

07/2008

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
NOV 10 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. W. William H.

1. Matter being protested Application for Transfer No. 73968 in the name of Janene C. Jensen
2. Name of protestant Du Wayne L. Kimball
3. Protestant's Representative for service (If different than protestant)

4. Service mailing address 1333 E 3500 N, Buhl ID 83316

5. Service telephone no. 208-541-8443 Email Address: Kimball64@gmail.com

6. Basis of protest (including statement of facts and law upon which the protest is based)

See three (3) attached pages.

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

7. What would resolve your protest? Denial of water right transfer

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 10 day of NOVEMBER, 20 08.

Du Wayne L. Kimball
Protestant

Protestant's Representative

FOR OFFICE USE ONLY

Fee: \$25.00
Receipt No. 5030517
Receipt by: SG
Date Received: 11/10/08

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

Protestant: DuWayne Kimball

Item #6:

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

It is thought that the applicant is submitting for the transfer of water rights for speculative purposes (IDAPA 37.03.08, paragraph 040.05.e.) and has no intent to use the water right if granted. The dairy has been for sale the last couple of years and one of the selling points listed on the internet is that "Sellers have purchased and are transferring additional commercial stockwater." It is believed that the applicant is only applying for the water right to increase the interest in his property and either to sell the property at a higher price or to sell the property at the current price with a quicker timeframe. In short it is believed the applicant of the proposed water right has no intent to develop the water right but to sell the water right for speculative purposes. The dairy has not functioned as a dairy for at least one year and the applicant has not lived in the state in that time. It is also thought that the applicant may not have the financial resources to accomplish the project if water rights are transferred since it appears the transfer appears to be based on speculation.

It is felt that if the water right transfer is approved that the transfer will affect the quantity of water under my existing water right 47-10987. The approval of the transfer will create two effects on the aquifer. One effect will be a localized effect that will result from a cone of depression around the proposed well. It is unknown if my well will fall within this cone of depression but if so it is possible that I could be looking at a minimum of increased pumping costs due to a greater depth to water, the possibility of having to lower my pump in the well, the possibility of having to deepen the existing well or drill a new well, and worst casing not being able to obtain water sufficient for my water right. These effects are all unacceptable. The other effect to the aquifer is going to be a lowering of the aquifer at a system level as the system comes into equilibrium with the increased transfer of water due to the new water right. This will have an affect on my well and potentially other wells that are greater distances away. This has the potential to affect spring flows along the Deep Creek drainage, Salmons Falls Creek Drainage, and the Snake River.

It is felt that the transfer of water from the Kimberly area to the Buhl area will have a positive effect on the Rock Creek drainage due to increased spring flows but will have a negative effect on the Deep Creek and Salmon Falls Creek drainage spring flows. Water table well logs from the Idaho Department of Water Resources website for the Twin Falls Ground Water Management Area show that the three wells in the study along the Deep Creek Drainage have had the water levels in the wells drop over their period of record. In general all the wells in the study area show a lowering of the groundwater depth. It is felt that this lowering is probably due to two factors. One factor being that as farmers convert to sprinkler irrigation from surface irrigation there will be less infiltration of surface water into the groundwater. This transfer from surface to sprinkler irrigation is still occurring. The other factor is as at the same time that water levels are dropping due to the sprinkler conversion more and more water is being appropriated out through groundwater permits. At some point a crisis will occur with the water being over appropriated. Is this transfer of water right the one that puts us at the crisis limit, is it the next application for water rights in the area, or are we a long distance from the limit? Historically the Idaho Department of Water Resources does not appear to have a good track record of knowing when they have over appropriated the water; as such is the case with the Eastern Snake River Plain Aquifer.

It is felt that allowing the transfer of the water right that the quality of the water will be impacted and continue to make it unsuitable for human consumption unless treatment occurs. My well was tested on December 22, 2003 and nitrate tested at 13 ppm. This exceeds the State Drinking Water standard maximum contaminant level (MCL) of 10 ppm. This puts infants under 6 months of age at risk for "blue baby syndrome." It is felt that allowing of the transfer of the water right, which will allow the expansion of the dairy to approximately three times its existing size, will have a negative impact on the ground water quality for my well as well as the aquifer in general. The Idaho State Department of Agriculture "Groundwater Nitrate Monitoring Report, Near Buhl, Idaho" (2004) report states the following:

Samples obtained only from dairy wells (Table 2) show a decrease in median nitrate value from 6.4 mg/L in 2001 to 5.1 mg/L in 2002 and a slight increase to 5.4 mg/L in 2003. Samples obtained only from domestic wells show a slight decrease in median nitrate value from 3.3 mg/L in 2001 to 2.8 mg/L in 2002 and a slight increase to 3.4 mg/L in 2003 (Table 3).

The report does not come out and directly implicate the dairies as the cause of the large difference (almost a factor of 2) of nitrate between the dairy wells and the domestic wells but the Idaho Department of Agriculture has very loosely regulated dairies and has made very few if any negative statements on dairy farms. The report does list dairies as a possibility of the nitrate contamination.

It is felt that the water right should be denied because the project conflicts with the local public interest. In the Twin Falls County Land Use Open House Questionnaire dairy expansion was the item with the strongest disagreement. The statements were rated from 1 to 10 with 10 being in agreement. There were 198 responses and the average score was 2.52. During the Open House, the two unfavorable land uses were expansion of CAFO's and coal-fired plants. The following comments were received on the Twin Falls, Land Use Open House questionnaires:

- ☐ No more dairy!
- ☐ Not mega dairies or CAFO operations within the Magic Valley
- ☐ The growth in the dairy industry should bottom out in this area. Put a lid on dairy expansion now before it gets out of control!
- ☐ Gone too far already. Twin Falls County does not need to compete with Jerome and Gooding Counties on this!
- ☐ This one industry can and does pollute our air, soil, and water. The county needs to be very cautious about placing too many eggs in one basket. Let's not be shortsighted in our mega-dairy acceptance with very real adverse impacts to our count
- ☐ We have more than enough already. I don't want this county to look like Jerome/Wendell.
- ☐ But for smaller, friendly dairies – NO CAFOs!!
- ☐ No way.
- ☐ In proper areas.
- ☐ Don't let Twin Falls County get like Gooding County. We need a diversified economy.
- ☐ Limited only!

- ☐ There should be absolutely no more CAFOs anywhere. Some of the existing should be closed.
- ☐ We have enough CAFOs!
- ☐ No more
- ☐ No more dairy!
- ☐ The county has more than enough CAFOs now. The north side of the Snake River looks like a war zone and smells like an outhouse in distress! I do not want Twin Falls County to be destroyed by CAFOs!
- ☐ No area should be primarily CAFOs.
- ☐ Enough already! Stop CAFOs!
- ☐ Too many already. Not enough land to apply waste to.

As one can see no positive comments were received for dairy expansion.

It is felt that the public interest against the expansion of dairies in Twin Falls County is because dairies smell (the smell may be considered air pollution), increase flies, decrease water quality, decrease groundwater levels, increase light pollution, increase dust levels, increase noise, and increase traffic levels on local roads.

Summary

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

- The transfer appears to be done in a purely speculative nature as it is my belief that the occupant does not intend to develop the water right. It is my belief that it is the intent of the occupant to transfer the water right to increase the value of his property in a speculative nature.
- The transfer would impact my existing water right by increasing pumping costs, increase the probability that the existing well will need to be deepened or a new well drilled, and at some point the possibility exists of not having enough water to fulfill the water right.
- The transfer would further decrease water quality which already does not meet human consumption standards due to the nitrate level being above the maximum contaminate level (MCL) of 10 ppm.
- 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.