



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

8 March 2010

Mr. Lex Smith
1969 S 1900 W
Malad, ID 83252

RE: Water Right Application 15-7307

Dear Mr. Smith,

Enclosed is a copy of the "Preliminary Hydrological Evaluation" of your application. The evaluation was completed by Mike McVay. Mr. McVay is a registered P.G. in Idaho and works in The Departments Hydrology section.

The data in the report indicates that the proposed well may have an impact a mile to the North by lowering the water table between 6 and 64 feet by the end of the irrigation season.

The application was not protested but the Department is required by law to evaluate any potential impacts to the "public." Due to the Idaho Supreme Court decision in "Parker v Wallentine" it appears there may be injury to some domestic wells.

Please review the hydrologic report and the outline of the Parker case and then contact me at 208 525-7161. It may be possible for the well to be designed, by a hydrogeologist, to minimize drawdown.

Sincerely,
Dennis M. Dunn
Dennis M. Dunn
Sr. Water Resource Agent

Encl: Preliminary Hydrologic Evaluation of permit 15-7307, Malad Basin
Summary of Parker v Wallentine

Parker v. Wallentine
Supreme Court of Idaho, 1982
103 Idaho 506, 650 P.2d 648

Facts:

The Idaho Ground Water Law, enacted in 1951, was amended in 1953 to state that while groundwater rights would continue to be administered according to the prior appropriation doctrine, prior water rights would not interfere with “the full economic development of the ground water resources of the state of Idaho.” Also, all ground water appropriators would be required to pump from a “reasonable” level established by the Department of Water Resources. It was again modified in 1978 to state that all domestic water rights were subject to the reasonable level standards the same as irrigation, etc.

In 1976, L. Junior Wallentine of Bear Lake County drilled a 200-foot-deep well on his property in order to irrigate a 64-acre field. He had a state water right to pump at 1350 gpm, and the well was subject to all existing water rights. His neighbor, Carl Parker, had a 71-foot-deep well that had been drilled in 1964. It was 125 to 150 feet away from the Wallentine well.

On March 4, 1976, a pump test was performed on Wallentine’s well. Late in the afternoon Parker discovered that his well had no water. It was producing again by the following day, but the water was muddy for several days afterward. In June of 1977, as Wallentine was preparing to irrigate, Parker filed suit and was granted a temporary restraining order. The district court granted a preliminary injunction until such time as the Department of Water Resources issued a determination of the reasonable pumping level for the area, and Parker’s well had been deepened at Wallentine’s expense. Wallentine appealed this ruling, and the matter eventually went before the Idaho Supreme Court.

Issue:

Should domestic wells be subject to the reasonable pumping level provision of the Idaho Ground Water Act? How should appropriations dating from before the 1978 modification be treated?

Decision:

The court found that Parker’s well was exempt from any reasonable pumping level provisions. In addition, Wallentine should not pump water for irrigation if it would cause harm to Parker.

Reason:

Before the Ground Water Act came into existence, groundwater was governed solely by the prior appropriation doctrine, the same as surface water. Under this doctrine, because he had drilled first, Parker had “a vested right to use the water for his domestic well.” This right included “the right to have the water available at the historic pumping level or

to be compensated for expenses incurred if a subsequent appropriator is allowed to lower the water table and Parker is required to change his method of means of diversion in order to maintain his right to use the water.” Also, because the well predated the 1978 amendment to the Ground Water Law, it was not subject to the reasonable pumping level provision.