

FEB 08 2021

DEPARTMENT OF
WATER RESOURCESSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**NOTICE OF PROTEST**
Application for Transfer No. 84613
involving 13-00057, 13-00885B, 13-00886B, 13-00887B, and 13-00889D

February 8, 2021

1. Matter being protested

Amended Application for Transfer No. 84613, involving water rights 13-00057, 13-00885B, 13-00886B, 13-00887B, and 13-00889D, filed by Merrill Ranch Partnership, LLC

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).

On December 24, 2020, Merrill Ranch Partnership, LLC ("Applicant"), filed Application for Transfer No. 84613. The transfer seeks to describe a new Permissible Place of Use ("PPU") under 13-00057, 13-00885B, 13-00886B, 13-00887B, and 13-00889D to clearly identify the 610.4 acres. The transfer also proposes to add all the Points of Diversions ("PODs") to all of the rights under this transfer and also change one of the PODs from T13S, R39E, S06, NESW, which entirely describes private land, to an existing POD (T13S, R39E, S06, SENW) which entirely describes federal land managed by BLM. The POD on private under water right 13-00057 (T13S, R39E, S06, NESW) was added under previously approved transfer 77356 (approved 09-20-2011). Water Right 13-00057 is delivered from Stockton Creek, while the remaining water rights (13-00885B, 13-00886B, 13-00887B, and 13-00889D) are diverted from Cottonwood Creek via the Treasureton Canal and injected into Stockton Creek before being rediverted to the Place of Use ("POU").

While the Cottonwood Creek water rights have historically been diverted into the Treasureton Canal in T12S, R38E, S08, SESE, and rediverted out of the Stockton Creek, water right 13-00057 is not authorized to be diverted from the POD located on federal lands within T13S, R39E, S06, SENW, nor be transported across federal land. If the POD on Cottonwood Creek (T12S, R38E, S08, SESE) is added to 13-00057, then a right-of-way ("ROW") would be needed to transport it across federal land within T13S, R38E, S06, NE1/4. A BLM ROW issued under FLPMA is required to access the POD on federal land and to convey 13-00057 across BLM.

POD described on Federal land (BLM):

T13S, R39E, S06, SENW

Conveyance route crossing Federal lands (BLM):

T013S, R39E, S06, Lot 1 (NENE), Lot 2 (NWNE), SWNE, and SENW

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)).

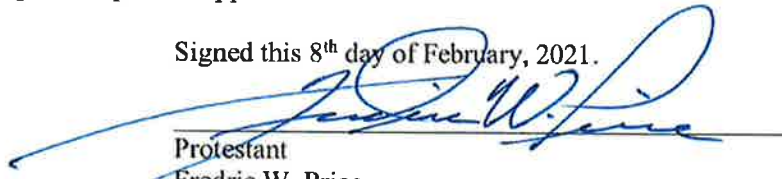
7. What would resolve your protest?

BLM's protest can be resolved by:

- 1.) Withdraw the application; or
- 2.) Applicant seeks and obtains a BLM issued Right-of-Way (ROW") for water right 13-00057 to access the Point of Diversion (POD) on federal lands described as T13S, R39E, S06, SENW (BLM) and transport water right 13-00057 across BLM land in S06:
 - a. 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 8th day of February, 2021.


Protestant
Fredric W. Price
Water Rights Specialist

Attachments:

- ◆Maps prepared by BLM for illustrative purposes.
- ◆Master Title Plat: T12S, R39E; T13S, R39E; and T13S, R38E.

FOR DEPARTMENT USE ONLY

Received by Ku

Date 2.8.2021

Fee Paid \$25.00

Date 2.8.2021

Received by Ku

Receipt # C109906

CERTIFICATE OF SERVICE

I certify that on February 8, 2021 I served a true and correct copy of the **“Protest of Application for Transfer No. 84613”**, 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:

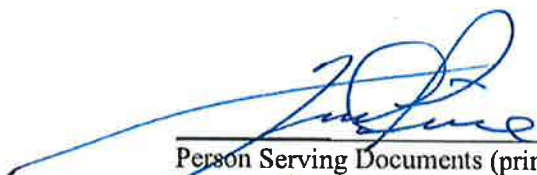
Shelley Keen, Water Allocations Chief
Idaho Department of Water Resources
Idaho State Office
Water Management Division,
322 East Front Street, Ste. 648
Boise, ID 83702-7371

Copies to:

James Cefalo, Regional Manager
Idaho Department of Water Resources
Eastern Regional Office
900 N Skyline Dr., Ste. A
Idaho Falls, ID 83402-1700

Merrill Ranch Partnership, LLC
ATTN: Glen Merrill, Manager
P.O. Box 22
Swan Lake, ID 83281-0022

Melissa Warren, Pocatello Field Office Manager
Danny Miller, Realty Specialist
U.S.D.I., BLM
Pocatello Field Office
4350 Cliffs Dr.
Pocatello, ID 83204-2105



Person Serving Documents (print name)


Signature of Person Serving Documents

B. DESCRIPTION OF RIGHTS AFTER THE REQUESTED CHANGES. IF THE RIGHTS ARE BEING SPLIT, DESCRIBE PORTIONS TO BE CHANGED AS THEY WOULD APPEAR AFTER THE REQUESTED CHANGES.

Total authorized under rights 10.93 cfs and/or acre-feet

3. Point(s) of Diversion:

- ☐ Attach Eastern Snake Plain Aquifer analysis if this transfer property to change. (Proceed to #4.)

Label it **Attachment #5**.

4. Place of use: (If irrigation, identify with number of acres irrigated per $\frac{1}{4}$ $\frac{1}{4}$ tract.)

- ☐ No changes to place of use are proposed - the following chart is therefore not completed. (Proceed to #5.)

Total Acres (for irrigation use)	610.4
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A FLPMA BLM Right-of-Way would be required to divert 13-00057 on federal land and to convey it across federal land.

8 4 6 1 3

BLM Protest: Transfer No. 83614 (Merrill Ranch Partnership, LLC) 13-00057 Before Transfer PODs

IDAHO DEPARTMENT OF WATER RESOURCES Proof Report

12/16/2020

Water Right 13-57

Owner Type **Name and Address**
Current Owner MERRILL RANCH PARTNERSHIP LLC
C/O GLEN MERRILL MGR
PO BOX 22
SWANLAKE, ID 83281

Priority Date: 5/1/1873

Base: Decreed

Status: Active

Source
STOCKTON CREEK

Tributary
OXFORD SLOUGH

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	01/01	12/31	0.480 CFS	
AESTHETIC STORAGE	01/01	12/31		13.6 AF
DIVERSION TO STORAGE	01/01	12/31	0.020 CFS	
Total Diversion			0.500 CFS	13.6 AF

Source and Point(s) of Diversion

STOCKTON CREEK

NWNESW

Sec. 6, Twp 13S, Rge 39E, BANNOCK County

POD on private land.

Place of Use

IRRIGATION within BANNOCK County

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
13S	38E	14			40.0			28.0	20.4	40.0						40.0			168.4

POU Total Acres: 168.4

AESTHETIC STORAGE within BANNOCK County

Twp	Rng	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
13S	38E	13						X											

Conditions of Approval:

1. 01M After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.
2. Transfer 77356 reduces the irrigated acres authorized under right 13-57 from 175.0 acres to 168.4 acres. This reduction provides the 13.6 acre-feet of water associated with the aesthetic storage pond.
3. R63 This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the place of use.
4. 219 Right 13-57 authorizes the diversion of 0.02 cfs and an annual volume of 13.6 acre-feet

[illegible]

Source: Esri, DeLorme, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the

A FLPMA ROW is required to transport WR 13-00057 across federal land and access the POD.

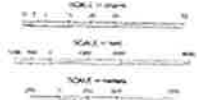
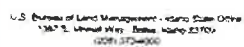


A FLPMA ROW is required to transport WR 13-00057 across federal land and access the POD.

[illegible]

WR 13-00057 POD is entirely described on private lands before transfer. After Transfer proposes to place POD in T13S, R39E, S06, SENW (federal land, BLM). A BLM FLPMA ROW is required to use the POD on federal land and transport 13-00057 across federal land.

WATERFALLS DISTRICT SECT. 7E



The fact that a graph is plotted on the journal of *Energy Management* (Table 1) and use of data and knowledge to make data. Knowledge required for the research can change what, when, where, how, and by whom the research is conducted. The research is conducted by a group of researchers at work. The research is conducted by a group of researchers at work.

The authors report no relationship between the two studies. The data used for the effectiveness study. See the literature review for the design of the effectiveness study.

has primarily to provide the elements of a social infrastructure. The primary activity of corporations in the private sector is to supply the goods and services which are the basis of the social infrastructure.

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Long 111° 57' 15" E

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UNIDENTIFIED LAND REFER TO INDEX OF
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DATA

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2005

DANIEL K. FALKENBERG, PhD

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DOI 10.4773/3-ages-act-01-01-1982
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MISSING LANDSCAPE DOCUMENTS

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U.S. Bureau of Land Management - Alaska State Office
1385 E. Street Way, Suite 1000, Anchorage, AK 99501
(907) 263-4000



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