

07/2008

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

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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 Application for Transfer of Water Right No. 79059
2. Name of protestant Gary L. Ball, Agent for the U.S. Fish & 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. 503-736-4788 Email Address: gary_ball@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 14th day of February, 20 14.

Protestant

Protestant's Representative

Receipt
E639547

Attachment for Protest of Transfer Water Right T79059 - Protest Issues

Non-use and forfeiture

The area of the Place of Use proposed for transfer under this water right appears to be dry in the map images submitted by the applicant with the transfer application. This same area also appears to have been consistently dry for intermittent years from 1992 to 2013, based on the Google Earth imagery. However, Google Earth does not have annual imagery available so it is not possible to analyze every year. We believe that IDWR has annual imagery of the area and can analyze irrigated areas annually. The fringes and areas of the Place of Use proposed for transfer are likely difficult to irrigate. They are outside the reach of the center pivots and are less accessible. We believe the applicant may have forfeited the portion of the water right proposed for transfer. In this case, the proposed transfer represents a new demand being added to the system. Even if not entirely forfeited through nonuse, the application indicates that water has only been applied to the corners in the extreme early or late parts of the season and on occasional years. Such use would have resulted in partial forfeiture diminishing the quantity of the right and/or the season of use.

Water right injury/Public interest

The Camas National Wildlife Refuge is located 2 miles downgradient of the proposed transfer. The U.S. Fish and Wildlife 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 and the U.S. Fish and Wildlife Service holds state appropriative water rights for both sources. The refuge wetlands have been slowly drying up and not getting enough water for years, in part due to declining groundwater levels and reduced streamflows in Camas Creek. Surface inflows from Camas Creek have declined and seepage losses in the canals and wetlands have increased, resulting in increased water requirements for wetland habitat. The refuge, which at one time had perennial wetlands, now has numerous dry basins. Increased groundwater extraction in the basin will only make these problems worse.

Enforcement

The enforcement of these kinds of transfers is likely problematic. It may be difficult to determine, until well into the season, whether a given fringe or patch of a Place of Use that has been transferred has continued to be irrigated illegally. Transfers such as these will essentially fragment the Place of Use of the rights and create problems with enforcement and regulation of water rights.

Precedent

This transfer sets a dangerous precedent for the area. The IDWR water right mapper and imagery show that many of the water right POUs in the Camas Creek basin include dry corners, fringes, or other areas that are not irrigated consistently, or not at all. Many of these fringes and areas have likely not been irrigated in the past. To allow transfer of the portions of these previously unused water rights to new areas will increase demand in a basin that already appears to be overappropriated and will exacerbate problems with overpumping and groundwater level declines.