

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

IN THE MATTER OF APPLICATION	)	PRELIMINARY
FOR TRANSFER NO. 72881 IN THE	)	ORDER
NAME OF THE CITY OF AMMON	)	
	)	

On June 23, 2006, the City of Ammon filed an application for transfer with the Idaho Department of Water Resources ("IDWR" or "Department"). IDWR assigned transfer no. 72881 to the application. Application no. 72881 proposes the construction of two new wells to serve the patrons of the City of Ammon ("Ammon" or "city"). The application for transfer also seeks to add the existing eight wells plus the two new wells of the Ammon municipal system to each of the city's water rights.

After publication of notice of the application, the application was protested by the following: Sandi Brown, R. Boyd Endecott, Raymond Judy, Fred Adams, Vaughn Adams, James W. Adams, William Harvey Olson, Nancy Pinnock, and Mary Taylor. In addition, the following individuals petitioned to intervene in the contested case: Richard D. Fowler, Charles Maggart, Jesse Saxton, Diane R. Burke, Richard B. Fisher, Mr. and Mrs. Dennis Kiser, and Doyle Robertson. Prior to the hearing, the following individuals withdrew their protests or were dismissed as parties by default order: Raymond Judy, William Harvey Olson, Richard B. Fowler, Charles Maggart, Jesse Saxton, Diane R. Burke, Richard B. Fisher, and Doyle Robertson.

On January 16, 2008, the Department conducted a hearing for the contested case. Robert Harris, Attorney at Law, represented Ammon. Boyd Endecott, Nancy Pinnock, and Mary Taylor represented themselves individually. Sandi Brown, Fred Adams, Vaughn Adams, James Adams, and Mr. and Mrs. Dennis Kiser did not appear at the hearing. The non-appearing parties listed above were dismissed as parties by Default Order dated April 17, 2008.

Having considered the evidence presented at the hearing, the hearing officer finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Ammon owns the following water rights authorizing use of ground water for municipal purposes:

Water Right No.	Priority Date	Rate (cfs)	Point of Diversion
25-4297	12/1/1946	0.78	NWSESE ¹ , Section 27, T2N, R38E
25-4295	8/1/1952	0.67	NESENW, Section 27, T2N, R38E
25-4294	1/3/1957	1.50	NWNENW, Section 27, T2N, R38E
25-7498	11/14/1989	2.32	SENW, Section 26, T2N, R38E
25-7023	1/16/1973	2.79	SWSWNE, Section 27, T2N, R38E*
25-7168	1/31/1979	6.13	SESWSE, Section 27, T2N, R38E
25-7634	3/24/1995	6.69	SENW, Section 22, T2N, R38E
25-13964	3/8/2001	6.70	SWSWNE, Section 27, T2N, R38E*
			NESENW, Section 30, T2N, R39E

*These authorized points of diversion are a single well.

2. The total flow rate authorized by all of the water rights combined is 27.58 cubic feet per second.

3. In addition to the eight wells listed above, the city proposes the construction of two wells in the following locations:

NWSW, Section 34, Township 02 North, Range 38 East
NENW, Section 25, Township 02 North, Range 38 East

4. The application for transfer also proposes to have all of the wells identified as points of diversion by each of the water rights.

5. In the year 2000, the population of Ammon, Idaho, was approximately 6,000 people. The population at the end of 2007 was approximately 14,000 people. The significant growth of Ammon prompted a study by the city to determine its water needs to properly serve the community. The study concluded that the city should construct three storage tanks, additional delivery lines, some booster pumps, and two new wells.

6. As a result of the study, approximately one-year ago, the residents of Ammon passed a \$15,000,000 bond issue for the water system construction. By constructing additional water delivery infrastructure, the city will improve the efficiency of the water system operation, will provide more consistent pressure in the system, and will be able to provide needed water for fire flows.

¹ In this decision, the public land survey numeric descriptor "1/4" is assumed to follow each two alpha character public land survey locator when the numeric descriptor is missing. For instance, in this example, the full description would be the NW1/4SE1/4SE1/4, Section 27, Township 2 North, Range 38 East, Boise Meridian.

7. The testimony of the city engineer established that wells will help with additional flows. The city selected the proposed well sites after studying various locations for aquifer productivity.

8. The peak system-wide water diversion by Ammon during the summer of 2007 was approximately 11,500 gpm. This peak flow of water diverted into the Ammon water system in 2007 equates to approximately 25.5 cfs.

9. Under current operating conditions, the summer time diversion is approximately two to three times the winter time diversion. The current average diversion is approximately 36 percent of the peak diversion of 25.5 cfs.

10. When ground water is pumped from a well, the ground water elevation in the well declines. The ground water elevation decline caused by pumping is referred to as a "draw down." When the ground water levels decline as a result of pumping, ground water located radially around the well migrates to the well to supply the water demand. As a result of the draw down in the well and the movement of ground water to the well, water levels also decline around the well.

11. Pumping draw downs create an inverted cone of depression in the ground water that expands radially from the location of the pumping well. The narrow mouth of the inverted cone of depression is at the location of the pumping well where the draw downs are at their deepest elevation.

12. A widely accepted method of modeling and estimating draw downs in ground water aquifers is the Theis Analysis. Based on aquifer characteristics of permeability, storativity, and the effects of an assumed pumping rate and length of time pumping, draw downs caused by pumping can be simulated using the Theis Equation.

13. Tom Wood, an expert witness for the city, modeled two hypothetical flow rates at the location of one of the proposed wells (referred to by Ammon as "Well no. 11") using the Theis Analysis. The following are summaries of estimated draw downs for each of the modeled hypothetical facts:

Continuously Pumping 720 Gallons per Minute for Three Years

Distance (feet)	Drawdown (feet)	Distance (feet)	Drawdown (feet)
250	4.4	3,000	2.2
500	3.7	4,000	1.9
750	3.4	6,000	1.6
1,000	3.1	8,000	1.3
2,000	2.5		

Continuously Pumping 2,000 Gallons per Minute for Three Months

Distance (feet)	Drawdown (feet)	Distance (feet)	Drawdown (feet)
250	9.4	3,000	3.4
500	7.7	4,000	2.7
750	6.7	6,000	1.8
1,000	6.0	8,000	1.2
2,000	4.3		

14. Nancy Pinnock owns two wells on her property. One of the wells was constructed approximately 50 years ago. This well historically supplied domestic water for three or four residences and water up to 1,000 head of stock. The well currently supplies water for irrigation of approximately two acres and domestic water to one residence. In addition, Pinnock owns another well that was drilled in year 2000. The second well provides water to her personal residence. Water from the second well also irrigates Pinnock's lawn and garden area. Pinnock does not have a water right recorded with the Department or claimed in the Snake River Basin Adjudication.

15. Pinnock's wells are approximately 1,610 feet from the proposed well no. 11. Pumping ground water from well no. 11 for three months at peak flow would cause a draw down of approximately five feet in her wells.

16. Mary Taylor owns a domestic well constructed in 1999. The Taylor well is located approximately 905 feet away from the proposed Well no. 11. The Taylor well irrigates less than one-half of an acre and provides potable and culinary water to the Taylor residence. Pumping ground water from well no. 11 for three months at peak flow would cause a drawdown of approximately 6.3 feet in her well.

17. Boyd Endecott owns a domestic well constructed approximately 37 years ago. Endecott does not have a recorded water right that identifies the well as a point of diversion. The Endecott well is located approximately 2,236 feet away from the proposed Well no. 11. Pumping ground water from well no. 11 for three months at peak flow would cause a draw down of approximately four feet in the Endecott well.

18. Water levels in the area of the proposed new construction fluctuate approximately 22 feet per year. The peak water level occurs in approximately September of every year, and the low elevation occurs in approximately March. During the irrigation season, surface water percolates into the ground water from surface water delivery systems. The accumulation of percolated ground water peaks at the end of the irrigation season. Non-diversion/delivery of surface water for irrigation during the winter months causes declines in aquifer levels.

19. Peak withdrawals by Ammon and other municipal users will occur during the time that the water levels are rising or are at their peak during the summer months.

20. Any draw downs caused by pumping will be masked by larger increase in water levels during the irrigation season.

CONCLUSIONS OF LAW

1. Idaho Code § 42-222 states, in pertinent part:

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.

2. The applicant bears the burden of proof for all of the factors listed in Idaho Code § 42-222.

3. Idaho Code § 42-226 states: "Prior appropriators of underground water shall be protected in the maintenance of reasonable ground water pumping levels as may be established by the director of the department of water resources."

4. In *Parker v. Wallentine*, 103 Idaho 506, 650 P.2d 648 (1982), the Idaho Supreme Court determined that a later in time appropriator should be enjoined from pumping ground water for irrigation that almost immediately dried up a domestic well located nearby. The Court held that the water right for the domestic well was perfected prior to the irrigation water right and before the reasonable pumping level standard was applied to domestic uses by the Legislature in 1978, and that the domestic water right holder was entitled to the protection of the ground water pumping level existing prior to pumping by the junior appropriator. The Court held that the injunction was not permanent, and could be absolved upon compensation by the junior appropriator for the expenses incurred by the senior appropriator.

5. In *Parker*, the Court stated:

Under the doctrine of prior appropriation, because Parker's domestic well was drilled prior to Wallentine's irrigation well, Parker has a vested right to use the water for his domestic well. That right includes the right to have the water available at the historic pumping level or to be compensated for expenses incurred if a subsequent appropriator is allowed to lower the water table and Parker is

required to change his method or means of diversion in order to maintain his right to use the water. *See Noh v. Stoner*, 53 Idaho 651, 26 P.2d 1112 (1933).

Id. at 512, 650 P.2d at 654.

6. Under *Parker*, if (1) pumping of ground water by junior ground water appropriators causes declines in pumping water levels in the wells of holders of senior-priority domestic water rights because of local well interference, and (2) the water rights held by the senior domestic water right holders bear priority dates earlier than 1978, the holders of the senior domestic water rights are entitled to compensation for the increased costs of diverting ground water caused by the declines in ground water levels.

7. In an administrative hearing for an application to appropriate water, the applicant bears the burden of proving that the proposed use of water will not injure other water rights. If a protestant holding a domestic ground water right seeks the protection of *Parker* that would insulate the protestant from the reasonable pumping level standard of the Ground Water Act, however, the protestant must come forward with evidence that: (1) the protestant is the holder of a domestic water right that is not subject to the reasonable pumping standard of the Ground Water Act, and (2) the protestant's diversion equipment and facilities are capable of diverting the protestant's water right at the ground water levels at or about the time the application is being considered. Once the protestant comes forward with the information, the applicant ultimately bears the burden of proving that the proposed use of water will not injure the protestant under the *Parker* standard. If there are additional facts necessary to establish the extent of injury that can most equitably be provided by the party seeking *Parker* protection, the party seeking *Parker* protection may be required to provide the factual information.

8. Nancy Pinnock established the existence of an unrecorded domestic ground water right diverted from one of her wells that was constructed approximately 50 years ago. Pinnock's domestic ground water right perfected by beneficial use of ground water diverted from this well is entitled to *Parker* protection.

9. Nancy Pinnock owns another domestic well providing water to her primary residence. Pinnock holds an unrecorded water right for domestic water diverted from the well. This domestic well was drilled in 2000, after the 1978 amendment to the Ground Water Act, and the domestic water right is subject to the reasonable pumping level standard.

10. Boyd Endicott established the existence of an unrecorded domestic ground water right perfected by beneficially using water diverted from a domestic well in approximately 1970 or 1971. Endicott's domestic ground water right is entitled to *Parker* protection.

11. Mary Taylor owns a domestic well constructed in 1999 that provides water to her residence. Mary Taylor established the existence of an unrecorded water right for domestic use perfected by beneficial use after the 1978 amendment to the Ground Water Act, and the domestic water right is subject to the reasonable pumping level standard.

12. Diversion from the new wells proposed by Ammon will cause ground water level declines in the protestants' wells. The maximum declines in water levels during the irrigation season, however, are not as great as the increases in water levels in the protestants' wells caused by surface water deliveries in nearby canals and laterals. As a result, pumping from the Ammon wells will not cause declines below the reasonable pumping level. In addition, pumping from the Ammon wells will not cause declines in water levels below the historical pumping levels for the Pinnock and Endicott domestic ground water rights entitled to *Parker* protection.

13. Nonetheless, if IDWR is required to administer water rights based on interference in the future, Ammon's diversion of water from the new wells under Ammon's existing water rights should be junior and subordinate to water rights with priority dates earlier than the date of this transfer approval. As a result, this approval should establish the date of priority for administration of Ammon's new wells as the date of the approval of this application for transfer.

14. With proper conditioning for the priority of administration as explained above, the proposed appropriation of water will not injure other water rights.

15. Diversion of water from the new wells will not enlarge the use of Ammon's water rights if the total diversion is limited to 27.58 cfs.

16. Providing water for municipal purposes is in the local public interest.

17. The construction of additional infrastructure such as storage tanks and additional delivery lines will insure that the water resources of the state are conserved.

18. Application for transfer no. 72881 should be approved.

ORDER

IT IS HEREBY ORDERED that application for transfer no. 72881 is **Approved**, subject to the following conditions:

The boundary encompassing the place of use for this water right is described with a digital boundary as authorized by Idaho law. The data comprising the digital boundary are stored in the electronic document management system of the Department and are incorporated into this approval by this reference. A map depicting the place of use is attached to the approval document to illustrate the place of use described by the digital boundary.

Prior to diversion and use of water under this right, the right holder shall install a totalizing measuring device of a type approved by the department on each point of diversion to measure the volume of water diverted. The measuring devices shall be read and recorded on a daily basis.

After specific notification by the department, the right holder shall report daily measurement data to the department.

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 is within State Water District No. 120.

The right holder shall accomplish the change authorized by this transfer within five years of the date of this approval.

Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

This right does not grant any right-of-way or easement across the land of another.

These water rights are from connected sources of water in the Snake River Basin and shall be administered conjunctively.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

The right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.

Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

Diversion and use of water under this right from the additional wells authorized under Transfer no. 72881, located in NWSW, Section 34, Township 02 North, Range 38 East and the NENW, Section 25, Township 02 North, Range 38 East, shall be subordinate to all ground water rights existing within the immediate area prior to the date of approval of this transfer upon determination of injury due to local well interference. The water rights transferred by Transfer no. 72881 retain their priority dates relative to all other actions to distribute water.

Construction of a replacement well at the location of an existing point of diversion is not authorized unless the water right holder: (1) limits the diversion flow rate from the replacement well to the flow rate authorized by the water right for the existing well prior to the approval of transfer no. 72881; or (2) obtains approval for the replacement well through an application for transfer.

Dated this 23rd day of April, 2008.


Gary Spackman
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of April, 2008, a true and correct copy of the foregoing document(s) described below were served by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Preliminary Order and Explanatory Sheet for "Responding to Preliminary Orders..." when a hearing was held.

SANDI BROWN
1791 S 52ND EAST
IDAHO FALLS ID 83401

BOYD ENDECOTT
1931 SOUTH 52ND EAST
IDAHO FALLS ID 83401

NANCY PINNOCK
1896 S 52ND E
IDAHO FALLS ID 83401

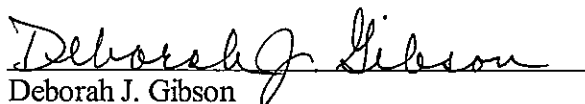
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W ROGER WARNER
482 CONSTITUTION
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