Shelly and William Spradlin
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Weston ID 83286
(802) 747-3713

17 August 2019

James Cefalo
Manager, Water Resource Program
Hearing Officer

Manager Cefalo,
Be advised, your findings (matter and date signed) in this case are being formally contested by protestants Spradlin (William), Spradlin (Shelley) and Fonnesbeck (Jay Norman).

- As of 08 16 2019 we received a working (audio) court transcript to refer to for a more comprehensive response . As the time for reviewing and response has been short, this is a brief summary of our reasons for contesting the findings due to the short time constraint for response..

Facts regarding if and or when harm has been done to others using the aquifer by the pumping of Mr Aston was disregarded.
In the Pre-Hearing Conference and/or Hearing Procedure Application for Transfer instructions, it clearly states
"Applications for transfer are filed for the purpose of changing a point of diversion, purpose of use, period of use or nature of use of all or part of a licensed, decreed or statutory water right. Section 42-222, Idaho Code, identifies the following potential issues that the department can consider in connection with an application of transfer:

1. Will the proposed transfer reduce the quantity of water under existing water rights?
2. Will the proposed transfer constitute an enlargement in use of the original right?
3. Will the proposed transfer be contrary to the conservation of water resources within the state of Idaho?
4. Will the proposed transfer conflict with the local public interest, where local public interest is defined as interests that people in the area directly affected by a proposed water use and its potential effects on the public water source?
5. Will the proposed transfer 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 use where the source of water originates?
6. If the transfer of water is for a municipal use, is it necessary to provide reasonably anticipated future needs for a municipal service area and is the planning horizon consistent with Sections 42-222 and 42-202B Idaho Code?
7. Will the proposed transfer change the nature of use from an agricultural use, and would such a change significantly affect the agricultural base of the local area?

- Points 8 and 9 omitted on document

BURDEN OF PROOF

The applicant has the burden of proof for issues 1, 2, 3, 5, 6, 7, 8 and 9 above and must provide proof for the department to evaluate these criteria.
The initial burden of proof in issue 4, if applicable, lies with both applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for these issues."

With that noted;

1. Yes, it would be impossible to remove a greater quantity of water and expect the same amount be available.
2. Yes, particularly the addition of water right (ref. Testimony of Charlotte Swanevelt) regarding water rights forfeited. In addition
3. Yes, overuse of any water would not constitute conservation of water resources.
4. N/A
5. Yes, it has already affected domestic wells. (Ref Bobbie White notice of protest, Shelly and William Spradlin notice of protest) as well as neighboring agricultural wells.
6. N/A
7. First part of the question, yes and no. it is not changing "from an agricultural use" with the exception of the 4" pipe from his well to his home approximately 1 mile away.. Second part of the question, yes, granting use of more water than that is allowable in the past has already significantly impacted the agricultural base of the local area as some farmers have only had the opportunity to harvest two crops. (norm for area is 3-4). Incidentally, Mr Aston has been able to harvest 4 crops per year in the past.

   Mr Aston's attempt to prove "no harm" to surrounding wells is comprised of a geologist report (ref. Clearwater Geosciences LLP report) which includes a well indicated to be the Spradlin well however is located south and west of highway 36 and not the "Spradlin well". (ref testimony of Thomas Wood on 02 26 2019) indicating he was referencing the wrong well in the assessment.

   Mr Thomas' report (ref ex123 page 7) also indicates no maintenance on the actual Spradlin 58 year old well however appears to be unaware of the well was pulled, re-drilled and relined in 1995. If he was unaware of these updates, how could he possibly make a conclusion on the effects on the Spradlin well if the data he used was at the failed Herbert Williams well located ½ farther west of the Aston well in an area now known to be difficult to find water.

   It appears there was no actual "draw down" test or geological disturbance test(excessive silt, sand or debris) conducted on affected wells as testing was not conducted on the Spradlin well. Although there may be an appearance of due diligence to provide the burden of proof in the report and testimony of Mr Wood, utilizing non scientific terms such as "*i still think* the communication is not significant" and (ref testimony in the audio transcript file MZ000005 @79.35 mark and beyond) when broached with the fact he utilized data from the wrong well he stated that it was "unfortunate" the data utilised was from the wrong well.

There is question of numerical figures Mr Wood used in the models to come to the presented numbers that are of concern. First, the values provided for the basis of a flow rate were done on a 10" pipe. Mr wood gave flow rate figures based on "pump work" (utilizing the amount of electricity it takes to move water through a pump) and rated Mr Astons flow rate based on a 10" pipe however he utilizes a 12" pipe with less drag therefore, the flow rate was undervalued. Secondly and most disturbing is the 3.42 rate information was provided by the applicant (ref. MZ000006 @08.25 mark and beyond) and his counsel which very well may have been either a preferable number as to either show a higher rate in an attempt to give the appearance that the stated rate is high and "still not affecting other wells" or just a number for preferable calculations downline. In any case. Numbers presented as data were actually not of a mathematical equation based on science but based on hearsay.

The statement above mentioned testimony that Mr Aston's geologist made (Thomas Wood testimony) regarding overpumping on water right 13-2209 (3.42cfs exceeding his allotted 2.8cfs) in the past and "having no negative impact" on surrounding wells indicates Mr Aston willingly submitted via geologist report, during the hearing he has overpumped the shared resources demonstrating his un-willingness to abide by the allotment (water right) constraints..

Essentially, the statement (3.42cfs for over a decade) along with other discrepancies mentioned above are incorrect thus not meeting the burden of proof standard or he has essentially stolen water for over a decade. How many gallons of water does Mr Aston owe the aquifer?

Considering Mr Aston's admission to over pumping in the past, to date, there is no device to verify the amount of water actually being pumped from the "Aston #2 well". ***Should there not be a device monitored by the IWRB?***

There has not to date, an attempt to mitigate the harm in water drawdown or sand/silt/debris conditions the Spradlin agricultural well and its ability to pump. I (William Spradlin) working to get an independent entity to measure depths and draw down when adjacent wells are on. In particular, as it has bearing on this case, the "Aston well(s)"

Referring back to the date of the application and its form, applicant Aston indicated on page 4, sec.(g) "To your knowledge, has/is any portion of the water rights proposed to be changed? The box indicating yes has been marked indicating "undergone a period of 5 or more consecutive years of non-use."
In the description, he indicated the 40 acres (twp16s, rng 38E, Section 9 was placed in soil bank in 1983. The "soil bank" program was discontinued in 1965 therefore is not exempt from forfeiture.
Hearing forfeited 36 acres in light, all 40 acres should be forfeited.

Both of the "Aston wells" are currently in dispute over water rights however, allowances have been made to at least temporarily, transfer and utilize the water from these wells at the rate requested by the applicant. ***Should Mr Aston not be held to the cfs of the 87 acres not being protested?***

Pivots, referred to in this hearing are currently pumping water onto fields. The North pivot access point is located on land not watered in years and deemed non-irrigated. Only the west (approximately) 2/3 south and west of the Anker ditch is deemed irrigated land. The balance, ⅓ is deemed non-irrigated land and has not been established otherwise.

The south pivot has pumped regularly since these proceedings began and has been allowed by the hearing officer. The problem with this is that the water right originates in Grace ID (50 miles away) and Mr Aston's own witness (Mr Wood) disputed the hydraulic communication on wells less than a mile apart. Mr Aston, through his own witness shows there is no hydraulic communication between his well and that of the water source of his "rented" water right in Grace, 50 miles away. ***A cease and desist order should be applied to the south pivot immediately and indefinitely.***

Findings include the statement "economy" however does not take into account the economy of the other users livelihoods either.

Within these proceedings there are disputed well rights affecting both of the "Aston wells", disputed ground irrigated vs non irrigated, the harm to other users in the aquifer (domestic and agricultural) and the clear deed to additional water rights (ref. Disputed legal transfer of water rights while land appurtenant to said water rights is still in probate) etc. in addition, the application refers to water rights quit claim deeds that are inaccurate or do not exist.

The ability of the Hearing Officer to arbitrarily allow Mr Aston to use more land, more water and not be required to fulfill the burden of proof is reckless.
We are requesting that until all legal remedies have been exhausted and a determination is reached by findings or agreement, Mr Aston place only the 2.8cfm allotted for the 87 acres on the 87 acres.

Based on these instances, and the fact they are not addressed in the preliminary order, we do not believe the findings will be appropriately conveyed to Director Spackman. The actual facts are not covered in the findings but in the 25 hours of audio transcripts which are Therefore, Director Speckman would not have accurate information to make an informed decision.

Sincerely,

Shelly and William Spradlin

8/19/19

Shelly Spradlin

08-19-19

William Spradlin