

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST
34-14339

March 29, 2012

RECEIVED

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DEPARTMENT OF
WATER RESOURCES

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APR 04 2012

Department of Water Resources
Eastern Region

1. Matter being protested

Application for Permit No. **34-14339** filed by Gordon Fulton.

2. Name of protestant

United States Department of the Interior
Bureau of Land Management
Idaho State Office
1387 South Vinnell Way
Boise, Idaho 83709-1657

3. Protestant's Representative for service (if different than protestant)

Fredric W. Price (contact person)

4. Service mailing address

same as above

5. Service telephone no.

(208) 373-3831

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

Gordon Fulton ("Applicant") filed an application for water permit seeking water to generate 250 kW of power. The Applicant is using various Points of Diversion (POD) in the SWSE, S34, T10N, R22E (Forest Service land) and piping the water in a 15" to 20" diameter x 2 1/2 mile long steel irrigation pipeline across FS land and BLM land, to a power plant located in the NWSW, S05, T09N, R22E (Wiley Smith Land). Because the conduit (pipeline, formerly a concrete ditch) crosses BLM land, BLM must ensure that the use of that conduit complies with all applicable state and federal rules regulations and laws.

BLM is filing a protest because the application for water permit contains no evidence that Fulton has sought authorization from FERC to generate power. After reviewing FERC requirements, it does not appear that the project would be accepted under any of the FERC exemptions (5 MW or Conduit), since Fulton doesn't own the land where the powerhouse is to be located (see 18 CFR 4.31(b)(2)), which indicates Fulton would have to get a full blown FERC license (very costly). The application is speculative.

Fulton and Smith hold several water rights at the proposed POD. Fulton's irrigation rights separately provide a 1"/ac across the 272 ac permissible place of use for a total of 5.4 cfs (2.4 cfs for 120 ac under 34-00057, 3.2 cfs for 272 ac under 34-00058) from the Rock Creek and Willow Creek diversions from 05/01 to 10/15. 34-00057 and

*Receipt
#CO 94966*

34-00058 provide for 392 acres of irrigation cumulatively, however the partial decrees limit the permissible place of use (PPU) to 272 acres. This application asks for 6.5 cfs of water which is 1.1 cfs above his existing irrigation rights, however some unknown portion of the 5.4 cfs for irrigation is supplied from Willow Creek. A recent field investigation indicated that there was less than 1 cfs flowing past the existing diversions on Rock Creek. Whether this application is for an additional 1.1 cfs or for 6.5 cfs of additional water above and beyond his existing irrigation rights, there does not appear to be sufficient water available to satisfy this application. There may also be a question as to whether Fulton can generate power from flows diverted for irrigation purposes by Wiley Smith?

It also appears that this application would completely dewater the drainage below the diversion, and allow no recovery of the riparian habitat below the diversion during the non-irrigation season as this application requests a year-round use. BLM has concerns that such an expanded use may not be in the local public interest and may be contrary to the conservation of water resources in the State of Idaho.

Fulton may have sufficient financial resources to construct facilities, but does the applicant have resources sufficient to pursue a full blown FERC license if that is deemed necessary?

There is an indication in the application that the applicant wishes to market the power generated, which would require connecting to the power grid, however the application does not include a diagram of the route to be taken to connect the powerhouse to the grid.

EXISTING WATER RIGHTS FROM PROPOSED POD:

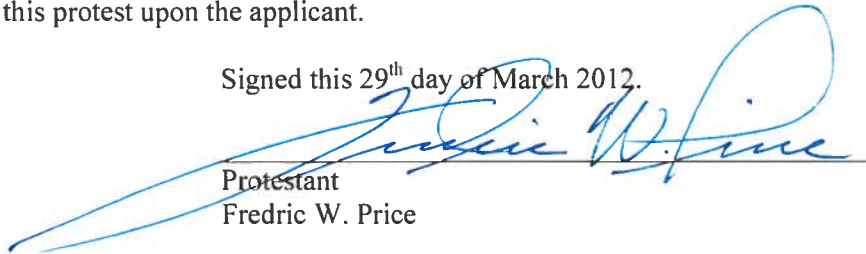
34-00057, 1887-06-01, Rock Creek & Willow Creek, 2.4 cfs, irr & stock, Dickey Livestock, Inc. & Gordon Fulton
34-00058, 1910-10-27, Rock Creek & Willow Creek, 3.2 cfs, irr, Dickey Livestock Inc & Gordon Fulton
34-00836, 1888-06-01, Rock Creek, 3.2 cfs, irr & stock, Wiley & Carolyn Smith
34-04039, 1934-03-31, Rock Creek, 3.2 cfs, irr, Wiley & Carolyn Smith
34-10585, 1951-05-01, Rock Creek, 3.2 cfs, irr, Wiley & Carolyn Smith

7. What would resolve your protest?

1. Proof of authorization from FERC.
2. Inclusion of the following conditions:
 - Condition 025: This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
 - Condition 054: Prior to diversion and use of water under this right, the right holder shall comply with all bonding requirements of appropriate governmental entities.
3. Limit the diversion of water to the existing quantities for irrigation (i.e. no additional appropriation for power purposes). In other words, power would be generated from just the quantities diverted for irrigation purposes.
4. Limit the diversion of water to the irrigation season.
5. Provide for bypass flows in order to maintain the existing riparian habitat below the diversion.
6. Provide a diagram of the transmission line route between powerhouse and grid.

I hereby, acknowledge that if I, or my designated representative, fail 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 29th day of March 2012.


Protestant
Fredric W. Price

Attachments:

- ◆Map prepared by BLM for illustrative purposes.
- ◆Master Title Plat: T09N R22E, T10N R22E

FOR DEPARTMENT USE ONLY

Received by SR7 Date 3-29-2012
Fee Paid \$25.00 Date 3-29-2012 Received by SR7 Receipt # C094966

CERTIFICATE OF SERVICE

I certify that on March 29, 2012, I served a true and correct copy of the **"Protest of Application for Permit No. 34-14339"** for Gordon Fulton with enclosures upon the following individuals by placing the documents in the United States mail in Boise, Idaho, postage paid, and addressed as follows:

Original to:

Jeff Peppersack, Administrator
Idaho Department of Water Resources (IDWR)
Idaho State Office
Water Management Division,
P.O. Box 83720
322 East Front Street
Boise, Idaho 83720-0098

Copies to:

Idaho Department of Water Resources (IDWR)
Eastern Regional Office
900 North Skyline Drive
Idaho Falls, ID 83402-1718

Gordon Fulton
5907 Hwy 93
Mackay, ID 83251

Gloria Jakovac, Realty Specialist
U.S.D.I., BLM
Salmon Field Office
1206 S. Challis St.
Salmon, ID 83467

David Logan
U.S.D.I., BLM
Salmon Field Office
1206 S. Challis St.
Salmon, ID 83467

Brandon Anderson
Person Serving Documents (print name)

Brandon Anderson
Signature of Person Serving Documents

34-14339, Fulton, Proposed Power Plant

10N 22E

10N 23E

POU
34-11581, FS

POU
34-07474, FS

34-07474 FS

34-00836, Smith
34-04039, Smith
Centroid ?

POU
34-0058

34-00057
34-00058

34-00057, Fulton
34-00058, Fulton
34-10585, Smith

Existing 20" pipeline

Fulton

Powerhouse
PGD

NSD&N

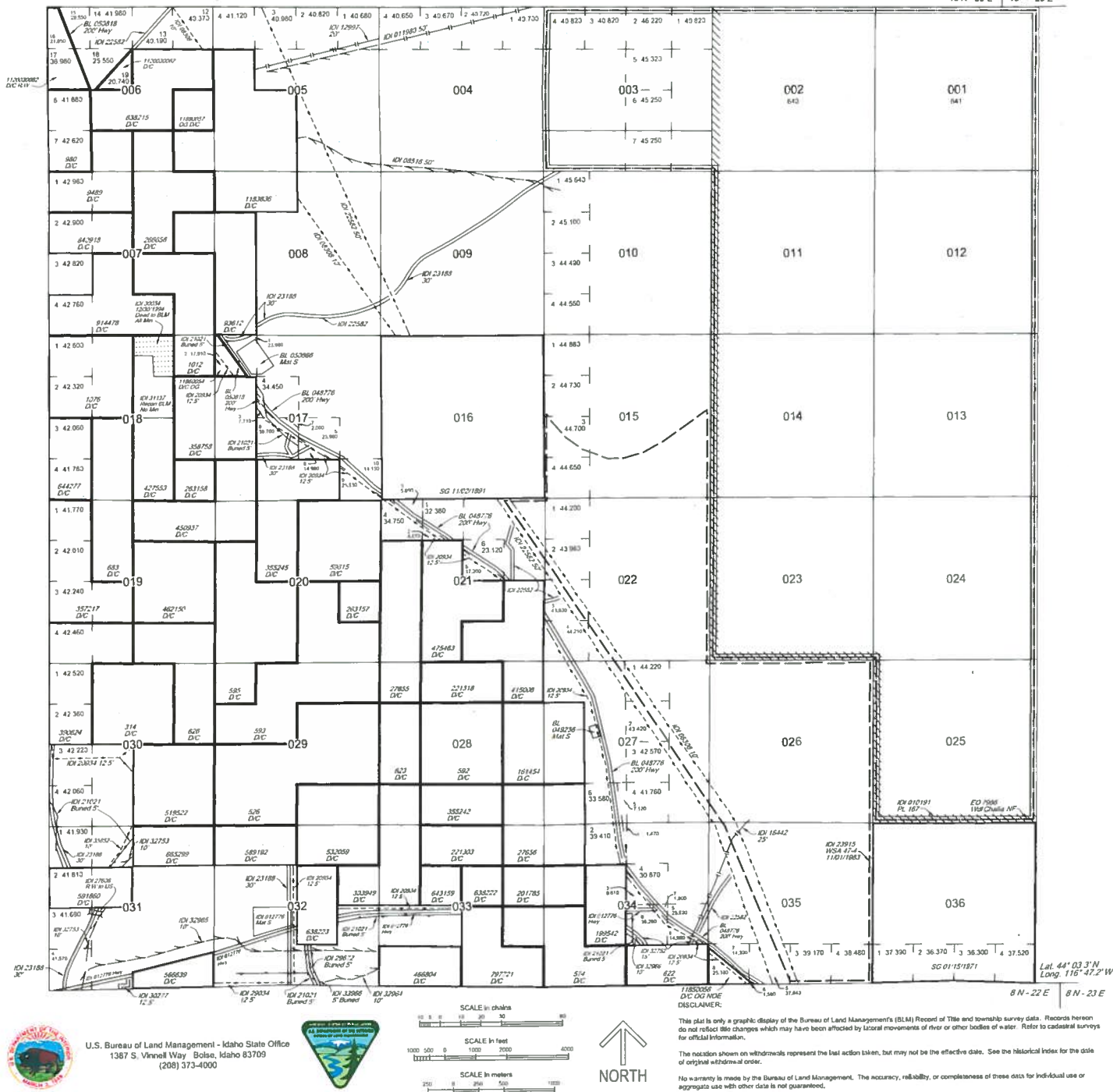
Smith

9N 22E

9N 23E

Protraction Diagram No B4 approved 01/27/1965

10 N-22 E	10 N-23 E
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MT PLAT[illegible]

IDI 33783 Sikes Act 08/14/1989
 Sec 7: Lot 3
 Sec 21: Lots 2,4,5
 Sec 22: Lots 3,4
 Sec 27: NWNW, SENW, E2SW
 Sec 34: Lots 2,3,8

FOR ORDERS EFFECTING DISPOSAL OR USE OF
UNIDENTIFIED LAND REFER TO INDEX OF
MISCELLANEOUS DOCUMENTS

FILE REF:	00060092N0220EAM100000.rdwg
CONVERTED TIF:	10/30/2008
BY:	JCB
LAST UPDATED:	03/07/2011
BY:	LFM
QAQC #1:	QAQC #2:
POSTED TO PUBLIC RECORDS:	March 7, 2011
BY:	
PUBLIC LAND SURVEY SYSTEM (PLSS):	
BLM GCSN ACQUIRED:	04/26/2005
OTHER:	N/A
PROJECTED COORDINATE SYSTEM:	UTM ZONE 12N, NAD 1983
NOTE:	
USE PLATS:	

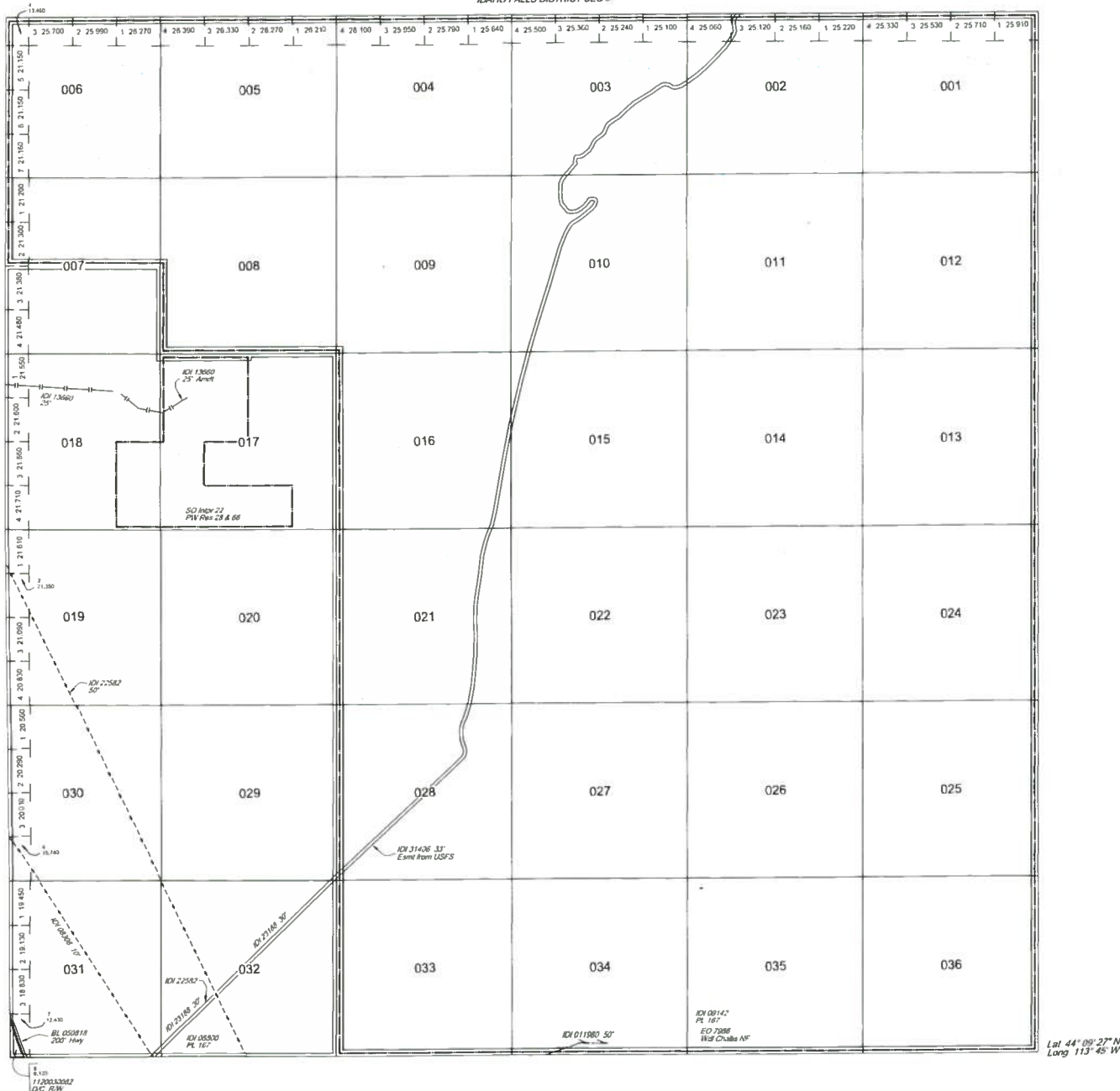
Boiler Mgr
T. 9 N
R. 22 E

CUSTER COUNTY 037
IDAHO FALLS DISTRICT SEC 3

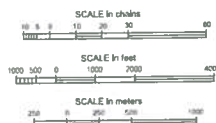
MT PLAT[illegible]

IDI 09142 Del PL 167 (Act of Cong 07/23/1955)
completed 12/10/1962 All NF surface Mgmt by USFS

FILE REF: ID#8610040729EAM100000 (dwg)	
CONVERTED TIF: 05/06/2009	BY: LFM
LAST UPDATED: 05/06/2009	BY: LFM
QA/QC #1:	QA/QC #2:
POSTED TO PUBLIC RECORDS:	May 7, 2009
BY:	
PUBLIC LAND SURVEY SYSTEM (PLSS)	
BLM CCOR ACQUIRED:	04/26/2005
OTHER:	N/A
PROJECTED COORDINATE SYSTEM:	UTM ZONE 12N, NAD 1983
NOTES:	
USE PLATS:	



No warranty is made by the Bureau of Land Management. The accuracy, reliability, or completeness of these data for individual use or aggregate use with other data is not guaranteed.



Bolsa Mer
T. 10 N
R. 22 E