

07/2008

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

RECEIVED

MAR 03 2022

Department of Water Resources
Eastern Region

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 Transfer Number 85695 in the name of PACIFICORP AN OREGON CORP, CHRISTOPHER H MEYER

2. Name of protestant US Fish and Wildlife Service

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

Rachel Esralew, DOI Regions 9/12 Water Resources Branch Chief

4. Service mailing address 911 NE 11th Avenue, Portland, OR 97232

5. Service telephone no. 503-231-2395 Email Address: Rachel_Esralew@fws.gov

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

See the attached memorandum Subject: Protest of Water Right Transfer Application Number 85695 for transfer of Water Right Numbers 11-248, 11-249, 11-250, 11-251

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

7. What would resolve your protest?

See the attached memorandum Subject: Protest of Water Right Transfer Application Number 85695 for transfer of Water Right Numbers 11-248, 11-249, 11-250, 11-251

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 3rd day of March, 2022.

Protestant

RACHEL ESRALEW
Digitally signed by RACHEL
ESRALEW
Date: 2022.03.03 05:55:50 -08'00'

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 Cx H Date 3/3/22 Time 10:11
\$25.00 fee Receipted by Cx H # E047856 Date _____



United States Department of the Interior

FISH AND WILDLIFE SERVICE
911 NE 11th Avenue
Portland, Oregon 97232-4181



March 3, 2022

Idaho Department of Water Resources Eastern Region
900 N Skyline Dr. Suite A
Idaho Falls, ID 83402-1718

Subject: Protest of Water Right Transfer Application Number 85695 for transfer of Water Right Numbers 11-248, 11-249, 11-250, 11-251

Dear Department of Water Resources,

The U.S. Fish and Wildlife Service (Service) submits the enclosed Notice of Protest of Water Right Transfer Application 85695 for the transfer of Water Right Numbers 11-248, 11-249, 11-250, 11-251 filed by filed by PacifiCorp. A \$25 protest fee will be paid at the time of delivery of hard copy of this protest to the IDWR office. The purpose of this memorandum is to provide additional information on the Service's answers to questions (6) and (7) in the Notice of Protest.

Notice of Protest Question 6: Basis of protest (including statement of facts and law upon which the protest is based)

- 1.) The U.S. Fish and Wildlife Service (Service), an agency within the Department of Interior, owns and operates the Bear Lake National Wildlife Refuge (Refuge), which includes the Mud Lake Unit where the transferred point of diversion and place of use of this proposed transfer will occur.
- 2.) The mission of the Service is "working with others, to conserve, protect and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people." The Service manages the National Wildlife Refuge System, where the needs of wildlife and their habitats come first on refuges, in contrast to other public lands that are managed for multiple uses. The National Wildlife Refuge System Administration Act of 1966, as amended) (16 U.S.C. 668dd et seq.) states the mission of the NWRS is "to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plan resources and their habitats within the United States for the benefit of present and future generations of Americans".
- 3.) In 1968, a total of 17,622 acres of land was set aside as Bear Lake National Wildlife Refuge by Public Land Orders 4415 (33 FR 7151) and 4545 (33 FR 19948). Additional lands were added to Bear Lake NWR under authority of the Migratory Bird Conservation Act of 1929 (MBCA; 16 U.S.C. §715d). Withdrawn lands assumed numerous purposes which may be impacted by this transfer, including (but not limited to): 1.) "...for use as

INTERIOR REGION 9
COLUMBIA-PACIFIC NORTHWEST

IDAHO, MONTANA*, OREGON*, WASHINGTON

*PARTIAL

INTERIOR REGION 12
PACIFIC ISLANDS

AMERICAN SAMOA, GUAM, HAWAII, NORTHERN
MARIANA ISLANDS

an inviolate sanctua., or for any other management purpose, for migratory birds.” (16 U.S.C. §715d (MBCA), 2.) ... suitable for – (1) incidental fish and wildlife-oriented recreation development, (2) the protection of natural resources, (3)...” (16 U.S.C. §460k-1 (Refuge Restoration Act (16 U.S.C. §460k-460k-4, as amended)), 3.) “...for the development, advancement, management, conservation, and protection of fish and wildlife resources...” (16 U.S.C. §742f(b)(1)(Fish and Wildlife Act of 1956))

- 4.) The Service objects to Water Right Transfer Application 85695 being approved without assurances that the Applicant has sufficient right-of-way to access property in a manner necessary to operate water management within the Refuge as described in the Applicant's transfer application documentation. The proposed POU and POD under the Applicant's transfer application is within land owned by the Service. The transfer application states that there will not be any new points of diversion from Bear River but alludes to new diversions where there are gates and pumps on the planned reservoir; the Service is requesting clarification on the locations of planned PODs within Service-owned land.
- 5.) The Service objects to Water Right Transfer Application 85695 being approved without assurances that the manner of proposed water use under this transfer will not adversely impact downstream water right holders or any Service-owned water rights in the Bear River Basin.
- 6.) The Service objects to Water Right Transfer Application 85695 being approved without an improved understanding of the methodologies used to calculate consumptive use requirements that the Applicant claims will mitigate water losses that would occur under the proposed transfer.
- 7.) The Service objects to Water Right Transfer Application 85695 being approved because the proposed project supported by this transfer, and described in the Applicant's transfer application, will adversely impact Refuge purpose and mission because of impacts to water use and water quality on the Refuge. This proposed project will result in a conflict of public interest because it will impair the Service's ability to meet their mission as outlined under the Service's authorities described in item (2) and (3) above. The Service's purpose and mission at Bear Lake NWR benefits the American people by serving public interest in protection of natural resources (migratory birds, wetland habitat) and providing recreational opportunities.

Notice of Protest Question 7: What would resolve your protest?

The Service's protest can be resolved if the Applicant can provide assurances to the Service:

- (1) the Applicant has sufficient right-of-way to manage water with new infrastructure under either existing or proposed points of diversions or places of use,
- (2) that the proposed transfer will not adversely impact downstream water right holders or Service-owned water rights in the Bear River Basin, or that the transfer application be granted with terms and conditions that allow for sufficient mitigation measures to sufficiently resolve impacts to downstream water right holders or Service-owned water rights,

(3) that the proposed project described in the transfer application (or possible alternatives to that proposed) will not adversely impact public interest, or that there will be sufficient mitigation measures to avoid these impacts.

If you have any questions or need further information, please contact me at 503-231-2395 (Rachel_Esralew@fws.gov) or Refuge Manager Jeremy Jirak at 208-847-1757 (Jeremy_Jirak@fws.gov). Please send future correspondence to our office address listed below the signature line.

Sincerely,

RACHEL ESRALEW Digitally signed by RACHEL ESRALEW
Date: 2022.03.03 05:52:50 -08'00'

Rachel Esralew
Water Resources Branch Chief
US Fish and Wildlife Service
911 NE 11th Avenue, Portland, OR 97232
Office phone: 503-231-2395
Rachel_Esralew@fws.gov

Enc: (1) Completed Notice of Protest Form
CC (digital copy sent via email):
PacifiCorp
Mark Sturtevant mark.sturtevant@pacificorp.com

Idaho Division of Water Rights
Eastern Regional Office
easterninfo@idwr.idaho.gov