

ROSTER OF ATTENDANCE

IDAHO DEPARTMENT OF WATER RESOURCES (IDWR)
2735 AIRPORT WAY, BOISE, IDAHO 83705

Re: Application for Transfer No. 77529 [Water Rt. No. 63-31957]
in the name of Bittercreek Meadows Water & Sewer
Association

Location: IDWR Western Regional Office

Date: March 30, 2012

Conducted by: Vicky Music

Name of attendee

Address

Bruckers 5020 S. Country life Ln. Meridian
T. Farrell 2078 Ashbury Dr. Boise, ID 83716

Agenda for Prehearing Conference
Re Protested Bittercreek Application for Transfer 77529 [WR # 63-31957]

9:30a.m. - noon, March 30, 2012, at IDWR Western Region, Conference Room

1. Attendance sign in
2. Participant introductions
3. Opening Statements by IDWR (5 minutes)
 - (a) Brief description of application, applicants and protestants
 - (b) Purpose of prehearing conference
 - (c) Review conference conduct & agenda
4. Applicant presentation – Bittercreek (5 minutes) – identify issues
5. Protestant presentation - Kenneth or Susan Bricker (5 minutes) –identify issues
IDWR role – (5-10 minutes)
 - (a) Department's application criteria
 - (b) Contested application and hearing process
 - (c) What the Department can and cannot do
6. Open Discussion
 - (a) Narrow & identify the issues
 - (b) What will the applicant agree to
 - (c) What will the protestants agree to
7. Settlement
 - (a) Yes –
 - (i) Can IDWR administer settlement
 - (ii) Protestant to submit protest withdrawal – set date
 - (b) No – Hearing is next step
 - (i) Hearing Officer is appointed by IDWR
 - (ii) applicant and protestant prepare their case to be heard
 - (iii) The hearing officer issues a written decision
9. Summarize pre-hearing conference

Prehearing Conference – Information Handout
Application for Transfer No. 77529 [water rt. no. 63-31957] submitted by Bittercreek Meadows
Water & Sewer Assn.

Purpose of Prehearing Conference

- ☐ Formulate and simplify the issues
- ☐ Discuss and propose settlement
- ☐ Address other matters that may expedite settlement
- ☐ Schedule deadlines, hearings, discovery

Conference Conduct

- ☐ Do not interrupt someone who is speaking
- ☐ Direct your wish to speak to the Department representative for acknowledgement
- ☐ If you have exceeded your time allotted or have drifted away from the subject, the Department representative may stop you.
- ☐ Be respectful of the process and other participants

IDWR 42-222 Evaluation Criteria for Application of transfer

- ☐ Will the proposed transfer reduce the quantity of water under existing water rights?
- ☐ Will the proposed transfer constitute an enlargement in use of the original right?
- ☐ Will the proposed transfer be contrary to the conservation of water resources within the State of Idaho?
- ☐ Will the proposed transfer conflict with the local public interest, where local public interest is defined as interests that the people in the area directly affected by a proposed water use and its potential effects on the public water source?
- ☐ Will the proposed transfer 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?
- ☐ If the proposed transfer is for a municipal use, is it necessary to provide reasonably anticipated future needs for a municipal service area and is the planning horizon consistent with Sections 42-222 and 42-202B, Idaho Code?
- ☐ Will the proposed transfer change the nature of use from an agricultural use, and would such a change significantly affect the agricultural base of the local area?

What the Department can do

- ☐ Place conditions on transfer approvals
- ☐ Acknowledge agreements between parties
- ☐ Enforce statutes re illegal diversions, issue NOVs, initiate actions seeking injunctive relief & obtain cease and desist orders

What the Department cannot do

- ☐ Place irrelevant conditions on transfer approvals
- ☐ Deny an application if the statutory evaluation criteria are met
- ☐ Decide trespass/ right-of-way issues

The applicant has the burden of proof and must provide IDWR with information sufficient to evaluate these criteria.

MEMO TO FILE

DATE March 30, 2012
TO PROTESTED APPLICATION FOR TRANSFER NO 77529 FILE
[WR NO 63-31957]
FROM VICKY MUSIC
RE PRE HEARING CONFERENCE HELD March 30, 2012

I conducted the prehearing conference today. The transfer proposes a second well be drilled as the primary source of potable water for the subdivision. The original well produces from an aquifer know to have ammonia or sulfur odors. The subdivision residents have complained of odors at the tap since the original well was drilled.

The matter will not proceed to a hearing right now. The following people attended the prehearing: Tim Farrell, PE, PG of Mountain Water LLC on behalf of the applicant, Bittercreek Meadows Water & Sewer Assoc.; and, Ken and Susan Bricker, the protestants.

Issues and proposed settlement

The issues identified at the conference are summarized here by party.

Ken and Susan Bricker - protestants: sufficiency of water, potential injury to their well and water right and the financial burden they would incur from injury due to the 2nd well being drilled. Their property is approximately 1200' southwest of the subdivision well. The Bricker want a pump test conducted, quarterly monitoring and a guarantee of reimbursement of money they spend in the future to correct damage incurred by pumping of the subdivision well. They have not had any problems with the well or water availability.

They have talked to residents who say there is no problem with the well and feel it is not necessary if the filters are maintained. The Brickers have had repeated problems with Jim Jewitt, the developer and applicant, and are considering hiring a water law attorney.

The protestants report a lawsuit has recently been filed by the subdivision homeowners v. the City of Meridian and Jim Jewitt. Evidently when the subdivision was developed, the City of Meridian gave it written assurances that city services would be extended to the subdivision and so the developer conveyed the application to the City, who developed a municipal right. Due to the economy, the City decided not to and conveyed the system, and water right back to the subdivision.

I stated the lawsuit will not affect this contested situation.

Tim Farrell for Jim Jewitt: The science was done during the drilling of the first well which showed that pumping the well had no effect on the Brickers well. The applicant is not

willing to do anything else. There will likely be no stipulation, pump test or monitoring or financial assurances.

The ownership issue has been resolved and the applicant will provide the deed conveying the water right, well system and real property back to the subdivision.

Conclusions

The proposed well will produce from a water-bearing zone 420'-480', about 300' deeper than the Bricker well water-bearing zone. There is no evidence of communication between the aquifers. The Brickers have had no problems with their well or water supply.

Mr. Bricker will be leaving for Peru next week and will be gone for 2 months. The Brickers want more time to decide what to do and so asked if they could have a 4 month extension.

The applicant will not settle.

I told the parties:

Please negotiate.

I will send letter setting a deadline in 2 weeks for the deed, 4 months for settlement or withdrawal of the protest. If no resolution, a hearing will be set 3 – 6 months after the deadline.