

MEMORANDUM

TO: File

FROM: Steve Lester 

DATE: May 19, 2005

RE: Scheduling Prehearing Conference for Application 65-22942

The applicants visited the office today to check the status of this application. They live in California and visit their Garden Valley property about once a year, they said. This visit is their annual trip for 2005. This memo summarizes concerns about this application in addition to broader concerns about protests in general.

Concerns for Application 65-22942

1) Prehearing Conference - They were surprised to learn the application was protested. They said they did not receive a copy of any protest from the protestant(s). According to the file, a prehearing conference is to be scheduled for early summer in Garden Valley. The applicants said it would be a financial hardship to travel to Idaho again this summer. They also said different travel plans could have been made if they had known sooner that a protest was filed. Due to these factors, they requested a telephone conference. The phone option might work or is at least worth trying in their opinion.

I think they made a fair but not overwhelming case for trying the phone conference approach. A conference would probably need to be held at Western to set up the call. Applicants live in the Pacific Time zone and asked if an early morning conference could be scheduled. Something along the lines of 9-10:00 a.m. MDT would be practical for all parties. This would allow adequate time for protestants to travel to Boise. The inconvenience to the protestants is balanced by the inconvenience to the applicants for not having received a copy of the protest from the protestants.

2) Group Protest - Another troubling item is observed in the protest. It appears to be a group protest without identifying a contact person. Some/all of the same people filed a similar protest in 65-22766 a couple years ago. "We didn't know" is not a good excuse in this case.

3) Water District - Warm Springs Creek remains an inactive water district despite the history of 65-22766 in which limited approval was granted (divert until July 1 in years when watermaster is not regulating the source, see attached). The same protestants are once again arguing that the water supply is inadequate. This looks like a "free lunch" approach in which existing users protect their senior rights but refuse to

activate the water district. Maybe a better result is to consider approving new applications but to require the district to be activated prior to diversion for a new use. This condition was recently used in a Terteling transfer for Water District 63-S.

Broader Concerns for Protests

I wonder if our protest process allows too much leeway. Protestants often fail to send a copy to the applicant in contrast to Rule of Procedure 302. Group protestants often fail to identify a contact person. These things cause extra work and/or confusion for parties. At a minimum, the department could consider revising its protest process to include rejection of a protest for failure to follow Rule 302. The last line of the legal notice in Workflow could be updated to state the following:

The protestant must also send a copy of the protest to the applicant to avoid rejection of the protest by IDWR.

The department could consider a “preliminary rejection” of a group protest for failure to identify a contact person.

Perhaps these suggestions only add more work to an already busy process. It might not be worth the extra bother. On the other hand, there is something troubling about continued failure to follow a clearly defined protest process. It’s the “free lunch” approach where the department often bears the extra burden.

IDAHO DEPARTMENT OF WATER RESOURCES

Water Permit Report 65-22766

WATER RIGHT NUMBER: 65-22766

Owner Type Name and Address
 Current Owner ANTHONY F YEAMANS
 #2 RAINBOW RIDGE
 GARDEN VALLEY, ID 83622
 (208)462-3364

Priority Date: 02/06/2003

Basis:

Status: Active

Source Tributary
 WARM SPRINGS CREEK MIDDLE FORK PAYETTE RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
DOMESTIC	03/15 to 11/15	0.040 CFS	
<u>Total Diversion:</u>		0.040 CFS	

Location of Point(s) of Diversion

WARM SPRINGS CREEK NW1/4SE1/4 Sec. 33, Twp 10N, Rge 04E, B.M.
 BOISE County

Place of Use

DOMESTIC

Twp	Rge	Sec	NE				NW				SW				SE				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
10N	04E	33														X			

Conditions of Approval:

1. R05 Use of water under this right may 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. 65 L, Warm Springs Creek.
2. 121 The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.
3. 01J Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.
4. During any irrigation season when a watermaster is not regulating diversions of water from Warm Springs Creek, the right holder shall cease diversion and irrigation on July 1.

Remarks:

RESULT OF 2004 HEARING