

November 26, 1999

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

MAR 22 2002

Department of Water Resources
Southern 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, 42-222 and 42-224, 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 #69678 in the name of Melodie or Wayne Baker

2. Name of protestant Valley Sun, LLC

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

Jon Marvel c/o Valley Sun, LLC

4. Service mailing address Valley Sun, LLC P.O. Box 1770, Hailey, ID 83333

5. Service telephone no. (208) 788-2290

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

See attached copy of letter dated March 21, 2002.

Valley Sun, LLC also protests the installation of this new point of diversion if it is already in place and if that is the case, requests that IDWR investigate and order removal of the installation prior to considering this protest. (Additional pages may be attached to describe nature of the protest)

7. What would resolve your protest? Compliance with Federal and State Law.

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 22nd day of March, 2000. 2002

Valley Sun LLC
Protestant

Jon Marvel, Manager
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.
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FOR DEPARTMENT USE ONLY

Received by JS Date 3-22-02 Time 3:40 pm
\$25.00 fee Received by JS # 502⁴2664 Date 3-22-02

VALLEY SUN LLC

P.O. Box 1770
Hailey, ID 83333
(208) 788-2290

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MAR 22 2002

Department of Water Resources
Southern Region

Idaho Department of Water Resources, Southern Region
1341 Fillmore St.-Suite 200
Twin Falls, Idaho 83301

Also sent by fax: March 22, 2002

Re: Protest the application of two companion transfers filed on 02/13/02 to transfer a point of diversion, application filing no. 69678 and 69690

Valley Sun L.L.C. (a down stream water right holder) and Western Watersheds Project (an Idaho non-profit corporation) hereby protest the application by D. Wayne & Melodie L. Baker, HC 68 Box 304; Clayton ID 83227 filed Application No. 69678 for diversion of 0.05 cfs for irrigation of 3.9 acres within NENE, S06, T09N, R18E and the application of Dick & Betty Baker, HC 68 Box 350; Clayton ID 83227 filed Application No 69690 for diversion of a combined total of 1.76 cfs for irrigation of 59.1 acres within N1/2, S06, T09N, R18E

The protest is filed to prevent diversion of waters of the State of Idaho in violation of law.

The combination of the water rights drawn from this proposed point of diversion total 1.81 cfs which may exceed the flows of Pine Creek during all or part of the irrigation season. In addition, it appears that the point of diversion is located not only on federal land but also within a wilderness study area. Pine Creek is tributary to the East Fork of the Salmon River which contains occupied habitat for Chinook Salmon, Steelhead and Bull Trout all of these are listed under the Endangered Species Act. Pine Creek is occupied by resident West Slope Cutthroat Trout a sensitive species. Dewatering of Pine Creek may and probably does have an impact on spawning and or rearing habitat of a listed species. It clearly would have an impact on West Slope Cutthroat. The application does not mention any NEPA analysis. A NEPA analysis is required for the alteration of the point of diversion on federal land. The potential for this diversion to impact a listed species and a wilderness study area make NEPA compliance critical. A federal judge ruled recently that federal agencies can restrict irrigation water in order to protect salmon listed under the ESA. The use of approved fish screens, metering devices or devices to ensure the maintenance of instream flows are not mentioned in

the application. State law requires that diversions utilize screens and provide for fish passage.

If approved, these applications may contribute to the taking of listed and sensitive fish species in violation of law. They would also illegally grant an intrusion or development in a designated wilderness study area. Furthermore, a relocation of the point of diversion up stream would cause a longer section of Pine Creek to be dewatered when dewatering occurs, further decrease fish habitat within Pine Creek. All of these issues indicate that granting these applications would not be in the public interest.

Sincerely,

Stew Churchwell

For: Jonathan H. Marvel, Ranch Manager, Valley Sun L.L.C.
Executive Director, Western Watersheds Project