

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 75529)

Gregory J. and Julia A. DeVries,)
)
Applicants)

DuWayne Kimball,)
)
Protestant)

ORDER CANCELING HEARING

On August 27, 2009 the Department of Water Resources (Department or IDWR) conducted a Pre-Hearing Conference in this matter.

On August 28, 2009 the Department issued a Notice of Hearing and Pre-Hearing Order. The notice set the hearing for October 6, 2009 and the order set specific dates for exchange of witness lists and exhibits, and provided for the possibility of the parties stipulating to the cancellation of the hearing.

On September 29, 2009 the Department received a Stipulation from the parties agreeing that:

1. This matter may be decided by the Hearing Officer assigned to this matter without a formal hearing or oral argument.
2. The parties agree that the only issue to be addressed by the IDWR Hearing Officer is: Will other water rights be injured by the proposed transfer?
3. The parties agree that all other criteria to be considered by the Department have been satisfied, and that neither side shall be required to produce evidence or testimony in that regard.
4. The parties agree that the following list of documents be considered by the Department:

For the Applicant:

- Application for Transfer No. 75529 and such other documents as were submitted with the Application.
- Multiple Well Effects Analysis of Transfer 75529 prepared by Brockway Engineering dated August 27, 2009.
- Map showing well locations in Section 2, T11S, R14E and surrounding area.

For the Protestant:

- Notice of Protest
- Well Driller's reports for Duffy, Duelke & Murphy.
- Map showing Twin Falls Groundwater Management Area.
- Hydrograph for well 10S14E-07DDA1.

- Technical Report entitled "Geohydrology and Development of a Steady State Ground-Water Model for the Twin Falls, Idaho Area" by Donna M. Cosgrove and others.
 - Technical Report entitled "Development of a Transient Ground-Water Model for the Twin Falls Area, Idaho" by Donna M. Cosgrove and others.
 - September, 2009 letter from Nancy Murphy regarding why she drilled a new well.
 - August, 2009 letter from Bruce Duffy regarding why he drilled a new well.
 - May, 1999 Application for Abandonment of Well, filed by Eaton Drilling, regarding Duelke well.
5. The parties waive their right to a formal hearing on this matter and request that the Hearing Officer render a decision based upon the information identified in the stipulation.

ANALYSIS

The Department accepts the Stipulation of the parties as binding between the parties. It is important to note that the Department is not a party to the Stipulation. The Department is bound by review criteria set forth in Idaho Code § 42-222.

Idaho Code § 42-222 in pertinent part states:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not 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, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter. The director may consider consumptive use, as defined in section 42-202B, Idaho Code, as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right. The director shall not approve a change in the nature of use from agricultural use where such change would significantly affect the agricultural base of the local area. The transfer of the right to the use of stored water for irrigation purposes shall not constitute an enlargement in use of the original right even though more acres may be irrigated, if no other water rights are injured thereby. A copy of the approved application for change shall be returned to the applicant and he shall be authorized upon receipt thereof to make the change and the original water right shall be presumed to have been amended by reason of such authorized change. In the event the director of the department of water resources determines that a proposed change shall not be approved as provided in this section, he shall deny the same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter set forth.

The Department will consider the evidence provided by the parties and will consider other available information as the Department normally does in processing transfers whether protested or not. The evidence submitted by the parties will be weighed by the Department and will be determined relevant or not in

determining injury to other water rights. The Department may require additional information from the applicant to fully review all the criteria set forth in Idaho Code § 42-222.

ORDER

IT IS HEREBY ORDERED that the hearing previously scheduled for October 6, 2009 is cancelled.

IT IS FURTHER ORDERED that the parties have been provided the opportunity for formal hearing but have waived that right.

The Department shall review the available information and the evidence provided by the parties, including any additional information requested from the applicant by the Department, and will issue a decision approving or denying the application as a preliminary order pursuant to Idaho Code § 67-5243.

Dated 15th of October, 2009

A handwritten signature in black ink, appearing to read "Allen Merritt", is written over a horizontal line.

Allen Merritt, PE

Hearing Officer

CERTIFICATE OF MAILING

I hereby certify that on the 1st day of October, 2009 a true and correct copy of the above and foregoing Order Canceling Hearing was forwarded with all required charges prepared, by U.S. Mail to the parties listed:

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Mary A. Baldwin
Administrative Assistant I