

07/2008

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

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 TRANSFER OF WATER RIGHT #77970
IN THE NAME OF SALLY JOHANSON
2. Name of protestant DWIGHT SIMMONS
3. Protestant's Representative for service (If different than protestant)

4. Service mailing address 5457 FISH HATCHERY ROAD MACKAY, ID. 83251
5. Service telephone no. 208-731-2161 Email Address: _____
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? _____

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 28 day of JUNE, 20 12.

Protestant Dwight Simmons

Protestant's Representative _____

RECEIVED
JUN 29 2012
Department of Water Resources
Eastern Region

Receipt
#E037758

Basis of Protest

I am a user of the Nielsen Ditch, and am located at the end of the ditch, downstream from the applicant. I hold some water rights senior to the applicant and some similar in priority to the applicant. Because of the daily fluctuations in flow of the Big Lost River, the Nielsen Ditch flow can vary widely on a daily basis, and I believe adding another junior water user above me will have an adverse effect on the amount of water I receive. This is especially true in late summer, a time when the ditch will carry enough water to run my sprinkler system in the morning and can be less than $\frac{1}{2}$ of that flow in the afternoon.

Contrary to the opinion of the ditch spokesperson, there are problems with the ditch that affect water delivery for all users, especially at the lower end of the ditch. First, the ditch in its present condition cannot always carry the amount of water delivered at the head gate due to clogging or overflow caused by beaver activity or debris. This takes place at high and low water periods.

Second, there is no organized effort to remove trees and brush along the ditch to improve flow. The applicant opposes ditch cleaning where it flows through her property.

Finally, being at the ditch's end, I am first to know when there is a problem, and adding another user above makes water delivery to me more problematic.

The proposed irrigation system mentioned in the application is installed at this time, and it appears that the intake is located at the ditch edge with no diversion head gate or measuring device.

Looking at the Application for Transfer, Part 1B #5, General Introduction Section B, I have to question that if a head gate exists and a ditch is there, can anyone put in an irrigation system and draw water from that ditch?

Resolution

- Applicant could improve diversion and ditch that has serviced the property in the past, thereby having their own ditch
- If water is moved to the Nielsen Ditch, more shrink water could be added
- The correct type of diversion head gate and measuring device must be added
- Some accommodation for turning off junior water rights during periods of low and fluctuating water must be made so junior water right holders upstream are not using water when senior right holders can't get water, and this must be done in a more timely manner
- The applicant and all users of the Nielsen Ditch need to agree to improve and maintain the ditch