

RECEIVED

JUL 11 2013

Department of Water Resources
Eastern Region

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

1. Matter being protested: Proposed Transfer Request No. 78657 to change POD of Water Right 35-14269.
2. Name of protestant: Terry A. Tomberlin and Cheryl Tomberlin.
3. Protestant's Representative for service (If different than protestant): Daniel Beck, Attorney
4. Service mailing address: Fuller & Beck Law Offices, PLLC
410 Memorial Dr. Ste. 201
Idaho Falls, Idaho 83404
5. Service telephone no.: (208)524-5400 Email Address: beck_dan@hotmail.com
6. Basis of protest (including statement of facts and law upon which the protest is based)

Protestant lives at 4281 S. 58 W., Idaho Falls, Idaho 83402, which is currently provided with water service by a domestic well. The proposed transfer request seeks authorization to relocate Applicant's well in close proximity to Protestant's existing well, which has reliably provided Protestant with sufficient water for Protestant's domestic use over a number of years. Relocation of Applicant's well has the potential to disrupt Protestant's domestic use, as Applicant's well at the new POD is significantly deeper than Protestant's domestic well, and Applicant's well has the capacity to pump significant quantities of water for irrigation purposes. Pursuant to Idaho Code §42-108, Applicant is only entitled to transfer its POD "...if the water rights of others are not injured by such change..."

7. What would resolve your protest?

A stipulation entered into by Applicant to ensure that Protestant (or any successors to Protestant's property) will not suffer any monetary loss as a result of the proposed Transfer. Such stipulation should include the following provisions: If Protestant's well ceases to produce adequate water, the owner of water right 35-14279, will pay all expenses to improve and deepen Protestant's well, or if necessary replace Protestant's well, including all expenses for a replacement pump and associated piping, plumbing and landscaping, to restore Protestant to Protestant's position prior to the transfer. In addition, Applicant shall pay to Protestant damages at the rate of \$100/per day while Protestant is unable to use Protestant's domestic water right. "Adequate water" is considered to be a flow of water typically supplied by a domestic water well, and equivalent in taste, purity, and safety to Protestant's existing well. Such a stipulation is consistent with Protestant's rights under existing Idaho law, including that set forth in *Parker v. Wallentine*, 103 Idaho 506, 650 P.2d 648 (1982). Protestant seeks to avoid legal costs and delay in the event of a disruption caused by the transfer by obtaining a stipulation prior to the disruption, instead of having to initiate a claim after a disruption has occurred.

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.

Receipt
#ED38874

Signed this 10th day of July, 2013.

Carry A. Tomberlin & Cheryl Tomberlin
Protestant

De M
Protestant's Representative

NOTE:

A protestant is required to timely file a protest with the department together with a \$25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."
 2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.
 3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.
 4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.
 5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.
 6. Specifically describe the nature of the protest.
 7. Describe the relief being sought by the protestant.
-

FOR DEPARTMENT USE ONLY

Received by _____ Date _____ Time _____

\$25.00 fee Received by _____ # _____ Date _____
