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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

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AUG 10 2012

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WATER RESOURCES

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AUG 16 2012

Idaho Water Resource
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 Application for Permit No. 74-15889
2. Name of protestant Idaho Water Resource Board
3. Protestant's Representative for service (If different than protestant)
Helen Harrington, Mgr., Water Planning Section
4. Service mailing address PO Box 83720
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 Attachment A

(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 10th day of August, 20 12.

Helen Harrington on behalf of the IWRB
Protestant

Protestant's Representative

Receipt
0095868

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.
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FOR DEPARTMENT USE ONLY

Received by SR7 Date 8/10/2012 Time 10:40 am
\$25.00 fee Receipted by SR7 # C095868 Date 8/10/2012

ATTACHMENT A

Application for permit 74-15889 proposes the diversion of 0.07 cfs of water from Bohannon 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.

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 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 \$5.7 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 reconnections 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. Bohannon Creek is a high priority for reconnection. The Board is working with IDFG to improve flows in the upper reaches of Bohannon Creek through a diversion consolidation and minimum flow agreement project. Other high priority projects would remove diversions serving as fish barriers and flow limitations.

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.