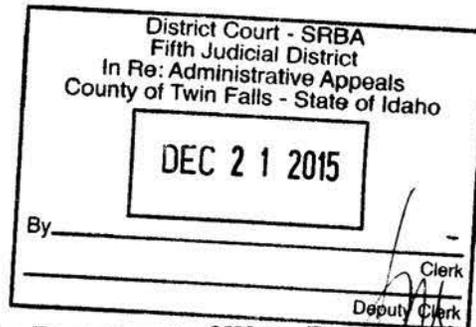


Edward S. Smith
PO Box 6015
Twin Falls, Idaho 83303

PRO SE



26 October 2015

CASE # CV-42-2015-4552
Dec 21, 2015

Before the Department of Water Resources in the State of Idaho

In the matter of Application
for Transfer No 79357, and 79380
(in the name of Thomas and Dorothy
Leno)

Protestant's Request for Director's Reconsideration
of Final Order

Protestant, Edward S. Smith respectfully submits these comments concerning the matter above, and requests that the Director reconsider the decision concerning the Season of Use and the Priority dates for each transfer.

Comments apply to transfers #79357, and #79380.

Season of Use

It is requested that the Director change the Season of Use to less than the Full Year.

The Director should support the 1 May – 30 September time frame for use of new water that the Hearing Officer decided was reasonable, and is the time of year that most probably would contain the very few days when the cows could use a cooling off.

In the event the Director does not follow the Hearing Officer's recommendations, then as a maximum, the Director should limit the Season of Use to the Applicant's acceptable usage dates of 15 March to 15 November. (See page 15 for both #79357, and #79380 in "Applicant's Exceptions to Amended Preliminary Order dated 15 June 2015)

The Leno well usage was restricted to a Season of Use to 1 April to 1 November and should not be expanded beyond the Applicant's Acceptable date, which corresponds to the Twin Falls Canal Company's water right of 15 March to 15 November.

The Director's expansion to a full year Season of Use places neighbors (whether protestants or not) in jeopardy by allowing water extraction at the dairies to occur when there is no "Back-fill" of water from the Twin Falls Canal System from roughly October to April. The facts on the ground raise legitimate concern that the recharge of ground water from the Leno well is essentially nil. (Testimony of Experts, Bonnichsen and Kimbal, and a close reading of the Moore and Eakin 1968 study titled, Water Resources-Reconnaissance Series Report 48). Since the true source of ground water to the dairies is likely from the Twin Falls Canal System, then the Season of Use should, as a maximum, be limited to the Applicant's acceptable level of 15 March to 15 November, which matches the Twin Falls Canal System's water right. Note: The water in the Canal this year is off as of 25 October 2015, and this has been the general cutoff time-frame for the last several years.

Priority Date

It is requested the Director support the Hearing Officer's advancement of the priority date of the approved water transfer to the current date.

The close proximity of existing water rights to the new dairy extraction sites creates the potential for well interference in existing wells, but the existing wells will not have the protection of their priority dates to defend themselves against an adverse water condition caused by the dairies if the 1970 priority date is allowed. This is unjust. The "Summary" paragraph of the Final Order for transfer #79380 should remain and be included in the conditions for the transfer of both #79357 and #79380.

It is only fair and equitable to protect the neighbors in the dairy area by protecting their current priority dates, which is the essence of Idaho water law. The Applicant's make a point that there is no pending or foreseeable deliver calls. (Applicant's Exceptions to Amended Preliminary Order dated 15 June 2015 Page 17 for #79357 and page 16 for #79380) This is not the point; future protection is being forfeited by the existing neighbors if the Director gives the dairies the substantially senior priority date.

Conclusions

While the Hearing Officer decided correctly in setting the Season of Use from 1 May through 30 September, the Applicant was willing to accept a less than full year season of use from 15 March to 15 November. The Director is asked to abandon the full year season of use, and as a maximum, hold the Season of Use to the Applicant's acceptable level of March 15 to November 15 (the Season of Use in the Twin Falls Canal Company's water right).

The Director did not consider the potential injury (in loss of water and cost to defend and remedy their water loss) to the existing neighbors with water rights that will now be junior in right by introducing a Senior (1970) priority date. The Director is requested to advance the Priority date to the current date of the Final Order

Dated: __ October 2015

Edward S. Smith
Protestant

Certificate of Service

I certify that the Protestant's Request for Director's Reconsideration of the Final Order was sent to the following on __ October 2015:

By hand delivery to:

IDWR Southern Regional Office
650 Addison Ave W.
Suite 500
Twin Falls, Idaho 83301

By hand delivery to:

Barker Rosholt and Simpson LLP
Attn: Mr. Travis Thompson
195 River Vista Place, Suite 204
Twin Falls, Idaho 83301-3029

Via e-mail and FAX to:

James Cefalo, Hearing Officer,
IDWR Eastern Region Office
900 N. Skyline Dr. Suite A
Idaho Falls, Idaho 83402-1718
james.cefalo@idwr.idaho.gov

Via e-mail and FAX to:

Director Gary Spackman
Deborah Gibson
IDWR – State Office
322 E. Front St.
Boise, Idaho 83720-0098
gary.spackman@idwr.idaho.gov
deborah.gibson@idwr.idaho.gov