

07/2008

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

APR 04 2016

Department of Water Resources
Eastern Region

NOTICE OF PROTEST

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 Refer to letter on file 80-831 20731
2. Name of protestant Lava Frigakom - Wayne Avery
3. Protestant's Representative for service (If different than protestant)

4. Service mailing address 8888 Sunnyside Rd. LHS. Idaho 83246
5. Service telephone no 2087765128 Email Address: Averyckn6@hotmail.com
6. Basis of protest (including statement of facts and law upon which the protest is based)
See attached letter

(additional pages may be attached to describe nature of the protest)
7. What would resolve your protest? not do it

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 4th day of April, 20 16.

Wayne Avery & Wayne Avery
Protestant

Protestant's Representative

Receipt # E041985

TOPAZ IRRIGATION COMPANY

IDAHO DEPT OF WATER RESOURCES 04/04/2016

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This is an objection notice in reference to the Topaz Irrigation Company, Transferring water #29-180, out of their canal and moving it 3 miles downstream and then taking it out of the river. 8 areas of concern listed:

#1) Water is decreed to Canal Co., not an individual.

#2) No mention of how much shrink in the 3 miles of travel. There needs to be a Hydrogeologist to figure out the shrink to protect up steam water users.

#3) I have been around flow meters for 7 years and I know they are not accurate. As soon as a little moss is pumped they no longer work as they should, and therefore the water master cannot regulate the water.

#4) Lava Irrigation was told by Idaho Dept. of Water Resources that if a diversion is moved more than $\frac{1}{4}$ by $\frac{1}{4}$ the Army Core of Engineers must be involved.

#5) The 17.7 reading at the end of irrigation season will be affected as they are in the upper reach and moving it to the lower reach.

#6) Water will not always be available.

#7) The pump should be the appropriate size to pump decreed water. Regulate the size of the pump.

#8) How long will it take for the water to arrive at the diversion point after it is turned down Dempsey creek

Lava Irrigation Company

Wayne Avery/Board Member

Wayne Avery 4-3-16
Tess Avery 4-4-16

Transfer to 80731

Apr. 4. 2016 3:03PM

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APR 04 2016

No. 7328 P. 2

Department of Water Resources
Eastern Region

Lava Irrigation Company Additional Statements for Basis of Protest to Application for Change in Point(s) of Diversion Filed by Topaz Irrigation Company. Transfer No. 80731.

Item 1. Water rights were used to establish pro-rated shares of stock when Topaz Irrigation Company, Limited was formed. (May 25, 1905). Said shares are identified in the original "Articles of Incorporation" of the Topaz Irrigation Company. (Articles of Incorporation are attached.)

Protest Comment (1). Have canal companies (Irrigation Companies) been allowed to have more than one main point of diversion from the waterway serving the Canal (Irrigation) Company or does this application establish a precedent? If this is a precedent, it should be governed by legislation and statute to allow for input from water users statewide to review and comment.

Item 2. Idaho Code 42-108 indicates if the water right or diversion is represented by shares of stock in a corporation, the consent of such corporation is required in order to consider the application.

Protest Comment (2). Topaz Irrigation Company "Articles of Incorporation" indicate there are 784 shares outstanding in the Company but there is no documentation in the application to indicate the majority of the stockholders have approved the request to apply for the additional point of diversion. Furthermore, there is no evidence recorded on the Secretary of State website of who the current stockholders of the Topaz Irrigation Company are and what their prorated shares are and that should be available if the Department of Water Resources is to assure compliance of the consent required in Idaho Code 42-108.

Item 3. Idaho Code 42-108 indicates a change in the point of diversion should not injure the water rights of others and Idaho Code 42-105 indicates when a water right is turned into the channel of a natural waterway and mingled with its water, and then reclaimed, the amount of water to which prior appropriators may be entitled shall not be diminished and due allowance shall be made for loss by evaporation and seepage.

Protest Comment (3) The application indicates a method for prevention of expansion of water rights with the change in the point of diversion through a totalizing flow meter and recognizes there will be transportation losses over the course of the 3-miles of transportation. However, seepage, evaporation, and consumption along the transportation route would need to be specifically identified as each will play a part in transportation losses. The minimum stream flow of the waterways would need to be identified prior to the study determining the transportation losses in order for measurement devices to be effective and a waterway that includes a rise and fall of minimum stream flow may require more measurement devices than the application addresses. A change to the point of diversion should not be allowed unless all studies have been completed in order to protect other water users. The burden of proof there is no injury to other water users should be the responsibility of the applicant of the point of diversion change and not the responsibility of the other water users to prove loss or injury!

Protest Comment (4) Improvements to the existing ditches of the Topaz Irrigation Company, (such as piping the water) could possibly address the needs of the water right holder and enable an increased water flow to the property of the applicant and address conservation issues that cannot be addressed by simply diverting into another waterway and then reclaiming the water "at the location" of the water right holder's property. The application appears to request permission to use water included in the water right that the water right holder has historically been unable to use on a consistent basis because of the existing condition and length of the Irrigation Company's ditch and the lack of water available to fill water user rights.

Lava Irrigation Company Lmt. (Protestant)

Kirk Dick / President (Representative and Title)

Apr. 4. 2016 3:03PM

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Eastern Region

No. 7328 P. 1

ATTENTION:

Eastern Division Idaho Department Water Resources

**Attach further information included in this fax under this
cover sheet to Lava Irrigation Lmt. protest to Topaz
Irrigation Company proposal for change of diversion
point Transfer # 80731. Thank You!! Kirk Irick 251-8095**