

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESRECEIVED
MAY 03 2018Department 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 Permit Application 21-13254 by Bunts and Singles, LLC
2. Name of protestant James Hagenbarth, PO Box 1128, Dillon, MT 59725-1128
3. Protestant's Representative for service (If different than protestant)
John Marshall, John Marshall Law PLLC
4. Service mailing address 575 W Bannock St, Ste B, Boise, ID 83702
5. Service telephone no. 208-991-2701 Email Address: john@jmarshalllaw.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? Withdrawal of application

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 20th day of April, 2018.

Protestant

Protestant's Representative

Receipt
2043964

BASIS OF PROTEST
to Application for Permit 21-13524

Applicant proposes to replace two existing ponds on Forest Service property with a new pond on applicant's property using water from a spring located on Forest Service property. Applicant proposes to transfer an existing domestic right to cover evaporative losses and to obtain the new permit for storage and recreation flows during the non-irrigation season. There are numerous legal impediments to this proposal.

The primary problem with the applicant's proposal is that it is wholly dependent on an agreement with the Forest Service that does not exist and is unlikely to ever be obtained. To proceed the applicant would need written permission from the Forest Service to 1) remove existing ponds, 2) acquire the Forest Service water right for the ponds (if one even exists), 3) divert from the spring on the Forest Service property, 4) convey water from the spring across Forest Service property, 5) reconfigure the location of an existing road easement owned by the Forest Service on applicant's property, and 5) move the location of the road on the Forest Service property. Without this permission from the Forest Service the applications are speculative and should be denied for this reason.

Moreover, the applicant's proposal would require permission from protestant to use an existing ditch, and protestant is unwilling to ever provide permission. Consequently, applicant does not have legal authority to either divert or convey the proposed new right or the right proposed for transfer to applicant's property. Consequently, the applications are speculative and both applications fail for this reason.

Additionally, because the application for permit and the proposed transfer are each dependent on the other to provide sufficient water for the proposed pond, the application for permit should be denied because the associated transfer, which seeks to provide water for evaporative losses, will fail based on it being an impermissible enlargement and injuring existing rights. The proposed applications are also inconsistent with the public interest because they will degrade fish habitat.