

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST
Application for Transfer No. 82068

RECEIVED

MAR 12 2018

WATER RESOURCES
WESTERN REGION

March 12, 2018

1. Matter being protested

Application for Transfer No. 82068, involving water right 02-10017, Dale and Jackie Van Es, (Owners) filed by Idaho Water Company, LLC (Buyer)

2. Name of protestant

United States Department of the Interior
Bureau of Land Management
Idaho State Office
1387 South Vinnell Way
Boise, Idaho 83709-1657

3. Protestant's Representative for service (if different than protestant)

Fredric W. Price (contact person)

4. Service mailing address

same as above

5. Service telephone no.

(208) 373-3831

6. Basis of protest (including statement of facts and law upon which the protest is based).

On December 19, 2017, Idaho Water Company, LLC ("Applicant") with SPF Water Engineering LLC ("Representative") filed an Application for Transfer (Transfer No. 82068). The transfer seeks to change the point of diversion (POD) to T06S, R07E, S01, Lot 4 (NWNWNW) which fully describes federal lands (BLM land), an existing pump station. The transfer also seeks to describe a new place of use (POU) which is entirely private lands owned by Deruyter Properties LP.

The applicant and the water right owner are not authorized to use the POD or to divert water across federal land. Neither Idaho Water Company, LLC, nor Deruyter Properties LP has approached BLM to file an application for a Right-of-Way (ROW) to transport 02-10017. The application submits IDI-0016775 as information to support access to the POD, however ROW IDI-0016775 granted access to Robert Rhead for transport of a different water right 02-02379. The applicant does not hold an approved BLM ROW to divert and transport water on or across federal lands.

Trespass on federal land is a prohibited act (43 CFR §2808.10(a)). A water right cannot be established in trespass (See e.g., *In RE General Determination of Rights to Use of Surface and Ground Waters of Payette River*, 107 Idaho 221, 687 P.2d 1348, 1353 (1984); citing, *Lemmon v. Hardy*, 95 Idaho 778, 519 P.2d 1168 (1974); *Jones v. McIntire*, 60 Idaho 338, 91 P.2d 373 (1939); *Bachman v. Reynolds Irrigation Dist.*, 56 Idaho 507, 55 P.2d 1314 (1936); *Short v. Praisewater*, 35 Idaho 691, 208 P. 844 (1922); *Rabido v. Furey*, 33 Idaho 56, 190 P. 73 (1920); *Bassett v. Swenson*, 51 Idaho 256, 5 P.2d 722 (1931)).

7. What would resolve your protest?

BLM's protest can be resolved by:

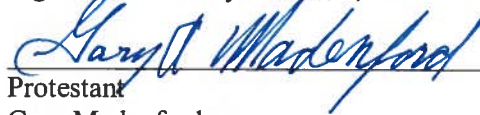
- 1.) Withdrawing the application; or
- 2.) Amend the application to remove the POD on federal lands described as (T06S, R07E, S01, Lot 4 (NWNWNW) and describe the POD on private lands; or
- 3.) Applicant seeks and obtains a new BLM Right-of-Way (ROW") to divert water right 02-10017 across BLM land; and

Add the following limiting conditions to the permit:

- i) "Prior to diversion and use of water under this approval, the right holder shall obtain authorization necessary to access the point of diversion, or place of use, or to convey water across federal lands."
- ii) "This right does not grant any right-of-way or easement across the land of another."

I hereby, acknowledge that if I, or my designated representative, fail 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 12th day of March, 2018.


Protestant

Gary Madenford
Water Rights Team Leader

Attachments:

- ◆Maps prepared by BLM for illustrative purposes.
- ◆Master Title Plats: T06S, R07E and T05S, R07E.

FOR DEPARTMENT USE ONLY

Received by BES

Date 3-12-18

BES

Fee Paid \$25.00

Date 3-12-18

Received by W046127

Receipt # W046127

CERTIFICATE OF SERVICE

I certify that on March 12, 2018, I served a true and correct copy of the "**Protest of Application for Transfer No. 82068**" for Idaho Water Company, LLC with enclosures upon the following individuals by placing the documents in the United States mail in Boise, Idaho, postage paid, and addressed as follows:

Original to:

Nick Miller P.E., Regional Manager
Idaho Department of Water Resources
Western Regional Office
2735 Airport Way
Boise, Idaho 83705-5082

Copies to:

Jeff Peppersack, Administrator
Idaho Department of Water Resources
Idaho State Office
Water Management Division,
P.O. Box 83720
322 East Front Street
Boise, Idaho 83720-0098

Idaho Water Company, LLC
1135 Valley Road South
Eden, Idaho 83325-5245

SPF Water Engineering LLC
c/o Lori Graves
300 East Mallard Drive, Suite 350
Boise, Idaho. 83706-6660

Dale and Jackie Van Es
8222 Desert Drive
Marsing, Idaho 83693-8264

James Tarter, Natural Resource Specialist
Kyle Paffett, Hydrologist
USDI-BLM;
Boise District Office
3948 South Development Avenue
Boise, Idaho 83705-5339

Wells Fargo Financial Leasing Inc.
800 Walnut Street
MAC F4031-050
Des Moines, Iowa 50309-3605
Security Interest: Idaho Water Right 02-10017

Rabo Agrifinance Inc.
14767 North Outer 40 Road, Suite 400
Chesterfield Missouri 63017-2003
Security Interest: Idaho Water Right 02-10017

SANDRA McCREA
Person Serving Documents (print name)


Signature of Person Serving Documents

Idaho Water Company, LLC

Idaho Water Company, LLC does not have an approved ROW for 02-10017. IDI-0 016775 is granted to Robert Rhead.



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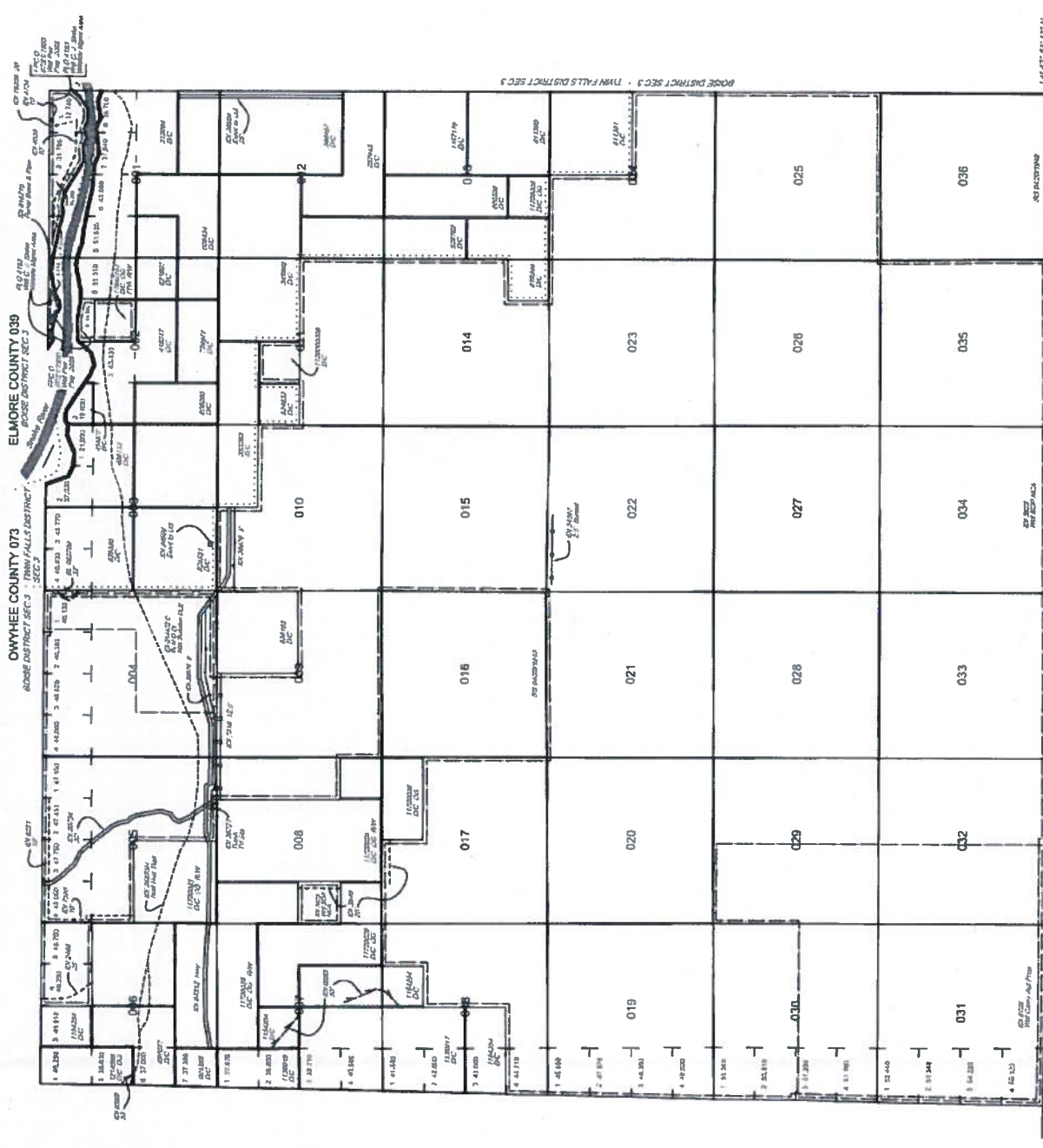
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REVIEW

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U.S. Bureau of Land Management • P.O. Box 250
1307 S. Vinell Way Boise, Idaho 83720
(208) 373-6000



TOWNSHIP 5 SOUTH RANGE 7 EAST OF THE BOISE MERIDIAN, IDAHO

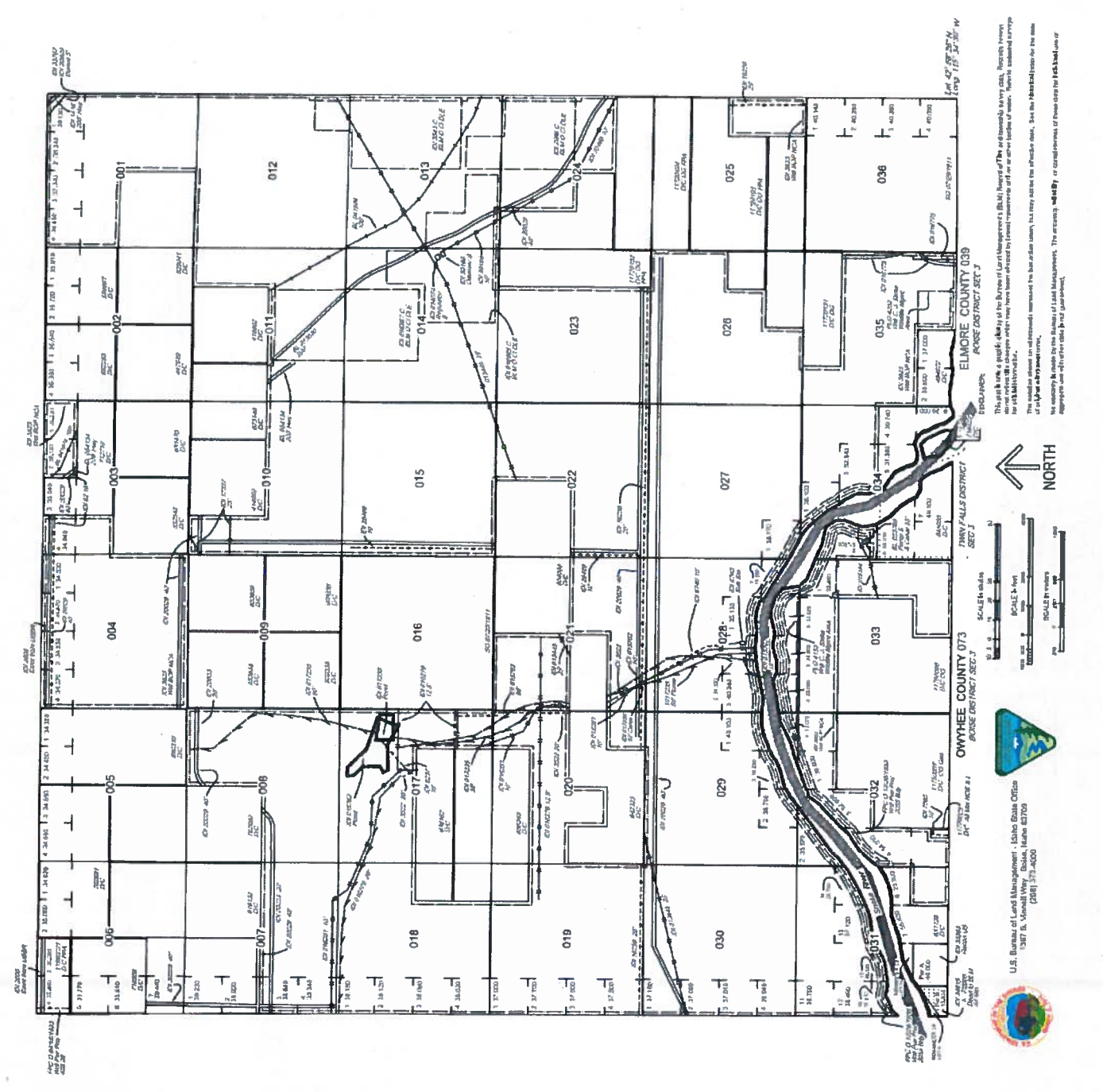
STATUS OF PUBLIC DOMAIN
LAND AND MINERAL TITLES
AND ACQUIRED LANDS

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This plat is a public plat of the Bureau of Land Management (BLM) showing the status of public domain land and mineral titles and acquired lands. The plat is based on the latest available information and is subject to change. The BLM is responsible for the management of public lands and resources, and this plat is a key tool for that purpose. The plat is available for public review and comment, and the BLM encourages the public to provide input on any issues or concerns. The plat is a valuable resource for landowners, developers, and the general public, and it is an important part of the BLM's mission to manage public lands for the benefit of all Americans.

Drawn by:
1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12