

John K. Simpson, ISB #4242
Sarah W. Higer, ISB #8012
BARKER ROSHOLT & SIMPSON LLP
1010 W. Jefferson St., Ste. 102
Boise, Idaho 83702
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

Attorneys for Idaho Power Company

RECEIVED

SEP 23 2013

DEPARTMENT OF
WATER RESOURCES

RECEIVED

SEP 24 2013

WATER RESOURCES
WESTERN REGION

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 78428

In the name of Black Mesa Farms LLC

NOTICE OF PROTEST

IDAHO POWER COMPANY (the "Protestant"), by and through its attorneys of record, files this *Notice of Protest* to the approval of the above-numbered *Application for Transfer* of water rights filed by the BLACK MESA FARMS LLC (the "Applicants").

The initial bases for the protest are as follows:

1. This transfer application of water rights 2-2209B and 2-103 is for "field preparation" within applicant's existing place of use.
2. Water right 2-2209B has a diversion right limitation of 90.24 cfs in combination with water rights 2-103, 2-4021, and all parts of base right 2-2209, including 2-2209B, 2-2209C, 2-2209E, 2-10187, 2-10189, 2-10191, 2-10196, 2-10208, & 2-10209.
3. It is unclear whether the proposed use would exceed the historical volume for these rights. Therefore, questions remain whether there is an enlargement under the proposed

transfer. If so, that proposed enlargement may impact the Swan Falls Agreement and trust water.

4. The State of Idaho defines “trust water” as “Trust water flows under the Snake River water rights agreement are located in the Snake River between Swan Falls Dam located in Section 18, Township 2 South, Range 1 East, Boise Meridian (B.M.) and Milner Dam located in Sections 28 and 29, Township 10 South, Range 21 East, Boise Meridian (B.M.) and all surface and groundwater sources tributary to the Snake River in that reach.” IDAPA 37.03.08.030.01(a).
5. This application is to transfer water that likely falls within the trust water area, and as such, Idaho Power files this protest to protect Snake River flows between Milner Dam and Swan Falls Dam. (*See also* Idaho Power Company letter explaining its trust water interests, attached as exhibit 1.)
6. And for such other and further reasons as may be discovered or set forth at the hearing on this matter. Protestant reserves the right to amend this Protest as necessary.

DATED this 23rd day of September, 2013.

BARKER ROSHOLT & SIMPSON LLP



John K. Simpson
Sarah W. Higer
Attorneys for Idaho Power Company

CERTIFICATE OF SERVICE

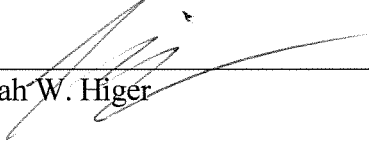
I hereby certify that on this 23rd day of September 2013, I served the original of the foregoing NOTICE OF PROTEST, by hand-delivering or depositing same in the U.S. Mail, postage prepaid, as indicated, addressed to the following:

Idaho Dept of Water Resources
322 East Front Street
Boise, ID 83720

Via Hand Delivery

Black Mesa Farms LLC
P.O. Box 82
Glenns Ferry, ID 83623

Via U.S. Mail



Sarah W. Higer

received 9/23/2013 jnh
2:40pm C097779



James C. Tucker
jtucker@idahopower.com
208-388-2112

April 20, 2012

Gary Spackman
Director
Idaho Department of Water Resources
P.O. Box 83270
Boise, Idaho 83702-0098

Re: Snake River Water Management and the Murphy Gage Minimum Stream Flows

Dear Director Spackman:

As you know, the Idaho Power Company is participating in the administrative proceeding before the Department involving certain water right applications in the Mountain Home area (*In the Matter of Application for Transfer No. 73811, et al*). The Company's interest in these applications stems from uncertainty as to whether ground water flows in the areas where the water is to be diverted influence the minimum flows in the Snake River at the Murphy Gage.

The State of Idaho, the Company, and interested stakeholders continue to work collaboratively on various issues related to the 2009 Framework Reaffirming the Swan Falls Settlement, including the development of appropriate measurement/monitoring protocols and management measures to ensure that the average daily minimum flows at the Murphy Gage, established under the State Water Plan and the Swan Falls Settlement, are maintained. To date, these efforts have centered on the assembly and consideration of relevant data and information associated with spring discharges, surface water and river flows and Company operations. This collaborative effort is an extension of the explicit recognition in the State Water Plan and the Swan Falls Settlement that the effective management of the ESPA and the Snake River is the principle means for ensuring that the Murphy minimum flows are maintained.

The effective management of the ESPA and the Snake River also involves considerations relative to the management and administration of "trust water"¹. The current draft of the revised State Water Plan (2012) provides that the opportunity for further development of trust water is currently limited by three factors – (1) uncertainty over the relative rights of senior water right holders for uses other than hydropower to the spring flows in the Thousand Springs Reach; (2)

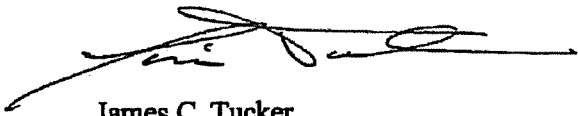
¹ The Department's rules define trust water as: Trust water flows under the Snake River water rights agreement are located in the Snake river between Swan Falls Dam located in Section 18, Township 2 South, Range 1 East, Boise Meridian (B.M.) and Milner Dam located in Sections 28 and 29, Township 10 South, Range 21 East, Boise Meridian (B.M.) and all surface and groundwater sources tributary to the Snake River in that Reach. (IDAPA 37.03.08.031(a))

term limited trust water rights that are to be subject to a public interest review by the Department in the near future; and (3) a moratorium on the issuance of new water rights within the trust water area. Consideration of these and other relevant factors affecting the allocation of trust water and the management of the ESPA and Snake River below Milner Dam are also instructed by the ongoing refinement of the ESPA model.

In the 2009 Framework Reaffirming the Swan Falls Settlement, the State and the Company also recognized that it was in their mutual long-term interest to cooperate regarding management of the water resources of the Snake River Basin, including water management issues associated with the "trust" and "non-trust" water areas. It is in this context that the Company is participating in the above referenced proceeding involving water right applications in the Mountain Home area and the Company anticipates that it may also participate in other proceedings before the Department involving water right applications that seek to appropriate water that may relate to the allocation of trust water or otherwise affect the minimum stream flows at the Murphy Gage.

The Company looks forward to working with you and your staff on these important issues. Please let me know if you would like to meet and discuss these matters further.

Sincerely,

A handwritten signature in black ink, appearing to read 'James C. Tucker', with a long horizontal flourish extending to the right.

James C. Tucker

JCT:sh

cc: Garrick Baxter/Idaho AG-IDWR
Clive Strong/Idaho AG