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JUL 05 2022

DEPARTMENT OF
WATER RESOURCES

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST
86-12155

July 5, 2022

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."

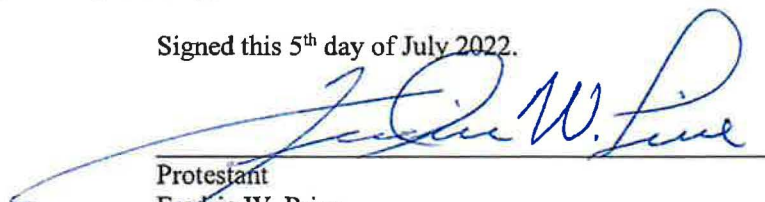
7. What would resolve your protest?

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 _____ Receipted by _____ Receipt # _____

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 McClen
Person Serving Documents (print name)



Idaho Department of Water Resources Receipt
Receipt ID: C113393

Payment Amount	\$25.00	Date Received	7/5/2022	Region	STATE
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Payment Type	Charge Card
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Payer	MCCREA, SANDRA L
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Comments	NOTICE OF PROTEST MATTER BEING PROTESTED: PERMIT# 86-12155 NAME OF PROTESTANT: DIXIE ANN WOLFF PROTESTANT'S REPRESENTATIVE FOR SERVICE (IF ANY): FREDRIC W. PRICE ORDERID: 52796202 LOCAL REFID: RgqqqQ3eakC9GmLINyec/A== TOTAL PAID: \$26.75(FEEs: \$1.75) AUTH_CODE: 036395 REC DATE: 7/5/2022 04:49:23 PM MDT
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Fee Details

Amount	Description	PCA	Fund	Fund Detail	Subsidiary	Object
\$25.00	PROTESTS	56103	0229	21		1155



Signature Line (Department Representative)