

November 26, 1999

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
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, 42-222 and 42-224, 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 claim to a Water Right No. 13-7661 in the name of Jay Norman Fannesbeck and/or ElRay Balls
2. **Name of protestant** Clinton K. Aston
3. **Protestant's Representative for service** (If different than protestant) _____

4. **Service mailing address** P.O. Box 35, Weston, ID 83286

5. **Service telephone no.** (435) 770-5999

6. **Basis of protest (including statement of facts and law upon which the protest is based)** Department of Water Resources Eastern Region

The existing well located at NW 1/4 NE 1/4 Sec. 8 Twp 16 S. Rge 38 E. B.M., County of Franklin as described on application for claim to water 13-7661 in the name of Jay Norman Fannesbeck and/or ElRay Balls, noted as PD #2 is located on property owned by protestant, Clinton K. Aston as recorded on Warranty Deed dated July 28, 2004, granted by Sidney L. Schvaneveldt. The water from the well has been used by Sidney Schvaneveldt for over thirty (30) years, and is currently used by Clinton K. Aston. The water from well is used on property filed under Claim No. 13-4120 and has been used on property since June of 1962. Applicant's are attempting to file a claim for ground not previously put to beneficial use under provision 42-243, Idaho Code. "A claim is not acceptable for the use of ground water with a priority date later than March 25, 1963". Water rights for ground owned by applicant's is represented by Water Right No. 13-2209. Applicant's are also attempting to circumvent IDWR procedures for transferring water under section 42-222, Idaho Code. as evidenced by application for Transfer No. 70722 in the name of ElRay Balls and/or Janice Balls, with corresponding water right No.s 13-7643 and 13-7644 pending transfer. Applicant's have filed for water right for property which they have no ownership, Reed O Griffiths, Fannesbeck Family Trust and others as evidenced by county records.
(See attached Affidavit)

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

7. **What would resolve your protest?**

Denial of Application for claim to a Water Right No. 13-7661 in the name of Jay Norman Fannesbeck and/or ElRay Balls

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.

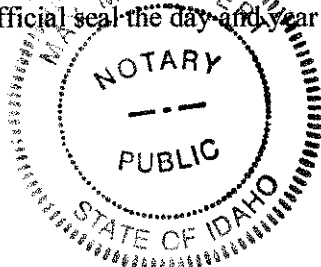
Signed this 19th day of Sept., 2005.

Clinton K. Aston
Protestant

Protestant's Representative

State of IDAHO
County of FRANKLIN

On this 19 day of September, 2005, before me, MAKIN GILBERT, a Notary Public in and for said State, personally appeared CLINTON ASTON, known or identified to me to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same. In witness whereof I have set my hand and affixed my official seal the day and year in this certificate first above written.



Makin Gilbert
Notary Public State of IDAHO
Residing at: Preston
Commission Expires 3-6-06

Receipt
E031281

RECEIVED
NOV 10 2005

Affidavit

BE IT ACKNOWLEDGED, that Clinton K. Aston
of P.O.Box 35 Weston, ID 83286, County of Franklin
does hereby file an exception of protest against a claim to
water right IDWR Claim No. 13-7661 in the name of
Jay Norman Fannesbeck and/or ElRay Balls.

And state the following reasons as facts based on legal documentation, for the purpose of showing the water claims rights of 13-7661 to be invalid.

1. The existing well located at NW ¼ NE ¼ Sec. 8 Twp 16S. Rge38 E. B.M. County of Franklin as described on application for claim to water 13-7661 in the name of Jay Norman Fannesbeck and/or ElRay Balls, noted as PD#2 is located on property owned by Clinton K. Aston as recorded on Warranty Deed dated July 28, 2004, granted by Sidney L. Schvaneveldt. The water from the well has historically been used by Sidney Schvaneveldt for over thirty(30) years, and is currently used by Clinton K. Aston. The water from the well is used on property filed under Claim No. 13-4120 and has been used on property since June of 1962.
2. Applicant's are attempting to file a claim for ground water not previously put to beneficial use under provision 42-243, Idaho Code. " A claim is not acceptable for the use of ground water with a priority date later than March 25, 1963". Water rights for ground historically irrigated is represented by Water Right No. 13-2209. Applicant's are attempting to expand water rights by claiming prior use for ground that has not been irrigated.
3. Applicant's are attempting to circumvent Idaho Department of Water Resources procedures for transferring water under section 42-222, Idaho Code, as evidenced by application for Transfer No. 70722 in the name of ElRay Balls and/or Janice Balls, with corresponding water right No.s 13-7643 and 13-7644 pending transfer. The claim to water right no. 13-7661 is a duplication of transfer with added acreage, and is an attempt to expand water right.
4. Applicant's have filed a claim to a water right No. 13-7661, which includes property that is not currently owned or operated by applicant's as evidenced by county records. Property owned by Reed O. Griffith's, Fannesbeck Family Trust and others was listed on application for water right. The attempt is being made to include property not historically irrigated by groundwater and expand water right to new properties.

Signed

Clinton Aston

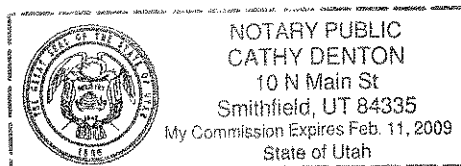
State of

Utah

County of

Cache

On this 21 day of September, 2005, before me, Cathy Denton, a Notary Public in and for said State, personally appeared Clinton Aston, known or identified to me to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same. In witness whereof I have set my hand and affixed my official seal the day and year in this certificate first above written



Cathy Denton
Notary Public State of Utah
Residing at Smithfield UT
Commission expires 2-11-2009

SCANNED

NOV 10 2005



The pictured property is located at : NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec 16 Twp 16 S. Rge 38 E. B.M., County of Franklin and deeded to Norman Fannesbeck(Trustee) is described on claim to water right No. 13-7661. Property indicated has not been historically irrigated and does not have any water rights described under Idaho Code 42-243. There are currently no irrigation devices,(ditches, pipelines,etc.) located on property to divert water from any source. Intent of applicant is to obtain and move water rights for this property as outlined under claim.



The pictured property above and below is located at : NE $\frac{1}{4}$ & NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec 21 Twp 16 S. Rge 38 E. B.M., County of Franklin and deeded to Norman Fonnesbeck(Trustee) and Jay Fonnesbeck is described on claim to water right No. 13-7661. Property indicated has not been historically irrigated from groundwater and does not have any water rights described under provision 42-243 Idaho Code. There are currently no irrigation devices,(ditches, pipelines,etc.) located on property to divert water from source. Intent of applicant is to obtain and move water rights for this property as outlined under claim.

