

07/2008

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

NOV 04 2013

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 Notice of Proposed Change of Water Rights Transfer No. 78862
2. Name of protestant Cedars Subdivision Owners Association, Inc.
3. Protestant's Representative for service (If different than protestant)
Thomas J. Holmes, Esq.
4. Service mailing address P O Box 967, Pocatello, ID 82304
5. Service telephone no. (208) 232-5911 Email Address: tholmesid@gmail.com
6. Basis of protest (including statement of facts and law upon which the protest is based)
See attached

(additional pages may be attached to describe nature of the protest)
7. What would resolve your protest? Denial of the proposed change of water right.

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 1 day of November, 2013.

Cedars Subdivision Owners Association, Inc.
Protestant

Protestant's Representative

Receipt
E039270

RECEIVED

NOV 04 2013

Department of Water Resources
Eastern Region

TELEPHONE: (208) 232-5911

FAX: (208) 232-5962

E-MAIL: tholmesid@gmail.com

MR. HOLMES' TELEPHONE EXTENSION: 103

LAW OFFICES
JONES, CHARTERED
203 SOUTH GARFIELD
P.O. BOX 967
POCATELLO, IDAHO 83204-0967

JACK H. ROBISON
THOMAS J. HOLMES

LAMONT JONES (1929-2013)

November 1, 2013

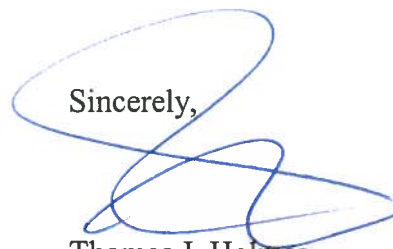
State of Idaho
Department of Water Resources
Eastern Region
900 N. Skyline Drive, Ste A
Idaho Falls, ID 83402

Re: Transfer No. 78862 Donald D. Brown

Dear Ladies and Gentlemen:

Enclosed please find our Notice of Protest along with our protest fee of \$25. A copy is being provided to Mr. Brown.

Sincerely,



Thomas J. Holmes

TJH/ah
cedars110113,11idwr.wpd

Enclosure
cc Clients
Don Brown

LAW OFFICES
JONES, CHARTERED
203 SOUTH GARFIELD
P.O. BOX 967
POCATELLO, IDAHO 83204-0967

JACK H. ROBISON
THOMAS J. HOLMES

LAMONT JONES (1929-2013)

TELEPHONE: (208) 232-5911
FAX: (208) 232-5962
E-MAIL: tholmesid@gmail.com
MR. HOLMES' TELEPHONE EXTENSION: 103

September 12, 2013

Sent Via Regular and Certified Mail

Donald and Phyllis Brown
4285 Bannock Hwy
Pocatello, ID 83204

Dear Mr. and Mrs. Brown:

I've been retained by the Cedar Hills Subdivision Homeowner's Association to advise them regarding continued interference by your alleged agent, Brad Christensen. Could you provide verification to me that Brad Christensen is your agent.

Specifically you have a water right 29-4391 to a spring that is located upon the Cedar Hills Subdivision. Apparently that spring has dried up as have other springs in the area and Brad Christensen is now diverting water from a nearby creek into the spring collection box.

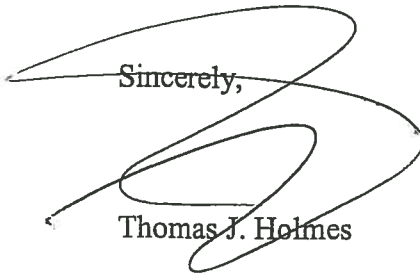
You have no rights to the creek water; your water rights are solely with the spring.

While you have a right to access the spring and maintain it, you and your agents have no right to divert water from the creek. We've requested the water master advise you of that fact, however, Mr. Christensen continues to go up on the property.

We would appreciate it if you would advise if Mr. Christensen is authorized to act as your agent.

Secondly, if he is, we would request that you advise him to no longer trespass upon the rest of the condo property or divert water from the creek. If that action continues, we will have no choice but to take legal action to enjoin you and your agent, if he is your agent, from trespass and an action for recovery of damages.

Sincerely,



Thomas J. Holmes

EXHIBIT

This protest is being filed on behalf of Cedars Subdivision Owners Association, Inc. The Cedars is a large condominium project located on Bannock Highway, Pocatello, Idaho northerly from the property owned by Donald Brown.

The original Cedars Subdivision was commenced in 1970 and various amended plats have been filed from time to time. Attached as Exhibit A is an amended plat.

Cedars Subdivision Owners Association, Inc. protests and disputes Mr. Brown's description in his Application for Water Right Transfer which indicates "I propose to divert surface water that has been the historic hydrology to the spring involved since pre 1939."

Above the Cedar Subdivision is a spring fed lake known as Cedar Lake. A small stream locally known as Buck Creek runs out of Cedar Lake down over various properties under Johnny Creek Road and enters into the Cedars Subdivision near condo unit 80 (Exhibits A, B and C).

It then runs through a culvert under the interior road servicing the condominium project (Exhibit D) and along the road (Exhibit E) down through the project where it exits under Bannock Highway and eventually runs into the Portneuf River.

This summer, apparently, Mr. Brown's spring dried up. Mr. Brown's spring lies in a gully within the condominium project and is some distance from Buck Creek.

Exhibit F is the covered area of Brown's spring and the covering is marked on that depiction. On Exhibit G, the gully in which Brown's spring is located is on the right side of the page and Buck Creek is depicted on the left side by a solid black line.

This summer Don Brown or possibly Brad Christensen acting for him illegally trespassed upon the condominium ground and installed a pipe to drain Buck Creek down the gully into Brown's spring box (Exhibit H). They would dam below the pipe to back up Buck Creek and divert it (Exhibits H, I and J). The dam has been removed. Exhibit K shows the pipe running from Buck Creek across the ridge and then going down to the spring box. Exhibit L shows, looking from the top of the ridge, where the pipe sinks down to the spring box.

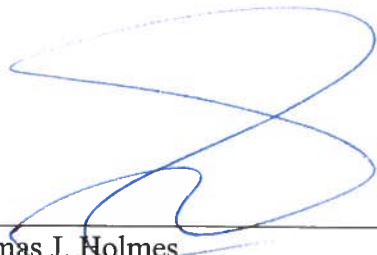
Complaint was made to the Water Master several times who advised Cedars Subdivision Owners Association, Inc. that he had advised Don Brown that his right to the spring gave him no right to Buck Creek. A demand letter (Exhibit M) was served upon Mr. Brown.

Protest is made to dispute any right Mr. Brown claims to Buck Creek. The Cedars Subdivision Owners Association, Inc. was unaware that it needed to file for the historic use that it has used out of Buck Creek since the condominium project was built in the early 1970's. The Association and/or individual unit owners use Buck Creek for irrigation and for aesthetic enhancement of the property. They are in the process of putting together an application for a water right, but it likely will not be completed for several weeks.



We respectfully request that Mr. Brown's application for a transfer be denied. No proof supporting his claim on the hydrology is presented. Further, if Buck Creek was the source of the hydrology for his spring, it would not have dried up.

DATED this 1 day of November, 2013.



Thomas J. Holmes

EXHIBIT A

EXHIBIT B



10/31/2013 07:58



EXHIBIT C

EXHIBIT D



10/31/2013 07:59



10/31/2013 08:00

EXHIBIT E



EXHIBIT F



10/31/2013 08:04

EXHIBIT G



Down hill



Buck Creek

Dionysus

10/31/2013 08:05

EXHIBIT H



10/31/2013 08:04

EXHIBIT I



10/31/2013 08:01

EXHIBIT J



10/31/2013 08:02

EXHIBIT K

Path
to
Spring
box

10/31/2013 08:02

EXHIBIT L

P: 10

Brown
springs

V

10/31/2013 08:02