

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

| | | |
|--------------------------------|---|------------------------------|
| IN THE MATTER OF APPLICATION |) | |
| FOR PERMIT NO. 75-14788 IN THE |) | |
| NAME OF PAUL SOMMERFELD |) | PRELIMINARY ORDER |
| AND JUDY SOMMERFELD |) | REJECTING APPLICATION |
| _____ |) | |

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

On October 2, 2014, Judy Sommerfeld and Paul Sommerfeld (“the Sommerfelds”) filed Application for Permit to Appropriate Water No. 75-14788 (“application”) with the Department of Water Resources (“IDWR” or “Department”). The application proposes the diversion and use of 0.04 cfs of water from Jesse Creek, a tributary of the Salmon River, for domestic purposes.

Idaho Code § 42-203A(5) directs IDWR to evaluate certain criteria in connection with each application for permit to appropriate water:

In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho, or (g) that it will 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 area where the source of water originates; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

IDWR published notice of the application as required by Idaho Code § 42-203A. Robert L. Blackadar (“Blackadar”) protested the application. After exploring options for resolving the protest informally, the Sommerfelds and Blackadar determined they could not reach an agreement. Consequently, on July 31, 2015, IDWR conducted a hearing in Salmon, Idaho, to take testimony and evidence in connection with the application.

At the hearing, Paul Sommerfeld represented the Sommerfelds. Attorney Fred Snook represented Blackadar.

Blackadar stated in the hearing that his protest is based on three of the review criteria stated in Idaho Code § 42-203A(5):

- Whether the proposed appropriation will reduce the quantity of water under existing rights.
- Whether the water supply is insufficient for the intended purpose.
- Whether the application will conflict with the local public interest.

Based on careful consideration of the administrative record, including the application file and evidence and testimony presented at the hearing, the Hearing Officer finds, concludes, and orders as follows:

FINDINGS OF FACT

1. The Sommerfelds bought their home in 2000. The home, situated on Lots 1-8 of Arlington Heights Subdivision, is on the western edge of the city of Salmon in Lemhi County. For three or four years prior to selling to the Sommerfelds, the previous owner of the home pumped water from a ditch on the property to irrigate lawn and landscaping around the home. Sommerfeld Testimony. Believing they had also acquired a water right when they acquired their home, the Sommerfelds continued to pump up to 0.10 cfs of water from the ditch to irrigate lawn and landscaping around their home. *Id.*; Ex. E.
2. The ditch conveying the water used by the Sommerfelds is locally known as the Blackadar-Sorenson Ditch. Blackadar Testimony. The Blackadar-Sorenson Ditch traverses about half a mile before reaching the Sommerfelds' property. From there, the Blackadar-Sorenson Ditch continues northeastward, conveying water to the following water users pursuant to valid water rights:

| Water Right No. | Priority Date | Diversion Rate | Water Use | Total Acres | Current Owner |
|-----------------|---------------|----------------|------------|-------------|-----------------------------------|
| 75-19D | 6/1/1868 | 0.500 | IRRIGATION | 22.0 | BLACKADAR, LOIS |
| 75-19H | 6/1/1868 | 0.810 | IRRIGATION | 88.8 | BLACKADAR, ROBERT L |
| 75-113A | 4/1/1894 | 0.185 | IRRIGATION | 22.0 | BLACKADAR, LOIS |
| 75-113B | 4/1/1894 | 0.124 | IRRIGATION | 14.0 | BILLS, RICHARD J; BILLS, SANDRA L |
| 75-113C | 4/1/1894 | 0.250 | IRRIGATION | 15.0 | BLACKADAR, ROBERT L |
| 75-14123 | 5/1/1884 | 0.040 | IRRIGATION | 6.5 | BOESE, KENNETH; BOESE, WENDY L |
| 75-14125 | 5/1/1884 | 0.030 | IRRIGATION | 5.0 | POWER, GARY D; POWER, TAMARA |

3. The Blackadar-Sorenson Ditch is a lateral off a larger ditch known locally as the Jesse Creek Lateral.¹ Blackadar Testimony; Lowell Testimony. The Jesse Creek Lateral conveys water northeastward from a headgate on Jesse Creek near its confluence with Pollard Canyon Creek in the SW¼NW¼, Section 1, Township 21 North, Range 21 East, B.M. *Id.* Jesse Creek is a tributary of the Salmon River.

¹ In the hearing, both the Blackadar-Sorenson Ditch and the Jesse Creek Lateral were also sometimes called the Farmers Ditch. To differentiate them from each other, their alternative names are used in this decision.

4. The portion of the Blackadar-Sorenson Ditch crossing the Sommerfelds' property is mostly piped. Sommerfeld Testimony; Blackadar Testimony; Ex. C. The Sommerfelds pump from a portion of the Blackadar-Sorenson Ditch that crosses a Lemhi County utility easement situated between their lots and the lots of their neighbor, Robert A. Wiederick. Sommerfeld Testimony; Wiederick Testimony; Ex. F. The Sommerfelds do not have written authority from Lemhi County to access and use the utility easement. Sommerfeld Testimony.
5. The Sommerfelds use of Jesse Creek water is not authorized by a permit, license, or decreed water right on file with the Department. The warranty deed for the Sommerfelds' property refers to Water Right 75-2139, which at one time authorized Cecile Phillips to divert and use water from springs, not Jesse Creek, to irrigate five acres of land in the SW¼SE¼, Section 36, Township 22 North, Range 21 East, B. M., which is near the Sommerfelds' property. Ex. B-4. However, Right 75-2139 was not claimed in the Snake River Basin Adjudication ("SRBA"). On April 25, 2012, SRBA Presiding Judge Eric J. Wildman issued an order closing the taking of claims and disallowing unclaimed rights in several administrative basins, including Administrative Basin 75, where Jesse Creek is located. Judge Wildman expressly disallowed Right 75-2139, among others. There is no record of any other water right for the use of water on the Sommerfelds' land.
6. The Sommerfelds' land was once owned by Cecile Phillips. Ex. B-1; Testimony of Luther Phillips. In 1966 Cecile Phillips quitclaimed to W. L. Blackadar an "easement and right-of-way for an irrigation ditch" across her property. Ex. B-1; Ex. B-2. Cecile Phillips reserved for herself the right to siphon water from the ditch when the water "is not needed" by W. L. Blackadar. Ex. B-1. However, Cecile Phillips never diverted water from the ditch, which became the Blackadar-Sorenson Ditch. Phillips Testimony. The Sommerfelds' deed does not refer specifically to the right to siphon water from the ditch. Instead, it includes a more general statement warranting "all water and water rights, ditch and ditch rights appurtenant thereto and used in connection therewith" Ex. B-4.
7. Diversions of water from Jesse Creek are regulated by the watermaster of Water District 75A. Greg Lowell ("Lowell") has been the watermaster in Water District 75A for six years. Lowell Testimony.
8. In 2014 Lowell informed the Sommerfelds they had no water right for their use of water from Jesse Creek. Lowell Testimony; Sommerfeld Testimony. In response, the Sommerfelds ceased pumping water from the Blackadar-Sorenson lateral and began using municipal water from the City of Salmon to irrigate their lawn and landscaping. Using the municipal water, the Sommerfelds could successfully irrigate their lawn, but they could not sustain enough flow or pressure to irrigate their 80 trees and shrubs, even after installing a larger booster pump. Sommerfeld Testimony. The Sommerfelds' lawn and landscaping, including the trees and shrubs, provide an aesthetic home environment, wildlife habitat, and protection from wind and fire. Sommerfeld Testimony.
9. On October 2, 2014, the Sommerfelds filed Application for Permit to Appropriate Water No. 75-14788 with IDWR. The application seeks authorization to continue the Sommerfelds' use of water from Jesse Creek delivered via the Jesse Creek Lateral and the Blackadar-Sorenson

Ditch. The proposed point of diversion is in Govt. Lot 4 (NW¹/₄NW¹/₄), Section 1, Township 21 North, Range 21 East, B. M. The place of use is at the Sommerfelds' home in Govt. Lots 2 (NW¹/₄NE¹/₄) and 3 (NE¹/₄NW¹/₄), Section 1, Township 21 North, Range 21 East, B. M. The proposed domestic use consists of the irrigation of less than half an acre of lawn and landscaping around the Sommerfelds' home. The proposed diversion rate is 0.04 cfs. The proposed season of use is from April 1 to October 31 each year.

10. The Sommerfelds can adjust their irrigation practices to avoid exceeding the requested 0.04 cfs. Sommerfeld Testimony.
11. The Jesse Creek Lateral is operated and maintained by a group of water users known as the Jesse Creek Lateral Association. Blackadar Testimony. The Jesse Creek Lateral Association hires Greg Lowell to deliver water to users of the Jesse Creek Lateral, in addition to his duties as watermaster of Water District 75A. Blackadar Testimony; Lowell Testimony. To date, Sommerfelds have not participated in the Jesse Creek Lateral Association. Blackadar Testimony.
12. It is not clear who owns the Blackadar-Sorenson Ditch. Blackadar Testimony; Sommerfeld Testimony.
13. The Blackadar-Sorenson Ditch has a long history of washouts and makeshift repairs. Blackadar Testimony; Wiederick Testimony; Ex. 1-D, 1-E, 1-F, 1-G, 1-H, 1-J, 1-K, 1-L, 1-M, 1-N. There is no formal association to share the costs of maintaining the Blackadar-Sorenson Ditch. Blackadar Testimony. For decades Blackadar or his father, W. L. Blackadar, have borne most of the construction, operation, and maintenance costs, including time and labor, for the Blackadar-Sorenson Ditch. *Id.*; Lowell Testimony. In fact, Blackadar remembers working with his father on ditch repairs as far back as 1974. Blackadar Testimony.
14. The Sommerfelds and their neighbor, Robert A. Wiederick, have contributed some resources needed to pipe sections of the Blackadar-Sorenson Ditch across their parcels of land. Sommerfeld Testimony; Wiederick Testimony; Blackadar Testimony; Ex. C.
15. Various racks and screens are installed to prevent debris from entering and clogging the piped sections of the Blackadar-Sorenson Ditch. The screens themselves collect debris, which can impede the flow of water and leave the ditch vulnerable to washouts unless regular maintenance is performed. Blackadar Testimony; Wiederick Testimony; Ex. F; Ex. 1-G.
16. The Blackadar-Sorenson Ditch, as currently constructed, cannot convey more water than it already carries to existing water right holders. Blackadar Testimony.
17. At the confluence of Jesse Creek and Pollard Canyon Creek, a diversion dam raises the head of water so that it can be diverted into the Jesse Creek Lateral. Blackadar Testimony; Ex. 1-A. Stream flow across the diversion dam is regulated by a series of check boards. *Id.* When flows are high in Jesse Creek and Pollard Canyon Creek, storms sometimes cause a surge of water to overtop the controlling device at the head of the Jesse Creek Lateral. Blackadar Testimony. At such times, the check boards controlling the flow down the Jesse Creek

channel must be removed, in dangerous conditions, to reduce the flow of water down the Jesse Creek Lateral and the Blackadar-Sorenson Ditch to prevent flooding and washouts. *Id.*

18. Greg Lowell measures the water delivered into the Blackadar-Sorenson Ditch from the Jesse Creek Lateral to satisfy the rights of existing water right holders. Lowell Testimony; Ex. 1-E. However, neither Sommerfelds, nor Blackadar, nor any of the other users of the Blackadar-Sorenson Ditch measure the amount of water delivered to their properties through the ditch. Lowell Testimony.
19. During most of the irrigation season in most years, there is sufficient water in Jesse Creek to satisfy existing water rights and the Sommerfelds' requested 0.04 cfs. Lowell Testimony.
20. The water right holders receiving water through the Blackadar-Sorenson Ditch irrigate pasture constantly throughout the irrigation season. Blackadar Testimony. There is no time when they stop or reduce their irrigation water use to cut hay, till, or harvest. *Id.*
21. In the past, Idaho Department of Fish and Game ("IDFG") has provided information showing that Jesse Creek is habitat for threatened anadromous fish species. Ex. 3. IDWR even denied Application 75-7552, which proposed a diversion of water from Jesse Creek, on the basis of public interest concerns raised by IDFG. *Id.* However, IDFG did not raise public interest concerns about the Sommerfelds' proposed appropriation.

ANALYSIS

Finding of Fact no. 16, based on testimony by Robert L. Blackadar, is of key importance in this case. Finding of Fact no. 16 states:

The Blackadar-Sorenson Ditch, as currently constructed, cannot convey more water than it already carries to existing water right holders.

Greg Lowell testified the Blackadar-Sorenson Ditch can convey the water rights of the current ditch users and also the 0.04 cfs requested by the Sommerfelds, but "not a lot more." As the basis for his conclusion, Lowell contends the Sommerfelds already diverted water from the Blackadar-Sorenson Ditch for 14 years without complaint by the other users of the ditch. In contrast, Blackadar testified that the Blackadar-Sorenson Ditch "will not accommodate any more water."

Both Lowell and Blackadar are impressive witnesses with extensive knowledge of the subject matter. Ultimately, Blackadar's testimony about the ditch capacity is more compelling than Lowell's for two reasons. First, Blackadar has performed most of the construction and maintenance work on the Blackadar-Sorenson Ditch for decades. Therefore, Blackadar's knowledge of the ditch's operational shortcomings is more comprehensive than Lowell's. Second, Lowell does not measure the water actually received by the current users of the Blackadar-Sorenson Ditch -- Blackadar, Lois Blackadar, Bills, Boese, and Power -- at their fields. Therefore, Lowell cannot know for sure that Sommerfelds' pumping of water from the ditch did not and would not reduce the water to which Blackadar, Lois Blackadar, Bills, Boese, and Power are entitled under their existing rights.

During the years the Sommerfelds pumped water from the Blackadar-Sorenson Ditch without a water right, Lowell delivered into the ditch only the amount of water equal to the collective water rights of the existing water right holders. There is no evidence in the record that other water sources, such as springs, add to the flow of Jesse Creek water in the Blackadar-Sorenson Ditch. Consequently, removal of water by the Sommerfelds must have reduced the water available to the existing water right holders to less than their collective water rights authorize. The current authorized users of the Blackadar-Sorenson Ditch do not temporarily shut down their water uses to cut hay, till, harvest crops, etc. Since there are no windows of time during which the current ditch users are not exercising their water rights, and the ditch cannot hold more water, allowing Sommerfelds to resume use of water from the ditch would deprive the existing ditch users of water they are entitled to receive.

CONCLUSIONS OF LAW

Governing Statutes and Rules

1. Idaho Code § 42-201(2) states:

No person shall use the public waters of the state of Idaho except in accordance with the laws of the state of Idaho. No person shall divert any water from a natural watercourse or apply water to land without having obtained a valid water right to do so, or apply it to purposes for which no valid water right exists.

2. Idaho Code § 42-202(1) states, in pertinent part:

For the purpose of regulating the use of the public waters and of establishing by direct means the priority right to such use, any person, association or corporation hereafter intending to acquire the right to the beneficial use of the waters of any natural streams, springs or seepage waters, lakes or ground water, or other public waters in the state of Idaho, shall, before commencing of the construction, enlargement or extension of the ditch, canal, well, or other distributing works, or performing any work in connection with said construction or proposed appropriation or the diversion of any waters into a natural channel, make an application to the department of water resources for a permit to make such appropriation.

3. Idaho Code § 42-203A(5), quoted above in this order, lists the criteria the Department must consider when evaluating an application to appropriate water. If the application fails to meet any of these criteria, IDWR must deny the application.

4. Rule 45 of the Department's Water Appropriation Rules (IDAPA 37.03.08) further interprets the review criteria established in Idaho Code § 42-203A(5).

5. Idaho Code § 42-202B (3) defines local public interest as "the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource."

6. Pursuant to Rule 40.04.c of the Department's Water Appropriation Rules, the applicant bears the ultimate burden of persuasion regarding all the factors set forth in Idaho Code § 42-203A(5).
7. Idaho Code § 42-111(1) defines domestic water use as:
 - (a) The use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half (1/2) acre of land, if the total use is not in excess of thirteen thousand (13,000) gallons per day, or
 - (b) Any other uses, if the total use does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day.

Requirement to File an Application

8. Pursuant to Idaho Code § 42-201(2), the Sommerfelds must have a valid water right to divert and use water from a natural watercourse. The Idaho Legislature established the water right requirement for any diversion and use of surface water in 1971. Jesse Creek is a natural source of surface water. Therefore, the Sommerfelds must have a valid water right to divert Jesse Creek water and convey it to their property through the Jesse Creek Lateral and the Blackadar-Sorenson Ditch.
9. Sommerfelds contend Cecile Phillips's quitclaim deed to W. L. Blackadar preserved for them a right to access the Blackadar-Sorenson Ditch and to use water being diverted pursuant to Blackadar's water rights. However, Cecile Phillips did not actually divert and use a portion of the Blackadar water rights on her land, nor did she or anyone else claim and receive confirmation of such a right in the SRBA. In 1989 the SRBA Court issued an order allowing claims to certain *de minimis* domestic and stockwater rights to be deferred. If the Sommerfelds' domestic use of Jesse Creek water had commenced prior to 1971, it might have been possible for them to assert they have deferred filing an SRBA claim to their domestic water use for which a permit was not necessary. However, the Sommerfelds did not begin using Jesse Creek water until after the year 2000, and they did so without a permit. Because there is no SRBA decreed water right, no pre-1971 domestic use that could have been deferred, and no post-1971 permit, the hearing officer concludes the Sommerfelds do not already have a water right.
10. Pursuant to Idaho Code § 42-202(1) and Rule 35.01.a of the Water Appropriation Rules (IDAPA 37.03.08), anyone seeking to establish a new water right is required to make application to the Department for a water right prior to commencing construction of the works necessary to divert and use the public waters of the State of Idaho. The Sommerfelds' application is appropriate.

11. The Sommerfelds propose to irrigate no more than half an acre immediately surrounding their home. According to Idaho Code § 42-111(1)(a), the proposed beneficial use is appropriately characterized as “Domestic” use.

Potential for Injury to Existing Water Right Holders

12. Rule 45.01.a.i of the Water Appropriation Rules establishes the relevant criterion for determining whether the proposed use will reduce the quantity of water under existing water rights. An application will be found to cause injury to another water user if:

The amount of water available under an existing water right will be reduced below the amount recorded by permit, license, decree or valid claim or the historical amount beneficially used by the water right holder under such recorded rights, whichever is less.

13. During most of the irrigation season in most years, there is sufficient water in Jesse Creek to satisfy existing water rights and the Sommerfelds’ requested 0.04 cfs. However, Greg Lowell measures his deliveries into the Blackadar-Sorenson Ditch to satisfy existing water rights. The Blackadar-Sorenson Ditch is capable of safely conveying only the amount of water routinely used by existing right holders. Because the Blackadar-Sorenson Ditch cannot safely hold additional water for the Sommerfelds, their proposed water use would reduce the quantity of water available to satisfy existing water rights.
14. The Sommerfelds have not met their burden of persuasion for showing that their proposed water use will not reduce the quantity of water available to satisfy existing water rights.

Sufficiency of the Water Supply

15. Rule 45.01.b of the Water Appropriation Rules establishes:

[T]he water supply will be determined to be insufficient for the proposed use if water is not available for an adequate time interval in quantities sufficient to make the project economically feasible (direct benefits to applicant must exceed direct costs to applicant), unless there are noneconomic factors that justify application approval.

12. During most of the irrigation season in most years, there is sufficient water in Jesse Creek to satisfy existing water rights and the Sommerfelds’ requested 0.04 cfs. During the remainder of the irrigation season, the Sommerfelds could rely on water from the City of Salmon to supplement the Jesse Creek supply.
13. The Sommerfelds have met their burden of persuasion regarding the sufficiency of the water supply for the proposed use.

Application is Made in Good Faith and not for Delay or Speculative Purposes

14. Rule 45.01.c.i of the Water Appropriation Rules establishes the relevant criterion for determining whether the application was made in good faith:

The applicant shall have legal access to the property necessary to construct and operate the proposed project, has the authority to exercise eminent domain authority to obtain such access, or in the instance of a project diverting water from or conveying water across land in state or federal ownership, has filed all applications for a right-of-way. Approval of applications involving Desert Land Entry or Carey Act filings will not be issued until the United States Department of Interior, Bureau of Land Management has issued a notice classifying the lands suitable for entry; and

15. By filing an application for permit as soon as they understood they did not have a water right, the Sommerfelds demonstrated some measure of good faith. However, the Sommerfelds have not shown they have legal access to the county easement where they pump water from the Blackadar-Sorenson Ditch.
16. The Sommerfelds have not met their burden of persuasion for an application made in good faith.

Sufficiency of the Applicant's Financial Resources

17. Rule 45.01.d.i of the Water Appropriation Rules establishes the relevant criterion for determining whether the applicant has sufficient financial resources to complete the project:

An applicant will be found to have sufficient financial resources upon a showing that it is reasonably probable that funding is or will be available for project construction or upon a financial commitment letter acceptable to the Director.

18. Blackadar is not disputing the sufficiency of the Sommerfelds' financial resources. However, reconstructing vulnerable portions of the Blackadar-Sorenson Ditch to safely convey additional water could require a significant investment. While Blackadar and the other existing users of the Blackadar-Sorenson Ditch should be financially responsible for maintaining the ditch at its current carrying capacity for their use, any new ditch user, such as the Sommerfelds propose to be, should bear a significant responsibility for improvements to increase the carrying capacity of the ditch. The Sommerfelds have not addressed their financial ability for such an investment.
19. The Sommerfelds have not met their burden of persuasion regarding their financial ability to complete the project.

Local Public Interest

20. Idaho Code § 42-202B(3) defines “local public interest” as “the interests that the people in the area directly affected by a proposed water use have in the effects of such water use on the public water resource.” The current definition of local public interest was adopted in 2003 and supersedes the evaluation criteria set forth in Rule 45.01.e of the Water Appropriation Rules which dates from 1993.
21. The current definition of local public interest requires an analysis of the effects of the proposed use on the public water resource itself. In other words, will the proposed use impact the public water resource in a way that renders it unable to accomplish other compelling public needs, such as important alternative uses or instream values? No part of the record presents an alternative for the use of the water in Jesse Creek. Even the Idaho Department of Fish and Game, which has in the past argued that the flows of Jesse Creek are important habitat for threatened anadromous fish species, did not offer such an argument in this case.
22. The Sommerfelds have met their burden of persuasion for the local public interest.

Conservation of Water Resources in Idaho

23. The Idaho legislature implemented the conservation of water resources requirement for water appropriations in 1990. The Department’s Application Processing Memorandum No. 48, which addressed the requirement, states:

The term “conservation” is not defined in the legislative intent or in the amendment. . . . Due to lack of stated legislative intent, the department will apply the criterion in terms of efficiency as is generally suggested by the term.

The requirement has been interpreted by the Department to require standards of water use efficiency so that the proposed beneficial use is accomplished while preserving as much water as possible for other benefits.

24. The Sommerfelds’ proposed quantity of 0.04 cfs is typical for domestic water use in Idaho. Such a quantity would not be wasteful. In fact, it is a reduction compared to the amount the Sommerfelds have historically taken from the Blackadar-Sorenson Ditch.
25. The Sommerfelds met their burden of persuasion for the conservation of water resources in Idaho.

Effects on the Local Economy

26. This criterion applies only to “out-of-basin” appropriations. It does not apply in this case.

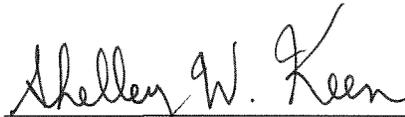
Determination without Prejudice

27. Because the Sommerfelds did not meet their burden of persuasion for the injury, good faith, and financial resources criteria, the application must be rejected. However, it should be rejected without prejudice. If devices are installed to measure water deliveries to each of the current Blackadar-Sorenson Ditch users, the Sommerfelds may be able to prove they can take 0.04 cfs without interfering with the delivery of existing water rights. If so, or if the Sommerfelds can improve the Blackadar-Sorenson Ditch so that it can carry additional water to their property without substantial risk of washouts, this decision should not prevent them from reapplying.

ORDER

Application for Permit No. 75-14788 is hereby **REJECTED** without prejudice, and issuance of a permit is **REFUSED**.

Dated this 22nd day of September, 2015.



Shelley W. Keen
Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2015, I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER REJECTING APPLICATION to the person (s) listed below:

RE: Water Right No.: 74-1378

**PAUL SOMMERFELD
1602 OLD LEESBURG RD
SALMON ID 83467**

**JUDY SOMMERFELD
1602 OLD LEESBURG RD
SALMON ID 83467**

**ROBERT L BLACKADAR
10 N CHEROKEE RD
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