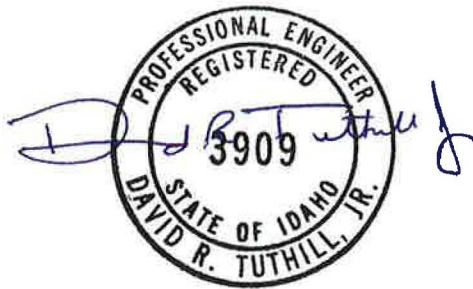


Expert Rebuttal Report for Application for Permit  
67-15333 in the Name of Double C&J Land Company

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May 15, 2020



EXHIBIT

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**Expert Rebuttal Report for 67-15333**  
**In the Name of Double C & J Land Co.**  
**May 15, 2020**

**Introduction**

This report provides a rebuttal of the information provided in the report in this matter by Scott King of SPF Water Engineering, LLC, dated May 1, 2020, whereby Mr. King identifies two concerns relative to the Double C & J Land Co. application.

1. The Application has the potential to reduce the quantity of water under existing water rights.
2. Eckhardt has concerns regarding speculation as Double C & J does not have authorization from Eckhardt (or BLM or Maddox) to store Jenkins Creek water at Monroe Reservoir.

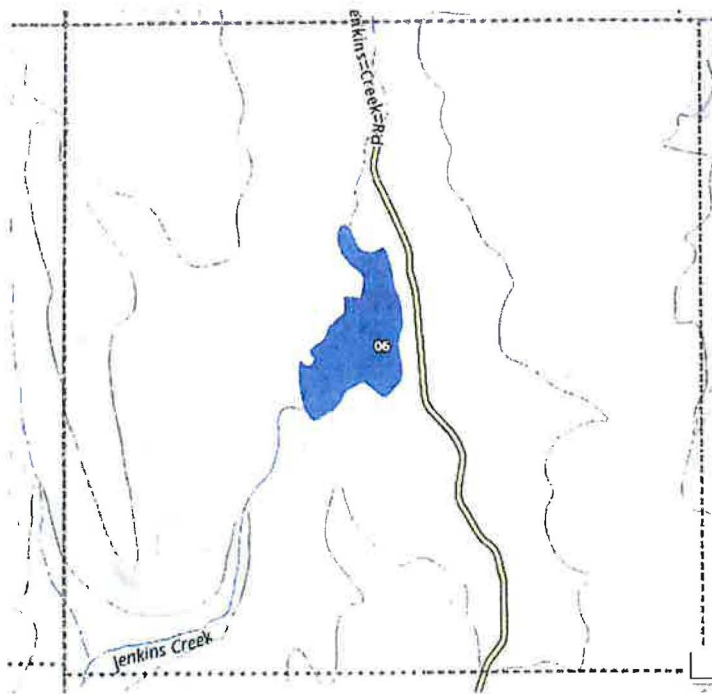
As described below, neither of these concerns should prevent the issuance of Permit 67-15333.

**Impact of 67-15333 on Existing Water Rights**

The diversion of Jenkins Creek by Monroe Creek Reservoir – a reservoir that has been on-stream for over 100 years and was constructed with permission from the federal government and state of Idaho – enables capture of water in the reservoir during periods when water is available. Given the upstream location of this reservoir in the Jenkins Creek drainage, and given the arid nature of land in this basin, this water is available primarily during spring runoff periods. It is helpful to review the USGS topographic map, identified as Figure 1 in the expert report in this matter provided by the author of this rebuttal report.

Note that upstream from (to the north of) the reservoir, Jenkins Creek is depicted as an intermittent stream and downstream it is depicted as a continually flowing stream. This is not uncommon for an upper drainage reservoir because high flows that would otherwise flow out of the basin unused in the spring during periods of peak runoff are captured and released during lower flow periods later in the year, reducing the flashiness of the stream and steadying the hydrograph.

This describes what happens with Monroe Reservoir. Instead of reducing the availability of stockwater in downstream reaches, the reservoir enhances water availability in the creek during periods of low flow when stockwater would be important.



**Figure 1.** Monroe Reservoir was constructed on Jenkins Creek, per USGS topographic map.

#### **Authorization to Store Water in Jenkins Creek Reservoir**

As described in Mr. King's report, Double C & J Land Company is not presently the owner of the land that surrounds Monroe Creek Reservoir. Mr. King describes as follows:

The Application identified the POD at the Monroe Reservoir, which is on land owned by others. One of the IDWR's criteria for approval will be a consideration whether the application is speculative. In this instance, the Application is made with the POD located on property the applicant does not own and no evidence that there is an agreement or authorization to store Jenkins Creek water with Eckhardt, BLM or Maddox.

The Double C & J Land Company application is not speculative for the following reasons:

1. Monroe Creek Reservoir was constructed by a predecessor in interest to Double C & J Land Company, and title to the reservoir has been passed to Double C & J Land Company.
2. Lands adjacent to 19<sup>th</sup> century and early 20<sup>th</sup> century waterworks in Idaho rarely have written easements. Take for example the canals in the Treasure Valley. There are countless situations where private land includes canals which were constructed before the land was developed and for which easements are unrecorded. The user of the water facilities has developed a prescriptive or unrecorded easement regardless of language in the deed.

3. Throughout decades of records held by the U.S. Bureau of Land Management (BLM) and the Idaho Department of Water Resources the author of this report is not aware of a single reference to either Eckhardt or the BLM as the owner of Monroe Creek Reservoir. All known records show Double C & J Land Company as the owner of the reservoir.

The allegation that Double C & J Land Company does not have possessory interest in the dam and reservoir is without merit.

### **Summary**

Application for Permit No. 67-15333 merits approval and issuance as a permit.