

07/2008

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

RECEIVED
AUG 03 2017
DEPT OF WATER RESOURCES
SOUTHERN REGION

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 application 47-17664 Robert and Jana Linderman
2. Name of protestant James Michael Hamilton
3. Protestant's Representative for service (If different than protestant)

4. Service mailing address 526 Sawtooth Ave, Buhl, ID 83316
208-543-6258 home
5. Service telephone no. 208-543-4354 work Email Address: mhamilton@farmersbankidaho.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? see attached

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 2nd day of August, 2017.

James Michael Hamilton
Protestant

Protestant's Representative

FOR OFFICE USE ONLY:

Receipt amount: \$50.00 Date: 8/3/2017
Receipt No.: S036264 By: DM

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6. Basis of protest

1. Will injure an existing right of Mike and Sally K. Hamilton by pulling water out of the unnamed stream for a yard and take away from our instream water rights and stock water rights to our 47 acres that border this property and is utilized by cattle for drinking.
2. When beneficial use is evaluated or examined the agricultural uses of the water down the stream outweigh watering a yard.
3. Applicant has cattle of his own that utilize this water and does not possess a stock water right but probably can utilize an instream right for cattle.
4. Applicant already has a point of diversion under his water right 47-17431 that is not being utilized. Why would the state grant another diversion point when his existing diversion point has not been utilized for over 5 years.
5. The application map shows water usage for ground that is gravel and buildings on approximately 1/2 of the drawing. This is not beneficial use in my opinion.
6. The most economical use of the water is for downstream users with prior appropriation rights to utilize the water for cattle or irrigation.
7. There is a presumed use protection for agriculture utilizing economic value.
8. The water supply in the unnamed stream (J-3 Coulee?) varies and the water supply at times would be insufficient. Water flows depend a lot on what prior appropriators are pulling from Mendini Tunnel.
9. The application is contrary to the conservation of water resources in Idaho.
10. A beneficial use field examination would clarify the above point and proof of beneficial use must be provided.

7. What would resolve the protest?

Mr. Linderman already has an existing water right 47-17431 for .03 CFS of irrigation. On 8-19-93 Jeffrey Wood was issued an aesthetic storage permit 47-8344. When Mr. Linderman purchased the property a pump was placed in the stream that pressurizes at least 3 sprinkler heads that may pump 15-20 GPM each. This pump location is contrary to his permit 47-17431

which has a different point of diversion. Neighbors were witness to Mr. Linderman installing a pump in the stream when he purchased the property. Prior to Mr. Linderman purchasing the property in '13 or '14 the property was not irrigated. The pump or pipe is located where the aesthetic storage permit of 12-28-93 was granted. It is my belief that an aesthetic permit does not grant a water user the right to pump from the creek. The aesthetic permit is not being utilized as the location is covered with limbs and watercress with the pump or pipe below and has negligible aesthetic value.

There are a couple options to correct his existing permit 47-17431 to become legal before any new permits are considered. One option is to require the permit holder to take his water from the point of diversion approved under water right 47-17431. This is not practical because when you take delivery of .03 CFS of water at the approved point of diversion and run it down an open ditch, then across a county road you would not have any water. It should be noted that this point of diversion has not been utilized for many years. If a pipe was installed at the point of diversion it would be costly. Then to cross a county road and obtain easements would be costly.

An option that may be acceptable is to apply for a change in his point of diversion for right 47-17431 for .03 CFS and deny the application 47-17664 to water a yard. The change in the point of diversion would allow him to pump from the creek but it must be monitored to live within the .03 CFS permit. If a permit for a point of diversion change were to be granted it would need to be subordinate to all prior appropriations and waive the priority date. The .03 CFS is to be controlled and only pumped when the water supply is adequate so that prior appropriations will not be damaged and existing easements will be honored under Idaho Code 42-1204 and 42-1209 Chapter 12.

Janice Michael Henth
8-2-17