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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

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Department of Water Resources
Eastern Region

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 Permit 74-16010 in the name of Lamar Cockerell and Sons LLC
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. 208.287.4848 Email Address: helen.harrington@idwr.idaho.gov
6. Basis of protest (including statement of facts and law upon which the protest is based)
See Attachment

(additional pages may be attached to describe nature of the protest)
7. What would resolve your protest? Use of water a supplemental to existing irrigated

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 24th day of February, 20 14.

Helen J. Harrington, Water Planning Section Mgr, I
Protestant

on behalf of Idaho Water Resource Board
Protestant's Representative

Receipt
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ATTACHMENT A

Application for permit 74-16010 proposes the diversion of 2.24 cfs of water from springs, tributary to sinks via an irrigation ditch. The Idaho Water Resource Board's (Board) review of the application indicates that there may not be a sufficient supply of water to fulfill the water right without adverse effect on the 35 cfs Lemhi River minimum stream flow right (74-14993). Permitting this application may not be in the local public interest because it is inconsistent with the State's efforts to support recovery of Endangered Species Act (ESA) listed fish species in the Lemhi River Basin through voluntary conservation measures that protect existing property rights. An additional water right of 2.24 cfs at the proposed diversion will increase the consumptive use in the Lemhi River Basin, thereby reducing flows to supply the Board's minimum stream flow 74-14993 at the L-6 diversion (See attached stream gage data).

The Lemhi River is home to Chinook salmon, steelhead, and bull trout, all currently listed as Threatened under the ESA. The Idaho Department of Fish and Game (IDFG) and the Idaho Office of Species Conservation's (OSC) Upper Salmon Basin Watershed Program technical team have identified low flow conditions and disconnected tributaries as factors limiting fish production in the Lemhi River Basin. The Board has administered the Water Transaction Program since 2003. Over the past 8 years, the Board has committed over \$6 million dollars toward flow restoration projects in the Upper Salmon River Basin – most of that funding coming from Bonneville Power Administration (BPA) through the Columbia Basin Water Transactions Program (CBWTP) and the Idaho Fish Accords. Over \$3.7 million of these funds were used for flow restoration projects implemented on a voluntary basis by local landowners to meet the minimum stream flow in the Lemhi River.

Priority conservation measures implemented through voluntary agreements include actions to reconnect tributaries with the Lemhi River that were previously inaccessible for fish. These actions focus on improving flow, removing structural barriers and addressing stream and riparian habitat issues. Over the past several years, considerable progress has been made to provide the conditions necessary so that all life stages of ESA listed fish can access prioritized tributaries. In 2004, the State entered into an agreement with the United States and the Nez Perce Tribe to resolve federal instream flow claims filed by the United States on behalf of the Tribe. As part of the 2004 Snake River Water Rights Settlement, the parties agreed to implement a suite of measures to address fish habitat issues in the Salmon and Clearwater Basins. The Salmon/Clearwater Component of the Mediator's Term Sheet provides that the State will establish programs under Section 6 of the ESA funded in part by the State's share of a Habitat Trust Fund. An MOA between the Nez Perce Tribe, the USFWS and NOAA Fisheries establishes a collaborative process for recommending expenditures from the State Section 6 Habitat Fund. The MOA sets forth a Framework for the Implementation of Habitat Actions in the Lemhi River Basin Pursuant to Section II.A.I of the Term Sheet. The Framework guides the implementation actions in the Lemhi Basin. (See Attached Lemhi River Habitat Actions table.)

The goal of the Lemhi Conservation Effort is "to conserve, restore, and enhance sufficient aquatic and riparian habitat to sustain viable fish populations while protecting private property rights and preserving and enhancing the farming and ranching lifestyle and economy of the Lemhi River Basin." (See Attached Overview of the Lemhi River Basin Community Based Habitat Restoration Effort prepared by Clive J. Strong, Deputy Attorney General, Office of the Idaho Attorney General for the Idaho Water Resource Board August 29, 2013 Lemhi Basin tour.) Additional withdrawals of water from flow limited areas is inconsistent with the efforts of the State and local community to craft site specific conservation solutions that support recovery of ESA-listed fish species, and avoid enforcement actions and litigation.

Table 1 – Lemhi River Habitat Actions
Attachment to Framework for the Implementation of Habitat Actions in the Lemhi River Basin Pursuant Section II.A.8 of the Term Sheet

Table 1. Lemhi River Habitat Actions.

Lemhi River Reach/Tributary	Objective	Potential Strategies	Potential Actions
Lemhi River Mouth Reach (Mouth to L6)	Provide fish passage	1) Maintain a minimum flow of 35 cfs at L6 throughout irrigation season by Year 10 of MOA. Maintain interim flow of 35/25 cfs at L6 for first 10 years of MOA: • Mar 15-Jun 30: 35 cfs not less than 80% of the time and 25 cfs not more than 20% of the time • Jul 1-Nov 1: minimum flow of 25 cfs maintained Adaptively manage to ensure passage objective is met (i.e., no undue delays or stress due to lack of flow) 2) Modify the stream channel to consolidate flows and increase water depth for passage 3) Evaluate pool development to create resting/staging areas for migrating fish by year 3 of MOA. 4) Protect riparian vegetation to provide thermal benefits for migrating fish. Evaluation to occur by year 5 of	• Transfer water from S14 on the Salmon River to L6 on the Lemhi River • Convert surface water to groundwater on Salmon River Golf Course and City Park • Lease water rights • Exchange surface water for groundwater/Kid's Creek and sprinklers • Donations of water rights on developed property • Complete an engineering/flow study by habitat specialists to identify specific requirements and appropriate actions • Engineer the design of appropriate structures and implement one project if study concludes feasible and effective by year 3 of MOA • Develop timeline and priority for implementation of each project. Projects designed to improve passage through the remaining critical reaches to be completed by year 15 of the MOA • Validate previous estimates of pool habitat to determine needs • Determine how pools can benefit migrating fish and evaluate risk of flooding • Implementation may occur prior to year 3 of MOA if deemed effective and feasible • Install fence to exclude livestock • Develop grazing rotations

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		MOA.	- Develop conservation easements in floodplains - Re-vegetate riparian areas
Lemhi River Lower Reach (L6 to Agency Creek)	Provide fish passage	1) Protect riparian vegetation to provide thermal benefits for migrating fish. Evaluation to occur by year 5 of MOA. 2) Evaluate pool development to create resting/staging areas for migrating fish.	- Install fence to exclude livestock - Develop grazing rotations - Develop conservation easements in floodplains - Re-vegetate riparian areas - Validate previous estimates of pool habitat to determine needs, - Determine how pools can benefit migrating fish, and if they potential increase flooding. - Implementation may occur prior to year 3 of MOA if deemed effective and feasible
Lemhi River Middle Reach (Agency Creek to Hayden Creek)	Improve rearing conditions for fish	1) Protect riparian areas to provide 80% bank stability. 2) Double the amount of pools that is estimated in the middle reach (from 7% to 14%) by year 20 of MOA 3) Improve the quality of pool habitat and evaluate its effectiveness by year 3 of MOA. Additional projects to	- Validate previous bank stability estimates by year 5 of the MOA to determine the location and protection needs. Implementation may occur within this evaluation period. - Install fence to exclude livestock - Develop grazing rotations - Develop conservation easements in floodplains - Re-vegetate riparian areas - Investigate effectiveness and feasibility by year 3 of the MOA. - Implement one demonstration pool development project during investigation period - Modify stream channel and install natural structure that create pools - Evaluate fish response - Install one demonstration pool development during the 3 year evaluation phase

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Lemhi River Upper Reach (Hayden Creek to Leadore)	Improve spawning and rearing conditions for fish	be implemented by year 20 of MOA if found effective and feasible. 4) Provide off channel habitat that supports fish spawning and rearing.	• Consultation for design and engineering of structures • Evaluate fish response • Survey Lemhi River floodplain and irrigation ditches to identify sites • Consultation for project design and engineering • If feasible, implement one project to create off channel habitat by year 5 of the MOA. • Evaluate other natural/historic channels and irrigation canals for implementation
	1) Preserve the flow regime at the McFarland Campground stream gage. 2) Develop an adaptive management process to develop measures that meet fish needs in the upper river		• Work with water users to prevent the development of future water rights that further deplete mainstem flow. • Evaluate relationship between habitat/flow and fish survival • Potential projects: • Increase stream flow utilizing water banks rentals used to reconnect upstream tributaries • Executing dry year lease options, partial and full season leases • Agreements not to divert through a voluntary water market
	3) Protect riparian areas to provide 80% riparian stability.		• Validate previous bank stability estimates by year 5 of the MOA to determine the location and protection needs. Implementation may occur within this evaluation period • Install fence to exclude livestock, • Develop grazing rotations • Develop conservation easements in floodplains • Re-vegetate riparian areas

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		4) Evaluate the effectiveness of increasing the amount of pools by year 3 of MOA. 5) Provide off channel habitat that supports fish spawning and rearing.	• Validate previous estimates of pool habitat to determine needs, • Determine how pools can benefit fish spawning and rearing • Implement based on evaluation results • Two potential projects identified for reconnection by year 10 of MOA: 1) Lemhi Little Springs Creek/Mill Creek confluence, and 2) Benedict Little Spring Creek • Evaluate other natural/historic channels and irrigation canals for implementation
Lemhi River – Basinwide	Reduce fish entrainment into irrigation ditches.	1) Install fish screens into irrigation canals below the point of diversion. 2) Construct fish barriers at the ditch return to prevent fish from entering the downstream end of canals.	• Inventory the Lemhi basin for fish entrainment by year 5 of MOA • Consultation, project design and engineering • Develop timeline for implementing projects • Inventory the Lemhi basin to determine where backdoor issues exist by year 5 of MOA • Consultation, project design and engineering • Develop timeline for implementing projects
	Improve spawning and rearing conditions for fish	1) Mimic high water events by providing pulses of flow during predetermined times	• Develop a water budget for the upper Lemhi basin by year 5 of MOA • Consultation to determine effectiveness for improving fish habitat. • If feasible, implementation to occur by year 10 of MOA or when high water opportunities occur
		2) Develop off channel habitat, either by reconnecting natural side channels or modifying irrigation canals by year 20 of MOA.	• Survey Lemhi River floodplain and irrigation ditches to identify sites • Consultation for project design and engineering

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	Provide unimpaired fish passage	1) Remove structures that impair fish passage.	• Inventory the Lemhi basin for potential fish barriers • Consultation, feasibility, project design and engineering
Kenney Creek	Provide unimpaired fish passage	1) Provide additional flow	• Acquire water through permanent, seasonal, or dry year leases • Transfer points of diversions and consolidate irrigation ditches in the lower reaches of Kenney Creek to increase flow
	Improve spawning and rearing conditions for fish	2) Remove/modify structures that prevent fish passage	• Modify existing irrigation structures to eliminate fish barriers
		3) Reduce/eliminate entrainment	• Install fish screens to reduce entrainment at numerous unscreened irrigation diversions
		4) Protect riparian areas in the lower reaches of Kenney Creek	• Install fence to exclude livestock, • Develop grazing rotations, • Develop conservation easements in floodplains
Pattee Creek	Provide unimpaired fish passage	1) Provide additional flow	• Consolidate irrigation ditches in Pattee Creek to increase flow, • Acquire water through permanent, seasonal, or dry year leases
	Improve spawning and rearing conditions for fish	2) Remove/modify structures that prevent fish passage	• Modify existing irrigation structures to eliminate fish barriers
		3) Reduce/eliminate entrainment	• Install fish screens to reduce entrainment at numerous unscreened irrigation diversions
		4) Protect riparian areas in Pattee Creek	• Install fence to exclude livestock, • Develop grazing rotations, • Develop conservation easements in

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				floodplains
Wimpy Creek	Provide unimpaired fish passage	1) Provide additional flow	2) Remove/modify structures that prevent fish passage	Consolidate irrigation ditches in the lower reaches of Wimpy Creek, and improve water conveyance from point of diversion to point of use
				Modify existing irrigation structures to eliminate fish barriers
				Install fish screens to reduce entrainment at numerous unscreened irrigation diversions
				- Install fence to exclude livestock - Develop grazing rotations - Develop conservation easements in floodplains
Bohannon Creek	Provide unimpaired fish passage	1) Provide additional flow	2) Remove/modify structures that prevent fish passage	- Consolidate irrigation ditches in the lower reaches of Bohannon Creek, and improve water conveyance from point of diversion to point of use - Acquire water through permanent, seasonal, or dry year leases
				Modify existing irrigation structures to eliminate fish barriers
				Install fish screens to reduce entrainment at numerous unscreened irrigation diversions
				- Install fence to exclude livestock, - Develop grazing rotations - Develop conservation easements in floodplains
Geertson Creek	Provide unimpaired	1) Provide additional flow		Consolidate irrigation ditches in the lower

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	fish passage		- reaches of Geertson Creek, and improve water conveyance from point of diversion to point of use - Acquire water through permanent, seasonal, or dry year leases - Modify existing irrigation structures to eliminate fish barriers - Install fish screens to reduce entrainment at numerous unscreened irrigation diversions - Install fence to exclude livestock, Develop grazing rotations - Develop conservation easements in floodplains
	Improve spawning and rearing conditions for fish	2) Remove/modify structures that prevent fish passage 3) Reduce/eliminate entrainment 4) Protect riparian areas in the lower reaches of Geertson Creek	
Agency Creek	Provide unimpaired fish passage	1) Provide additional flow	- Siphon L31 and L32 irrigation water that intersects Agency Creek to eliminate Agency Creek flow from being directed down these irrigation ditches - Consolidate irrigation ditches in the lower reaches of Agency Creek to increase flow, Acquire water through permanent, seasonal, or dry year leases - Modify existing irrigation structures to eliminate fish barriers - Install fish screens to reduce entrainment at numerous unscreened irrigation diversions - Install fence to exclude livestock, Develop grazing rotations, Develop conservation easements in floodplains
	Improve spawning and rearing conditions for fish	2) Remove/modify structures that prevent fish passage 3) Reduce/eliminate entrainment 4) Protect riparian areas in the lower reaches of Agency Creek	

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Big Timber Creek	Provide unimpaired fish passage	1) Provide additional flow 2) Remove/modify structures that prevent fish passage 3) Reduce/eliminate entrainment	- Siphon L63 irrigation water at the L63/Big Timber Creek intersect to eliminate Big Timber Creek water from being directed down the irrigation ditch - Modify and/or consolidate existing diversion structures in the lower reaches of Big Timber Creek to maintain more flow in the stream channel - Improve conveyance of water to point of use so that less water is withdrawn and flows are increased in Big Timber Creek - Replace the highway 28 culvert with an appropriate fish passage structure - Modify diversion structures and install fish screens.
Big Eightmile Creek	Provide unimpaired fish passage Improve spawning and rearing conditions for fish	1) Provide additional flow 2) Reduce/eliminate entrainment 3) Protect riparian areas in the lower reaches of Big Eightmile Creek	- Siphon L59 irrigation water at the L59/Big Eightmile Creek intersect to eliminate Big Eightmile stream flow from being directed down the irrigation ditch - Consolidate irrigation ditches in the lower reaches and improve conveyance of water from point of diversion to point of use - Acquire water through permanent, seasonal, or dry year leases - Modify diversion structures and install fish screens - Install fence to exclude livestock, - Develop grazing rotations, - Develop conservation easements in floodplains
Little Eightmile Creek	Provide unimpaired fish passage	1) Provide additional flow	Consolidate irrigation ditches in the lower reaches and improve conveyance of water from point of diversion to point of use,

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			2) Reduce/eliminate entrainment	• Acquire water through permanent, seasonal, or dry year leases • Modify diversion structures and install fish screens
Texas Creek *	Provide unimpaired fish passage	1) Reduce/eliminate entrainment		• Modify the existing structure at L63 to improve fish passage for migrating fish
	Improve spawning and rearing conditions for fish	2) Protect riparian vegetation in lower reaches		• Install fence to exclude livestock • Develop grazing rotations • Develop conservation easements in floodplains
Hawley Creek	Provide unimpaired fish passage	1) Provide additional flow		• Improve conveyance of water from point of diversion to point of use • Acquire water through permanent, seasonal, or dry year leases
		2) Remove/modify structures that prevent fish passage		• Replace culverts with appropriate fish passage structures
		3) Reduce/eliminate entrainment		• Replace diversion structure and install fish screen
	Improve spawning and rearing conditions for fish	4) Protect riparian areas in the degraded riparian zones throughout the tributary		• Install fence to exclude livestock • Develop grazing rotations • Develop conservation easements in floodplains
Eighteenmile Creek	Provide unimpaired fish passage	1) Provide additional flow		• Install a structure that prevents Eighteenmile Creek flow from being transported to Canyon Creek, and directs these flows down the historical channel so that a direct connection is made with the Lemhi River • Eliminate diversions and other ditch structures to provide flow and reduce entrainment

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	Improve spawning and rearing conditions for fish	2) Reduce/eliminate entrainment 3) Protect riparian areas throughout the tributary	• Acquire water through permanent, seasonal, or dry year leases • Replace diversion structure and install fish screen • Install fence to exclude livestock, • Develop grazing rotations, • Develop conservation easements in floodplains
Canyon Creek	Provide unimpaired fish passage	1) Provide additional flow	• Improve the structure of the Whitefish ditch/Canyon Creek siphon so that it is 100% effective in separating irrigation water from Canyon Creek
	Improve spawning and rearing conditions for fish	2) Remove/modify structures that prevent fish passage 3) Reduce/eliminate entrainment 4) Protect riparian areas in the lower reaches of Canyon Creek	• Replace culverts that prevent or impair fish passage • Install fish screens in irrigation diversions to reduce fish entrainment • Install fence to exclude livestock, • Develop grazing rotations, • Develop conservation easements in floodplains
Mill Creek	Provide unimpaired fish passage	1) Provide additional flow 2) Remove/modify structures that prevent fish passage 3) Reduce/eliminate entrainment	• Consolidate irrigation ditches in the lower reaches of Mill Creek (e.g. on Ferry Creek), and improve water conveyance from point of diversion to point of use • Modify existing irrigation structures to eliminate fish barriers • Install fish screens to reduce entrainment at several unscreened diversions in the lower

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	stream reaches		
	- Install fence to exclude livestock, - Develop grazing rotations, - Develop conservation easements in floodplains	4) Protect riparian areas in the lower reaches of Mill Creek	Improve spawning and rearing conditions for fish
Big Springs Creek	Install fish barriers at the lower end of screened irrigation ditches to prevent fish entrainment	1) Reduce/eliminate entrainment	Provide unimpaired fish passage
	Prescribe high volume flows to maintain stream channel and remove silt and other fine sediments	2) Improve substrate quality	Improve spawning and rearing conditions for fish
	- Install fence to exclude livestock - Develop grazing rotations, - Develop conservation easements in floodplains	3) Protect riparian areas in the upper reaches of Big Springs Creek	
Lemhi Little Springs Creek	Modify existing irrigation structures to increase flow	1) Provide additional flow	Provide unimpaired fish passage
	Install fish screens to reduce entrainment in unscreened irrigation diversions	2) Reduce/eliminate entrainment	
	- Install fence to exclude livestock, - Develop grazing rotations, - Develop conservation easements in floodplains	3) Protect riparian areas in the lower reaches	Improve spawning and rearing conditions for fish
Lee Creek	Modify existing irrigation structures to increase flow	1) Provide additional flow	Provide unimpaired fish passage
	Install fish screens to reduce entrainment in unscreened irrigation diversions	2) Reduce/eliminate entrainment	

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Improve spawning and rearing conditions for fish	3) Protect riparian areas	• Install fence to exclude livestock, • Develop grazing rotations, • Develop conservation easements in floodplains
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* The lower reach of Texas Creek is proposed for reconnection with the Lemhi River.