

07/2008

STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES

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MAY 09 2016

DEPARTMENT OF  
WATER RESOURCES

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 Application for Permit 74-16042 in the name of Gary R. and Joan Jenson
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)  
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 9 day of May, 2016.

Protestant

Protestant's Representative

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**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.

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**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 di Date 5-9-16 Time 1:12 PM  
\$25.00 fee Receipted by di # 101987 Date 5-9-16

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## ATTACHMENT A

Application for permit 74-16042 proposes the diversion of 0.18 cfs of water from the Lemhi River at the L6 diversion. 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 0.18 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.

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.

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. 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.

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