

Merritt, Allen

From: Merritt, Allen
Sent: Thursday, March 05, 2009 1:10 PM
To: 'Jim Laski'; 'Craig Hobdey'
Cc: Baldwin, Mary
Subject: RE: Rinker / South County Estates Water Transfer No. 74871
Attachments: img-304135717.pdf

Gentlemen,

Based on the recent emails and submittal of available dates for pre-hearing conferences please plan to participate in a pre-hearing conference telephone call to discuss scheduling the formal hearing in this matter. Review of your available dates finds that the afternoon of March 19th (Thursday) is available for such a conference.

Please plan on calling **(805)240-9472** and use participation code **675676** at **3:00 pm on Thursday March 19th**.

If you have others who wish to listen in to the conference call please share these numbers with them.

Attached is direction provided me when scheduling hearings you may wish to review prior to the conference.

If you have questions please let me know.

Allen Merritt

Southern Region Manager

From: Jim Laski [mailto:jrl@lawsonlaski.com]
Sent: Thursday, March 05, 2009 11:17 AM
To: Merritt, Allen
Cc: Craig Hobdey
Subject: RE: Rinker / South County Estates Water Transfer

I can be available Monday the 9th in the am; Tuesday the 10th anytime; I'm out the 11th – 13th; but then generally available after the 16th
Jim

From: Merritt, Allen [mailto:Allen.Merritt@idwr.idaho.gov]
Sent: Wednesday, March 04, 2009 1:05 PM
To: Jim Laski
Cc: Craig Hobdey
Subject: RE: Rinker / South County Estates Water Transfer

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Jim,

If negotiations fail and the applicant wants to move toward a hearing I generally will mail out calendars to the parties to identify dates in which a pre-hearing conference can be held to discuss the actual timing of a formal hearing. I'm not opposed to holding a pre-hearing conference by phone. I'm not opposed to forego mailing out calendars if the parties come to me with proposed times for such a conference.

For your information attached is the instruction from a hearing officer I have been given to be considered when holding a pre-hearing conference. As you can see the timelines outlined do not provide for a "quick" hearing.

If you gentlemen can provide times you will be available in the next few days or weeks I will attempt to schedule a pre-hearing conference call. Actually I have a recent list of dates that Craig provided in another contested case and if those times are still available for him to confer I will use his recent list of times to consider.

If you have questions or comments let me know.

Allen

From: Jim Laski [mailto:jrl@lawsonlaski.com]
Sent: Wednesday, March 04, 2009 9:58 AM
To: Merritt, Allen
Subject: RE: Rinker / South County Estates Water Transfer

Allen – In the event Mr. Rinker will not agree to the third condition (which Brockway says is not a standard condition imposed by IDWR), would it be possible to get a quick hearing on the protest so that we can get this matter resolved? Please advise.

Thanks for your help.

Jim

James R. Laski
Lawson & Laski, PLLC
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PO Box 3310
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From: Merritt, Allen [mailto:Allen.Merritt@idwr.idaho.gov]
Sent: Wednesday, February 25, 2009 8:22 AM
To: Craig Hobdey; Jim Laski; Dietrich Beef
Subject: RE: Rinker / South County Estates Water Transfer

Gents:

Please note that there are several wells in the Big Wood area that the watermaster already has regulatory authority over. Please also note that #2 is mostly comprised of two standard conditions that IDWR has applied on

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transfers of ground water with surface water as the primary right throughout the state.

Allen

From: Craig Hobdey [mailto:hobdeycraig@hotmail.com]
Sent: Tuesday, February 24, 2009 5:38 PM
To: Jim Laski; Merritt, Allen; Dietrich Beef
Subject: RE: Rinker / South County Estates Water Transfer

Jim,

Mr. Rinker should feel good that he is getting "special" treatment. However, he is not. My client is going to actively review and participate in as many transfers as they can and they will want the condition 3 language (or something similar) in all transfers. After all BWCC is agreeing to withdraw its protest based on those conditions. Otherwise, the transfer may not even be allowed.

Craig Hobdey

Subject: RE: Rinker / South County Estates Water Transfer
Date: Tue, 24 Feb 2009 16:32:33 -0700
From: jrl@lawsonlaski.com
To: hobdeycraig@hotmail.com; allen.merritt@idwr.idaho.gov

Craig – I see what you are saying and agree.

Could we fix this by also changing the second sentence to also say upon decree – as opposed to upon approval???

The problem is that Brockway is advising Rinker that condition three singles him out for special treatment, but that if the water right was regulated at the time of decree it would not.

jim

From: Craig Hobdey [mailto:hobdeycraig@hotmail.com]
Sent: Tuesday, February 24, 2009 4:15 PM
To: Jim Laski; Allen Merritt
Subject: RE: Rinker / South County Estates Water Transfer

Jim,

I don't think the additional language would add clarity. It would, in fact, be confusing and incompatible with the last line of condition 3.

Craig Hobdey

Subject: RE: Rinker / South County Estates Water Transfer
Date: Tue, 24 Feb 2009 15:46:17 -0700

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From: jrl@lawsonlaski.com
To: Allen.Merritt@idwr.idaho.gov; hobdeycraig@hotmail.com

Allen & Craig – would there be any objection to adding the phrase “Upon Partial Decree” to the beginning of number 3???

The water rights could be decreed at any time as there is no objection to the recommendation pending. I believe the addition of this phrase will be a condition to Rinker signing off on the stipulation. Please let me know if this will be a problem.

Thanks
Jim

James R. Laski
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From: Merritt, Allen [mailto:Allen.Merritt@idwr.idaho.gov]
Sent: Monday, February 23, 2009 12:09 PM
To: Craig Hobdey; Jim Laski
Subject: RE: Rinker / South County Estates Water Transfer

Gents:

Based on what I now understand from the last e-mails IDWR would likely have the following conditions:

1. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
2. The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right. If the surface water right(s) appurtenant to the place of use is abandoned, forfeited, sold, transferred, leased or used on any other place of use, this right to divert ground water shall not be used for any purposes without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.

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3. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right will be regulated by the watermaster of State Water District No. 37.

If these conditions seem appropriate to your desires, please incorporate them into a formally signed settlement agreement that also withdraws the protest and send it to my attention in our office.

Thanks for your cooperation in these matters.

Allen

From: Craig Hobdey [mailto:hobdeycraig@hotmail.com]
Sent: Friday, February 20, 2009 4:15 PM
To: Jim Laski; Merritt, Allen
Subject: RE: Rinker / South County Estates Water Transfer

Allen and Jim:

I can live with Jim's proposed language.
Please consider all of the foregoing conditions
precedent to the withdrawal of BWCC protest.

Craig Hobdey

Subject: RE: Rinker / South County Estates Water Transfer
Date: Fri, 20 Feb 2009 12:53:18 -0700
From: jrl@lawsonlaski.com
To: Allen.Merritt@idwr.idaho.gov; hobdeycraig@hotmail.com
CC: watermanager@cableone.net; Jeff.Peppersack@idwr.idaho.gov; Pam.Skaggs@idwr.idaho.gov

Allen & Craig:

In condition number 2, can we clarify that use of groundwater is allowed when surface water is not deliverable full, instead of just deliverable?

Also, based on my reading of the Memo, Craig needs to propose this as a conditional withdrawal of the protest to reviewed by IDWR and the parties to the transfer ... is that correct???

Please advise.

Jim

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From: Merritt, Allen [mailto:Allen.Merritt@idwr.idaho.gov]
Sent: Wednesday, February 18, 2009 12:21 PM
To: hobdeycraig@hotmail.com; Jim Laski
Cc: watermanager@cableone.net; Peppersack, Jeff; Skaggs, Pam
Subject: RE: Rinker / South County Estates Water Transfer

Craig,

I have reviewed the conditions proposed below and it appears that IDWR could incorporate them in some fashion in approval. Please find attached a memorandum providing some guidance in conditioning approvals as a result of settlements of protests. IDWR would likely re-work some of the language to be consistent with standard approval conditions. We would work with the parties as outlined in the memorandum to get something agreeable and understandable by all.

I believe IDWR's conditions would be something like this:

1. Both wells will have measuring devices.

The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).

2. Both wells will be locked until the surface water decrees are no longer viable.

The right holder shall make full use of all appurtenant surface water rights prior to diversion and use of ground water. Use of ground water shall be limited to times when surface water is not deliverable. If the surface water right(s) appurtenant to the place of use is abandoned, forfeited, sold, transferred, leased or used on any other place of use, this right to divert ground water shall not be used for irrigation purposes without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.

3. Only the Watermaster of 37/37M, or his designee, shall be authorized to unlock the wells.

Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right will be regulated by the watermaster of State Water District No. 37.

From: Kevin Lakey [mailto:watermanager@cableone.net]
Sent: Wednesday, February 18, 2009 11:10 AM
To: Merritt, Allen
Subject: RE: Rinker / South County Estates Water Transfer

Allen,

If given authority, I would be more than willing to take regulation of the well in question.

Kevin

-----Original Message-----

From: Merritt, Allen [mailto:Allen.Merritt@idwr.idaho.gov]
Sent: Wednesday, February 18, 2009 10:58 AM
To: watermanager@cableone.net
Subject: FW: Rinker / South County Estates Water Transfer

Kevin,

Do you have any comments about the proposed conditions of approval that Hobdey and Laski are proposing that would require the watermaster to control the well and lock it?

Allen

From: Peppersack, Jeff
Sent: Wednesday, February 18, 2009 10:54 AM
To: Merritt, Allen
Subject: RE: Rinker / South County Estates Water Transfer

Allen,

It raises a question that has been discussed in the past; does the watermaster for WD37 have authority to regulate wells? I think wells that have replaced surface water diversions are not in question. Tim Luke tells me that we may have applied the watermaster condition to some other wells where the association with surface water is less clear. We're likely to include wells in some future regulation, but the water district for ground water is not yet known - it could be WD37. Anyway, it may not matter if all parties are in agreement and the watermaster is willing to regulate the well. Has Kevin Lakey provided comment to the proposed conditions?

The only revision I would recommend is some language to allow a different water district/watermaster to regulate in the future if the department designates a separate district. Could be some revision of our current watermaster condition, something like:

Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right will be regulated by the watermaster of State Water District No. &DISTRICT.

This could be further modified to include the locking/unlocking of control works per the agreement.

Jeff

From: Merritt, Allen

3/5/2009

Sent: Wednesday, February 18, 2009 8:33 AM
To: Peppersack, Jeff
Subject: FW: Rinker / South County Estates Water Transfer

Jeff,

Do you have any thoughts on the proposed conditions cited below they want included on approval to resolve the protest?

Allen

From: Craig Hobdey [mailto:hobdeycraig@hotmail.com]
Sent: Monday, February 16, 2009 4:30 PM
To: Jim Laski; Merritt, Allen
Subject: RE: Rinker / South County Estates Water Transfer

Deliverable for the current year, and if the rights become deliverable later in the season the wells will be locked.

Craig Hobdey

Subject: RE: Rinker / South County Estates Water Transfer
Date: Mon, 16 Feb 2009 14:23:19 -0700
From: jrl@lawsonlaski.com
To: hobdeycraig@hotmail.com; allenmerritt@idwr.idaho.gov

Craig – Allen –

I looking more closely at the terms contained in the email below, we would suggest that the word "viable" under point 2 be changed to "deliverable".

Thanks

Jim Laski

Atty for South County Estates

James R. Laski
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From: Craig Hobdey [mailto:hobdeycraig@hotmail.com]
Sent: Monday, February 16, 2009 12:53 PM
To: allenmerritt@idwr.idaho.gov; Jim Laski
Subject: FW: Rinker / South County Estates Water Transfer

Allen,

Big Wood Canal Company proposes to settle transfer #74871, along the lines set forth in my e-mail to Jim Laski dated Mon, 16 Feb 2009. Is the Dept willing to include these remarks in the transfer and to the existing well? I note I have a meeting with you on Thursday, Feb 19, 2009. Maybe we'll have a little extra time to discuss this one also.

Craig Hobdey

From: hobdeycraig@hotmail.com
To: jrl@lawsonlaski.com; apb@idahowaters.com; dietrichbeef@pmt.org
Subject: RE: Rinker / South County Estates Water Transfer
Date: Mon, 16 Feb 2009 10:03:10 -0700

Jim,

I have reviewed the above with my client and have come up with some ideas that might make this work.

1. Both wells will have measuring devices.
2. Both wells will be locked until the surface water decrees are no longer viable.
3. Only the Watermaster of 37/37M, or his designee, shall be authorized to unlock the wells.

This is based on our understanding that the well is supplemental. And will insure my client there is no expansion of use or acreage.

Craig Hobdey

Subject: Rinker / South County Estates Water Transfer
Date: Wed, 14 Jan 2009 10:12:52 -0700
From: jrl@lawsonlaski.com
To: hobdeycraig@hotmail.com
CC: jrl@lawsonlaski.com

Craig:

As we discussed, I represent South County Estates, the transferor of the water rights in the above referenced transfer application to which your client, Big Wood Canal Company, has filed a protest. As the Brockways are unavailable to address your

concerns at this time, I am forwarding to you a chart I prepared to confirm the transfer application as submitted to the IDWR conformed with what we agreed we are transferring. The information included in the chart is all available on the IDWR website, which also includes the application and all supporting materials. From the chart, it is clear that there is no expansion of use as alleged in the protest. Also attached is the narrative included in the application materials (also available online) which explains exactly that 20 acres of irrigation water rights are to be moved to property directly north of the property it currently irrigates. A new well is proposed to be drilled for the groundwater portion of the right.

We hope that this addresses your concerns and that your client will withdraw its protest. However, if you continue to have legitimate concerns or need additional information, please let me know so that we can address in a timely fashion.

Thank you for your prompt attention to this matter.

Jim

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