

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

RECEIVED
Filing Fee: \$25.00
MAY 23 2022
WATER RESOURCES
WESTERN REGION

This form may be used to file a protest under Sections 42-203A, 42-203C, 42-211, 42-222 or 42-240, Idaho Code. The Department will also accept a timely protest completed in a different format if it contains the same information requested on this form. Each protestant must provide a separate \$25 filing fee for each application protested. The Department's Rules of Procedure (IDAPA 37.01.01) require the protestant to **send a copy of the protest to the applicant.**

1. Matter protested. Application for ☒ Permit ☐ Amendment of Permit ☐ Transfer ☐ Exchange
No. 65-24118 in the name of Colt Brown
2. Protestant's Name: Emmett Irrigation District
Address: 222 E Park St
Telephone: 208-365-4582 Email: emmettirrigationoffice@gmail.com
3. Protestant's Representative: Andrew Griggs
Address: 222 E Park St
Telephone: 208-365-8983 Email: emmettirrigationshop@gmail.com
4. Basis of protest. Clearly state your objections to approval of the application and identify the applicable review criteria. See Instructions for Filing a Notice of Protest for the relevant review criteria.
See attached sheets for basis of protest.

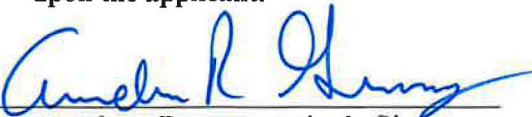
(Additional pages may be attached to describe the basis of your protest.)

Identify any review criteria that are not a basis for your protest:

Resolve by conditions that this water right could never harm the ability for Emmett Irrigation District's
water storage on the Payette River system to refill to maximum capacity after flood control release

5. ☒ Check here if Protestant and Representative will accept service of documents by email at the email address(es) listed under Item #2 and #3 above.

I 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 properly notified, 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.**


Protestant's or Representative's Signature

Andrew Griggs, District Manager
Printed Name and Title (if applicable)

May 19, 2022
Date

\$25.00 fee received by CS

FOR DEPARTMENT USE ONLY

Receipt # W050444

Date 05/23/2022

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

INSTRUCTIONS FOR FILING A NOTICE OF PROTEST

5. In a case where the place of use is outside the watershed or local area containing the source of water, whether the proposed change will adversely affect the local economy of the watershed or local area within which the source of water originates.
6. In a case where the nature of use is changing from agricultural use, whether the proposed nature of use change will significantly affect the agricultural base of the local area.
7. In a case where the water right is for municipal purposes, whether the proposed change is consistent with the requirements for municipal providers.

The criteria the Department must consider when evaluating an application for amendment of permit are set forth in Idaho Code § 42-211.

1. Whether the proposed amendment will result in the diversion and use of more water than originally permitted.
2. Whether the proposed amendment will adversely affect the water rights of others. (Whether the proposed amendment will injure existing water rights.)

The criteria the Department must consider when evaluating an application for exchange are set forth in Idaho Code § 42-240(5).

1. Whether the proposed exchange will injure other water rights.
 2. Whether the proposed exchange will result in an enlargement in use under existing rights.
 3. Whether the proposed exchange is contrary to the conservation of water resources within the state of Idaho.
 4. Whether the proposed change will conflict with the local public interest. ("Local public interest" is defined as the interests of the people in the area directly affected by the proposed use and its effects on the public water resource.)
 5. In a case where the place of use is outside the watershed or local area containing the source of water, whether the proposed exchange will adversely affect the local economy of the watershed or local area within which the source of water originates.
5. Pursuant to IDAPA 37.01.01.053.02.b, the Department may authorize parties to serve documents via email rather than mail or personal service. Check the box if you will accept service of documents, including notices and orders, by email. Please be sure to provide your email address(es) in Item #2 and #3.

Question No. 6 (Basis of Protest)

Emmett Irrigation District ("EID") protests the above-referenced Application for Permit under Idaho Code Section 65-24118 – Colt Brown

Section 42-203A (5) (a): Injury

Application seeks to appropriate 1.8 cfs of North fork Payette River flows from Gold Fork River from March 1 to November 15. Approximately four months of the proposed season of use (March 1 thru July 15) overlap with forecast and rule curve-based federal flood control operations during flood control years. The current position of the Idaho Department of Water Resources ("Department") and the State of Idaho is that senior storage water rights for Cascade and Deadwood Reservoirs are accounted for on a "paper fill" basis. This water right accounting construct is performed year-round and accrues/accounts natural flow to the senior Cascade and Deadwood storage water rights regardless of whether physical storage actually occurs (i.e., the paper fill-based water right accounting construct counts flood control bypass flows and reservoir evacuations against the existing storage rights for Cascade, Deadwood and Payette Lake Reservoirs.

One of the administrative means by which EID is left to preserve the historic status quo (i.e., by preventing the future/further erosion of available "excess" flows used to physically fill Cascade and Deadwood Reservoirs) is protesting new surface water right applications sourced from the Payette River and its tributaries going forward under Idaho Code Section 42-203A(4).

Section 42-203A (5) (e); Conflicts with the Local Public Interest

As noted in the *Comprehensive State Water Plan for the Payette River Basin* (approved and adopted by the Idaho Legislature on February 5, 1999), forecast and rule curve-based flood control operations (i.e., "spill and fill" reservoir operations) are critical to the protection of property and life in the lower Payette River Valley. See, e.g. Id., pp. 39-42; 68-72; and 160-163. Consequently, the Plan memorializes the existence and desirability of these operations and the balance between flood control and beneficial use storage the operations achieve (through the "refilling" of Cascade and Deadwood Reservoirs as and when it is safe to do so for beneficial use storage., as the flood risk wanes). Id., pp. 160-163

Issuing the requested permit in this matter is contrary to the public interest because it jeopardizes the integrity (and balance) of spill and fill flood control operations by widening the gap between 'paper fill' and physical fill of the reservoirs. This, in turn, could regime be providing less public flood control benefit than presently exists.

Section 42-203A (5)(f); Contrary to the Conservation of Water Resources

Cascade and Deadwood Reservoirs contain conservation pools (both for water quality and wildlife/fisheries habitat) and additional water storage increasingly relied upon for downstream anadromous fish flow augmentation. While much of Cascade Reservoir is "uncontracted space," that space is not free to be used for other purposes. Rather that space was formally set aside via NEPA process in 1995 –creating a pool of water supporting a variety of environmental demands integral to local water quality and fisheries, and central to meeting the flow augmentation requirements of the landmark Nez Perce Water Rights Settlement Agreement (and resulting Congressional Act) of 2004. Flows from the Payette River Basin are also integral to meeting downstream Snake River minimum stream flows, particularly at the Weiser Gage.

Issuing the requested permit decreases the quantity of water available to physically fill the reservoirs in flood control years, thereby jeopardizing the conservation, environmental, and water rights settlement-based demands already placed on those stored water supplies.

Reservation of Rights

During the course of these proceedings, additional bases of protest may come to light. EID reserves the right to raise additional contentions as they reveal themselves and as it deems necessary.