

IN THE MATTER OF APPLICATION FOR
PERMIT NO. 11-7829 Applic to Appropriate

[illegible]

**PACIFICORP, AN OREGON CORPORATION
PROTESTANT**

PacifiCorp, an Oregon corporation, whose address is 1407 West North Temple, Suite 110, Salt Lake City, Utah 84116, hereby protests the Amended Application for Permit No. 11-7829 filed April 24, 2017 (“Application”) by Fish Haven Pipeline Co, Inc. (“Applicant”). The protest application fee is hereby submitted by PacifiCorp.

1. Notices. PacifiCorp requests that the Department send notices and correspondence regarding this water right proceeding to:

Buffi Morris
Senior Property Agent
PacifiCorp
1407 W. North Temple, Suite 110
Salt Lake City, UT 84116

2. PacifiCorp Water Rights. PacifiCorp owns water rights in Bear Lake and in the Bear River as decreed in the matter of *Utah Power & Light Company v Last Chance Canal Company, Limited, et al.*, in Equity No. 203, July 14, 1920 (Dietrich Decree), and *Utah Power & Light Company v. Richmond Irrigation Company, et al.*, February 21, 1922 (Kimball Decree), as well as other rights in the Bear River.

Receipt
#ED43074
Rec'd 6/6/17

PacifiCorp's Bear Lake storage water rights authorize PacifiCorp to store Bear River water in Bear Lake "for the development of power or generating electric energy in any power plant which it may now have, or hereafter construct or acquire in or along Bear River, in the states of Idaho and Utah, and for irrigation purposes in what is generally known as Bear River Valley in said states." Dietrich Decree, p. 14. PacifiCorp owns the storage water rights in Bear Lake for power generation and irrigation purposes and delivers supplemental irrigation water to over 156,000 acres of land between the Outlet Canal at Bear Lake and Cutler Dam. The recipients of this supplemental irrigation water have delivery contracts with PacifiCorp.

The irrigation contractors and PacifiCorp also entered into the Amended and Restated Bear Lake Settlement Agreement whereby the irrigation contractors and PacifiCorp agreed to reduce their demand on Bear Lake in order to meet recreational and esthetic demands at Bear Lake.

In addition to its Bear Lake storage rights, PacifiCorp owns significant Bear River water rights in Idaho and Utah for power generation, all located downstream of the proposed Application.

3. Proposed Application. The Application seeks to appropriate public water of the State of Idaho. The Application proposes to divert 0.43 cfs from two (2) existing wells to "provide a replacement water supply for domestic purposes should supplies from spring source under water right no. 11-4270 be reduced or go off."

4. The Proposed Diversion and Use of Water Will Require a Mitigation Plan In August 2001, IDWR designated the Bear River Ground Water Management Area (BRGWMA) in accordance with IDAPA 37.03.11. In February 2003, IDWR issued an order establishing a Management Plan for the BRGWMA (the "Order"). The Order, among other things, requires

that “If a new use [from ground water] depletes the supply of water available to existing prior rights when water is needed to satisfy the beneficial use authorized under a prior right, a new use cannot be permitted unless the injury to the prior right is fully mitigated.” The Application asserts that water used from the well(s) is for replacement of water under water right no. 11-4270 should the spring source be reduced or go off. The Application is submitted as a new appropriation of water, therefore, PacifiCorp questions the necessity of a mitigation plan as required under the Order.

Under Idaho Statute 42-222, IDWR has established, among other things, any person entitled to the use of water represented by a license, a claim, or decree may change the point of diversion, place of use, nature of use or period of use. IDWR has established the mechanism for these aforementioned change(s) to be done under a Transfer Application. If, as the Application asserts, that the use of this water is for replacement only, then a Transfer Application that adds additional points of diversion to the existing statutory claim 11-4270 is the more appropriate method to provide the alternative point(s) of diversion.

However, if the intent, by the nature of the application is to appropriate new water, PacifiCorp asserts that the application requires a mitigation plan as required by the Order, and that as currently submitted should be denied.

5. Conclusion. PacifiCorp respectfully requests that the Application be denied if in fact a proper mitigation plan is required because water from the well is a new appropriation. Alternatively, PacifiCorp requests that the application be resubmitted as a Transfer Application adding the existing wells as new points of diversion.

Dated: June 2, 2017.

PACIFICORP



Buffi Morris, Senior Property Agent

CERTIFICATE OF MAILING

On this 2nd day of June, 2017, a true and complete copy of the foregoing document, was mailed postage prepaid, to the following:

Idaho Department of Water Resources
Eastern Division
900 N, Skyline Drive, Suite A
Idaho Falls, Idaho 83402

Randall C. Budge
Racine Olson Nye Cooper & Budge
P.O. Box 1391
201 E. Center
Pocatello, Idaho 83204-1391

June 2, 2017

Idaho Department of Water Resources
Eastern Regional Office
900 N. Skyline Drive, Suite A
Idaho Falls, ID 83402

RE: Application for Permit 11-7829 Fish Haven Pipeline Co, Inc. PROTEST

To Whom It May Concern:

Enclosed please find PacifiCorp's protest to Application 11-7829 in addition to the protest fee.

Please contact me with questions, direct 801.220.7803 or buffi.morris@pacificorp.com.

Best regards,



Buffi Morris
PacifiCorp
Sr. Property Agent/Water Rights Administrator

Enclosures