

07/2008

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

MAY 20 2015

DEPT OF WATER RESOURCES
SOUTHERN 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 Transfer # 79943 Permite # 45-14284
2. Name of protestant Earl Lavell Warthen
3. Protestant's Representative for service (If different than protestant)
Maybe Named at Later Date
4. Service mailing address 1047 S. Hwy 77 Albion, Idaho 83311
5. Service telephone no 208-673-5388 Email Address: _____
6. Basis of protest (including statement of facts and law upon which the protest is based) 42-222
Non use for Irrigation in my past observation
in being in Albion Valley in last 45 years
Plus if this goes through worried of injury to
my Irrigation Well (additional pages may be attached to describe nature of the protest)
7. What would resolve your protest? Deny Transfer.

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 20 day of May, 20 15.
Earl Lavell Warthen
Protestant

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 CBarnes Date 5/20/2015 Time 11:15
\$25.00 fee Receipted by CB # 5034785 Date 5/20/2015

Maline, Denise

From: warthen [warthen@atcnet.net]
Sent: Thursday, May 21, 2015 1:24 PM
To: Maline, Denise
Subject: Fw: Comment Letters for Transfers 79902 & 79943
Attachments: Fw_ Comment Letters for Transfers 79902 & 79943.eml

Denise Maline. Would you please include Brian Higgs Recamondations to my protest I made May 20 2015 at your office . Thank You Earl L Warthen

**ATTACHMENT TO PROTEST
AGAINST 79943**

Maline, Denise

**ATTACHMENT TO PROTEST
AGAINST 79943**

From: Brian Higgs [brian@waterwellconsultants.com]
Sent: Tuesday, May 12, 2015 7:54 AM
To: warthen@atcnet.net
Subject: Fw: Comment Letters for Transfers 79902 & 79943

From: [Brian Higgs](#)
Sent: Tuesday, May 05, 2015 4:43 PM
To: [Maline, Denise](#)
Cc: [William A Parsons](#) ; [Jaxon Higgs](#)
Subject: Re: Comment Letters for Transfers 79902 & 79943

Hi Denise.

I have no comment on transfer #79902.



Transfer #79943 has not been brought forward in good faith. The statements in the application do not represent the facts observed on the ground.

1.A.2 "The new water right..."

1.5.g The box "undergone a period of five or more consecutive years of non-use" is checked.

3.C "There will be no expansion of the acres of irrigation ..."

For verification of these facts see WMIS for these wells.

WMIS number 1000407. Site visit comments state:

"7/2/2014 No longer a well at this gps location"

"7/8/2011 No well, pumps, or electrical improvements observed."

Also see WMIS number 1000166 which is the second well listed as a POD.

"6/30/2012 ... runs a drip system for a few trees... runs the house below..."

One well of the 2 POD's listed does not exist. The small submersible pump in the second well used for the house, that delivers a drip system for a few trees from a spigot, cannot deliver irrigation water for 1 acre nor 67 acres. Obviously, if the surface water was not sufficient the groundwater right was not utilized.

The applicants statement concerning the availability of surface water at the new POD being greater is misleading. There may be more surface water available at the new POD, however, the groundwater was never used at the original POD. In a letter included in the application package, dated 3/26/2015 from G. Erick Powell, to Allen Merritt it states, "transferring of this right...will not cause an expansion of the ground water over historical use." If groundwater has not been historically used an expansion of groundwater use will occur.

In the memorandum dated 4/28/2015 from Jim Bitzenburg, under the statement "Injury to Other Water Rights" Mr. Bitzenburg states, "Information supplied with the application appears to indicate that the right will be used less in the proposed place of use." This is impossible if the right was never used at the old place of use.

The argument that the well was partially decreed in 2010 does not preclude that the fact that use of groundwater from this well is an increase and an expansion of groundwater in the already severely stressed Marsh Creek drainage. The Montgomery's never used this supplemental right while the Albion 12 Investments, a growing and expanding property, infers intentions to use the groundwater every instance surface water is insufficient. That is an expansion.

Thank you.

Brian

From: Maline, Denise
Sent: Tuesday, May 05, 2015 8:33 AM
To: Brian Higgs
Subject: Comment Letters for Transfers 79902 & 79943

Hi Brian,

Attached is a cover letter, recommendation forms and copy of applications for transfer 79902 & 79943. Please review the information and provide any necessary comments within 21 days. Feel free to contact our office if you have any questions.

Thank you in advance,

Denise Maline
Idaho Dept of Water Resources
Administrative Assistant, Southern Region
650 Addison Ave W, Ste 500
Twin Falls, ID 83301
(208) 736-3033
denise.maline@idwr.idaho.gov