



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 1341 Fillmore Street, Suite 200 • Twin Falls, Idaho 83301-3380

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December 3, 2009

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

Re: **Protested** Applications for Transfer No. 75177 (Brainerd), Transfer No. 75341(Sinott), and Transfer No. 75342 (Breck)

Ladies and Gentlemen:

The enclosed "Order Consolidating Proceedings and Granting Petitions to Intervene" has been prepared pursuant to Rules of Procedure 710 and 711 listed below. Pursuant to Rule of Procedure 711, any party or person affected by an Interlocutory Order may petition the officer issuing the order to review the interlocutory order.

710.INTERLOCUTORY ORDERS (RULE 710).

Interlocutory orders are orders that do not decide all previously undecided issues presented in a proceeding, except the agency may by order decide some of the issues presented in a proceeding and provide in that order that its decision on those issues is final and subject to review by reconsideration or appeal, but is not final on other issues. Unless an order contains or is accompanied by a document containing one (1) of the paragraphs set forth in Rules 720, 730 or 740 or a paragraph substantially similar, the order is interlocutory. The following orders are always interlocutory: orders initiating complaints or investigations; orders joining, consolidating or separating issues, proceedings or parties; orders granting or denying intervention; orders scheduling prehearing conferences, discovery, hearing, oral arguments or deadlines for written submissions; and orders compelling or refusing to compel discovery. Interlocutory orders may be reviewed by the officer issuing the order pursuant to Rules 711, 760, and 770. (7-1-93)

711.REVIEW OF INTERLOCUTORY ORDERS (RULE 711).

Any party or person affected by an interlocutory order may petition the officer issuing the order to review the interlocutory order. The officer issuing an interlocutory order may rescind, alter or amend any interlocutory order on the officer's own motion, but will not on the officer's own motion review any interlocutory order affecting any party's substantive rights without giving all parties notice and an opportunity for written comment. (7-1-93)

All "Administrative Rules" of the Department may be found at the following internet address:

<http://adm.idaho.gov/adminrules/rules/idapa37/0101.pdf>

If you have any questions regarding this matter please feel free to contact me at this office.

Sincerely,

Allen Merritt, PE
Southern Region Manager

CERTIFICATE OF MAILING

I hereby certify that on the 3rd day of December, 2009 a true and correct copy of the above and foregoing Order Consolidating Proceedings and Granting Petitions to Intervene was forwarded with all required charges prepared, by Regular U.S. Mail to the parties listed:

PAUL BRAINERD
2000 FIRST AVE # 2504
SEATTLE WA 98121

EDGAR L SINNOTT
PO BOX 3490
KETCHUM ID 83340

BRECK FAMILY TRUST
PETER B. & ANTONIA HUNTER BRECK
PO BOX 1604
ROSS CA 94957

JAMES P. SPECK
PO BOX 987
KETCHUM ID 83340

BROCKWAY ENGINEERING
2016 WASHINGTON ST NORTH # 4
TWIN FALLS ID 83301

WOOD RIVER IRRIGATION DIS # 45
C/O ALBERT P. BARKER
BARKER ROSHOLT & SIMPSON LLP
PO BOX 2139
BOISE ID 83701-2139

ATTN HELEN HARRINGTON
IDAHO WATER RESOURCE BOARD
PO BOX 83720
BOISE ID 83720

MS SHASTA KILMINSTER-HADLEY
ID ATTORNEY GENERALS OFFICE
PO BOX 83720
BOISE ID 83720

TROUT UNLIMITED
C/O PETER R. ANDERSON
910 W MAIN STREET STE 342
BOISE ID 83702

ATTN Debbie Gibson
ID DEPT OF WATER RESOURCES
PO BOX 83720
BOISE ID 83720-0098

A handwritten signature in cursive script, reading "Mary A. Baldwin", is written over a horizontal line.

Mary A. Baldwin
Administrative Assistant I

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF PROTESTED)	
)	
TRANSFER NO. 75177 IN THE NAME)	ORDER CONSOLIDATING
OF PAUL BRAINERD)	PROCEEDINGS AND
)	GRANTING
TRANSFER NO. 75341 IN THE NAME)	PETITIONS TO INTERVENE
OF ED SINNOTT)	
)	
TRANSFER NO. 75342 IN THE NAME)	
OF PETER AND ANTONIA BRECK)	
_____)	

On July 16, 2008, Paul Brainerd through his representative, Charles G. Brockway, filed application for transfer no. 75177 to move the points of diversion and place of use for a two acre portion of water rights 37-2630, 37-483C, 37-482H, 37-577BT and 37-481C, which he has agreed to purchase from South County Estates LLC to provide irrigation water for land he owns.

On November 21, 2008, Ed Sinnott through his representative, Charles G. Brockway, filed application for transfer no. 75341 to move the points of diversion and place of use for a one acre portion of water rights 37-2630, 37-483C, 37-482H, 37-577BT and 37-481C, which he has agreed to purchase from South County Estates LLC to provide irrigation water for land he owns.

On December 30, 2008, Peter and Antonia Breck through their representative, Charles G. Brockway, filed application for transfer no. 75342 to move the points of diversion and place of use for a 1½ acre portion of water rights 37-2630, 37-483C, 37-482H, 37-577BT and 37-481C, which he has agreed to purchase from South County Estates LLC to provide irrigation water for land they own.

All three transfer applications were advertised and timely protests were filed against all three transfer applications by the Idaho Water Resource Board ("IWRB"). The basis of the protests is to prevent injury to minimum stream flow rights held by the IWRB on the Big Wood River. Additionally a timely protest was filed against transfer application no. 75177 by the Wood River Irrigation District #45 ("District #45") through its attorney, Albert Barker. The basis of this protest is to prevent injury to the delivery of water through the District #45 canal.

On November 17, 2009, Trout Unlimited ("TU" or "petitioner") submitted to the Department of Water Resources ("Department"), through its attorney Peter Anderson, petitions to intervene in these matters ("petitions") as authorized in Rule of Procedure IDAPA 37.01.01.350 (Rule 350). The petitions claim a substantial interest in these matters and claim TU's coldwater fisheries interests may not be adequately represented by the IWRB.

On November 3, 2009, District #45 submitted to the Department, through its attorney Albert Barker, petitions to intervene in the contested applications for transfer no. 75341 and no. 75342. These petitions claim a substantial interest in these matters for the same reasons stated in District #45's timely protest of application for transfer no. 75177.

On November 19, 2009, Sinnott and the Brecks responded through their attorney, James Speck, by filing responses opposing the petitions of TU as provided in Rule of Procedure IDAPA 37.01.01.354 (Rule 354). The responses argue that the IWRB adequately represents the IWRB's water rights and that the petitions should be denied. Sinnott and the Brecks did not oppose the petitions of District #45. The IWRB did not file a response opposing the petitions to intervene.

Rule of Procedure IDAPA 37.01.01.556 (Rule 556) provides that the Department may consolidate two or more proceedings for hearing upon finding that they present issues that are related and that the parties will not be prejudiced.

Rule of Procedure IDAPA 37.01.01.353 (Rule 353) provides that if a timely filed petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties. If it appears that the intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding.

ANALYSIS

These three transfers deal with the movement of portions from the same water rights currently used for irrigation of the South County Estates LLC 1 mile south of Bellevue. All three transfers propose movement of water rights to the north up gradient in the Big Wood River Valley for irrigation of separate parcels owned separately by the three transfer applicants. James Speck represents all three of the applicants. The IWRB filed protests to all three of the applications based on the same potential injury to the minimum stream flow water rights held in its name. District #45, where all water is proposed to be moved from under the three applications, has expressed potential injury issues related to its ability to delivery water through the District #45 canal. It promotes administrative efficiency to consolidate these contested cases.

The minimum stream flow rights were established to protect against loss of water supply to preserve the minimum stream flows required for the protection of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, transportation and navigation values, and water quality in the public interest as provide for in Title 42, Chapter 15 of the Idaho Code. Although the Idaho Water Resource Board holds the minimum stream flow rights in its name the establishment of the rights relied on other entities or government agencies to provide expertise in assessing the need for such minimum stream flow rights. Trout Unlimited may illuminate fisheries interest in these proceedings.

CONCLUSIONS

These protested applications are similar, related and involve the same??? parties and the Department should consolidate these matters. Consolidation would not prejudice the parties or the outcome.

The petitioners have shown sufficient direct and substantial interest in the above captioned matters and their intervention may meaningfully add to the record for a decision on the potential injury issues raised by the protestants. The Department should conditionally grant the petitions.

ORDER

IT IS THEREFORE HEREBY ORDERED that the protested matters of transfer no. 75177, transfer no. 75341, and transfer no. 75342 are **CONSOLIDATED** and any future proceedings by the Department shall deal with all three contested applications.

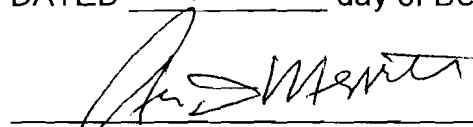
IT IS FURTHER HEREBY ORDERED that the petition of Trout Unlimited requesting intervention in the above captioned matters is **GRANTED** conditioned as follows:

1. The petitioner shall not broaden the issues to be heard at hearing. The participation of Trout Unlimited shall be limited to protection of their interests in the Big Wood River fisheries to the extent their interests are protected by IWRB's water rights.
2. The petitioner's intervention and participation shall not be a basis for any delay or extension of time in the proceeding.

IT IS FURTHER HEREBY ORDERED that the petition of the Wood River Valley Irrigation District #45 intervention in transfer no. 75341 and transfer no. 75342 is **GRANTED** conditioned as follows:

1. District #45 shall not broaden the issues to be heard at hearing on the consolidated proceedings.
2. District #45's intervention and participation shall not be a basis for any delay or extension of time in the proceeding.

DATED 2nd day of December, 2009.



ALLEN D. MERRITT, P.E.
Southern Region Manager