

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

RECEIVED

MAR 21 2022 DE

WATER RESOURCES  
WESTERN REGION

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 Amendment of Permit 63-32423
- 2. Name of protestant MARIAN SHAW in the name of DRY CREEK WATER COMPANY LLC
- 3. Protestant's Representative for service (If different than protestant) NA

4. Service mailing address 13975 N BROKEN HORN RD, BOISE, ID 83714

5. Service telephone no. 208-890-5934 Email Address: meshaw209@gmail.com

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

Please see attached page.

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

7. What would resolve your protest? Deny the application for amendment of Permit 63-32423

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 17 day of MS at Marsh, 20 22.

Marian Shaw  
Protestant

Protestant's Representative

## Basis of Protest

In 2009, the Dry Creek Rural Neighborhood Association (DCRNA) settled a protest with JMM Dry Creek LLC with a Water Rights Agreement describing limits to the use of water right 63-32423. The owner of the property involved is now BHH Investors 1414 LLC, and Dry Creek Water Company LLC is the applicant on an application for amendment of the permit 63-32423. Specifically, a new point of diversion under Transfer No. 73817 is sought. The new well, in addition to the 2 wells already approved, would be a third municipal well to “provide additional redundancy in near term and additional supply to meet maximum day demands at project build-out.”

In 2009, the “historic consumptive use” from the five water rights attached to the property had not been determined. Those rights were ground water (63-2535, 63-4023B, 63-4086B, and 63-7123) and from Dry Creek (63-17454).

The Water Rights Agreement notes “aquifer sustainability and the potential for injury to existing ground water users have not been determined if depletions to the aquifers in the Dry Creek area are increased from historic amounts.”

The Agreement goes on to describe 63-32423 to be for 5.0 cfs for municipal purposes, with diversion rate and volume not to exceed 7.84 cfs and 1764 AFA in combination with Water Rights 63-7123, 63-4086B, 63-17454, 63-4023B, and 63-2535.

Lack of knowledge of the sustainability of the aquifer and the potential for injury to existing ground water users (many of whom have senior water rights, including me) has not changed. The monitoring of wells and reporting of that data to IDWR is condition 14 under permit 63-32423, but diversion of water under the permit is very recent. An Apr 27, 2019 memo from Michele Edl of IDWR to Sean Albertson of SPF states “I understand that the development is still in its early stages and that water has not yet been diverted from the new production wells.” A memorandum from Ashley Ritter to Water Right File No 63-32423 on July 12, 2019 notes that “I called Jason Thompson (SPF), and he stated that the permit holder has recently begun to divert water.” Building of homes is very active at this time, but there is no way to know if the aquifer is enough to support the community at build-out, and diversion from the 2 approved wells is ongoing only since 2018.

The sustainability of the aquifer is unknown. There will surely be more homes, but there will not be more water. To give BHH Investors and Dry Creek Water Company “additional redundancy” at the risk of serious harm to other water right holders and users in Dry Creek Valley is wrong.

**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.

*done MS*

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**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.

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**FOR DEPARTMENT USE ONLY**

Received by LE Date 03/21/2022 Time 1:30pm

\$25.00 fee Received by LE # W050221 Date 03/21/2022