

07/2008

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JAN 16 2015

Department of Water Resources
Eastern Region

STATE OF IDAHO
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 Transfer No. 79714 in the name of BLF Land LLC
2. Name of protestant Tim Mayer (agent for U.S. Fish and Wildlife Service)
3. Protestant's Representative for service (If different than protestant)
4. Service mailing address 911 NE 11th Ave, Portland, OR 97232-4181
5. Service telephone no. 503 231-2395 Email Address: tim_mayer@fws.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? Denial of Transfer 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 15th day of January, 20 15.


Protestant

Protestant's Representative

Receipt
#2040565

Attachment for Protest of Transfer Water Right T79714 - Protest Issues

Section 42-222, *Idaho Code*, requires that the Idaho Department of Water Resources (IDWR) examine all the evidence and available information and approve a water right change or transfer if and only if, among other considerations, the proposed transfer does not injure other water rights; the proposed transfer does not represent an enlargement in use of the original right; the water right, or portion thereof, proposed for transfer is a valid water right; and the proposed transfer and use is in the local public interest. The U.S. Fish and Wildlife Service (Service) protests this transfer on the grounds that the subject transfer violates all of these criteria.

Non-use, Forfeiture or Partial Forfeiture, and the Validity of the Right

The area of the Place of Use proposed for transfer under this water right appears to be dry in the map images, based on a quick search of Google Earth imagery from 9/2006, 8/2009, 9/2012, and 10/2013. Google Earth does not have annual imagery available so it is not possible to evaluate water use for every year. We believe that IDWR has additional imagery of the area from other years.

This transfer is very similar to water right transfers 79058 and 79059. Larsen Farms is attempting to transfer water rights from dry corners, fringes, or other areas that are not irrigated consistently because they are outside the reach of the center pivots and are less accessible. The transfers involve areas that, by the applicant's own admission, have only been used intermittently, if at all, and only then, during the beginning and end of the irrigation season, and not to raise crops.

We believe the applicant has not used the water right for these areas and has forfeited the portions of the water rights proposed for transfer. Such use should result in partial forfeiture and a diminishment of the quantity of the right and/or the season of use. Allowing the full transfers to proceed would represent a new demand in a system that is already suffering from large groundwater declines and overallocation.

Water Right Injury

The Camas National Wildlife Refuge is located only a few miles downgradient of the proposed transfer. The U.S. Fish and Wildlife Service (Service) manages wetlands and wet meadows on the refuge to protect birds and other wildlife. The refuge's water supply comes from Camas Creek and groundwater. The Service holds 34 state appropriative water rights for these sources, 18 for surface water and 16 for groundwater. All of the surface water rights and all but one of the groundwater rights is senior to the water rights involved in the proposed Larsen Farm transfers.

The refuge wetlands have not been getting sufficient water for years and have been slowly drying up, in part due to declining groundwater levels and reduced streamflows in Camas Creek. Historically, there were numerous perennial wetlands in the area and now many of these areas are dry or are only intermittently flooded. More than 25% of the refuge wetlands remain dry in any one season because of limited water availability. Long-term monitoring wells in the vicinity of the refuge all show water level declines of about 10-20 feet since 1980, with the rate of decline steepening since about 1990. The

Furthermore, this transfer and the earlier proposed transfers set a dangerous precedent for water rights in the basin and the region. The problems of overallocation and overuse extend beyond the Camas Creek watershed and are widespread in the Snake River Basin. Declines in groundwater levels have been observed regionally and, for the first time, minimum Snake River flows established through the 1984 Swan Falls Agreement are threatened due to drought and groundwater pumping. The IDWR water right mapper and imagery show that many of the water right POUs in the Camas Creek basin and elsewhere across the Eastern Snake River Plain Aquifer include dry corners, fringes, or other areas that are not irrigated consistently, or not at all. To allow transfer of the portions of these previously unused water rights to new areas will increase demand in basins that already appear to be overappropriated and will exacerbate problems with overpumping and groundwater level declines and injury to surface water rights.