

07/2008

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
NOV 17 2008
DEPT. OF WATER RESOURCES
SOUTHERN REGION

NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, and 42-222, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested Application for Transfer No. 73968 in the name of Janene C. Jenkins ^{William H E}
2. Name of protestant Du Wayne L. Kimball Jr.
3. Protestant's Representative for service (If different than protestant)

4. Service mailing address 1335 E. 3500N Burli ID 83316
5. Service telephone no. 208-543-9941 Email Address: sh.kimball@hotmail.com
6. Basis of protest (including statement of facts and law upon which the protest is based)

See attached

(additional pages may be attached to describe nature of the protest)

7. What would resolve your protest? See attached

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 13 day of November, 20 08.

Du Wayne L. Kimball Jr.
Protestant

Protestant's Representative

FOR OFFICE USE ONLY

Fee: \$25.00

Receipt No. 5030536

Receipt by: 56

Date Received: 11/17/08

Application for Transfer No. 73968 in the name of William H. and Janene C. Jenks

Protestant: DuWayne L. Kimball Jr.

Item #6:

In accordance with section 42-203A.(4), Idaho Code, the application is protested.

It is felt that the transfer of water rights should be denied for the following reasons:

- The calculations for the quantity of water use are very difficult to follow. I would like to be able to check the calculations to see if they are reasonable.
- The letter cover letter states 500 to 900 heifers. It is my assumption that the water right calculations are for 900 heifers but was not able to follow the table.
- The transfer does not support the public interest. The public in the immediate area of the dairy as well as the public in Twin Falls County are not supportive of dairy expansion. Three homeowners within 1.5 miles of the dairy have had to recently deepen their wells. Another homeowner within ¼ mile of the dairy is said to have water level problems as well. They reportedly have water in the morning but the pump runs dry during the day. It is my belief that these fluctuations are probably due to the increased use of water during the day at the dairy. One homeowner within a ¼ mile of the dairy stated that their previous well produced water that looked and smelled like manure water. A second homeowner within a ½ mile radius indicated that their water has an odor. Do not know if all of these homeowners will file a protest but I could probably get a written statement from each homeowner.
- It is felt that if the water transfer is to take place that the water quality in the vicinity of the area will continue to degrade.
- It is felt that if the water transfer is to take place that the proposed use will contribute to the continued degradation of Deep Creek, a 303(d) listed stream.

Item 7.

It is preferred that the water right transfer be denied. If it is approved to protect the public interest I will withdraw my protest if the following conditions could be met.

- Installation of monitoring wells. A total of six wells. One well upstream (believed to be the south end of the property) to establish background conditions. Three wells that are believed to be at the downstream end of the property (north end). Two wells with one on the east side of the property and another one on the west side of the property in case the suspected flow directions are not accurate. Well locations need to be discussed and locations agreed upon.
- Once the wells are drilled develop a groundwater flow map.
- The monitoring wells would need to be installed into the groundwater which would allow monitoring of water levels and nitrates.
- The wells would need to be monitored quarterly for water table depth and for nitrate.
- During the monitoring I or my authorized representative would be allowed to visually observe the testing and be able to take duplicate nitrate samples or water level measurements. Duplicate nitrate samples that I take would be at my cost.
- The dairy could operate at its expanded level with the water from the transfer as long as the nitrate level did not increase above 1 ppm from the background level (in any of downstream monitoring wells). If the background levels are exceeded the dairy would have a one year probationary period to bring the dairy into compliance with the nitrate levels. If the levels

were still in exceedance of the 1 ppm nitrate level rise above background levels the dairy would revert back to its original historical water right prior to the transfer and the dairy would stay at the historical water operation until the nitrate levels come into compliance.

- With the monitoring wells testing would be done to calculate the cone of depression around the proposed pumping well. These calculations would then be used to determine which wells are in the cone of depression from proposed pumping. Those that are in the cone of depression would be monitored but as they will fluctuate when the well is in operation they will not be considered for compliance or non-compliance. Those that are not determined to be in the cone of depression will be used to monitor the groundwater tables for compliance. If the groundwater tables drop more than one foot from the original baseline data the dairy would revert back to its original groundwater rights prior to the transfer.
- Prior to initiating pumping with the new well initial monitoring would need to take place to take baseline water table depths.

It is felt that if these measures were taken that the water quality would be protected, that the water rights of others would be protected, and the public interest would be protected.