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MAY 10 2012

Department of Water Resources
Eastern Region

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May 5, 2012

RE: Permit No. 15-7347

SECOND PETITION FOR RECONSIDERATION

Idaho Department of Water Resources:

On May 4, 2012, the above parties acknowledge receipt of the Order Denying Petition for Reconsideration regarding water right number 15-7347 to establish a new water right, applied for by Mr. Victor Riches. Accept this Second Petition for Reconsideration during the fourteen (14) day window given. The above parties, owning 310 acres east of Mr. Riches' proposed well site, again oppose this new appropriation as it may be detrimental to those individuals who have established water rights with priority dates and domestic wells in the Malad Valley.

Review of the denial of the reconsideration with the "Analysis of Arguments" provided by James Cefalo, Water Resources Program Manager at the IDWR, shows that the order fails to adequately and objectively consider the matter at hand. The arguments supporting Mr. Riches' new appropriation are taking the appearance of a biased order, which places senior water rights holders in a defensive position to protect current rights. The IDWR website states, "The Idaho Department of Water Resources serves the people of Idaho and protects their welfare by making sure water is conserved and available to sustain Idaho's economy, ecosystem and the resulting quality of life." It appears the IDWR is not adequately considering the current water right owners or the purpose in which the entity is to function. The suggestion by the IDWR that protestors may file civil suit to retain water rights further supports the defensive position that has been subjected on current water rights holders as well as the lack of protection provided by the IDWR.

The Order Denying Petition for Reconsideration suggests that the petitions are "not the appropriate forum for resolving basin-wide aquifer concerns" (Order, page 2) and "not the proper venue for determining whether a basin-wide restriction on new ground water permits is warranted" (Order, page 2). In this case, the petition is not meant to resolve any issue other than denial of the new appropriation. The data provided merely supports the statements made showing concern about the present ground water supply. To reiterate the first Petition for Reconsideration, the IDWR should focus on preserving and protecting the established water rights rather than approve new water rights for any individual or developer who can provide supporting geological documentation to their benefit. Objectivity on the part of the IDWR, or the specific individual/group reviewing this case, is severely lacking.

The Department can assert that all of the arguments are not sufficient for declining the new appropriation, however, data to support the new appropriation that is NOT provided by Mr. Riches hired geologist are demanded. As the IDWR is the public entity given charge of protecting the water rights of Idaho, this would be an obligatory duty to preserve scarce natural resources.

ARGUMENTS PRESENTED IN ORDER DENYING PETITION OF RECONSIDERATION

Rather than rehash specifics or individual conflicting statements related to the application that have been negated by the IDWR, it seems most prudent to consider the law, which cannot be argued.

CONCLUSIONS OF LAW

1. Idaho Code 42-203A (5) states in pertinent part:

In all applications whether protested or not protested, where the proposed use is such: (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho...the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

Based on the above law, that the application for new water right #15-7347 could be questioned in regard to *(a) the reduction of quantity of water under existing water rights*. The 2009 written statement by Oneida County Officials (Exhibit P3) should be adequate evidence, in and of itself, to document the decline of water in the county. Instead, it has become a pitting of Mr. Riches paid substantiations by Mr. Wood against the word of the protestants who "misunderstand" (Order, page 1) the findings. Regardless, it should not be the senior water rights holder's responsibility to provide substantiation or invalidation of the applicant's claims in order to protect current priority-dated rights.

It is well-documented that the application conflicts with the local public interest as defined in section 42-202B, Idaho Code or item *(e)*. Regardless of documentation that was not adequately provided by the protestants at the hearing, how the proposed well will impact current water supply, or the estimated transmissivity of the local aquifer by the pump test, ***the proposed application conflicts with local public interest***. This should be sufficient evidence, according to law, to deny the new appropriation of water right #15-7347. Neither the applicant nor the IDWR can adequately estimate the local public interest other than through the protestant documentations which *have* been adequately and appropriately documented. Based on this law and the IDWR commitment to public service, the denial of the new appropriation should be considered an obligatory service by the IDWR.

With the legitimate concerns regarding the activity of the IDWR regarding this application for new appropriation, the corresponding Idaho State Representatives, Senator, and Governor have been contacted. In addition, the protestants have provided all correspondence, orders, and petitions to Idaho State Representatives Marc Gibbs and Fred Wood. Pending the official filing of the first petition of reconsideration, the topic was presented at the biannual meeting of the Bear River Commission in Salt Lake City on April 17, 2012. Concern was expressed by the members and, with the most recent conversation with Idaho State Representative Marc Gibbs, it has been indicated that support will be provided to deny this new appropriation. As protestants, we are committed to performing any number of additional petitions for reconsideration and hiring legal representation, if necessary, as this is an infringement on our priority-dated water rights and it does not appear that the IDWR is being considerate of the local public interest or upholding the duty in which the entity is appointed. Our agricultural future and property values are at stake and are aspects we are not willing to sacrifice.

Sincerely,



Brent L. Clark



Shawna A. Clark

(Members, Two Buck Chuck LLC)

CC:

Idaho Representative Marc Gibbs
Idaho Representative Fred Wood
Bear River Commission
Oneida County Commissioners
IDWR, State Office
Gary Spackman, Interim Director IDWR