

RECEIVED

FEB 24 2005

DEPARTMENT OF
WATER RESOURCES

George G. Hicks, Esq.
HOAGLAND, DOMINICK & HICKS
ATTORNEYS AT LAW, PLLC
Shoreline Center, Suite 100
1471 Shoreline Drive
Boise, Idaho 83702
Telephone (208) 343-9111
Facsimile (208) 386-9944
ISB No. 2617

Attorney for Protestant, Stuart R. Weimer

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

COPY

IN THE MATTER OF APPLICATION FOR
EXCHANGE OF WATER RIGHT NOS. 65-
3222 AND 65-8290 IN THE NAME OF PTR,
INC.

**PROTESTANT WEIMER'S POST
HEARING BRIEF**

Stuart Weimer by and through his attorney of record, Hoagland, Dominick & Hicks, hereby submits this post hearing brief. The Hearing was held on the 25th of January. Gary Spackman was the presiding Hearing Officer.

**I.
INTRODUCTION/FACTUAL BACKGROUND**

PTR, Inc. claims to be the owner of three water rights all of which are located on Scriver Creek in Garden Valley, Idaho. Stuart Weimer and Rhonda Weimer are land owners having purchased property in 1991 from Thomas Elam and Sharon Elam who conveyed the real property to the Weimers by Warranty Deed together with all appurtenances, including water rights. The delivery system for irrigation water has its point of diversion on Scriver Creek and runs through Weimers' property and on downstream to property owned by Jack & Sandra Kane. The system historically served

other additional land as is demonstrated in the shape files associated with the adjudication of water rights 65-3222, 65-8290 and 65-3223.

Weimers made application for a portion of the same water rights that were found by the Department to have been previously owned by Pine Tree Ranch Inc. and are now the subject of this Application for Transfer. Weimers are concerned that if the Application is granted there will be less water legally available to flow down the irrigation ditch from which Weimers draw their irrigation water and apply to their grass hay field by way of a water canon sprinkler. The water is pumped at a rate of fifty gallons per minute. This concern stems from the fact that PTR, Inc. has not adequately maintained the ditch in such a way that it will carry the volume of water associated with the three water rights.

II. THE DITCH IS POORLY MAINTAINED

Transfer of these water rights to a different point of diversion downstream will create even less incentive for PTR, Inc. to maintain the delivery system, the ditch that runs through Weimers' property, thus diminishing even further the carrying capacity of the ditch. This will tend to harm Weimers because PTR, Inc. has already attempted to force Weimers onto a rotation schedule. Weimers challenge PTR's authority to force a rotation schedule and that is an issue before the District Court. Weimers continue to maintain that they have a right to the water, a right for which application was made when Weimers filed a Notice of Change for a portion of Scriver Creek Irrigation Water Rights on March 15, 2004. On July 19th, 2004 Weimers' Application and fee were returned with a letter marked and admitted in the Hearing of this matter as Applicant's Exhibit Number 5 indicating that PTR owns and operates the irrigation system for the benefit of individual

irrigators within that system and that Pine Tree Ranch, Inc. had conveyed ownership of the Scriver Creek irrigation rights to PTR, Inc. There is, however, contradictory evidence in the record in the form of Protestant's Exhibit A clearly showing that the land owned by Weimers was deeded to them together with all the appurtenances and subject to reservations, restrictions, dedications, easements, rights of way, and agreements prior to the time that PTR was deeded any land or water rights by Pine Tree Ranch, Inc., its predecessor. The letter also invited Weimers to pursue the issue of water right ownership with the Hearing Officer in the context of the protests and the Weimers have chosen to do just that.

III. PTR BOARD OF DIRECTORS APPROVAL

Stuart Weimer was present at a meeting where the current application to transfer the subject water rights was discussed, voted upon, and approved. It is clear from the minutes of the meeting that Stuart Weimer was one of those individuals who approved of the Application. Stuart Weimer's testimony at the Hearing clearly indicates that he was misinformed at the time and later understood and believed there was and is an issue with regard to ownership of a portion of water rights in question. Had Weimer been fully informed at the Board of Directors' meeting it is his position that he would have never voted to approve the Application for Transfer.

IV. TRANSFER OF THE WATER RIGHTS AS REQUESTED WILL RESULT IN AN ENLARGEMENT OF USE

The record and testimony at the Hearing shows that the full capacity of the three subject water rights has not been used for many years. Weimer maintains that this is due to a lack of maintenance of the delivery system, the ditch that carries the water through

Weimers' property. Transfer of the point of diversion will enlarge the use of the water right from its historical usage. The ditch should be properly maintained, even to the point of piping at some points along the ditch.

V. RELEVANCE OF PROTEST AND INJURY

If the Application for Transfer of Water Rights is granted, Weimers will be injured in that they may be unable to exert control over their water rights and irrigate in the manner they have chosen because, as has been pointed out earlier, the incentive for maintaining the ditch or bringing it back to the capacity to carry the full measure of three water rights will be greatly diminished. However, if specific conditions are placed upon PTR, Inc. that the ditch must be maintained and the carrying capacity enhanced or increased so that Weimer may exercise his right to use a minimum of 50 gallons per minute, twenty four hours a day, 7 days a week as he claims he is entitled the injury will be less likely to occur.

In fact, even though the exchange or transfer of the water rights proposes to transfer the point of diversion downstream, Weimers would not be adverse to the transfer if the same is approved in part and with specific conditions as set forth above.

It is further contended that the transfer, if approved, should be approved only in part and that no more of a transfer be allowed than what has been proved at the Hearing can be put at beneficial use.

CONCLUSION

For the foregoing reasons it is urged that the Hearing Officer deny the Application for Exchange of Water applied for by PTR, Inc. for the Transfer of Water Rights 65-3222 and 65-8290. In the alternative, should the Hearing Officer determine that the

Application be granted, it is urged that it be granted only in part and with the specific condition providing that PTR, Inc. maintain the irrigation ditch in such a manner that Protestant, Stuart Weimer, is able to pump a minimum of 50 gallons per minute, twenty four hours a day, 7 days a week. Weimer has the historical right to the water and to apply it to beneficial use.

Respectfully submitted this 16TH day of February, 2005.

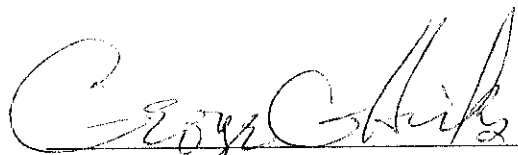

George G. Hicks

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16TH day of February, 2005, I served the foregoing Closed Hearing Brief by having a true and complete copy personally delivered or by facsimile and/or by depositing the same in the United States Mail, postage prepaid thereon, and addressed to:

S. Bryce Farris
Ringert Clark Chartered
P.O. Box 2773
Boise, Idaho 83701-2773

Hand Deliver	_____
U.S. Mail	<u> X </u>
Facsimile	<u> X </u>
Overnight Mail	_____


GEORGE G. HICKS