

07/2008

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

RECEIVED
DEC 06 2010
Department of Water Resources
Eastern Region

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, Application # 76779, Applicant is
City of Pocatello.
2. Name of protestant McCammon Ditch Company
3. Protestant's Representative for service (If different than protestant)
Jim Spinner, attorney for McCammon Ditch Company
4. Service mailing address PO Box 6009, Pocatello, Idaho 83205
5. Service telephone no. 208-232-4471 Email Address: spinjim@cableone.net
6. Basis of protest (including statement of facts and law upon which the protest is based)
Protest pursuant to I.C. 42-222, based on enlargement of use by change of use and user(s), which
may be injurious to other, prior and more senior water rights and users. Protests are more
specifically set forth on attached sheets.

(additional pages may be attached to describe nature of the protest)
7. What would resolve your protest? See attached sheets.

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 6th day of December, 2010.

McCammon Ditch Company
Protestant

Jim Spinner, attorney for McCammon Ditch Company
Protestant's Representative

Receipt
#2036297

6. BASIS OF PROTESTS, CONTINUED.

A. Measurement, Recording needed.

Protest:

Need more and better measurements, recording and monitoring flows, perhaps with a totalizer, so as to better administer the flows and diversions of the river.

Remedy:

The addition of full-time continuous recorders at sites which also will totalize the flow. Recorders are needed at the reservoir diversion gauge site and the PMVCC river diversion gauge site and possibly at PMVCC river gate site if used for "Pocatello's" water diversion.

Note:

McCammon Ditch Co. already has in place a continuous recorder at its diversion gauge site.

B. Release Rates from Reservoir may be excessive.

Reference: Storage Water Agreement

Page 2, para. 1 and Attachments #2a and #3

Protest:

Release rate of up to 50 cfs from reservoir storage will be excessive if release of "Pocatello" water is combined with PMVCC release. Such combined releases in the summer months will cause river to rise beyond the natural banks of the river and flood into low-land. Such would constitute wasting of in-stream water of which users have priority status.

Remedy:

Close regulation of reservoir discharge as to not exceed the capacity of the natural river channel. Regulation will limit the excess loss to other users and reduce injury to other users.

C. Transit Loss

Reference: Attachment #9

Sec. 7.0, Para. 5, Page 17

Storage water agreement Pg. 6, Para. 10E

1.) Protest:

This paragraph should be amended, deleting the phrase "no transit loss should be assessed in delivering the water to Pocatello". This puts a junior right ahead of a senior right.

Reason/Remedy:

This phrase deprives the senior priority user of its right to full use of water by allowing a

junior priority to subordinate the senior right. No loss clause shouldn't be used by Pocatello on any senior right below PMVCC's River Diversion.

Validate Loss

2.) Protest:

If diversion to Pocatello is run down to Sorensen hydro and not out of river bed at PMVCC river diversion gates, loss should be determined and assessed from PMVCC River Diversion gates (Head of Canal) to point of measurement (0000 ft) (2 ½ miles) and deducted from total allowed for diversion and added to next user on river.

Reason:

Distance from PMVCC river gates to gauge site is excessive and would need to have the loss for that distance determined and administered.

Remedy:

1. Study possible loss
2. Determine remedy

D. Not sure what is meant by "re-diversion" points.

Remedy:

Needs further explanation.

CERTIFICATE OF MAILING

I HEREBY CERTIFY on the 6th day of December, 2010, I served a true and correct copy of the foregoing document as follows:

City of Pocatello

☐ U.S. Mail, postage prepaid
☒ Hand Delivery
☐ Overnight Mail
☐ Facsimile

Michael C. Creamer
PO Box 2720
Boise, ID 83701

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile

Randall C. Budge
Racine, Olsen, Nye,
Budge and Bailey, Chtd.
PO Box 1391
Pocatello, ID 83204-1391

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Overnight Mail
☐ Facsimile

By: _____

Jim Spinner