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29 June 2015

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DEPT OF WATER RESOURCES
SOUTHERN REGION

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Before the Department of Water Resources in the State of Idaho

In the matter of Application
for Transfer No 79357, and 79380
(in the name of Thomas and Dorthy
Leno)

Protestant's objection to Applicant's
Exceptions to Amended Preliminary
Order.

Protestant, Edward S. Smith respectfully submits these comments concerning the matter above, and that the Director support and defend the Hearing Officer's decisions concerning the parameters involving the: Season of use, and the Priority dates for each transfer.

Comments are specifically oriented toward transfer #79357, but also apply to #79380.

Season of Use

By limiting the use of the transferred water to 1 May through 30 September the Hearing Officer correctly decided that misting of cows would occur most likely within those dates, and the Applicant in their application stated that that is what the new water would be used for. The term "misting" was changed to "drenching" by the Applicant, Mr. Visser, during his testimony at the hearing.

During the hearing, Applicant's attorney showed Mr. Kimball the projected temperature for the following day, which was 75 degrees, and indicated to the Hearing Officer and others that this higher temperature in March was prima facia evidence that cooling of cows would need to occur earlier in the year than May. What was missing was the second important number of Relative Humidity in combination with the higher temperature. A high temperature combined with a low (15% or so) Relative Humidity does not indicate that stress will occur in the cow. The Applicants had a chart showing the effects of temperature and Relative Humidity. If the Director scrutinizes that chart and historical records of temperature and Relative Humidity he will find that on the day in question (20 March 2015) the Relative Humidity was between 10% and 15% and when combined with 75 degrees was not a stressful condition for the cows.

The Director should support the 1 May – 30 September time frame for use of new water.

Priority Date

The Hearing Officer correctly advanced the priority date of the approved water transfer to the current date.

The fact that the water from the Leno Well flows into Nevada (all expert reports agree on this point) means that Nevada can appropriate the water as it alone decides, thus potentially using all the water that is supposedly available for use nearly 35 miles away at the proposed point of diversion. Although

the water is in Basin 47, and administered as one, there surely must be an assurance (not supported in these transfers, see Bonnicksen and Kimball reports), that water from the Leno Well will in fact be available at the proposed point of use.

Even though there is no pending water call, the priority date does need to be advanced. One only has to look across the Snake River to see the results of over allocation of water resources. One does not know when the lack of water availability will prompt a call, thus protection for the domestic wells in the area is needed.

Static Water Levels

The Applicant makes a point that the static water in the McCreary well shows a rising ground water in the second static water test, yet that does not take into consideration the time of year (Spring: lower groundwater levels, Fall: higher groundwater levels) that could have a definitive impact on the water level or that other wells may have been pumping or not at the time of the tests.

The Applicant also makes the point that a limited sampling of static water levels is not sufficient to make an informed decision as to the true nature of the static water level in a specific area. A more accurate base of information would have been available if the dairies would have monitored and recorded the well conditions as prescribed in their original 1998 transfer, which they did not.

Neighbors not Protesting

The Applicants make a point that some neighbors close to the dairies decided not to protest these transfers. There is no basis for such a claim. A decision requires a choice, and if the neighbors never knew about the transfers, then they did not decide to not protest. The deadline for protest simply came and went without their knowledge.

A legal notice in the local paper, that may or may not have been read, is not grounds for saying that neighbors decided not to protest. Yet, their protection from injury, just like the neighbors that did protest the transfers, falls upon the applicants.

The Hearing Officer in deciding a current priority date in essence is providing such protection for all neighbors.

Conclusion.

The Hearing Officer decided correctly in setting the season of use from 1 May through 30 September.

The Hearing Officer decided correctly in advancing the priority date for the transfers.

Dated: 29 June 2015



Edward S. Smith
Protestant

Certificate of Service

I certify that the Protestant's Objection to the Applicant's Exceptions to Amended Preliminary Order was sent to the following on 29 June 2015:

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