

07/2008

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

RECEIVED

JUL 24 2017

DEPARTMENT OF
WATER RESOURCES

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 for Transfer No. 81604 in the name of Kerrie N. Cheney and Janis S. Cheney
2. Name of protestant Idaho Water Resource Board
3. Protestant's Representative for service (If different than protestant)

4. Service mailing address PO BOX 83720 Boise, ID 83720-0098
5. Service telephone no. 208.287.4800 Email Address: Cynthia.Clark@idwr.idaho.gov
6. Basis of protest (including statement of facts and law upon which the protest is based)
The language in the Conservation Easement for the parent right (74-15723) and any subsequent splits (74-16084) does not allow for the transfer of the water to a place of use other than what is described in the 2008 Conservation Easement. (See Attachment A)

(additional pages may be attached to describe nature of the protest)
7. What would resolve your protest? Withdrawal of the 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 21 day of JULY, 20 17.

Protestant

CYNTHIA BRIDGE CLARK

Protestant's Representative



NOTE:

A protestant is required to timely file a protest with the department together with a \$25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."
 2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.
 3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.
 4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.
 5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.
 6. Specifically describe the nature of the protest.
 7. Describe the relief being sought by the protestant.
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FOR DEPARTMENT USE ONLY

Received by VC Date 7/24/17 Time 1:52pm
\$25.00 fee Receipted by VC # C108877 Date 7/24/17

CONSERVATION EASEMENT

THIS INDENTURE, made this 20th day of Nov, 2008, by and between Raymond and Margaret Cheney (Grantor), and STATE OF IDAHO, IDAHO WATER RESOURCE BOARD, 322 East Front Street, PO Box 83720, Boise, Idaho 83720-0098 and its successors and assigns, (Grantee);

WITNESSETH: That for and in consideration of the sum of ten dollars and no/100 (\$10.00), lawful money of the United States of America, receipt whereof is hereby acknowledged, the Grantor does hereby grant to the Grantee, its successors, and assigns, forever an easement for conservation purposes to limit the Grantor's withdrawal of water from the Lemhi River to facilitate the migration and habitat for salmon and steelhead. The water right subject to this easement authorizing the diversion of water for irrigation from the Lemhi River is identified as follows: 74-15723 and any subsequent splits. The conservation easement is appurtenant to the following described lands situated in **LEMHI COUNTY**, State of Idaho, to wit:

Township 21N, Range 22E, Section 9 B.M.:

11.8 acres in the NE1/4SE1/4

Township 21N, Range 22E, Section 10 B.M.:

7.8 acres in the NW1/4SW1/4

31.1 acres in the SW1/4SW1/4

35 acres in the SE1/4SW1/4

Subject to the following terms:

1. This easement shall be administered pursuant to an agreement ("Agreement") between the Grantor and Grantee dated 12/15/08. The Agreement shall be subject to amendment or revision by mutual agreement of the parties according to its terms.
2. This easement shall burden and run with the property in perpetuity.
3. This easement shall be recorded in the real property records of Lemhi County and designated appropriately in the official files of the Idaho Department of Water Resources to ensure that the water is regulated accordingly in future years. Water authorized for diversion under water right no. 74-15723 and any subsequent splits shall remain appurtenant to the legal place of use described herein and shall not be subject to administrative actions to transfer or otherwise alienate the water from the land.
4. The diversion of water from the Lemhi River under water right no. 74-15723 and any subsequent splits is permanently restricted under the conservation easement as follows:
 - a) Water shall be regulated by the State of Idaho to provide that 35 cfs of water remain in the Lemhi River below the L-6 diversion 80 percent of the time, and 25 cfs 100 percent of the time between March 15 and June 30, and 25 cfs

between July 1 and November 15 each year in perpetuity as measured at USGS gage 13305310, independent of permanent flows secured beyond 25 cfs.

- b) The water right(s) under this easement are subject to non-diversion as directed by Grantee up to 100 days per irrigation season in order to achieve the target flows in the Lemhi River.

5. In the event that operations pursuant to this Conservation Easement or the Agreement shall be declared illegal or otherwise unenforceable for any reason and the Grantee is prevented from achieving the target flows by a court of competent jurisdiction, the parties shall either amend the Agreement or execute such other instruments and make such other consideration, including but not limited to the purchase of the remainder of water right from the Grantor at fair market value so as to achieve the target flows in the Lemhi River as provided herein.

IN WITNESS WHEREOF the Grantor identified herein executed this Conservation Easement on the date following their signatures.

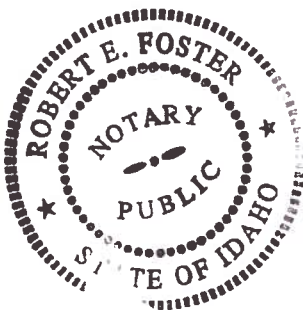
Raymond and Margaret Cheney
(Grantor)

11-29-2008
DATE

ACKNOWLEDGMENT

STATE OF ID)
) ss.
COUNTY OF Lemhi)

The foregoing instrument was acknowledged before me this 20th day of Nov, 2008, by



Robert E Foster
Notary Public
Address: Salem ID
My commission expires: 3-6-2013

State of Idaho) SS No. 279251
County of Lemhi)
This instrument was filed for record at the request
of State of Idaho Water Resource
at 01 o'clock pm 3:31 2009
and duly filed and indexed in the records of Lemhi
County
Terri J. Morton
Ex-Officio Recorder
By Elyrica Carden Deputy
Fee 600
Return to State of Idaho

Cheney Taxlot Map

