

07/2008

RECEIVED

SEP 23 2013

Department of Water Resources
Eastern Region

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

RECEIVED

SEP 18 2013

DEPARTMENT OF
WATER RESOURCES

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 Permit 74-16004 in the name of Allan and Betty Purcell
2. Name of protestant Idaho Water Resource Board
3. Protestant's Representative for service (If different than protestant)

4. Service mailing address PO BOX 83720 Boise, ID 83720-0098
5. Service telephone no. 208.287.4848 Email Address: helen.harrington@idwr.idaho.gov
6. Basis of protest (including statement of facts and law upon which the protest is based)
See Attachments A and Lemhi River Flows at USGS Gage at L-5 chart

(additional pages may be attached to describe nature of the protest)
7. What would resolve your protest? Withdrawal of 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 17th day of September, 20 13.

Helen Harrington on behalf of the IWRB
Protestant

Protestant's Representative

Receipt
#C097751

ATTACHMENT A

Application for permit 74-16004 proposes the diversion of 5.76 cfs of water from Big Timber Creek, tributary to the Lemhi River. The Idaho Water Resource Board (Board) believes that the application is not in the local public interest because it may negatively affect efforts to recover Endangered Species Act (ESA) listed fish species in the Lemhi River Basin and may injure delivery of minimum stream flow right 74-14993 on the Lemhi River. Additionally, the state of Idaho has committed to several goals through the Snake River Water Agreement of 2004 and legislative actions. If approved, this application may impair the state's ability to accomplish these goals. The goals are:

- a. Idaho Code 42-1506 and 42-1765A – Directed IWRB to establish a minimum streamflow water right of 35 cfs in Lower Lemhi to be met through water right rentals or other appropriate methods under state law.
- b. 2004 Snake River Water Rights (Nez Perce) Agreement
 - i. Commits the state to providing incentives for improving fish habitat in the Salmon and Clearwater Basins which includes improving or protecting flow conditions to augment stream flows.
 - ii. Commits the state to permanently protecting and maintaining 35 cfs in Lower Lemhi River
 - iii. Commits the state to accomplishing 10 Lemhi River tributary re-connections by 2024.

The Lemhi River is home to Chinook salmon, steelhead, and bull trout, all currently listed as Threatened under the ESA. The Idaho Department of Fish and Game (IDFG) and the Upper Salmon Basin Watershed Program technical team have identified low flow and disconnected tributaries as a factors limiting fish production in the Lemhi River Basin. The Board has been improving instream flows in the Lemhi River and tributaries as part of the Water Transaction Program since 2003. Over the last 8 years, the Board has committed over \$6 million dollars towards flow restoration in the Upper Salmon River Basin – most of that funding coming from Bonneville Power Administration (BPA) through the Columbia Basin Water Transactions Program (CBWTP) and the Idaho Fish Accords. Over \$3.7 million of that was spent in the Lemhi River Basin.

Tributary reconnects form a major ESA-recovery strategy in the Lemhi River. Only 3 tributaries, of over 20, flow regularly throughout the irrigation season. The State of Idaho has committed to reconnecting 10 tributaries over the next 15 years. Big Timber Creek is a high priority for reconnection and has been designated as one of the 10 reconnections. The Board has worked with IDFG to improve flows in the lower reaches of Big Timber Creek through two source switch projects that restore up to 5.9 cfs. Other high priority projects would address fish passage barriers and allow access to high quality habitat upstream.

The Board's flow restoration efforts are one part of the overall recovery strategy. Recovery and de-listing of Chinook salmon, steelhead, and bull trout would put management of the resource back under State control. Implementation of approved restoration plans also adds some measure of a defense against third-party "takings" lawsuits under the ESA. It is in the local public interest to recover the species for natural resource, recreational, and economic interests to maintain the viability of the agricultural communities. Additional withdrawal from the flow limited area is counter-productive to that goal and threatens efforts to move in a voluntary manner towards recovery.

Specifically, additional diversion at the proposed diversion will increase the consumptive use in the Lemhi River Basin, thereby reducing flows to supply the Board's minimum stream flow 74-14993 on the Lemhi River at the L-6 diversion (See attached stream gage data).

Lemhi River Flows at USGS Gage at L-5

