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APR 29 2019

DEPARTMENT OF
WATER RESOURCES

IDAHO DEPARTMENT OF FISH AND GAME

SALMON REGION
99 Highway 93 North
Salmon, Idaho 83467

Brad Little / Governor
Ed Schriever / Director

April 26, 2019

State of Idaho Department of Water Resources
ATTN: Jean Hersley, Technical Records Specialist II
322 East Front Street
P.O. Box 83720
Boise, ID 83720

David L. Udy
PO Box 87
Leadore, ID 83464

State of Idaho Department of Water Resources,
Salmon Field Office
ATTN: Cindy Yenter, Water District 170 Watermaster
102 S. Warpath
Salmon, Idaho 83467

Brockway Engineering PLLC
C/O Greg Sullivan
2016 N Washington ST STE 4
Twin Falls, ID 83301

RE: Notice of Protests: Application for Permit No. 74-16205 – Little Timber Creek, tributary to Big Timber Creek and Application for Transfer No. 82751 (Water Right Numbers. 74-49, 74-379, and 74-1856)

Dear Jean, David, Greg and Cindy:

The Idaho Department of Fish and Game (IDFG) has reviewed the above referenced Application for Permit and Application for Transfer submitted by David Udy (Applicant). The Applicant seeks to appropriate 1.0 cfs of public surface water from Little Timber Creek for "high water rights" to irrigate 60 additional acres of previously non-irrigated dry pasture lands from March 15 through November 15. The applicant also seeks to modify and expand the Place of Use (POU) for all three water rights to a single 132 acre permissible place of use (PPU), which overlaps with the majority of the original POU of 74-49. Both the permit application and transfer application have several inconsistencies and unanswered questions.

1. The proposed POD overlaps with four other water rights. Is there ditch capacity to handle additional flows?
2. There are two more points of diversion in the same quarter-quarter section and downstream of the proposed POD. These two points of diversion are the PODs for five additional water rights. Does this application affect these other water rights?
3. The places of use of the three rights are overlapping and limited to a 72-acre boundary. If the transfer is approved, water rights 74-49, 74-379, and 74-1856 should have a combined use limit of 72 acres to prevent enlargement. The applicant states that the remaining 60 acres within the proposed PPU will be irrigated by the proposed water right (Application for Permit 74-16205). Has this overlap been addressed with the applicant?
4. Little Timber Creek is a tributary to Big Timber Creek, a tributary to the Lemhi River, which has a Minimum Streamflow water right (74-14993). The proposed diversion is also upstream from Minimum Streamflow rights 75-14184 and 79-14119. Will these minimum streamflows be impacted by this request?
5. IDFG understands that this one of 18 applications in the general vicinity and the biological consequences of these requests individually and collectively need to be analyzed.

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The current Application for Permit does not provide adequate information or detail for us to determine what effect this proposal may have on the aquatic resources in Little Timber Creek, Big Timber Creek or the Lemhi River.

IDFG staff are quite familiar with water use and aquatic habitat conditions in Little Timber Creek, Big Timber Creek, and the Lemhi River. The State of Idaho has invested considerable time and financial resources with many collaborative partners to improve anadromous and resident fish populations in the aforementioned drainages. The purpose of this protest is to assist the Idaho Department of Water Resources (IDWR) by providing technical information addressing potential effects on anadromous fish and how any adverse effects might be mitigated. Little Timber Creek, Big Timber Creek, and the Lemhi River are important spawning and rearing habitat for a variety of ESA listed fish. The proposal submitted by the applicants may potentially affect these species by diminishing or altering the water supply, adversely impacting aquatic and riparian habitat, impairing potential anadromous fish migration, and undermining state, federal, and private efforts to enhance flows and reconnect fragmented habitat throughout Little Timber Creek, Big Timber Creek, Lemhi River and the Upper Salmon River Basin.

In accordance with provisions of I.C. § 42-203A (4) IDFG understands that a formal protest is required to participate in the proposed water right review process. It is part of the role and responsibility of IDFG in fulfilling its mission of protecting, preserving, and managing fish and wildlife resources to provide technical information regarding the potential effects of the proposed water right on these resources and assess how any adverse effects can be avoided, minimized or mitigated. IDFG does not support or oppose the application, but is rather filing this protest to assist IDWR in the decision-making process.

Please initiate the Interagency Billing for the applicable protest fee of \$25.00. The PCA is 19770 and the ABC code is B7/NX. Please send the billing documents to IDFG Headquarters, Attention: Dr. Walt Poole, P.O. Box 25, Boise, ID 83707.

If you have any questions, please contact the Region's Environmental Staff Biologist, Jeff Richards and/or Easement Specialist, Mike Demick at 208-756-2271.

Sincerely,



Tom Curet

Regional Supervisor

TC: md

CC: Walt Poole (IDFG-HQ)
Ann Vonde (Deputy Attorney General)
Gary Vecellio (IDFG-Idaho Falls)
Cindy Yenter (IDWR-Salmon)
Jeff Diluccia (IDFG-Salmon)
Paddy Murphy (IDFG-Salmon)
Jeff Richards (IDFG-Salmon)
Chad Fealko (NOAA-Fisheries-Salmon)
Linda Price (BLM-Salmon)

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Hersley, Jean

From: Demick, Mike <mike.demick@idfg.idaho.gov>
Sent: Tuesday, April 30, 2019 8:32 AM
To: Hersley, Jean
Cc: Poole, Walt
Subject: RE: Protest of application for permit 74-16205 and application for transfer 82751

Hello Jean: Sorry for my math error.

RE: Notice of Protests: Application for Permit No. 74-1502 & Application for Transfer No. 82751.

Please initiate the Interagency Billing for both application protest fees of \$25.00 each (total **\$50.00**). The PCA is 19770 and the ABC code is B7/NX. Please send the billing documents to IDFG Headquarters, Attention: Dr. Walt Poole, P.O. Box 25, Boise, ID 83707.

Mike

From: Hersley, Jean <Jean.Hersley@idwr.idaho.gov>
Sent: Monday, April 29, 2019 2:16 PM
To: Demick, Mike <mike.demick@idfg.idaho.gov>; Richards, Jeff <jeff.richards@idfg.idaho.gov>
Cc: Curet, Tom <tom.curet@idfg.idaho.gov>
Subject: protests of application for permit 74-16205 and application for transfer 82751

The Department received a protest from IDF&G today on application for permit 74-16205 and application for transfer 82751. The letter authorized our Department to initiate Interagency billing for \$25. But because there are two applications on one protest, we are going to need permission to initiate interagency billing for \$50. I have attached the letter for your reference. Thank you.

*Jean Hersley
Idaho Dept Water Resources
Technical Records Specialist II
208-287-4942*