

Mod.07/2008

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

MAY 26 2015

DEPT OF WATER RESOURCES
SOUTHERN REGION

NOTICE OF PROTEST

- 1- Matter being protested: Transfer No. 79943, Albion 12 Investments, LLC, applicant
- 2- Name of protestant: Christopher J. King
- 3- Protestant's Representative: None
- 4- Service mailing address: P.O. Box 54, 940 South Hwy. 77, Albion, ID 83311-0054
- 5- Service telephone no.: 208-431-0904 Email: cjking@safelink.net
- 6- Basis of protest: Idaho Code 42-222.

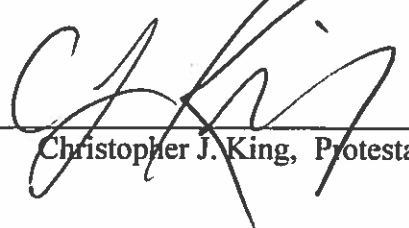
Please see the attached email sent by Brian Higgs (Water Master, Dist. 140) to Denise Maline of the IDWR dated May 5, 2015. After reading this email I have to conclude that no evidence exists that the water right in question (45- 14284) was ever developed to a significant degree, certainly nowhere near the extent required to irrigate of 67 acres. Therefore, this transfer would virtually be the creation of a new water right in the "already severely stressed Marsh Creek drainage". The applicant's advocates (attorneys and engineers) will undoubtedly present legal and technical arguments in favor of this transfer. However, unless they can present evidence that 67 acres has historically and habitually been irrigated at the existing site, the reality is that this transfer would allow 67 additional acres in the Albion valley to be irrigated with ground water. Such an expansion could contribute to lower ground water levels, causing harm to domestic well users such as myself, as well as to existing agricultural users. Agriculture is the heart of southern Idaho and I fully support the right of farmers to use existing irrigation rights. New ground water pumping at agricultural volumes, however, is certainly unwise, and probably unlawful (if my reading of 42-222 is correct).

7- What would resolve your protest?:

Denial of transfer, or limit of transfer to the actual water
use levels which can be substantiated at the current location.

I hereby acknowledge that if I fail to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have mailed a copy of this protest to the applicant, Albion 12 Investments, LLC, at 7595 East McDonald Dr., Ste. 130, Scottsdale, AZ 85250.

Signed this 26th day of May, 2015



Christopher J. King, Protestant

From: "warthen" <warthen@atcnet.net>
Subject: Fw: Comment Letters for Transfers 79902 & 79943
Date: Tue, May 19, 2015 7:39 am
To: cjking@safelink.net

From: Brian Higgs
Sent: Tuesday, May 12, 2015 6:54 AM
To: warthen@atcnet.net
Subject: Fw: Comment Letters for Transfers 79902 & 79943

**ATTACHMENT TO PROTEST
AGAINST 79943**

From: Brian Higgs
Sent: Tuesday, May 05, 2015 4:43 PM
To: Maline, Denise
Cc: William A Parsons ; Jaxon Higgs
Subject: Re: Comment Letters for Transfers 79902 & 79943

Hi Denise.

I have no comment on transfer #79902.

 Transfer #79943 has not been brought forward in good faith. The statements in the application do not represent the facts observed on the ground.

1.A.2 "The new water right..."

1.5.g The box "undergone a period of five or more consecutive years of non-use" is checked.

3.C "There will be no expansion of the acres of irrigation ..."

For verification of these facts see WMIS for these wells.

WMIS number 1000407. Site visit comments state:

"7/2/2014 No longer a well at this gps location"

"7/8/2011 No well, pumps, or electrical improvements observed."

Also see WMIS number 1000166 which is the second well listed as a POD.

"6/30/2012 ... runs a drip system for a few trees... runs the house below..."

One well of the 2 POD's listed does not exist. The small submersible pump in the second well used for the house, that delivers a drip system for a few trees from a spigot, cannot deliver irrigation water for 1 acre nor 67 acres. Obviously, if the surface water was not sufficient the groundwater right was not utilized.

The applicants statement concerning the availability of surface water at the new POD being greater is misleading. There may be more surface water available at the new POD, however, the groundwater was never used at the original POD. In a letter included in the application package, dated 3/26/2015 from G. Erick Powell, to Allen Merritt it states, "transferring of this right...will not cause an expansion of the ground water over historical use." If groundwater has not been historically used an expansion of groundwater use will occur.

In the memorandum dated 4/28/2015 from Jim Bitzenburg, under the statement "Injury to Other Water Rights" Mr. Bitzenburg states, "Information supplied with the application appears to indicate that the right will be used less in the proposed place of use." This is impossible if the right was never used at the old place of use.

The argument that the well was partially decreed in 2010 does not preclude that the fact that use of groundwater from this well is an increase and an expansion of groundwater in the already severely stressed Marsh Creek drainage. The Montgomery's never used this supplemental right while the Albion 12 Investments, a growing and expanding property, infers intentions to use the groundwater every instance surface water is insufficient. That is an expansion.

Thank you.

Brian

From: Maline, Denise
Sent: Tuesday, May 05, 2015 8:33 AM
To: Brian Higgs
Subject: Comment Letters for Transfers 79902 & 79943

Hi Brian,

Attached is a cover letter, recommendation forms and copy of applications for transfer 79902 & 79943. Please review the information and provide any necessary comments within 21 days. Feel free to contact our office if you have any questions.

Thank you in advance,

Denise Maline
Idaho Dept of Water Resources
Administrative Assistant, Southern Region
650 Addison Ave W, Ste 500
Twin Falls, ID 83301
(208) 736-3033
denise.maline@idwr.idaho.gov

Attachments:

untitled-[2]
Size: 9.8 k
Type: text/html

FOR OFFICE USE ONLY

Fee: \$25.00

Receipt No. S034791

Receipt by: DM

Date Received: 5.26.2015