



IDAHO DEPARTMENT OF
WATER RESOURCES

Northern Region • 7600 N Mineral Drive, Suite 100 • Coeur D'Alene, ID 83815-7763

Phone: 208-762-2800 • Fax: 208-762-2819 • Email: northerninfo@idwr.idaho.gov • Web: idwr.idaho.gov

Governor Brad Little

Director Gary Spackman

August 09, 2022

DIXIE ANN WOLFF
533 PRESTON AVE
LEWISTON, ID 83501-4338

USDI BLM IDAHO STATE OFFICE
C/O FREDRIC W. PRICE
1387 S VINNELL WAY
BOISE, ID 83709-1657

RE: Application for Permit No. 86-12155

Dear Parties:

This letter acknowledges receipt of a protest filed against Application for Permit No. 86-12155. The following options are available for the resolution of protested applications:

- Direct contact between the parties to determine the nature of the protest and to attempt to resolve the protest. Sincere conversation between the parties prior to initiation of formal proceedings can often resolve protest.
- Discussions at an informal settlement conference between Department staff, the applicant(s), and the protestant(s). The enclosed document summarizes the informal settlement conference purpose and procedure.
- Formal proceedings administered by the Department after the informal settlement conference. If formal proceedings are necessary, the Department will schedule a prehearing conference to begin the process.

Please consider the best option(s) for resolution of the protested application.

Meanwhile, the Department will schedule an informal settlement conference pursuant to the Department's Rules of Procedure (IDAPA 37.01.01). **Please notify the Department within 14 days of any dates you are UNAVAILABLE to participate in an informal settlement conference in the next <three> months.** You may provide unavailable dates via mail or via email to the email address below. If you do not notify the Department of unavailable dates, the Department will assume you are available for the informal settlement conference on any date selected. The Department may schedule the informal settlement conference as a conference phone call or in-person. The Department will send notice of the informal settlement conference once it is scheduled.

You may contact this office if you have any questions regarding the procedure discussed in this letter or additional information regarding the application, protest(s), water rights, and other matters administered by the Department is available on the Internet at www.idwr.idaho.gov.

Sincerely,



Tammy Alleman
Administrative Assistant 1
(208) 762-2807
Tammy.Alleman@idwr.idaho.gov

Enclosure(s): Informal Settlement Conference Procedure

RECEIVED

JUL 05 2022

DEPARTMENT OF
WATER RESOURCES

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST
86-12155

JUL 12 2022

July 5, 2022

IDWR / NORTH

1. Matter being protested

Application for Permit No. **86-12155** filed by Dixie Anne Wolff

2. Name of protestant

United States Department of the Interior
Bureau of Land Management
Idaho State Office
1387 South Vinnell Way
Boise, Idaho 83709-1657

3. Protestant's Representative for service (if different than protestant)

Fredric W. Price (contact person)

4. Service mailing address

same as above

5. Service telephone no.

(208) 373-3831

6. Basis of protest (including statement of facts and law upon which the protest is based).

Application for Permit 86-12155 ("Application") describes a legal land description under the Point of Diversion ("POD") which entirely describes federal land managed by the Bureau of Land Management ("BLM") located within T36N, R03W, S06, Lot 16 (NESE) (BLM land). The route (pipeline) also appears to include both federal lands managed by BLM (T36N, R03W, S06, Lot 16 (NESE)) and private lands. The applicant is not authorized to access the POD located on federal land nor transport water across federal land for the uses proposed under this application.

The application states authorization of POD by use under existing water right 86-12073. This appears to be incorrect as the application map appears to show a new POD proposed located south of the existing POD under existing water right 86-12073. Although the Applicant may possibly hold an inferred ROW under the Act of 1866 for the existing water right, an approved FLPMA ROW is required to access any POD(s) on federal land and also transport water across federal land for the irrigation use proposed under this application. Access to POD(s) on federal land proposed under this new application is in trespass.

Unauthorized use of federal land is a prohibited act (43 CFR §2808.10(a)). A water right also cannot be established in trespass (See e.g., *In RE General Determination of Rights to Use of Surface and Ground Waters of Payette River*, 107 Idaho 221, 687 P.2d 1348, 1353 (1984); citing, *Lemmon v. Hardy*, 95 Idaho 778, 519 P.2d 1168 (1974); *Jones v. McIntire*, 60 Idaho 338, 91 P.2d 373 (1939); *Bachman v. Reynolds Irrigation Dist.*, 56 Idaho 507, 55 P.2d 1314 (1936); *Short v. Praisewater*, 35 Idaho 691, 208 P. 844 (1922); *Rabido v. Furey*, 33 Idaho 56, 190 P. 73 (1920); *Bassett v. Swenson*, 51 Idaho 256, 5 P.2d 722 (1931)).

In the Innovative Mitigation Solutions case (37-22852), the application for permit was rejected by IDWR because "there is no information in the record demonstrating the Applicant has legal access to the property necessary to operate the project proposed in Application 37-22852, or authority to exercise imminent domain authority to obtain such access. Protestants are entitled to judgment as a matter of law that Application 37-22852 was not filed in good faith. See IDAPA 37.03.08.45.01.c.i."

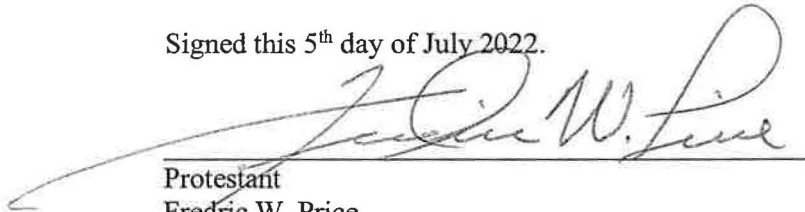
7. What would resolve your protest?

BLM's protest can be resolved by:

- 1.) Withdraw the application; or
- 2.) a) Applicant seeks and obtains a BLM issued Right-of-Way (ROW") to access the POD on federal land and transport water across federal land proposed under Application for Permit 86-12155; and
b) Add the following limiting conditions to the permit:
 - i) "Prior to diversion and use of water under this approval, the right holder shall obtain authorization necessary to access the point of diversion, or place of use, or to convey water across federal lands."
 - ii) "This right does not grant any right-of-way or easement across the land of another."

I hereby, acknowledge that if I, or my designated representative, fail 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 5th day of July 2022.



Protestant
Fredric W. Price
Water Rights Lead
Protestant's Representative

Attachments:

- ◆Maps prepared by BLM for illustrative purposes.
- ◆Master Title Plats: T36N, R03W

FOR DEPARTMENT USE ONLY

Received by _____ Date _____

Fee Paid \$25.00 Date 7-5-22 Received by KM Receipt # C113393

CERTIFICATE OF SERVICE

I certify that on July 5th, 2022, I served a true and correct copy of the **Protest of Application for Permit No. 86-12155** with enclosures upon the following individuals by placing the documents in the United States mail in Boise, Idaho, postage paid, and addressed as follows:

Original to:

Shelley Keen, Water Allocation Bureau Chief
Idaho Department of Water Resources (IDWR)
Idaho State Office
322 East Front Street, Ste. 648
Boise, Idaho 83702-7371

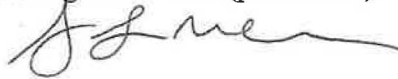
Copies to:

M. Richman, Regional Manager
IDWR Northern
7600 North Mineral Drive, STE 100
Coeur d'Alene, Idaho 83815-7763

Dixie Anne Wolff
533 Preston Ave.
Lewiston, Idaho 83501-4338

Craig A. Johnson, Fishery Biologist
Curt Otto, Realty Specialist
U.S., Department of the Interior
Bureau of Land Management
Cottonwood Field Office
2 Butte Drive
Cottonwood, Idaho 83522-5200

Sandra McCrea
Person Serving Documents (print name)



INFORMAL SETTLEMENT CONFERENCE PROCEDURE

APPLICATION FOR PERMIT

ISSUES

Applications to appropriate the water of the state of Idaho are referred to as applications for permit and are for the development of new water rights. Section 42-203A, Idaho Code, requires the Idaho Department of Water Resources (Department) to consider the following issues in connection with an application for permit:

1. Will the proposed appropriation reduce the quantity of water under existing water rights?
2. Is the water supply sufficient for the purpose for which it is sought to be appropriated?
3. Was the application made in good faith or for delay or speculative purposes?
4. Does the applicant have sufficient financial resources with which to complete the proposed project?
5. Will the proposed use conflict with the local public interest, where local public interest is defined as 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. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?
7. Will the proposed use 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?

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, 3, 4, 6, and 7 above and must provide evidence for the Department to evaluate these criteria.

The initial burden of proof on issue 5 lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for all of these issues.

PROCEDURE

The Department generally conducts an informal settlement conference with the parties to determine the issues and to try to settle a protested matter before the formal hearing process starts. The formal hearing process commences with a prehearing conference, which may require parties to be represented by an attorney.

INFORMAL SETTLEMENT CONFERENCE

The purpose of an informal settlement conference is to provide the opportunity for the parties and the Department to familiarize themselves with a protested matter and to attempt to resolve the matter. At the conference, the Department and the parties will discuss the application and protests, explore settlement options, discuss additional informational needs, evaluate the need for additional informal proceedings or alternative dispute resolution options such as mediation, and discuss the commencement of formal proceedings. When attending the conference, please bring a calendar with your schedule for the next two–six month period from the date of the informal settlement conference for the purpose of scheduling follow-up conferences, if needed.

HEARING

If the parties do not resolve the matter at the informal settlement conference, a formal hearing process may be commenced according to Sections 42-1701A(1) and (2), Idaho Code and the Department's Rules of Procedure. Copies of Idaho Code and the Department's rules are available upon request or by accessing the Department's website at: www.idwr.idaho.gov. The Department records formal hearings, and copies of a hearing recording are available upon request. There may be a charge for reproducing the recording.

If necessary, the hearing will likely be conducted by a hearing officer appointed by the Director rather than by the Director himself. The hearing officer will be designated in a notice of prehearing conference that commences the formal hearing process.

AMERICANS WITH DISABILITIES ACT

Any scheduled conferences or hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please notify the Department no later than ten (10) days prior to the conference or hearing.