

APR 19 2012

Department of Water Resources
Eastern Region

Brent L. Clark
Shawna A. Clark
Two Buck Chuck, LLC
54778 Happy Valley Ln
Mount Vernon, OR 97865
541-620-4588/541-620-4589

April 14, 2012

RE: Permit No. 15-7347

PETITION FOR RECONSIDERATION

Idaho Department of Water Resources:

On April 13, 2012, the above parties acknowledge receipt of Preliminary Order Issuing Permit for water right number 15-7347 to establish a new water right, applied for by Mr. Victor Riches. Please accept this 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 vicinity.

Review of preliminary order states that the protests "generally stated concerns that the proposed ground water well would impact domestic wells in the area." As the landowners of nearest proximity to the proposed irrigation well, a review of the original protests submitted by the above parties will show that the impact on the domestic well was only ONE concern identified with regard to the establishment of this new water right. In fact, the concerns with regard to irrigation water and surface springs were primary concerns documented in the protest and were not adequately addressed in the preliminary order. Consideration of water appropriation should not only consider domestic well impact but should consider the current irrigation with established priority water rights and ground springs which allow for present farming, wildlife habitat, and the overall value of land.

It is not understood how the impact of this well could be accurately established by an agent hired by Mr. Riches with a pump test less than 1/10th of the volume than the proposed well. The preliminary order cites Mr. Tom Wood, Mr. Riches' hired geologist, and reports his "assumptions" as conservative in nature. Regardless of the reported conservative effect the proposed well may have on surrounding wells, the IDWR should focus on preserving and protecting the established water rights rather than approving new water rights for any individual or developer who can establish a "negligible effect" and be "persuasive."

FINDINGS OF FACT NOT ADDRESSED IN PRELIMINARY ORDER

1. Mr. Wood conducted a pump test using a pump that pumped 140 gal/min, less than 1/10th of the 1500 gal/min proposed well. In addition the well utilized one mile north of the proposed site has a 8" well casing versus the 16" casing proposed by Mr. Riches. The results of this one, small pump test

cannot be generalized to accurately or theoretically establish a negligible effect on surrounding water supply.

2. The proposed well is geographically located between two areas identified with ground water shortages, the Curlew Valley Critical Ground Water Area and the Bear River Ground Water Management Area. In 2009, Oneida County officials submitted a well protest to the IDWR stating concerns regarding the number of irrigation wells in the county, with a reported “negative effect on the springs that fill our reservoirs and provide irrigation and stock water in our county.” The letter, dated March 9, 2009 also states that The Oneida County Commission would “like to be on record as being in opposition to any other wells of this nature [irrigation] that are being considered or may be presented in the future to the Idaho Department of Water Resources.” This speaks to the concern regarding water shortages three years ago—a situation that has likely not improved with the lack of precipitation. It is recommended that IDWR take into account testimony from parties in addition to the sole contractor hired by Mr. Riches., when determining the impact this well may have on water supply.

3. Based on ground water level data available from the IDWR website, the two irrigation wells monitored and located within closest proximity of the proposed well (15S 35E 22AAB1 & 15S 35E 01DAA1) show a trend of decreasing ground water levels prior to 1990. This is objective data reported by the IDWR/USGS and supports the need for the IDWR to focus on protecting the current water rights by denying applications for new appropriations.

4. With regard to the two domestic wells constructed prior to 1978 and within ½ mile of the proposed well (one belonging to the above protestants Brent & Shawna Clark, the other Mr. Hughes): The 1982 case presented before the Idaho Supreme Court, *Parker v. Wallentine*, 103 Idaho 506 (1982) suggests that the invocation of protection of steady ground water levels can be protected in wells constructed prior to 1978 if the establishment of date of construction, use, and ground water levels at time of construction or current static water levels in well have been made. The Preliminary Order Issuing Permit states that Mr. Clark did not provide documentation of either at the hearing, however, this was not requested and it was not realized that documentation to defend a current domestic well or water right was going to be required by the protestants. It seems incredulous that current water right holders should be placed in a defensive position to retain ownership and avoid encroachment by others.

Mr. Riches application did not include or consider the Clark well, presumably due to the fact that it was constructed in the 1960's and no public well log is available as well permits were not required at that time. As it was stated that there was not enough evidence to determine if the Clark domestic well could be entitled protection under the *Parker v. Wallentine* decision, it also seems questionable that the IDWR would have enough evidence to approve of this new water right application based on information provided entirely from the applicant. The Preliminary Order suggests that the Clarks may pursue a civil suit to make a determination regarding the applicability and viability of a *Parker v. Wallentine* argument which shows a lack of consideration to local public interest by the IDWR. Again, this lends to the defensive position required of senior water right and domestic well owners.

5. In addition to the domestic well, the above protestants have irrigation water rights through water provided by Samaria Water & Irrigation Company as well as a spring located on Mr. Riches land, Aldrich springs. The irrigation water and spring water draw from the same water basin Mr. Riches proposes to access. These water rights are priority dated from 1893-1947. Priority water rights should establish *priority* to senior holders, disallowing junior applicants to procure new appropriations.

6. Mr. Riches' application for farming irrigation of the proposed 215 acres of land is not realistic, for topographic and ground quality reasons. Of the 215 acres, only approximately 22 acres is currently farmed, irrigated with 5.5 shares of Samaria Water and Irrigation Company water. Review of the acreage will show approximately 27 acres of topographically very steep ground that would be unable to be irrigated at all. Another 136 acres (approx.) of the most southern portion consists of increasingly steep sagebrush and rocky terrain that would likely be unsuitable for farming. The remaining acreage, approximately 59 acres of dry land, could feasibly be farmed but could still be considered *marginal* farming ground. Reallocation of the water supply, as will undoubtedly occur if Mr. Riches' irrigation well is approved, to less marginal ground is in direct opposition to the local farming/ranching economy and public interest.

7. As mentioned in the initial notice of protest, at least seven year-round surface springs are located within the meadows below Mr. Riches' proposed well site. These springs provide water for livestock, wildlife, and are a natural habitat for fowl and upland game birds. The springs create a sub-irrigated sanctuary and provide refuge for geese and ducks that arrive every winter and spring. At the present time, when irrigation season is underway, the flow of these springs slows. Another large irrigation well could further decrease or stop the flow of the surface springs which would also impact wildlife.

CONCLUSIONS OF LAW

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

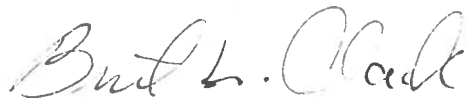
In all applications whether protested or not protested, where the proposed use is such: (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to 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) or the reduction of quantity of water under existing water rights*, supported by IDWR current well monitoring and subjective statement by Oneida County Officials. Prior to making any

determination in this regard, it would seem prudent to objectively, and without partiality, quantify the impact the proposed well may have prior to making a decision. In addition, it is well-documented that the application conflicts with the local public interest as defined in section 42-202B, Idaho Code or item (e). It would seem reasonable to IDWR to more thoroughly consider the protestants grievances and local official statements objecting the application.

The Preliminary Order Issuing Permit # 15-7347 serves to support the appropriation of water rights to an applicant without current water rights, to the potential detriment of current water right holders and residents of the surrounding area. It is unfortunate that no reasonable pumping levels have been established for the Malad River drainage (Basin 15) and seems to leave water rights owners vulnerable to advantageous individuals, such as Mr. Riches. It is realized that this Petition for Reconsideration reiterates those items outlined in the initial protest, however, it is felt that these items should support the denial of the water right application. Your consideration in this matter would be greatly appreciated.

Sincerely,



Brent L. Clark



Shawna A. Clark

(Members, Two Buck Chuck LLC)

ENCLOSURES:

Letter to Governor Otter
Letter to Senator Darrington
Letter to Representative Bedke
Letter to Representative Wood
Letter to Oneida County Commissioners

Brent & Shawna Clark
5501 S. 4400 W.
Malad City, Idaho 83252
541-620-4588/541-620-4589
theclarks@diamond2ranch.com

The Honorable C. L. "Butch" Otter
Governor of Idaho
P.O. Box 83720
Boise, ID 83720

April 14, 2012

copy

Dear Governor Otter:

I am writing to express concern regarding recent events relating to the appropriation of water rights within the State of Idaho. My husband and I own a small cattle ranch in Oneida County, just outside of Malad City, Idaho. We raise ranch horses, beef cattle, and hay which depend upon the priority-dated water rights we possess.

Oneida County lies between two ground water shortage areas, the Curlew Valley Critical Ground Water Area and the Bear River Ground Water Management Area. In 2009, Oneida County Commissioners submitted a protest to Idaho Department of Water Resources, documenting opposition to any new irrigation wells, due to decreasing irrigation water supply.

In 2011, a developer from California filed to take possession some of our water rights (which was denied after we were able to provide a chain of title) and subsequently applied for a 1500gal/minute irrigation well directly across from our small ranch. This developer hired a geologist to support his application and has documented a "negligible impact" of the proposed well on the surrounding area.

Despite the geologist's report that states otherwise, we feel that our domestic water, flood-irrigation water, and surface springs are in danger—especially with the decreasing water supply—as the Idaho Department of Water Resources issued a preliminary water right # 15-7347 on April 9, 2012 despite multiple protests and a hearing in March, 2012. We have submitted a Petition of Reconsideration in another attempt to protect and retain our current priority-dated water rights and domestic water supply.

With your ranching background, you undoubtedly understand how vital water is to the production and sustainability of any ranch. We feel we are at the mercy of the IDWR and this developer, knowing our livelihood is at stake. If you can provide any assistance or recommendations in this effort, we would be very grateful.

Respectfully,

Shawna Clark

Brent & Shawna Clark
5501 S. 4400 W.
Malad City, Idaho 83252
541-620-4588/541-620-4589
theclarks@diamond2ranch.com

The Honorable Denton Darrington
Senator of Idaho, District 27
302 S. Hwy. 77
Declo, ID 83323

April 14, 2012

COPY

Dear Senator Darrington:

I am writing to express concern regarding recent events relating to the appropriation of water rights within the State of Idaho. My husband and I own a small cattle ranch in Oneida County, just outside of Malad City, Idaho. We raise ranch horses, beef cattle, and hay which depend upon the priority-dated water rights we possess.

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With your agricultural background, you likely understand how vital water is to the production and sustainability of any ranch. We feel we are at the mercy of the IDWR and this developer, knowing our livelihood is at stake. If you can provide any assistance or recommendations in this effort, we would be very grateful.

Respectfully,

Shawna Clark

Brent & Shawna Clark
5501 S. 4400 W.
Malad City, Idaho 83252
541-620-4588/541-620-4589
theclarks@diamond2ranch.com

The Honorable Scott Bedke
State of Idaho Representative, District 27
P.O. Box 89
Oakley, 83346

April 14, 2012

COPY

Dear Representative Bedke:

I am writing to express concern regarding recent events relating to the appropriation of water rights within the State of Idaho. My husband and I own a small cattle ranch in Oneida County, just outside of Malad City, Idaho. We raise ranch horses, beef cattle, and hay which depend upon the priority-dated water rights we possess.

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With your background in cattle ranching, you undoubtedly understand how vital water is to the production and sustainability of any ranch. We feel we are at the mercy of the IDWR and this developer, knowing our livelihood is at stake. If you can provide any assistance or recommendations in this effort, we would be very grateful.

Respectfully,

Shawna Clark

Brent & Shawna Clark
5501 S. 4400 W.
Malad City, Idaho 83252
541-620-4588/541-620-4589
theclarks@diamond2ranch.com

The Honorable Fred Wood
Idaho State Representative, District 27
P.O. Box 1207
Burley, ID 83318-0828

April 14, 2012

COPY

Dear Representative Wood:

I am writing to express concern regarding recent events relating to the appropriation of water rights within the State of Idaho. My husband and I own a small cattle ranch in Oneida County, just outside of Malad City, Idaho. We raise ranch horses, beef cattle, and hay which depend upon the priority-dated water rights we possess.

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With your rural Idaho residence, you likely understand how vital water is to the production and sustainability of any ranch. We feel we are at the mercy of the IDWR and this developer, knowing our livelihood is at stake. If you can provide any assistance or recommendations in this effort, we would be very grateful.

Respectfully,

Shawna Clark

Brent & Shawna Clark
5501 S. 4400 W.
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theclarks@diamond2ranch.com

Oneida County Commissioners
10 Court Street
Malad ID 83252-1200

copy

Dear Mr. Firth, Mr. Tubbs, and Mr. Sweeten,

We are writing to inform and express concern regarding recent events relating to the appropriation of water rights within the State of Idaho, County of Oneida. As you are likely aware, Mr. Vic Riches applied for a large irrigation well in Samaria that was protested by several local residents. Mr. Riches hired a geologist to support his application and has documented a “negligible impact” of the proposed well on the surrounding area.

Despite the geologist’s report that states otherwise, we feel that our domestic water, flood-irrigation water, and surface springs are in danger—especially with the decreasing water supply—as the Idaho Department of Water Resources issued a preliminary water right # 15-7347 on April 9, 2012 despite multiple protests and a hearing in March, 2012. We have submitted a Petition of Reconsideration in another attempt to protect and retain our current priority-dated water rights and domestic water supply.

In 2009, Oneida County Commissioners Larry Etherington, Cecil Sweeten, and Joe Daniels submitted a protest to Idaho Department of Water Resources, documenting opposition to any new irrigation wells, due to decreasing irrigation water supply. In the letter of protest, the commissioners stated they would like to see a moratorium on irrigation well permits in Oneida County. This was, however, not completed allowing individuals like Mr. Riches to apply for new water rights.

In addition to the Petition of Reconsideration submitted to the IDWR, we have written Idaho Governor Butch Otter, Senator Denton Darrington, Representative Fred Wood, and Representative Scott Bedke. It seems necessary to address this problem at a county level, as well, to protect the local water supply—domestic and irrigation. If you can provide any assistance or recommendations in this effort, we would be very grateful.

Respectfully,

Brent & Shawna Clark