

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

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April 27, 2020



EXHIBIT

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**Expert Report for 67-15333**  
**In the Name of Double C & J Land Co.**  
**April 27, 2020**

**Opinions**

1. Given its physical setting, Monroe Creek Reservoir has always used Jenkins Creek as a source. The Monroe Creek source augments Jenkins Creek, as in many years Jenkins Creek is not adequate to fully fill the reservoir.
2. The fact that Jenkins Creek was not a designated source for the reservoir prior to now was an oversight and not intentional.
3. Application for Permit 67-15333 seeks to correct this oversight and will not change the historic operation of the reservoir, or the drainage, in any way.
4. Application for Permit 67-15333 meets the criteria established in Idaho Code § 42-203A(5) and IDAPA 37.03.08 for approval by the Department.

**Introduction**

Application for Permit No. 67-15333 is unusual in that it does not propose any change to water diversions in Idaho – it only serves to document a use that has existed for over 100 years.

Unfortunately, the Snake River Basin Adjudication (SRBA) did not result in identifying Jenkins Creek as one of the sources of Monroe Reservoir. Recently the use of Jenkins Creek as a source of water for the reservoir was challenged, which was a surprise to the present owners and operators of the reservoir. As it appears that this discovery was too late for correction within the SRBA, the applicant is using the Application for Permit as the vehicle to correct this error.

**Background Information**

Double C & J Land Co.'s lands came out of the federal domain in 1890 with patents signed by President Harrison. Double C & J Land Co.'s predecessor, the Idaho Intermountain Institute, designed and built Monroe Reservoir. The Institute applied for permission for the project with Department of Interior in 1910. A water right permit for an onstream reservoir was approved by the State Engineer (predecessor of IDWR) on April 22, 1910, and an approval was granted by the Department of the Interior in February/March 1913. A map of the approval is dated March 8, 1913, showing the drainage in and around Monroe reservoir as within the scope of the project.

Based on the SRBA stockwater claims that were filed by Eckhardt's attorney, the earliest patent for an Eckhardt parcel is September 13, 1913, with the rest being patented in 1917, 1920, 1921, 1922, 1923, and 1927. Therefore, the actions taken to permit and build Monroe Reservoir pre-dated Eckhardt's lands coming out of the federal domain.

A water right license, No. 5983, was issued by IDWR on February 12, 1929, for diversion from Monroe Creek to Monroe Reservoir with a priority date of May 3, 1914. This licensed water right was subsequently issued number 67-2044 and was decreed in the Monroe Creek Water Right Adjudication in the case of *Monroe Creek Irrig. Dist. v. Dickerson et al.* (Washington County, January 4, 1979).

The "error" in not listing Jenkins Creek as a source for the onstream reservoir was attempted to be corrected by Double C & J Land Co.'s predecessor, Mainvil, in the SRBA when he filed a claim for 67-2044. The reason this can be deduced is in Remarks, line 14 to the SRBA claim, Mainvil lists the legal description of Jenkins Creek as the point of diversion. For reasons unknown, an additional claim was not filed for the Jenkins Creek source and this use of Jenkins Creek water which had been ongoing for about 100 years was left out of the SRBA.

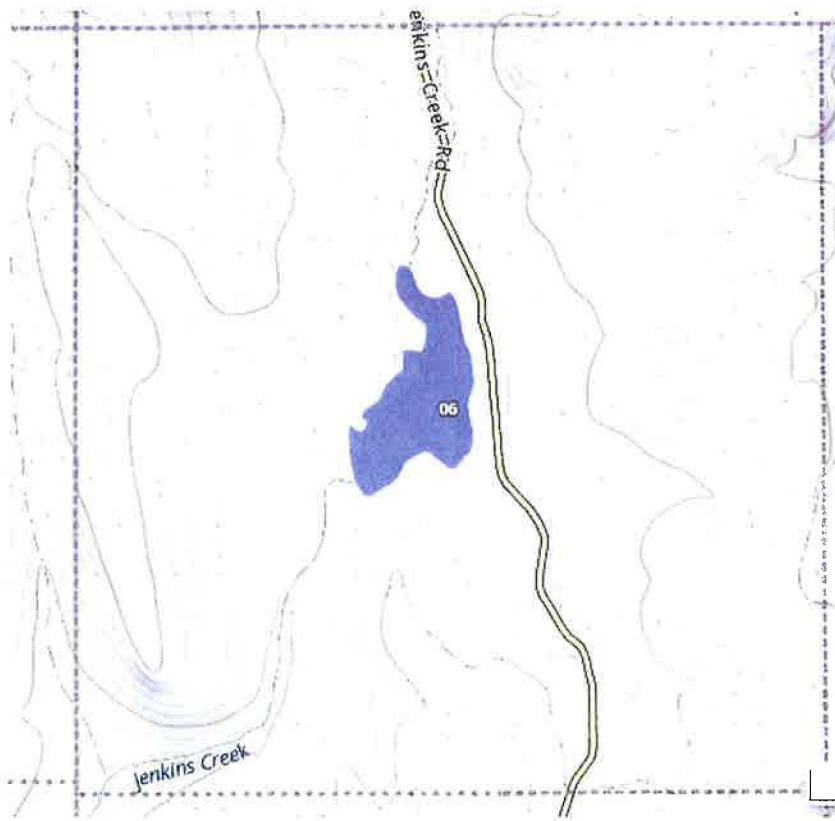
By the time this error was discovered, the SRBA did not allow for the correction of this routine type of omission. Thus, the Double C & J Land Co. was left with the option of filing an application with IDWR to correct this technical error in their water rights. This is the only remedy now available under law. Importantly, nothing on the ground will change with permitting and licensing. The only thing that will change if a permit and license are not issued is the Double C & J Land Co.'s farming and ranching operation will be devastated.

## Analysis

One question that has been asked relative to the water rights for Monroe Reservoir is why Jenkins Creek was never filed on, given its central role in the filling of the reservoir.

As depicted in Figure 1 below, the reservoir was built on Jenkins Creek. This topographic depiction was verified by an onsite review by the author of this report on January 8, 2020.

A review of the original Application for Permit reveals the original plan was to construct a reservoir holding 5860 acre-feet, much greater than the 345 acre-feet the reservoir presently holds. As depicted in Figure 2, the proposal was to irrigate 3,650 acres with water stored by a 100 feet high dam, as compared to the existing 36.2 feet high dam for the irrigation of 453 acres as specified in the present application. The contribution of Jenkins Creek would have been minor relative to the original proposal – it has been much more significant for the as-built dam and irrigation system.



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

There are two other factors that perhaps contributed to the oversight to show Jenkins Creek as a source of Monroe Reservoir. First, there are two other reservoirs on Jenkins Creek for use by Double C & J Land Co. The Jenkins Creek filings for these two perhaps provided complacency that the water rights for the reservoirs had been properly claimed. Second, Double C & J Land Co. purchased the ranch shortly after the claims had been filed in the SRBA by their predecessors John and Grace Mainvil. The new owners trusted the previous long-term owners to fully file on all of their claims, and Mr. and Mrs. Mainvil inadvertently missed this one.

Another consideration is that some of Monroe Reservoir is located on land now owned by Eckhardt. This might give rise to a thought that Eckhardt has a color of ownership in the reservoir. On the contrary, Monroe Reservoir has clearly been owned by the applicant and its predecessors based on all known records. For example, the IDWR Safety of Dams records going back more than 30 years appear to be devoid of any mention of Eckhardt. All of the maintenance of the dam during that time appears to have been conducted by the applicant and its predecessors. Thus, unless evidence to the contrary is produced, it is clear that the applicant is the owner of Monroe Reservoir.

5. To be used for:

I. Irrigation and domestic use:

(a) Amount of land to be irrigated: 3650 acres.

(b) In the following legal subdivisions: See attached list.

6. Estimated cost of works: \$205,000.00

7. Description of works for diversion:

I. Kind of works: Concrete dam, reservoir and flume

II. Dimensions of works:

(a) Height of dam 100 feet, length of dam at top 830 feet, length of dam at bottom  
" " " 100 " " " " " 570

60 feet. Material used in construction: Concrete and earth

(b) Capacity of reservoir: 5,860 acre foot  
1,210

**Figure 2.** Picture of a portion of the original Application for Permit for Monroe Reservoir.

### Legal Criteria

The protest filed by Eckhardt states the initial reason for their protest is that the application fails to meet the criteria set forth in Idaho Code § 42-203A(5) and IDAPA 37.03.08. These requirements are briefly reviewed as follows:

#### **Idaho Code § 42-203A(5) Criteria**

- Subsection (a) – Reduce the Quantity of Water Under Existing Rights.
  - No issue, the project has been in place and diverting from Jenkins Creek for 100 years.
- Subsection (b) – Water Supply is Insufficient.
  - Same as above.
- Subsection (c) – Application Made in Good Faith, not for Delay or Speculation.
  - Same as above.
- Subsection (d) – Applicant has Sufficient Financial Resources.
  - Same as above.
- Subsection (e) – Application will not Conflict with the Local Public Interest.
  - If the application is not approved, it will be detrimental to the public interest.
- Subsection (f) – Application is Contrary to Conservation of State's Water Resources.
  - If storage of water is not allowed to continue, that water will flow out of the state.
- Subsection (g) – Application will Adversely Affect the Local Economy.
  - Double C & J Land Co. adds to the local economy with this water.

#### **Rule 45 Evaluation Criteria**

- 45.01 – Criteria for All Applications.

- 45.01.a – Whether the Proposed use will Reduce the Quantity of Water under Existing Water Rights.
  - Double C & J Land Co. and their predecessors have been diverting this water for 100 years.
- 45.01.b – Whether the Water Supply is Insufficient.
  - Same as above, the project has been in place for 100 years.
- 45.01.c – Whether the Application is made in Good Faith, not for Delay or Speculative Purposes – requires an analysis of the intention of the applicant with respect to the filing and the diligent pursuit of application requirements.
  - This application for permit process merely corrects the water rights for the applicant.
  - 45.01.c.i – Legal Access.
    - Applicant shall have legal access to the property necessary to construct and operate, has the authority to exercise eminent domain to obtain such access, or in the instance of a project diverting water across federal land, has filed all applications for a right of way.
      - The project has been in place for 100 years. Permission was given by the federal government after the base farm/ranch property came out of the federal domain and was patented in 1890. Interior gave permission in 1913 for the water project.
      - In addition, Double C & J Land Co. has a statutory easement found in Title 42 with the presence of all diversion works for 100 years.
      - Double C & J Land Co. is filing necessary paperwork with BLM for a right of way.
  - 45.01.c.ii – Any Other Permits Necessary.
    - None on the private side.
    - Potentially need a right of way from BLM because of some change in FLPMA.
  - 45.01.c.iii – No Obvious Impediments.
    - None, the project has been built and in place for 100 years.
- 45.01.d – Sufficient Financial Resources.
  - Not applicable because it has been built and been operating for 100 years.
- 45.01.e – Local Public Interest Conflict.
  - If corrections to the paper record are not made, Double C & J Land Co. property will lose value, negatively affecting the local economy.

## Summary

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