

07/2008

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST**

RECEIVED
SEP 10 2009
Department of Water Resources
Eastern Region

RECEIVED
SEP 08 2009
Department of Water Resources
Western 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 In the name of Marvin C. Hutchings Transfer 75604 for Water Right 75-14598 Twelvemile Creek, Salmon River Basin (75)
2. Name of protestant Larry Zuckerman, Central Idaho Director, Western Watersheds Project

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

4. Service mailing address PO Box 1322, Salmon, Idaho 83467

5. Service telephone no. (208) 756-8000 Email Address: larry@westernwatersheds.org

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

This point of diversion, fish screen and lockable and measurable headgates were constructed with the Bonneville Power Administration funding and contract through the Upper Salmon Basin Watershed Project, but it was designed for multiple water users on Twelvemile Creek. The water right, 75-14598, according to IDWR records, is for irrigating 53.6 acres owned by Mr. Hutchings with 2.68 cfs of Twelvemile Creek. When viewing Twelvemile Creek several times this summer, it appeared that it was over-appropriated, while it was possible that Mr. Hutchings was irrigating additional lands than viewed from Hwy 93S in other irrigation seasons. Apparently some of the other water users of Twelvemile Creek water that divert downstream of the fish screen were not receiving their water rights for some portions of the summer, while Mr. Hutchings was irrigating as well as water users that divert above his point of diversion. It is probable that the maximum flow design for the fish screen, point of diversion, and headgates work as well as the pipeline are much larger than the adjudicated 2.68 cfs of Twelvemile Creek, since it was designed for multiple water users on Twelvemile Creek, not just Marvin Hutchings and Water Right 75-14598. Also according to the IDWR public notice for this transfer, the original POD still exists and should be eliminated.

Mr. Hutchings has a long history of irrigating and farming land that was not his. Part of the lands that Mr. Hutchings was irrigating for many years are not owned by him, but rather are the property of the U.S. government and are managed by the U.S. Bureau of Land Management, Salmon Field Office. The IDWR should verify that the calculated diversion rate for Mr. Hutchings' water right only corresponds to his lands, not the lands that he used to irrigate illegally and now irrigates with a Federal land-use permit.

The water savings with this publicly-funded irrigation project were supposed to benefit the instream flows of Twelvemile Creek, a tributary of the Salmon River, and the native anadromous salmonids that historically spawned and reared in the stream including the

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threatened Snake River spring/summer Chinook salmon and threatened Snake River Basin steelhead. Threatened bull trout, including fluvial and resident populations, historically used Twelvemile Creek also for spawning, rearing, and thermal refugia. The returns on this salmonid recovery money are not as evident as would have been expected considering the original plans and design.

Western Watersheds Project protest this proposed transfer of water right 75-14598 for an additional POD, upstream of the fish screen. WWP requests that IDWR administer water law and ensure that the number of acres irrigated are equal to the number of acres owned by Mr. Hutchings and attached to this water right. Additionally, the diversion works should be modified so that no more than his legitimate water right can be diverted and travel down the pipeline conveyance, unless additional water users are added to the system.

(additional pages may be attached to describe nature of the protest)

7. What would resolve your protest? Inspect the point of diversion, fish screen and lockable and measurable headgates; ensure proper amount of water has been diverted for the amount of land Mr. Hutchings actually owns, and then modify the diversion works and fish screen to only allow the maximum amount covered by Mr. Hutchings' Water Right 75-14598, or allow other users on Twelvemile Creek to participate in the publicly-funded fish screen and pipeline project by transferring their water rights also to the pipeline and eliminate their other points of diversion and conveyance systems along Twelvemile Creek. Also eliminate Mr. Hutchings' second (original) point of diversion, which the IDWR write-up implies, still exists. The Second POD is no longer necessary and provides for opportunities for abuses.

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 eighth day of September, 2009.

Larry Zuckerman

Protestant

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 iApplication for Permit No. _____ in the name of _____ i or

iApplication for Transfer No. _____ in the name of _____.i

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.

FOR DEPARTMENT USE ONLY

Received by _____ Date _____ Time _____

\$25.00 fee Received by _____ # _____ Date _____