



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region • 900 N Skyline Drive, Suite A • Idaho Falls ID 83402-1718

Phone: (208) 525-7161 • Fax: (208) 525-7177

Website: idwr.idaho.gov • Email: easterninfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

September 24, 2020

ELAINE SORENSEN
3871 W 2500 N
MOORE, ID 83213

LUKE H. MARCHANT
PO BOX 50130
IDAHO FALLS, ID 83405

SPECK & AANESTAD
JOEL ANDERSON
C/O JAMES P. SPECK
PO BOX 987
KETCHUM, ID 83340

LEONARD VAN EPS
3340 W 3000 N
MOORE, ID 83255

MATEA MCCRAY
KARON HUGGINS
3470 COBBLESTONE LN
IDAHO FALLS, ID 83404

CINDY ARCHER
PO BOX 463
MOORE, ID 83255

JERRY BROWNE
3041 N 3350 W
MOORE, ID 83255

RE: Application for Transfer 84270

Dear Parties:

This letter is intended to acknowledge the receipt of protests against the above referenced application from the following:

- Joel Anderson
- Leonard Van Eps
- Matea McCray & Karon Huggins
- Cindy Archer
- Jerry Browne

Please contact Christina Henman within 14 days from the date of this letter to communicate any dates that you will be unavailable to attend a prehearing conference during the next 3 months. If you do not provide these dates within 14 days, the department will be unable to take your scheduling needs into consideration.

The parties are encouraged to discuss the protest(s) prior to the pre-hearing conference to see if the issues of protest can be resolved prior to the conference. The attached document summarizes the procedure used to address a contested application for transfer. 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,



Christina Henman
Administrative Assistant
Christina.henman@idwr.idaho.gov
(208) 497-3793

Encl: Protest(s)

PRE-HEARING CONFERENCE AND/OR HEARING PROCEDURE APPLICATION FOR TRANSFER

ISSUES

Applications for transfer are filed for the purpose of changing a point of diversion, purpose of use, period of use or nature of use of all or part of a licensed, decreed or statutory water right. Section 42-222, Idaho Code, identifies the following potential issues that the department can consider in connection with an application for transfer:

1. Will the proposed transfer reduce the quantity of water under existing Water Rights?
2. Will the proposed transfer constitute an enlargement in use of the original right?
3. Will the proposed transfer be contrary to the conservation of water resources within the State of Idaho?
4. Will the proposed transfer 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 and its potential effects on the public water source?
5. Will the proposed transfer 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?
6. If the proposed transfer is for a municipal use, is it necessary to provide reasonably anticipated future needs for a municipal service area and is the planning horizon consistent with Sections 42-222 and 42-202B, Idaho Code?
7. Will the proposed transfer change the nature of use from an agricultural use, and would such a change significantly affect the agricultural base of the local area?

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, 3, 5, 6, 7, 8, and 9 above and must provide evidence for the department to evaluate these criteria.

The initial burden of proof on issue 4, if applicable, 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 these issues.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a pre-hearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues to avoid unnecessary proof, identify documents, schedule discovery, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement or make settlement offers, schedule hearings, establish procedure at hearing, and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. When attending the conference, please bring a calendar with your schedule for the next two–six month period from the date of the prehearing conference for the purpose of scheduling a hearing. Parties will be expected to discuss their availability at the prehearing conference for the purpose of scheduling the hearing.

HEARING

A hearing may be conducted 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.

The hearing will likely be conducted by a hearing officer appointed by the Director rather than by the Director himself. If so, the hearing officer will prepare a recommended or preliminary order. Parties can petition for reconsideration of a decision or file exceptions. A brief to support exceptions may request oral argument. Parties may seek judicial review of any final order issued by the Director.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled 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 hearing.

07/2008

RECEIVED
SEP 11 2020
Department of Water Resources
Eastern Region

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 Transfer 84270 in name of Elaine Sorensen
2. Name of protestant Joel Andersen
3. Protestant's Representative for service (If different than protestant)
James P. Speck
4. Service mailing address Speck & Aanestad, A Professional Corporation, PO Box 987, Ketchum, ID 83340
5. Service telephone no. 208-726-4421 Email Address: jim@speckandaanestad.com
6. Basis of protest (including statement of facts and law upon which the protest is based)
One or more of the changes requested by this Application will injure one or more of Protestant's water rights, will constitute an enlargement of one or more of the Applicant's water rights, are not consistent with the conservation of the ground water resources of the State and are not in the local public interest as defined in Idaho Code Section 42-202B.

(additional pages may be attached to describe nature of the protest)
7. What would resolve your protest? Denial of the request to divert any additional water rights from the Applicant's wells in Section 5, T.4N., R.26E., B.M., Butte County.

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 8 day of September, 2020

Protestant

James P. Speck
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 CA H Date 9/11/2020 Time 3:00 pm
\$25.00 fee Receipted by CH # E046282 Date 9/11/2020

JAMES P. SPECK
jim@speckandaanestad.com

DOUGLAS J. AANESTAD
(retired)

SPECK & AANESTAD
A PROFESSIONAL CORPORATION
ATTORNEYS

120 EAST AVENUE NORTH
P. O. BOX 987
KETCHUM, IDAHO 83340

TELEPHONE
(208)726-4421
FACSIMILE
(208)726-0752

September 9, 2020

Jonie Barg
Eastern Regional Office
Idaho Department of Water Resources
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402-1718

Re: Application for Transfer 84270 in the Name of Elaine Sorensen

Dear Jonie:

I represent Joel Andersen. Enclosed you will find the *original* and a copy of a Notice of Protest to the above-referenced Application for Transfer. Please file the original and return a receipt date stamped copy to me by email at my email address stated in the Notice. You will also find our firm's check enclosed made payable to IDWR in the amount of \$25.00 for the Protest fee.

Kindly contact me right away if you have any questions or concerns about the Notice.

Thank you.

Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By:

James P. Speck

Enclosures

cc: Elaine Sorensen (w/enclosure)
Luke H. Marchant (w/enclosure)

07/2008

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
SEP 14 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 84270 IN NAME OF ELAINE SORENSEN
2. Name of protestant LENARD VAN EPS
3. Protestant's Representative for service (If different than protestant)

4. Service mailing address 3340 W 3000N MOORE ID 83255
5. Service telephone no. 208-521-9909 Email Address: LENARD_VANEPS@YAHOO.COM
6. Basis of protest (including statement of facts and law upon which the protest is based)

I LIVE 1/2 MILE FROM THIS APPLICATION SO I WILL BE DIRECTLY
AFFECTED BY THIS TRANSFER BY LOWERING THE GROUND WATER
FOR MY IRRIGATION PUMP. THIS IS NOT CONSISTENT WITH CONSERVATION
OF GROUNDWATER RESOURCES OF THE STATE OF IDAHO DEFINED IN IDAHO
CODE SECTION 42-202 B (additional pages may be attached to describe nature of the protest)

7. What would resolve your protest? DENIAL OF THE REQUEST TO DIVERT ANY
ADDITIONAL WATER RIGHTS FROM THE APPLICANTS WELLS IN SECTION 5,
T. 4N., R. 26E., BUTTE COUNTY.

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 14 day of SEPTEMBER, 2020.

Lenard Van EPS
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. _____ in the name of _____."
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 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 OA kh Date 9/14/2020 Time _____

\$25.00 fee Receipted by ad # E046291 Date 9/14/2020

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

SEP 14 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 84270
2. Name of protestant MATEA McCray, Karon Huggins
3. Protestant's Representative for service (If different than protestant)
N/A
4. Service mailing address 3470 Cobblestone Ln. Idaho Falls, ID 83404
5. Service telephone no. 208-360-2826 Email Address: mateamccray@gmail.com
6. Basis of protest (including statement of facts and law upon which the protest is based)
Attached.

(additional pages may be attached to describe nature of the protest)
7. What would resolve your protest? _____

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 14th day of September, 20 20.

Protestant Matea McCray for Karon Huggins; Matea McCray

Protestant's Representative Matea McCray

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 _____."
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 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 CH dh Date 9/14/2020 Time 2:00 pm
\$25.00 fee Received by CH # E046290 Date 9/14/2020

Idaho Dept of Water Resources
900 N. Skyline Drive Suite A
Idaho Falls, Idaho 83402

Date: 9/14/2020

Subject: Protest to Application ID #84270 (Luke H Marchant, Elaine R Sorensen) From Matea McCray and Karon Huggins

Understanding the following:

- A. The # 1 priority for water rights in the State of Idaho is domestic wells per Article XV, Section 3 of the Constitution of the State of Idaho;
- B. Section 1 of the 14th Amendment to the US Constitution states, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.";
- C. The Big Lost River has been empty of water during the irrigation season on the lower (Arco) end of the river since IDWR allowed the "West and East Channel of the river" designation and even after the adjudication;
- D. Natural waterways and the river are the mechanisms for domestic well (groundwater) recharge;
- E. That under "Conjunctive Management", ground water and surface water are "one in the same".

We object to any and all water right transfers that result in any one through all of the following 7 harmful practices:

- 1) Any water being transferred from in-district to out-of-district should be denied. The only recharge (year round) of irrigation wells and water table outside of the district should take place during the times of flood conditions on the Big Lost River and every water way and every person with a water right should be allowed to recharge their land and water table during that time, equally. Those irrigation wells outside of the district need to impact their own groundwater table for crop irrigation, not District 34's.
- 2) Any water right that is being moved from a tract of land that held both a surface and groundwater right for the same acreage should not be expanded for use on previously unfarmed acreage elsewhere unless comparable acreage from the original place of use is abandoned.
- 3) All transfers and changes to the points of diversion allowed off of the river or other waterways are subject to shrink along the route. Downstream landowners on that diversion must be notified individually, by mail, of the proposed change to that water system by IDWR so that they can determine the impact to their water rights/land. The descriptions of the changes in the Legal Notices section of newspapers are woefully inadequate for an average person to analyze how the proposed changes will impact their property.
- 4) Piping delivery systems and lined canals (to prevent shrink) further exacerbate the lack of domestic well recharge.
- 5) No one should ever be allowed to "assume" or claim an "abandoned" water right except for the individual that owns the land that water right was originally on. Unused water rights should go to "next in time" and stay within the system. IDWR has a moratorium on irrigation wells in Basin 34 because that basin is already over appropriated as apparent from an empty river.
- 6) Any large holding ponds should not be allowed to fill during the non-irrigation season when there is no water in the river below the city of Arco. The only water that should be delivered to holding ponds is

water delivered during flood conditions in the spring or water being delivered per one's water rights during the irrigation season.

7) There is no remaining "waste water" to be consumed for irrigation purposes in Basin 34. Any waste water available as identified by applicants as "waste" that does not naturally and currently terminate on applicant's property is water that flows through downstream property owner's land that would be damaged by giving that water to the applicant for additional irrigation purposes.

Harm from Practices 1-7 above are obvious due to the fact that IDWR has allowed the lower end of the Big Lost River to go dry for most of the year over the past 30 years. This resulted in devastating impacts to the City of Arco and everyone in the Southern part of Butte County with hundreds of domestic wells running dry at the expense of the domestic well owners to subsidize a select few farmland irrigators. Additionally, senior water right owners have been denied their irrigation water under the guise of "futile call" in the river caused by these practices. Irrigation water delivery systems have been allowed to be removed at the expense of many for the benefit of few, which prevented delivery of deeded water rights. To allow these corrupt practices "knowingly" harms everyone on the lower end of the river and benefitting a few "elite" at the expense of "many" goes against the US Constitution (Item B) above.

Thank You,

Matea McCray . 9/14/2020.
Matea McCray for Karon Huggins 9/14/2020
Matea McCray
3470 Cobblestone Ln.
Idaho Falls, Idaho 83404

Karon Huggins
2132 N 2900 W
Arco, Idaho 83213

07/2008

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
SEP 14 2020
Department of Water Resources
Eastern Region

NOTICE OF PROTEST

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1. Matter being protested Application for transfer 84270 Elaine Sorenson
2. Name of protestant Cindy Archer
3. Protestant's Representative for service (If different than protestant)

4. Service mailing address Cindy Archer P.O. Box 463 Moore Idaho 83255
5. Service telephone no. 208-269-6558 Email Address: rooneysmom@aol.com
6. Basis of protest (including statement of facts and law upon which the protest is based)
these changes requested by this Application will affect me and many more around my property and does not consistent with the conservation of ground water resources of the state and are not in the local public interest as defined in Idaho code section 42-202B
(additional pages may be attached to describe nature of the protest)
7. What would resolve your protest? To Deny the Request to divert Any Additional water rights from Applicants wells in Section 5, T.4N., R.26E., B.M., Butte County

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 10th day of Sept, 20 20.
Cindy Archer
Protestant

Protestant's Representative

NOTE:

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 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 CA dh Date 9/14/2020 Time _____
\$25.00 fee Received by CA dh # E046292 Date 9/14/2020

07/2008

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
SEP 11 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 84270 in the name of Elaine Sorenson
2. Name of protestant Jerry Browne

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

4. Service mailing address 3041 N 3850 W Moore, Idaho 83255
5. Service telephone no. 208-554-4800 Email Address: _____

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

The water right for that well was for 118 inches the proposed enlargement of the water right will injure my ground water right. Water right 34-2424A.

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

7. What would resolve your protest? Deny diverting additional water rights from wells in Section 5, T. 4N, R26E, B.M., Butte County -

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 10th day of September, 20 20.

Jerry L. Browne
Protestant

Protestant's Representative

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 7. Describe the relief being sought by the protestant.
-

FOR DEPARTMENT USE ONLY

Received by CAH Date 9/11/2020 Time 3:00
\$25.00 fee Received by CAH # E046 283 Date 9/11/2020