

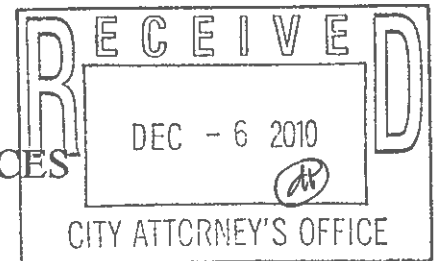
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DEC 06 2010

Department of Water Resources
Eastern RegionSTATE 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 WATER TRANSFER APPLICATION # 46779
2. Name of protestant John SCHWARTZ
3. Protestant's Representative for service (If different than protestant)
N/A
4. Service mailing address incare of Box 240 McCammon, Idaho 83250
5. Service telephone no (208) 254-3634 Email Address: fineproofdata@gmail.com
6. Basis of protest (including statement of facts and law upon which the protest is based) SEE: "A" annexed hereto.
1) NO UPPER PORTNEUF/MARSH VALLEY AREA RECHARGE IS ADDRESSED?
2) SAME ACRES TABLE "4" AS RIGHT "3069777"?
3) STORAGE? (4) PROOF "BENEFICIAL USE"? (5) HARM, DRYING UP ACRES?
(6) UNDER "AGREEMENT" (a) 620 AF BECOMES 3100 AF (b) NO RIGHTS RESERVED ISSUE?
 (additional pages may be attached to describe nature of the protest)
7. What would resolve your protest? 1) FIVE (5) YEAR "PROOF OF BENEFICIAL USE" STUDY OF "LOSS OF RECHARGE" TO UPPER PORTNEUF/MARSH VALLEY AFTER UPGRADES/CONSTRUCTION. (2) ESCROW MONIES SET ASIDE FOR DAMAGES SEE:

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 5TH day of DECEMBER, 20 10.

[Signature]
Protestant

Protestant's Representative

Receipt
E036295

City of Pocatello
Water Rights Application # 76799
Last Protest: 17:00 Hrs. December 6, 2010
IDWR – Idaho Falls, Idaho

Protest Outline:

- 1) No Incidental Recharge is addressed for the Upper Portneuf/Marsh Valley Area. [W]ill this DRY-UP thousands of acres and/or culinary/stock water wells of this region of South Bannock county; Yes or no?
- 2) Under "Right ID# 306977" the same PARCELS are listed as on "Table 4" of "Application# 76799". [I]s this considered "Water Stacking" and/or "Monopolizing" water; Yes or no?
- 3) Where is the proof that the City of Pocatello has, and/or will have, the storage capacity for 3100 AF, per annum, does the proof exist, *Yes or no?*
- 4) Where is the proof that the City of Pocatello has the acreage / infrastructure (capacity) as per Title 42, Chapter 2, § 217, PROOF OF APPLICATION TO BENEFICIAL USE, to utilize, and/or has utilized, all the water they have acquired in the past several years, not only out of the Portneuf River, but, also the Snake River, Palisades, (50,000 AF), and Chesterfield Reservoirs, does the proof exist, *Yes or no?*
- 5) Where is the proof that no harm will be caused to the People of South Bannock, County by the granting of (1) "Transfer" off of the prescribed area; and (2) "Transfer Use" from "Private Use" to "Municipal Use", for profit? [T]o me that means, the "City" is "Drying" up 5000 + acres of South Bannock County so the "City" can use, sell, convey the water, in "this Application", unencumbered, does it not; Yes or no?
- 6) (a) *Under Document on file dated November 12, 2010, (g7wq01_pdf, Attachment #2a and #3. Page 3 of 14), (Storage Water Agreement), AGREEMENT (2)) says, 620 AF over FIVE (5) years, "Annual Increments." [M]y question is, how did 620 AF per annum, turn into 3100 AF annual?*
(b) Attachment #2 A and #3, page 6 of 14, Storage Water Agreement #10, (H) Transfers the Rights for the City Pocatello's (hereafter the "City(s)" use as the City chooses with no prior authorization or consent. (1) [T]o me that means, they do not have to get prior approval from anyone to use the water as the City sees fit; and (2) NO "Rights to any Damages are Reserved", does it not; Yes or no?

Proposal(s)

- 1) A five (5) year study of loss of recharge after all construction and upgrades, to existing *Canal/Ditch Companies and Laterals*, are calculated into the "Proof of Application to Beneficial Use".
- 2) Monies, set aside in Escrow, to cover damages to all individual well (Ground water), and/or Junior Water Right (Irrigation, Surface water/Stock water) holders.

Exhibit "A"