

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

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JUN 19 2020

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 Permit No. 65-23934 Alana Rathbun and David Rathbun
2. Name of protestant Emmett Irrigation District
3. Protestant's Representative for service (If different than protestant)
Neil Shippy, District Manager
4. Service mailing address 222 E Park St. Emmett, Idaho 83617
5. Service telephone no. 208-365-8983 Email Address: emmettirrigationshop@gmail.com
208-365-4582 emmettirrigationoffice@gmail.com
6. Basis of protest (including statement of facts and law upon which the protest is based)
Please see attached sheet

(additional pages may be attached to describe nature of the protest)
7. What would resolve your protest? With conditions that this water right could never harm the ability for
Emmett Irrigation District's water storage on the Payette River system, to refill to maximum capacity after
flood control release operations.

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 19th day of June, 2020.

Emmett Irrigation District

Protestant

 Neil Shippy, District Manager
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.
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FOR DEPARTMENT USE ONLY

Received by LE Date 06/19/2020 Time 12:00PM

\$25.00 fee Receipted by LE # W048406 Date 06/19/2020

Question No. 6 (Basis of Protest)

Emmett Irrigation District ("EID") protests the above-referenced Application for Permit under Idaho Code Section 65-23934 – Alana Rathbun and David Rathbun

Section 42-203A (5) (a): Injury

Application seeks to appropriate 0.03 cfs of Payette River flows from May 1 to September 30. Approximately four months of the proposed season of use (March 1 thru July 15) overlap with forecast and rule curve-based federal flood control operations during flood control years. The current position of the Idaho Department of Water Resources ("Department") and the State of Idaho is that senior storage water rights for Cascade and Deadwood Reservoirs are accounted for on a "paper fill" basis. This water right accounting construct is performed year-round and accrues/accounts natural flow to the senior Cascade and Deadwood storage water rights regardless of whether physical storage actually occurs (i.e., the paper fill-based water right accounting construct counts flood control bypass flows and reservoir evacuations against the existing storage rights for Cascade, Deadwood and Payette Lake Reservoirs.

One of the administrative means by which EID is left to preserve the historic status quo (i.e., by preventing the future/further erosion of available "excess" flows used to physically fill Cascade and Deadwood Reservoirs) is protesting new surface water right applications sourced from the Payette River and its tributaries going forward under Idaho Code Section 42-203A(4).

Section 42-203A (5) (e); Conflicts with the Local Public Interest

As noted in the *Comprehensive State Water Plan for the Payette River Basin* (approved and adopted by the Idaho Legislature on February 5, 1999), forecast and rule curve-based flood control operations (i.e., "spill and fill" reservoir operations) are critical to the protection of property and life in the lower Payette River Valley. See, e.g. Id., pp. 39-42; 68-72; and 160-163. Consequently, the Plan memorializes the existence and desirability of these operations and the balance between flood control and beneficial use storage the operations achieve (through the "refilling" of Cascade and Deadwood Reservoirs as and when it is safe to do so for beneficial use storage., as the flood risk wanes). Id., pp. 160-163

Issuing the requested permit in this matter is contrary to the public interest because it jeopardizes the integrity (and balance) of spill and fill flood control operations by widening the gap between 'paper fill' and physical fill of the reservoirs. This, in turn, could regime be providing less public flood control benefit than presently exists.

Section 42-203A (5)(f); Contrary to the Conservation of Water Resources

Cascade and Deadwood Reservoirs contain conservation pools (both for water quality and wildlife/fisheries habitat) and additional water storage increasingly relied upon for downstream anadromous fish flow augmentation. While much of Cascade Reservoir is "uncontracted space," that space is not free to be used for other purposes. Rather that space was formally set aside via NEPA process in 1995 –creating a pool of water supporting a variety of environmental demands integral to local water quality and fisheries, and central to meeting the flow augmentation requirements of the landmark Nez Perce Water Rights Settlement Agreement (and resulting Congressional Act) of 2004. Flows from the Payette River Basin are also integral to meeting downstream Snake River minimum stream flows, particularly at the Weiser Gage.

Issuing the requested permit decreases the quantity of water available to physically fill the reservoirs in flood control years, thereby jeopardizing the conservation, environmental, and water rights settlement-based demands already placed on those stored water supplies.

Reservation of Rights

During the course of these proceedings, additional bases of protest may come to light. EID reserves the right to raise additional contentions as they reveal themselves and as it deems necessary.