



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

April 28, 2022

DOLSBY FAMILY LLC
1509 NORTSHORE DR
SANPOINT, ID 83864

SANDPOINT LAW PC
ATTN: ALISON DUNBAR
312 S FIRST AVE, SUITE A
SANPOINT, ID 83864

RE: Application for Permit No. 96-10624

Dear Parties:

This letter acknowledges receipt of protest against Application for Permit No. 96-10624. Pursuant to the Department's Rules of Procedure (IDAPA 37.01.01), the Department will schedule an Informal Settlement Conference to discuss the application and protests, explore settlement options, and identify any additional information that may assist in settlement discussions. If, after or during the settlement conference, the parties find that settlement is not possible, the Department will initiate formal proceedings by scheduling a Pre-Hearing Conference and identifying a hearing officer to manage the contested case proceedings from that point forward.

To assist the Department in scheduling the Informal Settlement Conference, **please notify Tammy Alleman within 14 days of the date of this letter of any dates you are unavailable to participate in a settlement conference over the next three months.** Unavailable dates may be provided by letter or email. If you do not notify the Department of unavailable dates, we will assume that you are free to participate in the conference on any date selected.

The applicant(s) and protestant(s) are encouraged to discuss the contested case and attempt to resolve the protest prior to the Informal Settlement Conference. The attached document summarizes the procedure use to address a contested application for permit. Please feel free to contact our office if you have questions about the procedures described in this letter. Additional information about water rights and other Department matters is available on the Department's website: www.idwr.idaho.gov

Sincerely,

Tammy Alleman
Administrative Assistant
Tammy.Alleman@idwr.idaho.gov

Enclosure(s)

Informal Settlement Conference Procedure

RECEIVED

APR 22 2022

DEPARTMENT OF WATER RESOURCES

RECEIVED

APR 28 2022

DWR / NORTH

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, and 42-222, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested Application for Permit No. 96-10624, submitted by Dolsby Family LLC

2. Name of protestant Vytautas Julius Smetona

3. Protestant's Representative for service (If different than protestant)
Alison Dunbar, Sandpoint Law, PC.

4. Service mailing address 312 S. First Ave., Ste. A, Sandpoint, ID 83864

5. Service telephone no. (208) 263-4748 Email Address: alison@sandpointlaw.com

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

Please see attached.

(additional pages may be attached to describe nature of the protest)

7. What would resolve your protest? Please see attached.

I hereby, acknowledge that if I, or my designated representative, fails 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 13th day of April, 2022.

Vytautas Julius Smetona
Protestant

[Signature]
Protestant's Representative

NOTE:

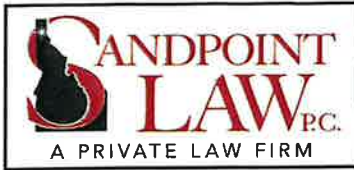
A protestant is required to timely file a protest with the department together with a \$25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."
 2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.
 3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.
 4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.
 5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.
 6. Specifically describe the nature of the protest.
 7. Describe the relief being sought by the protestant.
-

FOR DEPARTMENT USE ONLY

Received by ICA Date 4.22.22 Time 11:30 AM
\$25.00 fee Received by ICA # C112575 Date 4.22.22



April 18, 2022

Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

RECEIVED

APR 22 2022

DEPARTMENT OF
WATER RESOURCES

Dolsby Family LLC
1509 Northshore Drive
Sandpoint, ID 83864

Re: Protest of Application 96-10624

Dear IDWR,

I represent Vytautas Julius Smetona and Catherine Smetona regarding their marital community's protest of Permit Application No. 96-10624, as submitted by Dolsby Family LLC.

The Smetonas purchased their lots over the past few years, and with those lots inherited the current hydroelectric system. The system includes a diversion point on the Smetonas' property, which pipes downhill to the Dolsby property. On the Dolsby property, there are two hydroelectric units, and the same water flows through both units. The first unit is owned exclusively by the Smetonas. The second unit is owned exclusively by the Dolsbys. After the water flows through the Smetonas' unit and through the Dolsbys' unit, the water drains into the forest. The parties jointly own the piping which serves both units. The system is subject to the "Shared Hydro Electric Turbine System Agreement" recorded as Instrument No. 918489, records of Bonner County, Idaho. A copy of that Agreement was submitted with the Dolsby Application. That Agreement, which contains easements and maintenance agreements for the system, sets forth the ownership and easement rights and identifies ownership over each portion of the system.

The system is not permitted, and for that reason the Smetonas tried to work with their previous neighbors to permit and update the system, to no avail. Now, the Smetonas are happy to see that the Dolsbys are interested in permitting the system and working within IDWR's jurisdiction, as the Smetonas would like to rely on the system as intended.

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LICENSED IN IDAHO

While the Smetonas are very happy to see that the Dolsbys want to correct the permitting issue, the Smetonas must object to the permit as filed.

First, the Application is not jointly made with the Smetonas, but the system is a jointly owned system. As there is only one diversion point for the system, the parties should be filing for a joint permit. Further, the Smetonas and their predecessors in interest used the diversion first, and therefore have priority pursuant to § 42-106. In this manner, the Application interferes with the rights of the Smetonas.

Second, the Application claims that the Dolsbys own, operate, and benefit from both Units. That is an oversight, as the Dolsbys do not own, have access to, or benefit from Unit 1. In this manner, the Applicant is seeking to permit something for which it does not receive a beneficial use and is not in compliance with § 42-104.

Third, the Application states that the water is returned to the stream from which it is drawn. This is also an oversight. The water, upon exiting the hydroelectrical system, drains out into a forested area which is not near the creek bed. As such, the application should reflect that the system does not return the water to the source, and that the water is used to irrigate the surrounding vegetation; or it should propose a system to return the water to the stream. In this manner, the Application is inaccurate.

In order to resolve these issues, the Smetonas request that:

1. The Application be denied/withdraw and a joint application be filed; or consideration of the Application be continued, and an amended joint application be filed; and
2. The Application be corrected to provide for the correct ownership and beneficial use of the two Units; and
3. The Application be corrected to reflect that the system does not return the water to its source, but irrigates the surrounding forest land; or be corrected to reflect plans to return the water to its source.

It is the Smetonas' desire to correctly permit the system pursuant to the Idaho Code and IDWR's rules, as well as to work jointly with the Dolsbys.

Sincerely,



Alison M. Dunbar
Attorney at Law

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.