

Lester, Steve

From: Lester, Steve
Sent: Wednesday, October 05, 2011 9:38 AM
To: 'Tim Farrell'
Subject: RE: Bittercreek Meadows 63-31957

Tim:

Any application is subject to protest, whether published in legal notices or not. The department routinely seeks comments from previous protestants when new changes to water rights are proposed. In this case, there probably have not been any problems since the department probably would have heard about it. However, we have a public interest obligation to check it out to determine if the private agreement that resolved the protest has been successful or not. This application to change a water right by adding a well will include some effort to see if the prior protestant has any remaining concerns. The change in ownership has nothing to do with the department decision to notify the previous protestant – it's the change in point of diversion by adding a well that is the concern. This approach is within the scope of the department's discretion and is not at all unusual.

It is not for you or me to determine if someone else has grounds to do something – due process cannot be foreclosed in these matters. However, my best guess is that Brinker will not be concerned about this. I think it will go ok.

Steve

From: Tim Farrell [<mailto:tfarrell@mountainwtr.com>]
Sent: Tuesday, October 04, 2011 12:07 PM
To: Lester, Steve
Cc: Grimm, Angie; 'Jim Jewett'
Subject: RE: Bittercreek Meadows 63-31957

Steve, Thanks for the additional information on the past protest. I have the following thoughts and questions.

- JIJ met all conditions contained in the stipulation and proved that the pumping did not excessively drawdown the protestants water level in their well. It appears as if the protest has been withdrawn.
- Did IDWR require the City of Meridian to notify the protestant when the water system was transferred to the City?
- Since this transfer will return ownership to the original water right holder, and all conditions of the original stipulation have been accomplished, why would we go back and notify the protestant.
- On other transfer applications are past protestants notified of change of ownership? On change of ownership transfers are past protestants always notified.
- It appears that if we give the protestant the opportunity to comment on issues that have been resolved by the department and JIJ, we are setting the stage for another protest that will be unwarranted.

Steve, this is a simple transfer back to the original owner of the water right. However, the water right is licensed and is currently serving the public water system. This transfer will not positively or negatively impact past protestants. No change in pumping will occur, and the protestant should not have grounds to go back in time to challenge the licensed water right.

Please let me know your thoughts on the above issues.

Mountain Waterworks, LLC
Tim Farrell, P.E.

Principal Engineer

3152 Bown Way
Boise, Idaho
(208) 850-9978
tfarrell@mountainwtr.com

From: Lester, Steve [<mailto:Steve.Lester@idwr.idaho.gov>]
Sent: Tuesday, October 04, 2011 10:47 AM
To: tfarrell@mountainwtr.com
Cc: Grimm, Angie
Subject: Bittercreek Meadows 63-31957

Tim:

Here is some additional information regarding the transfer application to add a well to this right.

The original application was protested in 2004. The protest was resolved with a private agreement now noted in the license conditions of approval (see attached). The protestant still owns the property bordering the subdivision and still has the same mailing address. Although the transfer application does not need to be published in legal notices, the department needs to confirm the protestant does not have concerns about the transfer. We can do this one of two ways:

Option 1, faster

The applicant can send the protestant a copy of the transfer application and request that any comments/concerns be provided to this office within two weeks from the date of that letter. To verify this step has been completed, the applicant should submit a copy of that request letter to this office for the transfer application record.

Option 2, slower

If the applicant does not complete that step, the department will. This will include a two week comment period. The department will proceed with this comment letter if the applicant's letter is not received by October 14, 2011.

Either way, the department will assume the protestant is not concerned if a written reply is not received from the protestant by the appropriate deadline.

Also, I will be out of the office for an extended period after October 7. I discussed this situation with staff to handle the application in my absence. After this Friday, please contact Angela Grimm, P. G. & Senior Water Resources Agent, for continued work on the transfer. She is fully capable of completing the transfer processing to help expedite this for your client. She can be reached at 334-2190 &/or angie.grimm@idwr.idaho.gov.

Please let me know if you need anything by this Friday. Thank you for your attention to this matter.

Steve

Lester, Steve

From: Lester, Steve
Sent: Tuesday, October 04, 2011 10:47 AM
To: 'Tim Farrell (tfarrell@mountainwtr.com)'
Cc: Grimm, Angie
Subject: Bittercreek Meadows 63-31957
Attachments: 63-31957 protest.pdf

Contacts: Tim Farrell

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Steve

November 26, 1999

RECEIVED

JUL 29 2004

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

DEPARTMENT OF
WATER RESOURCES

JUL 30 2004

NOTICE OF PROTEST

C674676

WATER RESOURCES
WESTERN REGION

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, 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 Water Right No. 63-31957 J L J Enterprises, INC. 408 S. EAGLE Rd. Ste. 103 EAGLE, ID. 83616

2. Name of protestant SUSAN BRICKER and/or Kenneth BRICKER

3. Protestant's Representative for service (If different than protestant)

4. Service mailing address 5020 S. Country Life LN., Meridian, ID 83642

5. Service telephone no. (208) 288-2008

6. Basis of protest (including statement of facts and law upon which the protest is based)

(additional pages may be attached to describe nature of the protest)

7. What would resolve your protest?

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 29th day of July, 2004, 2000.

Susan Bricker
Protestant

Protestant's Representative

6. & 7.

Because of the amount of water this community well will be pumping (1,000 g.p.m. based on water supply requirements of the Meridian Rural Fire District) we feel an in-depth study should be performed to give us some assurance that this well will not dry up my well. I haven't measured the distance but think my well will be approximately in the range of 1,200 ft from where they want to drill this community well. Seeing how the land lays this puts our well I think in jeopardy. Our records show that we have a 155 - 162 ft. well with a 6" casing and with our pump - pumps 20 g.p.m. Our static level is at 73 ft. I feel that if you are going to allow this community well that we need to have some tests done first. I think that a qualified registered geologist or engineer should perform some extensive tests to give me that assurance. I think that the developer should pay to have an aquifer test done, an engineering study, a test well drilled to examine the maximum of pumping during a 24 hr. period followed by complete recovery, and my well should be monitored for draw down through out the building out of this subdivision. If my well is compromised during the building out of this subdivision then I need to know that there is money available to remedy the situation at once.

If any of these tests cannot be performed or they fail then this water right 63-31957 and proposed subdivision should be denied.

I don't know what would resolve my protest, but I do know that if the Developer is allowed to drill this community well and I have problems, I shouldn't be the one to pay the cost and have to fight whomever to fix the problem. I think it is reasonable for me to expect at the very least that a note be placed on the plat, on the deed of each lot, and in the Home Owner's Association CC&R's that they are liable and would have to compensate me if I have well problems due to their community well. It would be impossible to go after the developer - he is just going to change his LLC and move on to the next project - and guarantees he makes are just a waste of paperwork both for Water Resources and me. In thinking about this I think the only way to come close to solving this problem is to **insist** on all the available tests be performed so that the Water Resources can verify to me that I shouldn't have any well problems.

Matter being protested: Water Right No. 63-31957

Mar 31 05 05:05p

on Williams

20 344-6633

P. 2

BEFORE THE DEPARTMENT OF WATER RESOURCES OF
THE STATE OF IDAHO

_____)) IN THE MATTER OF APPLICATION FOR) WATER RIGHT NO. 63-31957 IN THE) NAME OF JLI ENTERPRISES) _____))	)) STIPULATION TO WITHDRAW PROTEST))))
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COMES NOW, the protestants, Sue and Kenneth Bricker (hereinafter "Brickers"), together with the applicant, JLI Enterprises, Inc. (hereinafter "JLI"), and hereby enter into this Stipulation to withdraw Brickers' protest to the above referenced Application for Water Right.

FACTS

JLI submitted an Application for Water Right Permit No. 63-31957 to IDWR to appropriate groundwater in Meridian, Idaho on or about May 26, 2004. The application proposes installation of a well (Bittercreek Well) to provide domestic water for 24 homes (0.47 cfs) and fire protection (2.23 cfs). Brickers filed a protest against the application on July 29, 2004. Brickers own a domestic well ("Bricker Well") located approximately 1200 feet away from JLI's proposed Bittercreek Well. Brickers hold water right no. 63-31852 which is diverted from the Bricker Well. The basis of Brickers' protest is the possibility that well interference from the Bittercreek Well may injure the Bricker Well and water right. Brickers will withdraw their protest to JLI's application for a water right permit if the parties agree to the terms of the stipulation as set out below.

STIPULATION

To effectuate the Withdrawal of Protest, the parties stipulate and agree that Bricker will withdraw their protest, and that a permit for Water Right no. 63-31957 may be granted contingent upon the following conditions:

1. JLI will conduct a pumping test on the Bittercreek Well, once it is installed. JLI will monitor the static water level in the Bricker Well during test pumping of the Bittercreek Well. The Bittercreek Well will be pumped continuously at a minimum rate of 1,000 gpm for at least nine (9) hours for the test purposes and continuing at a rate of at least 1,212 gpm for at least four (4) additional hours for test purposes, or at the well's maximum yield if less than the foregoing. The measurements, including measurements of the Bricker Well, and an analysis of the pumping test shall be completed by a registered professional engineer or professional geologist and will be reported to the Idaho Department of Water Resources ("IDWR") as a condition of the water right permit and will be simultaneously supplied to the Brickers.
2. If the analysis of the pumping test of the Bittercreek Well shows that the operation of the Bittercreek Well under the conditions authorized by the permit (i.e., continuous pumping at rates up to 0.47 cfs and pumping at a rate of 2.7 cfs for fire fighting for periods of up to four (4) hours will cause the Bricker Well to be drawn down in excess of ten (10) feet, JLI will, at its election, either engineer and implement a proposed solution thereto or forfeit to Brickers the letter of credit described in paragraph 4 below. If JLI elects to engineer a solution, JLI shall deliver a written description thereof to Brickers within ten (10) days of the completion of the test

RECEIVED

MAY 05 2005

RINGERT CLARK

Mar 31 05 05:05p

on Williams

20 344-6833

P. 3

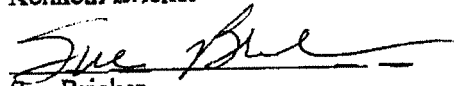
pumping, whereupon Brickers shall have ten (10) days within which to comment in writing to JLJ and JLJ shall have a further 10 days to respond to Brickers' comments. If the parties reach agreement on the engineered solution to the interference described herein, then JLJ shall, at its expense, implement the same within a reasonable time not to exceed 90 days. If the parties can not agree upon a solution to the interference described herein, then the dispute shall be submitted to binding arbitration to be conducted by an arbitrator experienced in water right matters as the parties may agree upon. Such arbitration shall be conducted pursuant to the rules for commercial arbitration of the American Arbitration Association, or such other rules as the parties may agree upon. The prevailing party in arbitration shall be entitled to an award of attorney fees and costs incurred that are related to the arbitration.

3. JLJ will have no obligations hereunder if the Bricker Well loses productivity from a cause other than the authorized operation of the Bittercreek Well.

4. As security for the performance of its obligations hereunder, JLJ shall deliver to the Brickers a non-revocable letter of credit in the principal sum of \$6,000.00 conditioned on JLJ's faithful performance of its obligations under this agreement, which said letter of credit shall be payable to Brickers in the event JLJ shall be in material breach of its obligations hereunder or in the event JLJ elects or is required to forfeit the same as provided in this Stipulation. The Brickers may continue to hold the non-revocable letter of credit until the "engineered solution" and/or the arbitrator's decision have been successfully implemented. If either is not successfully implemented, due to no fault of the Brickers, the non-revocable letter of credit shall be deemed forfeited to the Brickers.

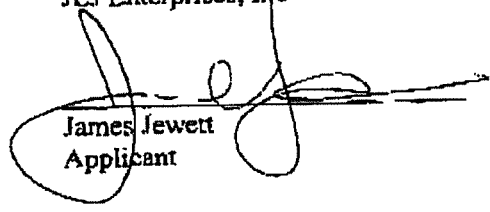
5. If a suit, action, or other proceeding arising out of or relating to this Stipulation is instituted by either party to this Stipulation, the prevailing party shall be entitled to recover its reasonable attorney fees and costs.

DATED This 1 day of April, 2005.


Kenneth Bricker
Sue Bricker

DATED This 31 day of March, 2005.

JLJ Enterprises, Inc


James Jewett
Applicant