

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESRECEIVED
NOV 09 2020
Department of Water Resources
Eastern 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 Transfer No 84441 in the name of Bruce + Glenda McConnell

2. Name of protestant David Tomchak

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

Same

4. Service mailing address 1476 Lee Creek Road Leadore, ID 83464

5. Service telephone no. (208) 390-3017 Email Address: tomchak1@yahoo.com

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

See attached pages:

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

7. What would resolve your protest? See attached pages:

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 08th day of November, 20 20.

David R. Tomchak
Protestant

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. 84441 in the name of McConnell."
 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 m. pettis Date 11-9-20 Time 1:57 pm
\$25.00 fee Receipted by m. pettis # E046423 Date 11-9-20

Basis of protest:

Bruce & Glenda McConnell have water rights for Lee Creek only. They do not have water rights for Everson Creek. Here are their filed upon water rights numbers (7 4-361, 7 4-362, 7 4-363, 7 4-364, 7 4-365, 7 4-367, 7 4-368) and the set points where they have existing water rights of 15.2 cfs on Lee Creek at (NENE Sec 30 T16N R25E). If they are allowed to move their 15.2 cfs on Lee Creek to (SWSW Sec 20 T16 R25E) it will be below where Everson Creek feeds into Lee Creek taking water from legitimate water right holders on Everson Creek. The McConnell's have been taking water from Everson Creek water right holders illegally. They have done this by removing the original headgate attached to their water rights for Lee Creek and setting it off to the side of where Lee Creek and their ditch diverge or separate. Not only is this illegal, but it makes it impossible for the water master to control water flow and does not allow water above 15.2 cfs back into Lee Creek's (currently empty) main stream bed (see photo 1). Furthermore, McConnell's have drained Lee Creek into their upper ditch by not having a headgate and are currently irrigating with that water (see photo 2). Presently, the weir that McConnell's are measuring their water with is over ½ mile downstream in their upper ditch, which is not in compliance with established guidelines set forth by the State of Idaho Department of Water Resources (see photo 3). They also have a weir that is on their lower ditch measuring water from Everson Creek that they have no water rights to use (see photo 4). At this time, the McConnell's have 100% of Lee Creek dumping into their upper ditch (see photo 5). McConnell's bottom ditch is located after Everson Creek feeds into Lee Creek and is currently dammed forcing most of the water from Everson Creek/Lee Creek's empty channel into their lower ditch. All of this takes place approximately ½ mile downstream of McConnell's water rights (see photos 6, 7, and 8).

In addition, it appears McConnell's have water rights to the springs located on Rosalee Whitakers property which has nothing to do with Everson Creek's main stream flow. The arrangement as to how they get that spring water to their property is between them and the land owners that the water must cross over and should not have anything to do with the flow of Everson Creek.

Resolution for protest:

A new headgate must be installed along with a weir to measure water flow within 300 feet or by established guidelines set forth by the State of Idaho Department of Water Resources. The new headgate and weir must be placed at (NENE Sec 30 T16N R25E) where McConnell's water rights numbers (7 4-361, 7 4-362, 7 4-363, 7 4-364, 74-365, 7 4-367, 74-368) are originally filed. This new headgate must allow the water master the ability to control water flow so as to channel everything above 15.2 cfs into Lee Creek's normal stream bed and allow it to meet downstream where Everson Creek dumps into Lee Creek's channel (see photo 9). The damming of the water which flows from Everson Creek/Lee Creek at McConnell's lower ditch must be stopped (refer to photos 6-8). McConnell's lower ditch must be removed or blocked off, so as to not take any water from Everson Creek/Lee Creek downstream from where the original water rights are filed on.

Signed this 09th day of November, 20 20

Protestant David R. Joubert



Sent from Yahoo Mail on Android



2 of 3

10:03 AM



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