



IDAHO DEPARTMENT OF FISH AND GAME

SALMON REGION
99 Highway 93 North
Salmon, Idaho 83467

C.L. "Butch" Otter / Governor
Virgil Moore / Director

January 16, 2014

James Cefalo
Idaho Department of Water Resources
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402

RECEIVED
JAN 22 2014
Department of Water Resources
Eastern Region

RE: Notice of Protest—Application for Permit Water Right No. 74-16008, Mr. Lynn Herbst

Dear Mr. Cefalo:

The Idaho Department of Fish and Game ("IDFG") has reviewed the Application for Permit No. 74-16008 submitted by Mr. Lynn Herbst ("Applicant"), whose address is PO Box 21, Tendoy, ID 83468. The Applicant seeks to appropriate 3.17 cfs of public surface water from an unnamed spring that is tributary to Agency Creek via a constructed ditch. Agency Creek is tributary to the Lemhi River. The proposed beneficial use of spring water is for irrigation from March 15th to November 15th.

IDFG is very familiar with water use and aquatic habitat conditions on this section of Agency Creek and Lemhi River. This section of Agency Creek and Lemhi River is considered critical habitat under the Endangered Species Act ("ESA") for summer Steelhead, Bull Trout, and Chinook Salmon. It also contains resident populations of Rainbow Trout, Westslope Cutthroat Trout and Mountain Whitefish. IDFG staff, along with many collaborative partners, has spent considerable effort and financial resources improving flow and habitat for anadromous and resident fish populations, as well as monitoring the effects of these actions. Fish and Game maintains a fish screen on Agency Creek and has worked collaboratively with the Applicant to pursue resource conservation activities on his property. The proposed Application for Permit submitted by the applicant may be contrary to the local public interest because it is inconsistent with these efforts intended to improve fishery and aquatic habitat resources.

The spring source in question was likely connected to the Lemhi River prior to construction of Highway 93. We do see a benefit of all or a portion of this spring water returning to the Lemhi River either directly or via Agency Creek. Any additional spring flows of this magnitude (> 3.0 cfs) would help improve aquatic habitat conditions and fishery resources in lower Agency Creek and the Lemhi River. Given the applicant has several existing water rights associated with the described place of use, we are concerned that the application represents an enlargement of water

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resources. Since the applicant has likely been using this spring source water previously for irrigation, we would like to work with IDWR to help develop scenarios that can benefit the Applicant and the aquatic resources that IDFG is entrusted to manage. The removal of this spring water reduces stream flow in this area of the Lemhi basin, and potentially impairs future restoration efforts for anadromous fish.

It is the role and responsibility of IDFG, when fulfilling its mission of protecting, preserving, and managing fish and wildlife resources to provide technical information regarding the potential effects of the proposed water right on these resources and assess how any adverse effects can be avoided, minimized, or mitigated. In accordance with the provisions of Idaho Code § 42-203A(4), IDFG understands that a formal protest is required to participate in the water right application review process.

IDFG does not support or oppose the application, but is instead filing this protest to assist the IDWR in the decision-making process.

Please initiate the Interagency Billing for the applicable protest fee of \$25.00. The PCA is 11606 and the ABC code is B7/TX. Please send the billing documents to IDFG Headquarters, Attention: Dr. Walt Poole, P.O. Box 25, Boise, ID 83707.

If you have any questions, please contact the Region's Environmental Staff Biologist, Tom Bassista at 525-7290.

Sincerely,



Tom Curet
Regional Supervisor

SLS: tpb

CC: Walt Poole (IDFG-HQ)
Ann Vonde (Deputy Attorney General)
Sharon Kiefer (IDFG-HQ)
Helen Harrington (IDWR-Boise)
David Kampwerth (USFWS-Chubbuck)
David Mabe (NOAA-Fisheries-Boise)
Lynn Herbst (Applicant)

Cox, Sharla

From: Sutcliffe, Lorna
Sent: Thursday, January 23, 2014 2:01 PM
To: Cox, Sharla
Subject: RE: Interagency Billing 74-16008

BILL0329

Thanks,
Lorna

From: Cox, Sharla
Sent: Wednesday, January 22, 2014 9:24 AM
To: Sutcliffe, Lorna
Subject: RE: Interagency Billing 74-16008

Oops, forgot to add the attachments.

Sharla

*Sharla Cox
Administrative Assistant
Idaho Dept of Water Resources
900 N Skyline Dr. Ste A
Idaho Falls ID 83402
sharla.cox@idwr.idaho.gov
208-525-7161 phone
208-525-7177 fax*

From: Cox, Sharla
Sent: Wednesday, January 22, 2014 9:23 AM
To: Sutcliffe, Lorna
Subject: Interagency Billing 74-16008

Lorna, can you please do an interagency billing for me? Please let me know what the BILL number is.

Amount of Billing: \$25.00

Bill to:
Idaho Dept of Fish & Game
Attn: Walt Poole
PO Box 25
Boise ID 83707

Bill for: Protest for Application for Permit 74-16008 (see enclosed application and protest letter).

PCA 63103

Thank you,