

RECEIVED

MAY 14 2012

Department of Water Resources
Eastern Region

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 – Point of Diversion 77852, in the name of Glen Atchley, Emma Atchley, concerning Water Right number 21-7406.

2. Name of protestant : Kristine Baum

3. Protestant's Representative for service, if different than protestant: N/A

4. Service mailing address: P.O. Box 777, Ashton, ID 83420

5. Service telephone no.: 208-652-3352 Email Address: kbaum@jps.net

6. Basis of protest (including statement of facts and law upon which the protest is based)

My protest can be divided into four areas of concerns: They are legal concerns, water right concerns, economic concerns, and environmental concerns. My father, Russell Baum, is General Partner of the Russell O. Baum Family Trust, Inc. (ROBFT). I am a Limited Partner of the ROBFT. The Russell O. Baum Family Trust (ROBFT) owns the property (T09N R43E sec 36 B.M.) directly to the north of the land Mr. Atchley purchased in January 2012 from my Orme cousins' family LLC (T08N R43E sec 01 B.M.). My concerns are as follows:

Receipt
#E037597

1. Legal Concerns:

According to the original paperwork of the Permit to Appropriate Water, water right 21-07406, proposed priority date January 4, 1989, under conditions/remarks, #7, states that "The issuance of this permit in no way grants any right-of-way or easement across the land of another", signed on January 3, 1992 by Glen Saxton for IDWR Director Higginson. Mr. and Mrs. Atchley in this transfer 77852 paperwork is planning (and threatening) to cause us to grant him easement or right-of-way across our Baum family's property. Because the permit is the precursor to the actual license, i.e. water right, the same conditions of the "Permit to Appropriate Water" No. 21-07406 would apply to the license No. 21-07406 (water right), unless it is, or was, otherwise specifically changed by the IDWR Director (or acting entity), or other governing body authorized to do so. The existing paperwork available to the public does not show any change in the restrictions from the "permit" to the "license", by any IDWR employee. The burden of proof would lie with the IDWR to show the change in the conditions from the permit (1989 to 1992) to the license, if there was one, if the water right 21-07406 was shown that the condition was removed or changed in any way.

Regarding the North Fremont Canal Systems acceptance letter dated April 12, 2012, to accept the Glen and Emma Atchley's change of the point of diversion in Fall River to the point of diversion of the North Fremont Canal System at the head of the Marysville Canal: It was signed (and most likely written) by the President of the North Fremont Canal Systems, who is Glen Atchley. And it was also signed by his cousin, Vice President Sean Maupin. Mr. Atchley should have recused himself from signing because he stood to gain from this transfer.

2. Water Right Concerns:

The transfer of the name of the water right No. 21-07406 from the names of Russell O. Baum and H J Orme associated with the Orme Place property, to the H.J. Orme Family, LLC, was signed by Hyrum Erickson, a lawyer in the Rigby, Andrus & Rigby law offices, for Ms. Cheryl Orme for the H.J. Orme Family, LLC. Mr. Erickson made an assumption that my father, Russell O. Baum, was dead. There was no effort on the lawyer's part to contact by phone or by mail Mr. Baum about the transfer of his name (the surviving owner of the water right) of the water right out of his name to the H.J. Orme Family, LLC. Let it be known that the Rigby, Andrus & Rigby law offices represent Glen and Emma Atchley, and they are handling the Atchley's interest in the easements or right-of-ways in this matter. This whole matter stinks to high heaven of lawyers having conflicts of interest, of questionable ethics, and impropriety of the transfer of names on the water right. I understand that the water right in Idaho remains with the land in question, and the land was owned by HJ Orme, then to the H.J. Orme Family, LLC. Mr. Baum's name was still on water right No. 21-07406, with only his signature on file, not H.J. Orme's signature.

3. Economic Concerns: The property value of our family's property would be negatively impacted by this project if this transfer is approved and the Atchleys plan on crossing/spanning Falls River with his irrigation line. If they are granted an easement or right-of way (which should not happen because of the argument, listed above in #1. Legal Concerns, concerning the Permit, condition #7 prohibiting a right-of-way or easement across the land of another person), then they would have to have trucks coming onto our

property, pouring concrete on our property, installing very tall (taller than typical telephone poles) metal or wooden poles, on both sides of the Falls River, with the cables, and the unsightly monstrosity of it visible to all. Should we want to develop and sell our land for home sites on this beautiful and scenic property, this eyesore could negatively impact our land value when compared to other properties which did not have this potential eyesore. It would only negatively affect our land, our view, and our neighbor's views. A buried mainline would not affect the value so much. However, the proposed position the Atchleys have indicated on their IDWR Transfer Application paperwork shows he plans on placing this pipe across Falls River and across our property at about the middle of our property. We already have our mainline in this location. The existence of another mainline in the same area is not acceptable, nor is the site where they want to cross Falls River acceptable.

4. Environmental Concerns: If the transfer is approved, and the project is allowed to continue despite our family's opposition, then this crossing of the Falls River would set precedence. To my knowledge, spanning of the Falls River with an irrigation conduit for a private entity's economic gain (i.e. not for the public good and not for a canal company or water district) has not been done before. If you allow this to happen, what is to stop other private entities or individuals from doing the same thing? You would be setting a precedence allowing others to do as the Atchleys are planning, plus allow the Atchleys to do this type of pipeline across the river over and over again as they buy up more and more property on the "our" side of the Falls River.

Also, if the transfer is approved, and construction is conducted during the spring or the fall, migration patterns of the moose, whitetail deer, mule deer, and elk could be affected by the presence and sound of construction. Helicopters or cranes would probably be needed to suspend the pipe across the river, adding to the noise pollution and disturbance to the animals in their migratory patterns.

Plus, in the Transfer #77852 paperwork, it states the water right No. 21-07406 is limited to 1.99 cubic feet per second and/or 616.0 acre-feet per year. This proofing of the water rate from the same pump above included the Baum's 28 acres water right of 21-02151, for a total acreage of 204 acres (176 acres from the 8N 43E SEC 1 "Orme" property plus 28 acres from the 9N 43E SEC 36 "Baum" property). This pumping rate (1.99 cu ft/sec and/or 616.0 AF/year) of the 21-07406 SHOULD BE REDUCED by the amount of water which would have watered the 28 acres on the Baum property, and ADD THIS AMOUNT back to the Baum's water right 21-02151. (see Application For Permit 21-07406, form 202, and) The Atchleys state they would be using 2 pumps to pump out of the Marysville Canal at the new diversion point, and this figure was based on the Baum's pump at the time. My concern is that using two pumps could divert more water out of the Falls River if their two combined pumps deliver more water than our one pump. Their pumps would need to go through the same proofing procedure that our single pump did to assure that their 2 pumps don't exceed the corrected amounts suggested above.

7. What would resolve your protest?

The denial of where they want to cross the river, and denial of allowing them access across or through the Russell O. Baum Family Trust (ROBFT) property located at T09N R43E sec

36 B.M. Because our family farmed the Orme Place property for over 50 years, and my father Russell O. Baum applied for the water rights for that property, and the Orme place was dry farm land before we improved it, it should revert back to dry farm status. The diversion point (pump) we placed on the Falls River watered both properties because our family leased the Orme place, and farmed it until the land was sold to the Atchleys. We placed a portable private mainline to deliver water to the Orme place. We allowed passage of this water across our land to the Orme place because we farmed it, and we benefitted financially from the irrigated crops grown on it. The Orme place would not have water rights if it hadn't been for my father and brothers getting the permit, then the license, for this water right that is now in question. Actually, I'm not sure what would resolve this protest. The Atchleys could try to buy/lease an easement or right-of-way from another neighbor to put in a pump at the river, however because the conditions of the original permit for this 21-07406 water right "in no way grants any right-of-way or easement across the land of another", the question of any easement or right-of-way across is mute.

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: 14 day of May 2012.



Kristine Baum

Protestant

Protestant's Representative

Cc: Glen and Emma Atchley, letter copy sent, 14 May, 2012

NOTE:

4054E 1300 N
Ashton, ID 83420

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.