestic use of water under Permit 75-7052 included use at Williams Lake Lodge and uses for 58 homes located within platted lots within the Williams Lake Subdivision and un-platted lands outside the subdivision all within SESE (Lt 4), Section 33; SWNW (Lt 1), SENW, N½SW (Lt 2), SWSW (Lt 4), SESW (Lt 3), Section 34, both T20N, R21E and NWNE (Lt 2), NENW (Lt 3), NWNW (Lt 4), Section 3, T19N, R21E.
5. The domestic use established pursuant to Permit 75-7052 was not limited to in-house use and included the ability to irrigate lawns associated with households. Some lawns historically were watered from this system although the irrigation developed was not extensive and a total area has not been determined.
6. The lodge facility has the capacity to sleep 100 people and includes a 20 unit RV park, a 19 room motel, 7 cabins with 11 total beds, 1 boat house with apartment, a restaurant with a seating capacity of 60 and a bar with a seating capacity of 60.
7. On April 19, 1994 the status of Williams Lake Water and Sewer District was changed to a recreational water and sewer district by order of the district court.
8. In the Fall of 1994 Williams Lake Recreational Water and Sewer District executed a voluntary consent order with the Idaho Department of Health and Welfare which it in part agreed to: "Discontinue the use of the surface water from Williams Lake as a source of potable water no later than July 31, 1996."
9. In the Fall of 1994 the springs covered by permits 75-7589 and 75-7590 were developed when a "new" common diversion and delivery system was constructed. The system captured two springs located within the SWNESE and the NESWSE, Section 34, T20N, R21E. The system has a capacity to divert 0.21 cfs.

¹ Public land survey descriptions in this decision without a fraction following a two alpha character descriptor are presumed to be followed by the fraction "1/4." In addition, all public land survey descriptions are presumed to be based on the Boise Meridian. All locations are in Lemhi County.

10. In the Fall of 1994 when the new delivery system was constructed the old delivery system from Williams Lake was damaged in places and totally discontinued. Since 1994 water has not been diverted from Williams Lake pursuant to permit 75-7052. Some evidence exists that there may be an intention to resurrect this system for limited irrigation use but the culinary or potable water use of the system has been discontinued with the demonstrated intention of utilizing the springs developed under permits 75-7589 and 75-7590 for the culinary or potable water supply.

11. BLM holds approved permit 75-7638 for development of a spring located in the area near the springs developed by the applicant for use at a campground near Williams Lake. During design and/or construction of the new system the applicant and BLM agreed to supply water to the BLM campground through the new system. Licensing of permit 75-7638 is pending.

12. The new delivery system was constructed and was hooked up to supply 64 residences, Williams Lake Lodge and the BLM campground during the development period of permits 75-7589, 75-7590 and 75-7638. The location of these uses is the same as described in findings No. 4 above excluding the BLM campground.

13. IDWR commonly uses estimates for non-irrigation water uses in determining volume limits for licensing purposes that include the following:

Dwellings (Single family per resident).....	60 gpd
Resorts (Day & Night) per camper.....	50 gpd
Restaurants (with bar & toilet) per patron.....	12 gpd

14. IDWR commonly licenses domestic uses per household for 0.6 afa for in-house use only or 1.2 afa for in-house and yard watering combined.

15. Permits 75-7589 and 75-7590 are specifically limited to in-house use only and prohibited from outside use (irrigation).

16. Protestants are concerned that the change in nature of use sought by the amendments will allow the enlargement of the rights and injure downstream waterusers considered in the March 1, 1993 final order approving permits 75-7589 and 75-7590.

17. Historically a few houses served by the applicant have been relocated as a result of fire and reconstruction within the Williams Lake area.

18. Approving or denying the amendments will ultimately result in licensing of permits 75-7589 and 75-7590 in one fashion or another.

19. The maximum volume of water developed from Williams Lake pursuant to permit 75-7052 for non-potable domestic water use based on 0.6 afa per household for 58 units is 34.8 afa.

20. The use at Williams Lake Lodge is seasonal and approximately 214 days annually.

21. The total maximum volume of water developed from springs pursuant to permits 75-7589 and 75-7590 for the potable water supply based on 0.6 afa per household for 64 households and 50 gpd for 100 campers and 12 gpd for 60 customers at the restaurant and bar all at Williams Lake Lodge is 42.2 afa.

CONCLUSIONS OF LAW

1. Idaho Code § 42-211 states, in pertinent part:

Whenever a permit has been issued pursuant to the provisions of this act, and the permit holder desires to change the place, period, or nature of the intended use, or make other substantial changes in the method of diversion or proposed use or uses of the water, he shall file an application for amendment . . . and upon receipt thereof it shall be the duty of the department of water resources to examine same and if approval thereof would not result in the diversion and use of more water than originally permitted and if the rights of others will not be adversely affected thereby, the director of the department of water resources shall approve said application . . .

2. Idaho Code § 202B(6) defines municipal purposes as follows:

“Municipal purposes” refers to water for residential, commercial, industrial, irrigation of parks and open space, and related purposes, excluding use of water from geothermal sources for heating, which a municipal provider is entitled or obligated to supply to all those users within a service area, including those located outside the boundaries of a municipality served by a municipal provider.

3. Idaho Code § 202B(5)(c) defines municipal provider to include:

A corporation or association which supplies water for municipal purposes through a water system regulated by the state of Idaho as a “public water supply” as described in section 39-103(10), Idaho Code.

4. Williams Lake Recreational Water & Sewer District is a municipal provider. As a municipal provider, Williams Lake Recreational Water & Sewer District may hold water rights authorizing municipal use.

5. In *Hardy v. Higginson*, 123 Idaho 485, 849 P.2d 946 (1993), the Idaho Supreme Court held that an application to amend a permit is subject to a determination that the application is in the local public interest.

6. Idaho Code § 202B(3) defines the local public interest as follows:

"Local public interest" is defined as the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource.

7. The applicant bears the burden of proof for all of the factors listed in Idaho Code § 42-211.

8. Approval of the proposed amendments and issuance of licenses will not enlarge the original permitted use if conditioned appropriately.

9. Approval of the proposed amendments and issuance of licenses will not adversely affect other water rights if conditioned appropriately.

10. Approval of the proposed amendments and issuance of licenses are in the local public interest.

11. IDWR should license rights 75-7052 and 75-7589 for municipal uses with limitations. (Note that license 75-7589 should represent a combination of permitted uses under original permits 75-7589 and 75-7590.)

ANALYSIS

The use of water for "Municipal" use varies depending on the situation. Municipal providers are granted much latitude in development. In some situations if a system is developed pursuant to a permit for municipal use the right is licensed for a volume equivalent to the continuous rate over the entire year. This is not the case in this instance. Because the original permits were limited initially to domestic use quantified by the number of homes and the normal volume required by the number of homes or businesses established; the approval to change the use description to "municipal use" from "domestic use" must carry forward these original limitations. Otherwise the rights would be enlarged.

It is likely that regulation of these subject rights in the future will be by a watermaster of a water district to be established in the future. It is intended that the watermaster will regulate these rights by monitoring rate (cubic feet per second (cfs)) and volume (acre feet per annum (afa)). Counting of households, dwellings, cabins, people, patrons or other such elements should not be a basis of regulation. These counts were only initially used to establish the upper limits of the rate and volume to be licensed. Once these rights are licensed it is intended that the counts may fluctuate as long as the licensed rate and volume are not exceeded.

In some situations a "Municipal" user may change the location of use within a service area without going through the Idaho Code 42-222 process. It is intended that this approval grant such an allowance particularly since the location of houses have already been demonstrated to have changed due to fire and may continue to change in the future. The flexibility to describe the place of use as within a service area should be afforded the applicant.

ORDER

IT IS HEREBY ORDERED that the applications for licensing amendments of permits no. 75-7052 and 75-7589 are **approved with limitations** and that the licenses for these rights be issued as the attached draft licenses indicate with the specific conditions of approval listed:

IT IS FURTHER ORDERED that, right 75-7052 is subject to forfeiture if the delivery system is not reconstructed within five years of the date of final license. (Note that the processing of a transfer of this right may be required to facilitate reconstruction of the delivery system. The future transfer will be subject to all criteria set forth in Idaho Code § 42-222 and approval of these amendments is not a predetermination of any of these criteria.)

IT IS FURTHER ORDERED that, the use of water for the BLM campground is not incorporated as a use pursuant to right 75-7589 and shall be dealt with as a separate matter under licensing of permit 75-7638 in the name of BLM.

IT IS FURTHER ORDERED that Gary Hawkins, Linday Hawkins, Valeea Steinbruegge and William Steinbruegge III are found to be in default in these matters and are no longer parties to these contested cases

Dated this 10th day of September, 2007.



Allen Merritt
Hearing Officer

DRAFT

**State of Idaho
Department of Water Resources
Water Right License**

WATER RIGHT NO. 75-07052

Priority: March 23, 1990

Maximum Diversion Rate: 0.30 CFS
Maximum Diversion Volume: 34.8 AF

It is hereby certified that WILLIAMS LAKE RECREATIONAL WATER & SEWER DISTRICT
PO BOX 82
SALMON ID 83467 has complied with the terms and
conditions of the permit, issued pursuant to Application for Permit dated July 01, 1974; and has
submitted Proof of Beneficial Use on March 23, 1990. An examination indicates that the works have a
diversion capacity of 0.3 cfs of water from:

SOURCE

WILLIAMS LAKE

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
MUNICIPAL	01/01 to 12/31	0.30 CFS	34.8 AF

LOCATION OF POINT(S) OF DIVERSION:

WILLIAMS LAKE L2 (SE1/4NW1/4SW1/4) Sec. 34, Twp 20N, Rge 21E, B.M.
LEMHI County

CONDITIONS OF APPROVAL

1. Place of use is within the service area of Williams Lake Recreational Water & Sewer District as provided for under Idaho law. The place of use is generally described as Sections 33 & 34, Township 20N, Range 21E; and Section 3, Township 19N, Range 21E.
2. This right does not grant any right-of-way or easement across the land of another.
3. The right holder shall maintain a measuring device of a type approved by the Department as part of the diverting works.
4. This municipal right is limited to the non-potable water use within the Williams Lake Recreational Water & Sewer District.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed and sealed this _____ day of _____, 2007.

DAVID R. TUTHILL, JR.
Director

DRAFT
State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 75-07589

Priority: June 29, 1992

Maximum Diversion Rate: 0.21 CFS
 Maximum Diversion Volume: 42.2 AF

It is hereby certified that WILLIAMS LAKE RECREATIONAL WATER & SEWER DISTRICT
 PO BOX 82
 SALMON ID 83467 has complied with the terms and
 conditions of the permit, issued pursuant to Application for Permit dated June 29, 1992; and has
 submitted Proof of Beneficial Use on January 23, 1998. An examination indicates that the works have a
 diversion capacity of 0.21 cfs of water from:

SOURCE

SPRING **Tributary:** LAKE CREEK

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
MUNICIPAL	01/01 to 12/31	0.21 CFS	42.2 AF

LOCATION OF POINT(S) OF DIVERSION:

SPRING	SW1/4NE1/4SE1/4	Sec. 34, Twp 20N, Rge 21E, B.M.
LEMHI County		
SPRING	NE1/4SW1/4SE1/4	Sec. 34, Twp 20N, Rge 21E, B.M.
LEMHI County		

CONDITIONS OF APPROVAL

1. Place of use is within the service area of Williams Lake Recreational Water and Sewer District as provided for under Idaho law. The place of use is generally described as Sections 33 & 34, Township 20N, Range 21E; and Section 3, Township 19N, Range 21E.
2. This municipal right is limited to in-house or potable water for use at Williams Lake Lodge and household in the Williams Lake area. Stockwatering is allowed for stock associated with the households. This right shall not be used for irrigation.
3. The issuance of this right does not grant any right-of-way or easement across the land of another.
4. The right holder shall install and maintain acceptable measuring device(s), including data logger(s), at the authorized point(s) of diversion, in accordance with Department specifications. The right holder shall annually report monthly use volumes to the Department by January 15th of each year or at any time upon notice by the Department.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed and sealed this _____ day of _____, 2007.

 DAVID R. TUTHILL, JR., Director