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MAY 23 2019

Department of Water Resources
Eastern Region

Randall C. Budge, ISB No. 1949
T.J. Budge, ISB No. 7465
RACINE OLSON, PLLP
P.O. Box 1391; 201 E. Center
Pocatello, Idaho 83204-1391
Telephone: 208-232-6101
Fax: 208-232-6109
randy@racineolson.com
tj@racineolson.com

D. Brent Rose
Clyde, Snow & Sessions, P.C.
One Utah Center, Thirteenth Floor
201 South Main Street
Salt Lake City, Utah 84111
Telephone: 801-322-2516
Fax: 801-521-6280
dbr@clydesnow.com

**BEFORE THE DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO**

**IN THE MATTER OF APPLICATION
FOR PERMIT NO. 13-8038 DONALD
KENNEY; BLUE SKIES RANCH LLC**

Applicant.

**PROTEST OF BEAR RIVER
WATER USERS ASSOCIATION**

Bear River Water Users' Association, for and on behalf of its members, (collectively "BRWUA" or "Protestants:") through legal counsel, Randall C. Budge of Racine Olson, PLLP, and D. Brent Rose of the firm Clyde, Snow & Sessions, P.C., hereby protests the above-described Application for Permit (the "Application"). In support of its protest, the Association hereby states as follows:

1. Bear River Water Users Association is a non-profit corporation and cooperative association organized in 1994 to represent its members who are all Bear River Basin water users for the purpose, among other things, of monitoring, protecting, preserving and defending from interference or impairment their respective decreed and appropriated water rights and other contract rights and common interests in and to the natural flow of water in the Bear River and its tributaries and irrigation storage water in Bear Lake.

Receipt
#2045011

2. BRWUA's membership includes the Last Chance Canal Company, West Cache Canal Company, Cub River Irrigation Company, Bear River Canal Company and Idaho and Utah Small Pumper Associations. Collectively, BRWUA's members represent approximately 3000 family farms having a combined irrigated acreage of approximately 151,000 acres in Idaho and Utah.

3. Members of BRWUA hold decreed and other appropriated rights under the respective laws of the States of Idaho and Utah for the diversion and use of the natural flow of water in the Bear River and its tributaries, for irrigation, stock watering and other purposes. The direct flow rights of BRWUA's members are all supplemented with water which is held in storage in Bear Lake and released to them for use pursuant to contracts executed by and between each of the individual members and Utah Power and Light Company, a subsidiary of PacifiCorp.

4. Further, when the natural flow of the Bear River is insufficient to satisfy the water rights of BRWUA's members, the members of BRWUA depend upon the supplemental water supply delivered out of storage in Bear Lake by PacifiCorp in satisfaction of its contractual obligations. The diversion and use of water by the Applicant pursuant to the proposed Application thus adversely impairs the contractual rights of BRWUA's members. The decrease in the natural flow of the Bear River and its tributaries resulting from new appropriations in the Bear River Basin correspondingly increases the already unsustainable demand on Bear Lake storage water which PacifiCorp is obligated to deliver pursuant to its supplemental irrigation water contracts with BRWUA's members.

5. The diversion and use of water by the Applicant pursuant to the proposed Application will adversely impair the decreed, contract and other appropriated water rights of BRWUA's members by diminishing the amount of water flowing naturally in the Bear River and its tributaries to which BRWUA's members have the prior vested right, unless depletion resulting from the Application is fully mitigated by an adequate and satisfactory Mitigation Plan.

6. Protestants protest the Application on the following grounds:

- a. The proposed appropriation will reduce the quantity of water under existing water rights.
- b. The water supply itself is insufficient for the purpose for which it is sought to be appropriated.

- c. The Application is not made in good faith, is made for delay or speculative purposes.
- d. The Applicant has not sufficient resources to complete the work involved.
- e. The proposed use conflicts with the local public interests to the extent that it will have an adverse effect on the full and maximum beneficial use of Protestant's water rights and the economic development established and reliant thereon.
- f. The 0.08 stock water component of the Application fails to comply with the Bear River Ground Water Management Plan by including a mitigation plan that that fully mitigates for depletions to prevent injury to existing water rights.

7. If the Application is to be granted, appropriate terms and conditions must be attached to protect the prior vested water rights of Protestants including but not limited to:

- a. The permit should be issued subject to all prior water rights and supplemental contract rights;
- b. No diversions should be allowed until such time as a mitigation plan has been approved that fully mitigates for depletions to prevent injury to existing water rights in compliance with the Bear River Ground Water Management Plan.

8. Please send notices and correspondence regarding this Protest to:

Randall C. Budge
Racine Olson, PLLP
P.O. Box 1391
Pocatello, Idaho 83204-1391
randy@racineolson.com

D. Brent Rose
Clyde, Snow & Sessions, P.C.
One Utah Center, Thirteenth Floor
201 South Main Street
Salt Lake City, Utah 84111
dbr@clydesnow.com

WHEREFORE, Protestants protest the above-referenced Application and request that approval be denied. Alternatively, if the Application is granted Protestants request that

appropriate terms and conditions be applied to protect the prior and vested natural flow and storage contract rights of Protestants.

DATED this 21st day of May, 2019.

RACINE OLSON, PLLP

By: _____
RANDALL C. BUDGE

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 21st day of May, 2019, I mailed a true and complete copy of the foregoing document in the manner indicated below, to the following:

Idaho Department of Water Resources Eastern Regional Office 900 N. Skyline Drive, Suite A Idaho Falls, Idaho 83402	U.S. Mail
David and Claudia Cottle Bear Lake Watch, Inc., Executive Directors 3539 Brighton Point Drive Salt Lake City, UT 84121 bearlakewatch@aol.com	Email
D. Brent Rose Clyde, Snow & Sessions, P.C. One Utah Center, Thirteenth Floor 201 South Main Street Salt Lake City, Utah 84111 dbr@clydesnow.com	Email
Buffi Morris Senior Property Agent PacifiCorp 1407 W. N. Temple, Suite 110 Salt Lake City, Utah 84116 Buffi.Morris@pacificorp.com	Email


FOR RANDALL C. BUDGE



RANDALL C. BUDGE
randy@racineolson.com

May 21, 2019

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

RECEIVED
MAY 23 2019
Department of Water Resources
Eastern Region

Re: Protest of Application for Permit No. 13-8038

To whom it may concern:

Enclosed please find the original and extra copy of a Ber River Water Users Association, Inc.'s Protest of Application for Permit No. 13-8038, together with a check in the amount of \$25.00 for the filing fee. Please file the original and conform stamp and return the copy in the enclosed stamped and addressed return envelope.

Thank you for your assistance. If you have any questions, please give me a call.

Sincerely,

A handwritten signature in blue ink that reads 'Randy Budge'. The signature is fluid and cursive.

RANDALL C. BUDGE

RCB:ts
Enclosures