

07/2008

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

SEP 21 2018

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 TRANSFER NO. 82657 TETON PARTNERS, LTD P.O. BOX 276 WATER PARK, FL
2. Name of protestant LEIGH CREEK CANAL CO.
3. Protestant's Representative for service (If different than protestant)
WILLIAM MOULTON PRES. LEIGH CREEK CANAL CO.
4. Service mailing address 4940 N. HIGHWAY 33 TETONIA, ID 83452
5. Service telephone no: 208-313-1255 Email Address: WILLIAMBOYDMOULTON@GMAIL.COM
6. Basis of protest (including statement of facts and law upon which the protest is based)

SEE ATTACHED

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

7. What would resolve your protest? DENIAL OF TRANSFER

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 21 day of SEPT, 20 18.

LEIGH CREEK CANAL COMPANY
Protestant

William Moulton
Protestant's Representative

Receipt - E044388

Basis of Protest

Line 6

Transfer No. 82657

Leigh Creek Canal Company is small water delivery system delivering water from South Leigh Creek in Teton County, Idaho. We distribute water for both shareholders and for some of those same shareholders who also have individual water rights that are also delivered through Leigh Creek Canal Company via a transport agreement. If any of this water is removed from delivery via Leigh Creek Canal Company, damage results to the Company.

As an example, LCCC has a long but very rocky and gravelly canal. We suffer significant water loss due to shrinkage. If the Applicant removes a large portion of the water that has been historically delivered for 131 years, it will compel the remaining water users to suffer the entire shrinkage.

This same principle applies to fees and dues that are required to operate the Canal Company. Fewer payers requires the remainder to pay more to deliver the water. Costs are primarily fixed with very few if any variable costs associated with delivery of water and the maintenance of the Canal. Consequently, costs are largely the same whether 100 cfs is being delivered or 1000 cfs is delivered. The canal doesn't get shorter, insurance doesn't decrease nor does the water masters lose his job. It just cost so much to operate. Losing a contributor to those costs damages the remaining users.

The applicant is a water user who has both shares of LCCC water and individual water rights serviced by a transport agreement with LCCC. In changing his point of diversion, he is working against himself and his fellow shareholders.

Leigh Creek Canal Company is being required by IDWR to construct a weir prior to the 2019 water year. This weir is estimated to cost at least \$12,000.00. To lose water users from LCCC is to force this significant cost upon fewer users who have been providing service to these water rights for over 100 years. Further, the anticipated new diversion does not have a measuring weir, so costs to deliver these water rights will incur doubling costs.

The earliest priority date for the applicant is water right 22-13176 with a priority date of 1897-05-15 for .60 cfs. One other water right delivered by LCCC has the same date and same cfs. The next priorities delivered by LCCC are 1897-06-01 priorities, for a total of 4.00 cfs. The cut-off dates for those priorities will likely be on or very near the same exact date. Moving .60 cfs to another point of diversion to POSSIBLY get another day or two of water does little for the applicant and only damages the other priorities delivered via LCCC. All other priority dates for water rights owned by this applicant are inferior to the 1897-06-01 priorities, therefore, would not be deliverable to the new point of diversion anyway when Water gets too low to fulfill the 1897-06-01 priorities.

In my experience, we seldom have delivery to LCCC later than July 15th of any given year. Many times, the cut-off date is even earlier so any benefit to applicant would be questionable at best. It would only harm the remaining users in decreasing water and revenue.