

MAY 20 2020

WATER RESOURCES
WESTERN REGION

Norman M. Semanko, ISB No. 4761
PARSONS BEHLE & LATIMER
800 West Main Street, Suite 1300
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Telephone: 208.562.4900
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AWorthen@parsonsbehle.com

Attorneys for Eckhardt Family LLLP

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION
FOR PERMIT NO. 67-15333 IN THE NAME
OF DOUBLE C&J LAND CO.

**DECLARATION OF CHERI MOORE IN
SUPPORT OF ECKHARDT FAMILY
LLLP'S MOTION FOR SUMMARY
JUDGMENT**

I, Cheri Moore, declare as follows:

1. I am over the age of eighteen (18) years and legally competent to make this declaration.

I have personal knowledge of the facts set forth herein, and I can testify as to the truth of the statements contained herein if called upon as a witness in this action.

2. I am a general partner of and the registered agent for Eckhardt Family LLLP ("Eckhardt").

3. I am familiar with Double C&J Land Co., Inc.'s ("Double C&J") completed application for water permit No. 67-15333 ("Application"), attached hereto as Exhibit A.

4. I am also familiar with the timely protest to the Application filed by Eckhardt on November 18, 2019, attached hereto as Exhibit B.

5. Double C&J has a limited easement to divert and store water from *Monroe Creek* in the Monroe Reservoir ("Easement"). But that Easement does not, and never has, authorized Double C&J to divert and store water from *Jenkins Creek* in the Monroe Reservoir. See Eckhart Expert Report, attached hereto as Exhibit C.

6. Although the Application seeks to divert water from Jenkins Creek to the Monroe Reservoir on a year-round basis, the Easement also has never authorized Double C&J to divert water into the Monroe Reservoir on a year-round basis. See Eckhardt Expert Rebuttal Report, attached hereto as Exhibit D; see also Water Right Report for Water Right No. 67-2044, attached hereto as Exhibit E.

7. Eckhardt will not provide Double C&J with a new easement to expand the current use of Monroe Reservoir on Eckhardt property. Double C&J has not requested, or otherwise approached Eckhardt about, such an easement.

8. In his original expert report, as well as his rebuttal to Eckhardt's expert report, Double C&J's expert failed to confront (or even acknowledge) the fact that the company's current easement does not permit Double C&J to divert and store Jenkins Creek water on Eckhardt's property. Attached hereto as Exhibits F and G are Double C&J's expert report and rebuttal expert report.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

 5-19-2020
Cheri Moore

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of May, 2020, I served a true and correct copy of the foregoing document on the parties listed below by their designated method of service.

Chris M. Bromley Candice McHugh McHugh Bromley PLLC 380 S. 4th Street, Ste. 103 Boise, ID 83702 cmchugh@mchughbromley.com cbromley@mchughbromley.com	<input checked="" type="checkbox"/> U.S. First Class Mail, Postage Prepaid <input type="checkbox"/> U.S. Certified Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile 208.287.0864
United States Department of Interior Bureau of Land Management c/o Fredric W. Price 1387 South Vinnell Way Boise, ID 83709-1657 Fwprice@blm.gov	<input checked="" type="checkbox"/> U.S. First Class Mail, Postage Prepaid <input type="checkbox"/> U.S. Certified Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile 208.373.3899
Shelley W. Keen Hearing Officer PO Box 83720 Boise, ID 83720-0098 Shelley.keen@idwr.idaho.gov	<input checked="" type="checkbox"/> U.S. First Class Mail, Postage Prepaid <input type="checkbox"/> U.S. Certified Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Electronic Mail <input type="checkbox"/> Facsimile 208.287.6700


NORMAN M. SEMANKO

EXHIBIT A

RECEIVED

FORM 202 Rev. 09/16

OCT 01 2019

INCOMPLETE
DEPARTMENT OF
WATER RESOURCESSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Ident. No. 67-15333

RECEIVED

OCT 03 2019

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

OCT 23 2019

COMPLETE
WATER RESOURCES
WESTERN REGION1. Name of applicant(s) Double C & J Land Co.Name connector (check one): ☐ and ☐ or ☐ and/orPhone 208-580-4819Mailing address 990 Jenkins Creek Rd.City WeiserState ID ZIP 83672Email jenkinscreekbranch@gmail.com2. Name of representative, if any McHugh Bromley, PLLCPhone 208-287-0991qMailing address 380 S. 4th St., Ste. 103City BoiseState ID ZIP 83702Email cbromley@mchugbromley.coma. ☐ Send all correspondence for this application to the representative and not to the applicant OR☒ Send original correspondence to the applicant and copies to the representative.b. ☐ The representative may submit information for the applicant but is not authorized to sign for the applicant OR☒ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation.3. Source of water supply Jenkins Creekwhich is a tributary of Snake River

4. Location of point(s) of diversion:

Twp	Rge	Sec	Govt Lot	1/4	1/4	1/4	County	Source	Local name or tag #
12N	05W	6			NE	SW	Washington	Jenkins Creek	

5. Water will be used for the following purposes:

Amount 345 af for Irrigation Storage purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per year)Amount 345 af for Irrigation from Storage purposes from 3/1 to 11/15 (both dates inclusive)
(cfs or acre-feet per year)Amount 345 for Stockwater Storage purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per year)Amount 345 for Stockwater from Storage purposes from 1/1 to 12/31 (both dates inclusive)
(cfs or acre-feet per year)6. Total quantity to be appropriated is (a) _____ cubic feet per second (cfs) and/or (b) 345 acre-feet per year (af).

7. Proposed diverting works:

a. Describe type and size of devices used to divert water from the source. Existing dam on Jenkins Creek that has historically impounded water from Jenkins Creek and Monroe Creek.b. Height of storage dam (on file) feet; active reservoir capacity 345 acre-feet; total reservoir capacity 345 acre-feet. If the reservoir will be filled more than once each year, describe the refill plan in item 12. For dams 10 feet or more in height AND having a storage capacity of 50 acre-feet or more, submit a separate Application for Construction or Enlargement of a New or Existing Dam. Application required? ☐ Yes ☒ No

c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.

d. Is ground water with a temperature of greater than 85°F being sought? ☐ Yes ☐ Noe. If well is already drilled, when? _____; drilling firm _____;
well was drilled for (well owner) _____; Drilling Permit No. _____Received by AKDate 10/1/19

For Department Use

Time 2:15Preliminary check by AKFee \$ 370Received by AKReceipt No. CI01795Date 10/25/2019

8. Description of proposed uses (if irrigation only, go to item 9):

- Hydropower; show total feet of head and proposed capacity in kW. _____
- Stockwatering; list number and kind of livestock. 250 CB 10/23/19
- Municipal; must complete and attach the Municipal Water Right Application Checklist.
- Domestic; show number of households _____
- Other; describe fully. _____

9. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11N	05W	6								1.5	10		6	37					54.5
11N	05W	7					35	6	1.5	35	37	10	20	33		10	11		198.5
11N	05W	18					15	29	40	15	1	40	40	20					200
12N	05W	6			X					X	X					X			

Total number of acres to be irrigated: 453

Stockwater Storage same as irrigation storage. CB 10/23/19
Stockwater from storage same as irrigation from storage.

10. Describe any other water rights used for the same purposes as described above. Include water delivered by a municipality, canal company, or irrigation district. If this application is for domestic purposes, do you intend to use this water, water from another source, or both, to irrigate your lawn, garden, and/or landscaping? 67-2044, 67-2097A, 67-2097B, 67-4520, 67-14246, 67-14247, 67-14251

- Who owns the property at the point of diversion? BLM and Eckhardt Family LLLP
- Who owns the land to be irrigated or place of use? Applicant
- If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: Existing easement

12. Describe your proposal in narrative form, and provide additional explanation for any of the items above. Attach additional pages if necessary. This application is filed in order to legally allow diversion of water from Jenkins Creek into Monroe Reservoir. Diversion of Jenkins Creek water into Monroe Reservoir has taken place for over 100 years, with the point of diversion claimed in the SRBA. On file with IDWR is a transfer to legally recognize the past 100 years of historic practice. No time is needed to complete the works as they are existing.

13. Time required for completion of works and application of water to proposed beneficial use is 1 years (minimum 1 year).

14. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½" x 11" map or maps clearly identifying the proposed point of diversion, place of use, section #, township & range. The map scale shall not be less than two (2) inches equal to one (1) mile.

The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.

John D. Hoff
 Signature of Applicant

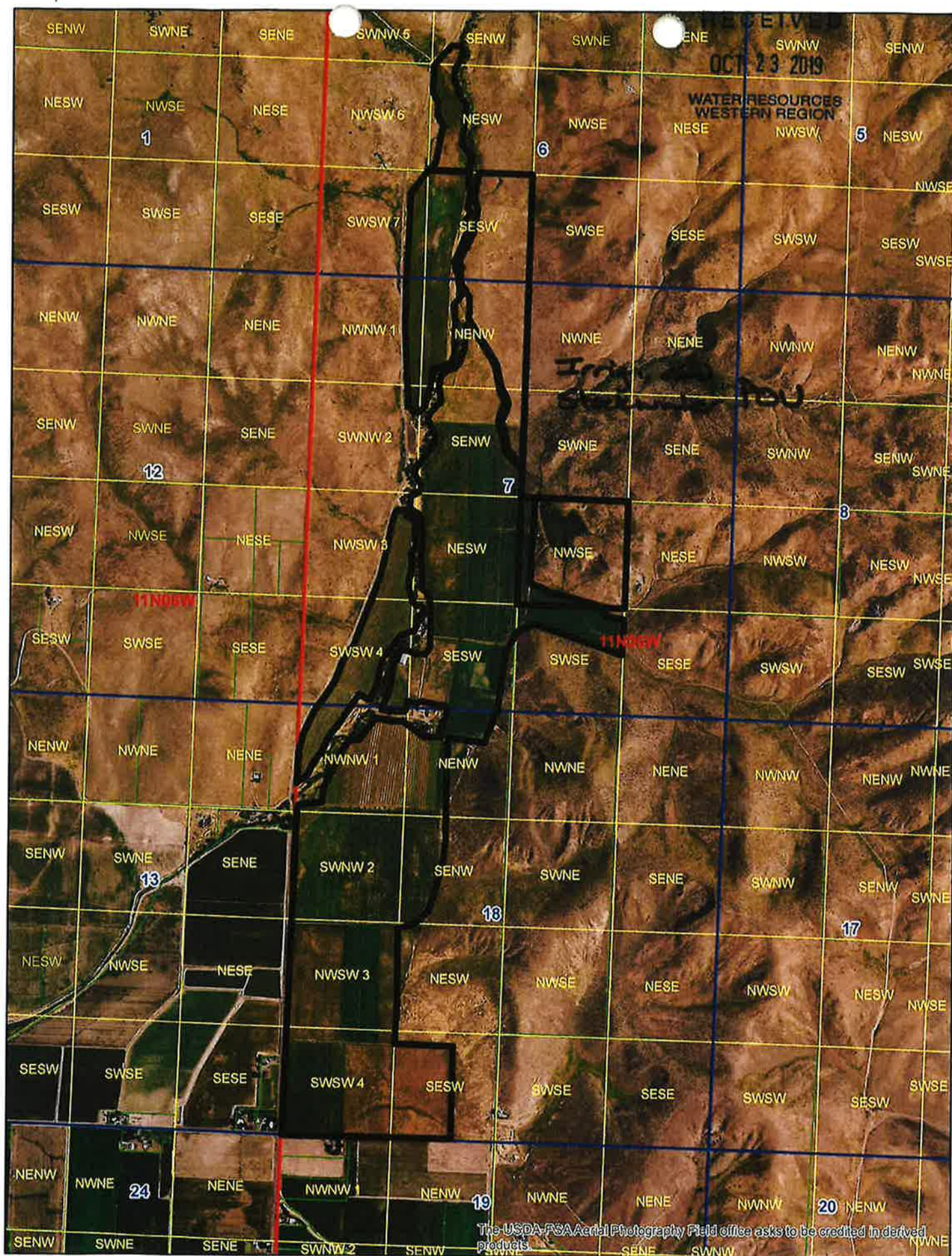
John D Hoff Pres.
 Print Name (and title, if applicable)

Christy D Hoff
 Signature of Applicant

Christy D. Hoff Secretary/Treas.
 Print Name (and title, if applicable)

RECEIVED
JUL 23 2013





(Please type or print legibly)

SS NAME
FILE EFFECTIVE

Pursuant to Section 53-504, Idaho Code, the undersigned gives notice of adoption of an Assumed Business Name.

- Double C & J Land Co.

- Name
John D. Hoff

Complete Address

990 Jenkins Creek Rd. Weiser, ID.

Christy D. Hoff

- ☐
- Retail Trade

☐ Manufacturing☐

Transportation and Public Utilities

☐ Wholesale Trade☒ Agriculture☐

Finance, Insurance, and Real Estate

Services

Construction



Mining

- Jenkins Creek Ranch

990 Jenkins Creek Rd.

Weiser, ID. 83672

- Submit Certificate of Assumed Business Name and \$20.00 fee to:**

**Secretary of State
700 West Jefferson
Basement West
PO Box 83720
Boise ID 83720-0080
208 334-2301**

Secretary of State use only

IDAHO SECRETARY OF STATE

06/22/2000 09:00
CK: 93 CT: 132735 DH: 328408

1 @ 20.00 = 20.00 ASSUM NAME # 2

Signature:

Christy Hoff

Printed Name:

Christy D. Hoff

Capacity:

Sec. of treas

(see instruction # 8 on back of form)

December 2017

9. Other Information

D 36861



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

October 30, 2019

ECKHARDT FAMIY LIMITED PARTNERSHIP
1275 JENKINS CREEK RD
WEISER ID 83672

Re: Application for Permit No. 57-12010

Dear Interested Party:

The above referenced application may be of interest to you. I would like to inform you that the application has been submitted to the *Weiser Signal* for advertising. I have enclosed a copy of the application for your convenience. This information is also available on our website www.idwr.idaho.gov.

If you desire to file a formal protest against approval of the application, a written protest along with the \$25.00 protest fee must be received in this office by **November 25, 2019**. A copy of the protest must also be sent to the applicant.

If you have any questions regarding the application, please contact this office at 208-334-2190.

Sincerely,

Anna Kaiser
Administrative Assistant
Western Regional Office

Enclosures

Kaiser, Anna

From: Kaiser, Anna
Sent: Wednesday, October 30, 2019 4:34 PM
To: 'jamie.gough@usda.gov'
Subject: Application for Permit No. 67-15333
Attachments: Agency Recommendation Form.docx; 67-15333.pdf

October 30, 2019

JAMIE GOUGH
BOISE NATIONAL FOREST
1805 HWY 16, ROOM 5
EMMETT ID 83617

RE: Application for Permit No. 67-15333

Dear Mr. Spencer:

The Idaho Department of Water Resources (IDWR) is seeking written comment and/or recommendation(s) from your agency regarding the above referenced water right application(s). Copy(s) of the application(s) are enclosed with this email for your reference. Please review the application(s), complete the enclosed recommendation form, and submit your reply, if any, to this office by the protest deadline of **November 25, 2019**.

If your agency desires to formally protest approval of this application, you may do so by filing a written protest along with a \$25.00 filing fee for each protested application by the protest deadline.

IDWR will assume your agency does not object to this application if a timely response is not received. Please contact me if you have any questions regarding the application. Thank you for your help.

Sincerely,

Anna Kaiser | Water Resource Agent
IDWR-Western Region
2735 W Airport Way, Boise ID 83705
(208).334.2190 | anna.kaiser@idwr.idaho.gov

Kaiser, Anna

From: Kaiser, Anna
Sent: Wednesday, October 30, 2019 4:31 PM
To: 'Tarter, James'
Subject: Application for Permit No. 67-15333
Attachments: Agency Recommendation Form.docx; 67-15333.pdf

October 30, 2019

J. ALLEN TARTER
BLM-FOUR RIVERS FIELD OFFICE
3948 DEVELOPMENT AVE.
BOISE ID 83705

RE: Application for Permit No. 67-15333

Dear Mr. Tarter:

The Idaho Department of Water Resources (IDWR) is seeking written comment and/or recommendations from your agency regarding the above referenced water right applications. Copies of the applications are enclosed with this email for your reference. Please review the applications, complete the enclosed recommendation form, and submit your reply, if any, to this office by the protest deadline of November 25, 2019.

If your agency desires to formally protest approval of these applications, you may do so by filing a written protest along with a \$25.00 filing fee for each protested application by the protest deadline.

IDWR will assume your agency does not object to these applications if a timely response is not received. Please contact me if you have any questions regarding the applications. Thank you for your help.

Sincerely,

Anna Kaiser

Kaiser, Anna

From: Kaiser, Anna
Sent: Wednesday, October 30, 2019 4:30 PM
To: Boe, Erik
Subject: Application for Permit No. 67-15333
Attachments: 67-15333.pdf; Agency Recommendation Form.docx

October 30, 2019

IDAHO DEPARTMENT OF WATER RESOURCES
DAM SAFETY
ATTN: ERIK BOE
WESTERN REGION
2735 W AIRPORT WY
BOISE ID 83705

RE: Application for Permit No. 67-15333

Dear Mr. Boe:

The Idaho Department of Water Resources (IDWR) is seeking written comment and/or recommendation(s) from your agency regarding the above referenced water right application(s). Copy(s) of the application(s) are enclosed with this email for your reference. Please review the application(s), complete the enclosed recommendation form, and submit your reply, if any, to this office by the protest deadline of **November 25, 2019**.

If your agency desires to formally protest approval of this application, you may do so by filing a written protest along with a \$25.00 filing fee for each protested application by the protest deadline.

IDWR will assume your agency does not object to this application if a timely response is not received. Please contact me if you have any questions regarding the application. Thank you for your help.

Sincerely,

Anna Kaiser

Kaiser, Anna

From: Kaiser, Anna
Sent: Wednesday, October 30, 2019 3:49 PM
To: 'Bosworth,Bill'
Subject: Application for Permit No. 67-15333
Attachments: Agency Recommendation Form.docx; 67-15333.pdf

October 30, 2019

STATE OF IDAHO
DEPT OF FISH & GAME
ATTN: BILL BOSWORTH
3101 S POWERLINE RD
NAMPA, ID 83686

RE: Application for Permit No. 67-15333

Dear Mr. Bosworth:

The Idaho Department of Water Resources (IDWR) is seeking written comment and/or recommendation(s) from your agency regarding the above referenced water right application(s). Copy(s) of the application(s) are enclosed with this email for your reference. Please review the application(s), complete the enclosed recommendation form, and submit your reply, if any, to this office by the protest deadline of **November 25, 2019**

If your agency desires to formally protest approval of this application, you may do so by filing a written protest along with a \$25.00 filing fee for each protested application by the protest deadline.

IDWR will assume your agency does not object to this application if a timely response is not received. Please contact me if you have any questions regarding the application. Thank you for your help.

Sincerely,
Anna Kaiser



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

October 30, 2019

DOUBLE C & J LAND CO INC
990 JENKINS CREEK RD
WEISER, ID 83672-5142

Application for Permit No. 67-15333

Dear Applicant:

The Department of Water Resources has received your water right application. Please refer to the number referenced above in all future correspondence regarding this application.

A legal notice of the application has been prepared and is scheduled for publication in the, WEISER SIGNAL on 11/6/2019 and 11/13/2019. Protests to this application may be submitted for a period ending ten (10) days after the second publication.

If the application is protested, you will be sent a copy of each protest. All protests must be resolved before the application can be considered for approval. If the protest(s) cannot be resolved voluntarily, the Department will conduct a conference and/or hearing on the matter.

If the application is not protested, the Department will process your application and notify you of any action taken on the application. If your application is approved, the Department will send you a copy of the permit.

Please contact this office if you have any questions regarding the application.

Sincerely,

Anna Kaiser
Water Resource Agent

CC:
MC HUGH BROMLEY PLLC
380 S 4TH ST STE 103
BOISE, ID 83702-7687

Kaiser, Anna

From: Kaiser, Anna
Sent: Wednesday, October 30, 2019 2:40 PM
To: 'idahofiddler@yahoo.com'
Subject: WASHINGTON Legal Ad
Attachments: Cover Letter.docx; Legal Notice.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Good Afternoon Legal Clerk,

Please see the attached ad for publication on 11/6/2019 & 11/13/2019.

Please confirm these are okay to publish as shown.

Thank You,

Anna Kaiser | Administrative Assistant I
IDWR-Western Region
2735 W Airport Way, Boise ID 83705
(208).334.2190 | anna.kaiser@idwr.idaho.gov

October 30, 2019

LEGAL NOTICE DEPARTMENT

WEISER SIGNAL
PO BOX 709
WEISER, ID 83672

RE: Application For Permit No: 67-15333

Dear Legal Notice Department:

Please publish the enclosed legal notice on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before 11/25/2019. Your cooperation is appreciated.

Sincerely,

Anna Kaiser
Water Resource Agent

Enclosures

The following application has been filed to appropriate the public waters of the State of Idaho:

67-15333

DOUBLE C & J LAND CO INC

990 JENKINS CREEK RD

WEISER, ID 83672-5142

Point of Diversion NESW S6 T12N R05W WASHINGTON County Source JENKINS CREEK Tributary SNAKE RIVER

Use: IRRIGATION FROM STORAGE 03/01 to 11/15 345 AF

Use: IRRIGATION STORAGE 01/01 to 12/31 345 AF

Use: STOCKWATER FROM STORAGE 01/01 to 12/31 345 AF

Use: STOCKWATER STORAGE 01/01 to 12/31 345 AF

Total Diversion: 345 AF

Date Filed: 10/23/2019

Place Of Use: IRRIGATION FROM STORAGE

T11N R05W S6 SENW NESW L7(SWSW) SESW

T11N R05W S7 NENW NWNW SWNW SENW NESW L3(NWSW) L4(SWSW) SESW NWSE SWSE

T11N R05W S18 NENW L1(NWNW) L2(SWNW) SENW NESW L3(NWSW) L4(SWSW) SESW

Place Of Use: STOCKWATER STORAGE, IRRIGATION STORAGE

T12N R05W S6 SWNE SENW NESW NWSE

Place Of Use: STOCKWATER FROM STORAGE

T11N R05W S6 SENW NESW L7(SWSW) SESW

T11N R05W S7 NENW L1(NWNW) L2(SWNW) SENW NESW L3(NWSW) L4(SWSW) SESW NWSE SWSE

T11N R05W S18 NENW L1(NWNW) L2(SWNW) SENW NESW L3(NWSW) L4(SWSW) SESW

Total Acres: 453

Permits will be subject to all prior water rights. For additional information concerning the property location, contact Western Region office at (208) 334-2190; or for a full description of the right(s), please see www.idwr.idaho.gov. Protests may be submitted based on the criteria of Idaho Code § 42-203A. Any protest against the approval of the application(s) must be filed with the Director, Dept. of Water Resources, Western Region, 2735 Airport Way, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 11/25/2019. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Director

Published on 11/7/2019 and 11/14/2019

EXHIBIT B



Norman M. Semanko, ISB #4761
PARSONS BEHLE & LATIMER
800 West Main Street, Suite 1300
Boise, Idaho 83702
Telephone: 208.562.4900
Facsimile: 208.562.4901
NSemanko@parsonsbehle.com
boisedocket@parsonsbehle.com

Attorneys for Eckhardt Family LLLP

RECEIVED RECEIVED
NOV 20 2019 NOV 18 2019
WATER RESOURCES DEPARTMENT OF
WESTERN REGION WATER RESOURCES

Receipt # C107953
Received by: AN

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

IN THE MATTER OF APPLICATION
FOR PERMIT NO. 67-15333 IN THE
NAME OF DOUBLE C&J LAND CO.,
INC.

NOTICE OF PROTEST

Eckhardt Family LLLP ("Protestant"), by and through its counsel of record, Norman M. Semanko of Parsons Behle & Latimer, files this Notice of Protest to the above-referenced Application for Permit pursuant to Idaho Code § 42-203A(4) and IDAPA 37.01.01, Rule 250. The initial reasons for this protest are that the application fails to meet the criteria set forth in Idaho Code § 42-203(A)(5) and IDAPA 37.03.08.

The Protestant reserves the right to oppose the Application for other reasons that may subsequently be discovered.

The Protestant further reserves the right to withdraw or otherwise settle its protest upon discussion with the Applicant.

DATED this 18 day of November, 2019.

PARSONS BEHLE & LATIMER

A handwritten signature in blue ink, appearing to read 'N. M. Semanko', is written over a horizontal line.

Norman M. Semanko
Attorney for Eckhardt Family LLLP

CERTIFICATE OF SERVICE

I hereby certify that on this 18 day of November, 2019, I served the foregoing document on the parties listed below by their designated method of service.

<i>Original:</i> Idaho Department of Resources Idaho Water Center 322 East Front Street Boise, ID 83702-7374	<input type="checkbox"/> U.S. First Class Mail, Postage Prepaid <input type="checkbox"/> U.S. Certified Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail or CM/ECF
<i>Copy:</i> Double C&J Land Co., Inc. 990 Jenkins Creek Road Weiser, ID 83672	<input checked="" type="checkbox"/> U.S. First Class Mail, Postage Prepaid <input type="checkbox"/> U.S. Certified Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic Mail or CM/ECF
<i>Copy:</i> Candice McHugh Chris Bromley McHugh Bromley PLLC 380 South 4 th Street, Suite 103 Boise, ID 83702	<input checked="" type="checkbox"/> U.S. First Class Mail, Postage Prepaid <input type="checkbox"/> U.S. Certified Mail, Postage Prepaid <input type="checkbox"/> Federal Express <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Electronic Mail <i>cmchugh@mchughbromley.com</i> <i>cbromley@mchughbromley.com</i>


NORMAN M. SEMANKO

EXHIBIT C

**ECKHARDT FAMILY LLLP PROTEST AGAINST
DOUBLE C & J LAND CO.
APPLICATION FOR PERMIT No. 67-15333**

Prepared for

ECKHARDT FAMILY LLLP

Prepared by

**SPF Water Engineering, LLC
300 East Mallard, Suite 350
Boise, Idaho 83706
(208) 383-4140**

May 1, 2020



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Appendices

Appendix A: Application for Permit 67-15333.

Appendix B: Eckhardt Family LLLP Rights Subject to Injury

1. OVERVIEW

Double C & J Land Co ("Applicant") filed Application for Permit No. 67-15333 seeking to divert 345 afy from Jenkins Creek for Irrigation Storage, Irrigation from Storage, Stockwater Storage, and Stockwater from Storage. The Applicant describes the storage facility as an existing dam that has historically impounded water from Jenkins Creek and Monroe Creek.

Eckhardt Family LLLP (Eckhardt) filed a Notice of Protest against Application for Permit No. 67-15333 on the basis that diversions from Jenkins Creek have the potential to injure the ability of Eckhardt to put their downstream senior water right to use and that no authorization to use the Monroe Reservoir exists.

This report evaluates the Application's compliance with the requirements for approval set forth in Idaho Code § 42-203A(5). When reviewing Applications for Permit, the Director of the Department of Water Resources (IDWR) considers a number of criteria, including:

- (a) whether the Application will reduce the quantity of water under existing water rights, or
- (b) whether the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or
- (c) whether it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or
- (d) whether the applicant has not sufficient financial resources with which to complete the work involved therein, or
- (e) whether it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or
- (f) whether it is contrary to conservation of water resources within the state of Idaho, or
- (g) whether it will adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates.

As discussed below, the Application has the potential to reduce the quantity of water under existing water rights. Eckhardt has also raised 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.

2. APPLICATION FOR PERMIT 67-15333

2.1. Description of Application

Application for Permit 67-15333 ("Application") was filed by Double C & J Land Co and received by IDWR on October 1, 2019. The original filing was incomplete and a complete application was filed on October 23, 2019. The application proposes a point of diversion at 12N 5W Section 6 NESW. The application proposes diverting a total of 345 afy with the following amounts, uses and season:

345 afy for Irrigation Storage from 1/1 to 12/31

345 afy for Irrigation from Storage from 3/1/to 11/15

345 afy for Stockwater Storage from 1/1 to 12/31

345 afy for Stockwater from Storage from 1/1 to 12/31

The diverting works are described as "Existing dam on Jenkins Creek that has historically impounded water from Jenkins Creek and Monroe Creek." The reservoir is stated to have an active reservoir capacity of 345 af. Stock watering is described as 250 (the kind of livestock is not described). The application describes a place of use of 453 acres for irrigation from storage use with stockwater from storage use in the same location. The 453-acre place of use appears to correspond with other water rights owned by the Applicant for irrigation use including 67-2044, 67-2097A, 67-2097B, 67-4520, 67-14246, 67-14247, and 67-14251.

The application states that the point of diversion for the right is owned by the BLM and Eckhardt Family LLLP. Similarly, the storage facility known as Monroe Reservoir is not owned by the Applicant. The application's narrative states:

"This application is filed in order to legally allow diversion of water from Jenkins Creek into Monroe Reservoir. Diversion of Jenkins Creek water into Monroe Reservoir has taken place for over 100 years, with the point of diversion claimed in the SRBA. On file with IDWR is a transfer to legally recognize the past 100 years of historic practice. No time is needed to complete the works as they are existing."

2.2. Other Right Associated with Application's Storage Facility

Application for Permit 67-15333 proposes diverting water from Jenkins Creek into storage on a year-round basis. The facility proposed to store water is located on Jenkins Creek is an existing dam and reservoir that is locally known as Monroe Reservoir. Decreed water right 67-2044, owned by Double C & J Land Co, authorizes the following uses:

6.4 cfs for Diversion to Storage from 11/15 to 03/15

320 afy for Irrigation Storage from 1/1 to 12/31

320 afy Irrigation from Storage from 3/15 to 11/15

The irrigation place of use for this right is the same 453 acres described by Application 67-15333. The point of diversion from Monroe Creek is located at 13N 06W Section 25 SENENE. Water right 67-2044 does not identify the location of the storage facility. No water rights owned by either the applicant or anyone else identifies the storage facility in NESW Section 6, T12N, R5W or diverting Jenkins Creek water into storage at that location.

The adjudication claim file for 67-2044 describes that water is diverted from Monroe Creek and conveyed through a ditch to Monroe Reservoir. Notes in the adjudication file indicate that the ditch from Monroe Creek to Jenkins Creek was not functional at the time of the adjudication. The claim, and subsequent decree, do not list Jenkins Creek as a source for storage.

3. ECKHARDT FAMILY LLLP RIGHTS

Eckhardt owns the following right associated with Jenkins Creek that stand to be injured by Double C & J's Application for Permit 67-15333.

Decreed water right 67-11045 with a June 27, 1934 priority date authorizes year-round diversion of 0.02 cfs from Jenkins Creek for instream stockwater use. The beginning and ending points of stream flow is 12N 5W Section 30 NENWNW (Lt 1). This right is located on Jenkins Creek downstream of the storage facility listed by the Application. The place of use for this right is depicted in Figure 1.

4. REDUCED FLOW (INJURY) ANALYSIS

The Application proposes diversion of water from Jenkins Creek into storage on a year-round basis. Storage releases will be used by the Applicant for irrigation and stockwater. The Application provides no provisions for releasing water to meet Eckhart's water right 67-11045, an in-stream stockwater right located downstream of the storage facility with a senior priority date to Application 67-15333. Eckhart water rights may be injured due to the reduced ability to use Jenkins Creek water unless sufficient flow is allowed to pass the dam to fulfill 67-11045.

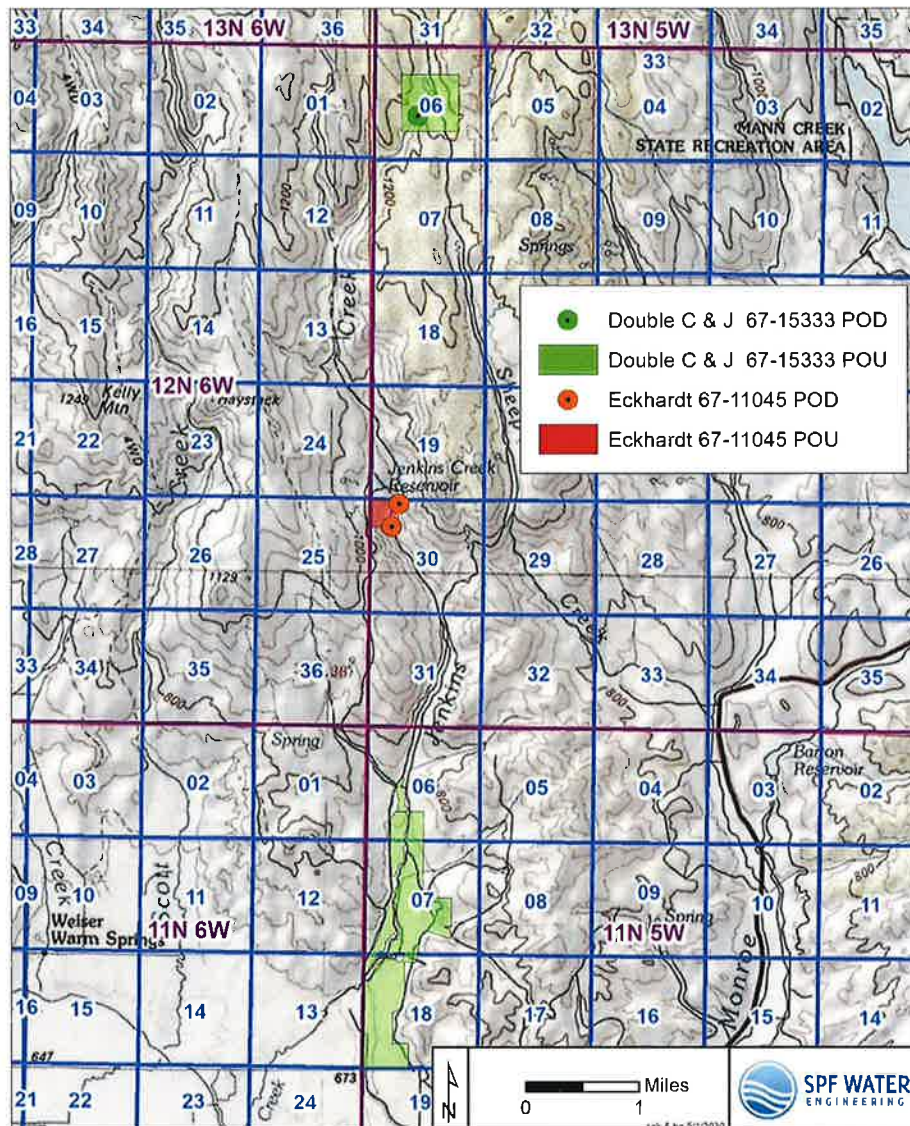


Figure 1: Point of diversion and places of use for Double C & J application for permit 67-15333, and downstream points and place of use for Eckhardt right 67-11045.

5. GOOD FAITH / SPECULATION

Figure 2 shows a snippet of the Washington County Parcel Map, in which the three parcels forming a mosaic over the storage facility in the center of Section 6 T12N, R5W include:

- RP12N05W062400 – owned by Eckhardt Family, LLLP
- RP12N05W064200 – owned by BLM
- RP12N05W060000 – owned by Maddox Bar EX Ranch LTD PRTSHP

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.

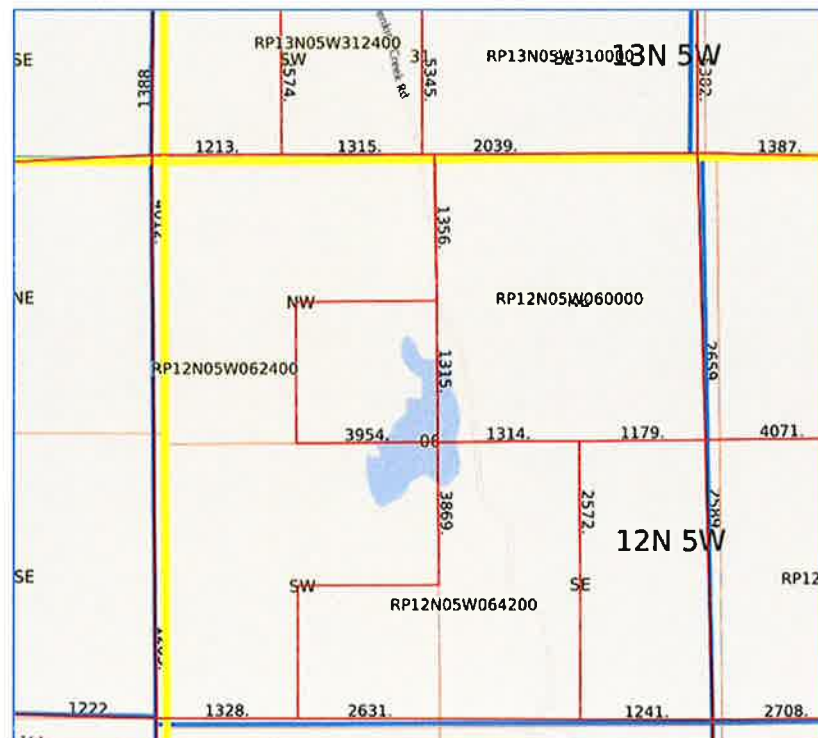


Figure 2: Parcel Map Surrounding the Monroe Reservoir

6. SUMMARY AND CONCLUSIONS

Eckhardt protests Application for Permit 67-15333 on concerns that diversions from Jenkins Creek has the potential to affect the ability to fulfill their senior downstream water right and that the Applicant is storing water in a facility located on land owned by Eckhardt, BLM, and Maddox without authorization.

Appendix A
Application for Permit 67-15333

RECEIVED

FORM 202 Rev. 09/16
OCT 01 2019
RECEIVED
INCOMPLETE
DEPARTMENT OF
WATER RESOURCES

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Ident. No. 67-15333

RECEIVED

OCT 03 2019
WATER RESOURCES
WESTERN REGION

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

OCT 23 2019
COMPLETE
WATER RESOURCES
WESTERN REGION

- Name of applicant(s) Double C & J Land Co.
Name connector (check one): ☐ and ☐ or ☐ and/or
Mailing address 990 Jenkins Creek Rd. City Weiser
State ID ZIP 83672 Email jenkinscreekbranch@gmail.com
- Name of representative, if any McHugh Bromley, PLLC Phone 208-287-0991q
Mailing address 380 S. 4th St., Ste. 103 City Boise
State ID ZIP 83702 Email cbromley@mchugbromley.com
 - ☐ Send all correspondence for this application to the representative and not to the applicant OR
☒ Send original correspondence to the applicant and copies to the representative.
 - ☐ The representative may submit information for the applicant but is not authorized to sign for the applicant OR
☒ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation.
- Source of water supply Jenkins Creek which is a tributary of Snake River
- Location of point(s) of diversion:

Twp	Rge	Sec	Govt Lot	1/4	1/4	1/4	County	Source	Local name or tag #
12N	05W	6			NE	SW	Washington	Jenkins Creek	

- Water will be used for the following purposes:
 Amount 345 af for Irrigation Storage purposes from 1/1 to 12/31 (both dates inclusive)
 (cfs or acre-feet per year)
 Amount 345 af for Irrigation from Storage purposes from 3/1 to 11/15 (both dates inclusive)
 (cfs or acre-feet per year)
 Amount 345 for Stockwater Storage purposes from 1/1 to 12/31 (both dates inclusive)
 (cfs or acre-feet per year)
 Amount 345 for Stockwater from Storage purposes from 1/1 to 12/31 (both dates inclusive)
 (cfs or acre-feet per year)
- Total quantity to be appropriated is (a) _____ cubic feet per second (cfs) and/or (b) 345 acre-feet per year (af).
- Proposed diverting works:
 - Describe type and size of devices used to divert water from the source. Existing dam on Jenkins Creek that has historically impounded water from Jenkins Creek and Monroe Creek.
 - Height of storage dam (on file) feet; active reservoir capacity 345 acre-feet; total reservoir capacity 345 acre-feet. If the reservoir will be filled more than once each year, describe the refill plan in item 12. For dams 10 feet or more in height AND having a storage capacity of 50 acre-feet or more, submit a separate Application for Construction or Enlargement of a New or Existing Dam. Application required? ☐ Yes ☒ No
 - Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
 - Is ground water with a temperature of greater than 85°F being sought? ☐ Yes ☐ No
 - If well is already drilled, when? _____; drilling firm _____; well was drilled for (well owner) _____; Drilling Permit No. _____

Received by AK Date 10/1/19 Time 2:15 Preliminary check by AK
 Fee \$ 310 Received by AK Receipt No. C107795 Date 11/25/2019

8. Description of proposed uses (if irrigation only, go to item 9):

- Hydropower; show total feet of head and proposed capacity in kW. _____
- Stockwatering; list number and kind of livestock. 250 CB 10/23/19
- Municipal; must complete and attach the Municipal Water Right Application Checklist.
- Domestic; show number of households _____
- Other; describe fully. _____

9. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11N	05W	6								1.5	10		6	37					54.5
11N	05W	7					35	6	1.5	35	37	10	20	33		10	11		198.5
11N	05W	18					15	29	40	15	1	40	40	20					200
12N	05W	6			X					X	X					X			

Total number of acres to be irrigated: 453

Stockwater Storage same as irrigation storage. CB 10/23/19
Stockwater from storage same as irrigation from storage.

10. Describe any other water rights used for the same purposes as described above. Include water delivered by a municipality, canal company, or irrigation district. If this application is for domestic purposes, do you intend to use this water, water from another source, or both, to irrigate your lawn, garden, and/or landscaping? 67-2044, 67-2097A, 67-2097B, 67-4520, 67-14246, 67-14247, 67-14251

- Who owns the property at the point of diversion? BLM and Eckhardt Family LLLP
- Who owns the land to be irrigated or place of use? Applicant
- If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: Existing easement

12. Describe your proposal in narrative form, and provide additional explanation for any of the items above. Attach additional pages if necessary. This application is filed in order to legally allow diversion of water from Jenkins Creek into Monroe Reservoir. Diversion of Jenkins Creek water into Monroe Reservoir has taken place for over 100 years, with the point of diversion claimed in the SRBA. On file with IDWR is a transfer to legally recognize the past 100 years of historic practice. No time is needed to complete the works as they are existing.

13. Time required for completion of works and application of water to proposed beneficial use is 1 years (minimum 1 year).

14. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½" x 11" map or maps clearly identifying the proposed point of diversion, place of use, section #, township & range. The map scale shall not be less than two (2) inches equal to one (1) mile.

The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.

John D. Hoff
 Signature of Applicant
John D Hoff Pres.
 Print Name (and title, if applicable)

Christy D Hoff
 Signature of Applicant
Christy D Hoff Secretary/Treas.
 Print Name (and title, if applicable)





Appendix B
Eckhardt Water Right 67-11045


[Home](#) / [Water Rights](#) / [Research](#) / [Search Water Rights](#)

WATER RIGHT REPORT

4/22/2020

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 67-11045

Owner Type	Name and Address
Current Owner	ECKHARDT FAMILY LLLP 1275 JENKINS CREEK RD WEISER, ID 83672-5158 2085491754
Original Owner	JAMES L ECKHARDT
Original Owner	NELLIE ECKHARDT 247 THORNWOOD MERIDIAN, ID 83642 2088884734
Original Owner	BLUEFIELDS SA 43 5TH AVE NEW YORK, NY 10003 2122434968

Priority Date: 06/27/1934

Basis: Decreed

Status: Active

Source	Tributary
JENKINS CREEK	SNAKE RIVER

Beneficial Use	From	To	Diversion Rate	Volume
STOCKWATER	01/01	12/31	0.02 CFS	
Total Diversion			0.02 CFS	

Location of Point(s) of Diversion:

JENKINS CREEK Beginning of Stream Flow	NENWNW Lt 1	Sec. 30	Township 12N	Range 05W	WASHINGTON County
JENKINS CREEK End of Stream Flow	SENWNW Lt 1	Sec. 30	Township 12N	Range 05W	WASHINGTON County

Place(s) of use:

Place of Use Legal Description: STOCKWATER WASHINGTON County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
12N	05W	30	1	NWNW										

Conditions of Approval:

1. C24 The operation, use, and administration of this water right is also subject to the terms and conditions of the Stipulation and Joint Motion for Order Approving Stipulation entered into on August 29, 2002 between the United States of America and James L. and Nellie Eckhardt, filed in the office of the Washington County Recorder and recorded on November 13, 2002 as Instrument No. 187717; the provisions of such stipulation to apply fully to this water right.
2. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
3. N11 The quantity of water decreed for this water right is not a determination of historical beneficial use.

4. X02 Stockwater use is for 200 range cattle.
5. C33 This right shall be used in conjunction with Right No. 67-12576 and is limited to a total combined diversion rate of 0.02 cfs and a total combined quantity of 13,000 gallons per day.

Dates:

Licensed Date:

Decreed Date: 07/07/2003

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector: OR

Water District Number: NWD

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

EXHIBIT D

**APPLICATION FOR PERMIT NO. 67-15333
IN THE NAME OF DOUBLE C&J LAND COMPANY
REBUTTAL REPORT**

Prepared for

ECKHARDT FAMILY LLLP

Prepared by

**SPF Water Engineering, LLC
300 East Mallard, Suite 350
Boise, Idaho 83706
(208) 383-4140**

May 15, 2020



INTRODUCTION

This report is prepared in response to the Applicant's Expert Report for Application for Permit 67-15333 in the name of Double C&J Land Company dated April 27, 2020. This Expert Report is referred to as the "IWE Report" in this document.

OPINIONS AND ANALYSIS

The IWE Report provides the following opinions numbered 1 through 4. SPF's response follows each numbered opinion.

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.

Response: Double C&J Land Co's decreed water right 67-2044 authorizes diversion from Monroe Creek for storage in Monroe Reservoir. This right does not describe Monroe Creek as an augmenting source for storage, but instead describes Monroe Creek as the only source. This right does not authorize the storage of water diverted from Jenkins Creek.

2. The fact that Jenkins Creek was not a designated source for the reservoir prior to now was an oversight and not intentional.

Response: The fact that Jenkins Creek was not a designated source may have been an oversight, but this oversight does not provide authorization to store water diverted from Jenkins Creek.

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.

Response: Application for Permit 67-15333 proposes to divert water from Jenkins Creek on a year-round basis. Decreed right 67-2044 authorizes diversion to storage from November 15 to March 15, from Monroe Creek only, and does not authorize diversion to storage between March 16 to November 14. Therefore, Application for Permit 67-15333 proposes to change the authorized operation by vastly increasing the time in which water can be diverted to storage, as well as the source of water to be stored.

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.

Application for Permit 67-15333 has the potential to injure Eckhardt's decreed right 67-11045 and therefore does not meet the criteria established in Idaho Code § 42-203A(5) or IDAPA 37.03.08.

The IWE report states that if this application is not approved "...the Double C & J Land Co.'s farming and ranching operation will be devastated." Double C & J Land Co. owns water right 67-2044 authorizing diversion of water from Monroe Creek for storage in Monroe Reservoir. Double C & J Land Co. also owns other water rights authorizing diversion from Jenkins Creek for irrigation including water rights 67-2097B, 67-2097A, and 67-14251, the latter two of which authorize diversion to storage in Jenkins Creek Reservoir. Double C & J Land Co. has operated without the proposed additional storage from Jenkins Creek since IDWR's enforcement letter ended this unauthorized practice. It seems apparent that denial of application for permit 67-15333 will not devastate Double C & J Land Co.'s farming and ranching operation.

LEGAL CRITERIA

Application for Permit 67-15333 fails to meet the criteria set forth in Idaho Code and Idaho Administrative Rules.

Idaho Code §42-203A(5)

- Subsection (a) – Reduce the Quantity of Water Under Existing Rights.
 - The application proposes diversion to storage from a new source in a longer season which stands to reduce the quantity of water available to Eckhardt's right 67-11045
- Subsection (b) – Water Supply is Insufficient.
 - The applicant has failed to demonstrate that the supply is sufficient to fill both application for permit 67-15333 and Eckhardt's right 67-11045.
- Subsection (c) – Application Made in Good Faith, not for Delay or Speculation.
 - The applicant has failed to demonstrate authorization to store water under the new application on land not owned by the applicant.
- Subsection (e) - Application will not Conflict with the Local Public Interest.
 - Depriving Eckhardt's use under their existing decreed water right is not in the local public interest.
- Subsection (f) – Application is Contrary to Conservation of State's water Resources.
 - Water not stored by the applicant will be available to downstream water right holders including Eckhardt.
- Subsection (g) – Application will Adversely Affect the Local Economy.
 - Depriving Eckhardt's use of water right 67-11045 will adversely affect the local economy.

IDAPA 37.03.08 Rule 45 Evaluation

- 45.01.a – Whether the Proposed use will Reduce the Quantity of water under Existing Water Rights.
 - The proposed use stands to reduce the quantity available under existing water right 67-11045.

- 45.01.c.i – Legal Access
 - The applicant has not demonstrated legal access to store water under application 67-15333 on land owned by Eckhardt and BLM.

SUMMARY

Application for Permit 67-15333 should be denied. If the application is approved, the permit and subsequent license should be conditioned to ensure that Eckhardt's water right 67-11045 is not injured due to a reduction in supply.

EXHIBIT E



WATER RIGHT REPORT

5/19/2020

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 67-2044

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	DOUBLE C & J LAND CO INC 990 JENKINS CREEK RD WEISER, ID 83672-5142 2085491232
Original Owner	GRACE L MAINVIL
Original Owner	JOHN B MAINVIL 990 JENKINS CREEK RD WEISER, ID 83672 2085490178

Priority Date: 05/03/1914

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
MONROE CREEK	WEISER RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION STORAGE	01/01	12/31		320 AFA
IRRIGATION FROM STORAGE	03/15	11/15		320 AFA
DIVERSION TO STORAGE	11/15	03/15	6.4 CFS	
Total Diversion			6.4 CFS	320 AFA

Location of Point(s) of Diversion:

MONROE CREEK | SENENE | Sec. 25 | Township 13N | Range 06W | WASHINGTON County

Place(s) of use:

Place of Use Legal Description: IRRIGATION FROM STORAGE WASHINGTON County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
-----------------	--------------	----------------	------------	--------------	--------------	------------	--------------	--------------	------------	--------------	--------------	------------	--------------	--------------

11N	05W	6	NESW	4	7	SWSW	6.6		SESW	32		
		7	NENW	32	1	NWNW	6.3	2	SWNW	1.3	SESW	36
			NESW	37	3	NWSW	9	4	SWSW	19	SESW	34
			NWSE	6		SWSE	11					
		18	NENW	19	1	NWNW	28	2	SWNW	41	SESW	12
			NESW	5.8	3	NWSW	41	4	SWSW	41	SESW	31

Total Acres: 453

Conditions of Approval:

1. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
2. S39 The use of water for irrigation under this right may begin as early as March 1, provided other elements of the right are not exceeded. The use of water before March 15 under this remark is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the date a partial decree is entered for this right.
3. E51 Right Nos. 67-2044, 67-2097A, 67-2097B, 67-4520, 67-14246, 67-14247 and 67-14251 are limited to a total combined diversion rate of 9.06 cfs for irrigation purposes.
4. E55 Right Nos. 67-2044, 67-2097A, 67-2097B, 67-4520, 67-14246 and 67-14247 are limited to the irrigation of a combined total of 453 acres in a single irrigation season.

Dates:

Licensed Date:

Decreed Date: 10/20/2008

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector: And

Water District Number: TBD

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit: 453

Combined Volume Limit:

Combined Rate Limit: 9.06

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

EXHIBIT F

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

Prepared for: McHugh Bromley, PLLC
380 S. 4th Street
Boise, ID 83702

Prepared by: Idaho Water Engineering, LLC
2918 N. El Rancho Pl.
Boise, ID 83704

April 27, 2020



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.

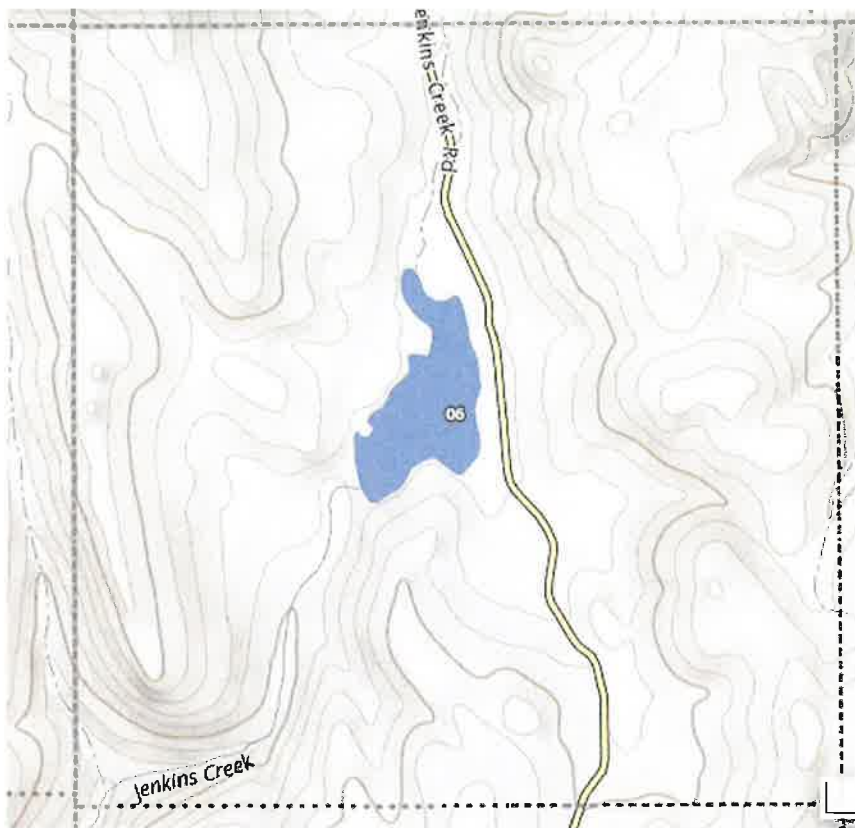


Figure 1. Monroe Reservoir was constructed on Jenkins Creek, per USGS topographic map.

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: \$210,000.00

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 820 feet, length of dam at bottom 570 feet, length of dam at bottom 570 feet.

60 feet. Material used in construction: Concrete and earth

(b) Capacity of reservoir: 5,860 acre feet
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.

EXHIBIT G

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

Prepared for: McHugh Bromley, PLLC
380 S. 4th Street
Boise, ID 83702

Prepared by: Idaho Water Engineering, LLC
2918 N. El Rancho Pl.
Boise, ID 83704

May 15, 2020



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.

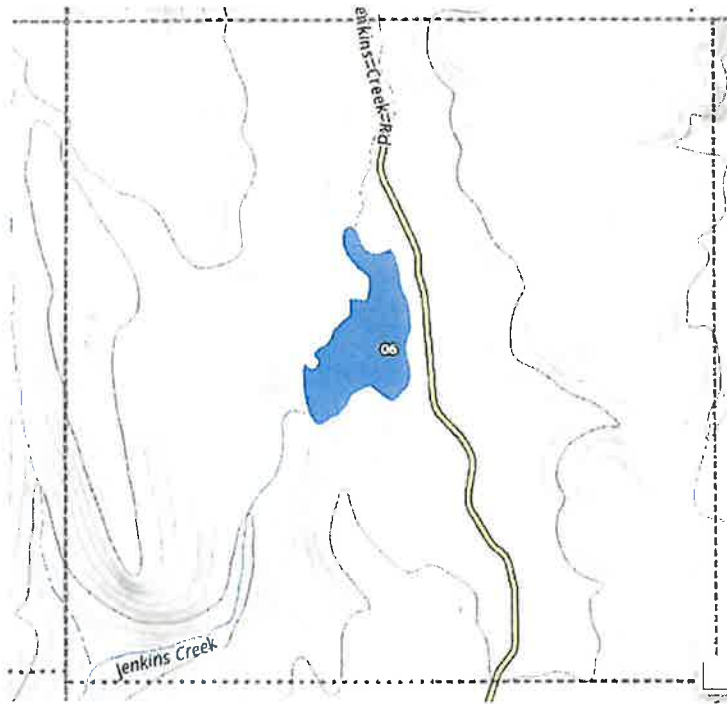


Figure 1. Monroe Reservoir was constructed on Jenkins Creek, per USGS topographic map.

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 19th century and early 20th 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.