

07/2008

RECEIVED

MAY 26 2015

DEPT OF WATER RESOURCES
SOUTHERN REGION

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, and 42-222, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested Transfer # 79943 Permit # 45-14284
2. Name of protestant Norman L. Smyer
3. Protestant's Representative for service (If different than protestant)
Could be named Later if Needed
4. Service mailing address 765 Hwy 77 Declo, Id. 83323
5. Service telephone no. 208-654-2310 Email Address: _____
6. Basis of protest (including statement of facts and law upon which the protest is based) 42-222
Non use for Irrigation, If Allowed, drilling in Area
Near Springs could Alter or Stop flow causing Harm
to my water rights from said Springs and Howell Creek
My Property Adjoins Albion 12 Ranch + Hwy 77
(additional pages may be attached to describe nature of the protest)
7. What would resolve your protest? Deny transfer

I hereby, acknowledge that if I, or my designated representative, fails 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 served a copy of this protest upon the applicant.

Signed this 26 day of MAY, 20 15.
Norman L. Smyer
Protestant

Protestant's Representative

FOR OFFICE USE ONLY

Fee: \$25.00

Receipt No. 5034794

Receipt by: DM

Date Received: 5-26-2015

kasmyer@atcnet.net

From: "Brian Higgs" <brian@waterwellconsultants.com>
To: <warthen@atcnet.net>
Sent: Tuesday, May 12, 2015 7:54 AM
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.

5/22/2015

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