

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO**

**IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 63-32238 IN THE NAME OF) NOTICE OF INTENT TO REJECT
STEVEN L AND/OR CHRIS L STOUT) APPLICATION FOR PERMIT
_____)**

Findings

On June 6, 2005, Steven L and/or Chris L Stout filed with the Idaho Department of Water Resources (IDWR) application for permit #63-32238 for recreation and wildlife beneficial use of public waters. Public notice of the application was made in state wide newspapers during April 2008. The application was protested by Dan Bilboa Jr. and Jason Kotter. The Kotter protest was later dismissed for non- appearance at the pre-hearing conference.

The application for permit form submitted by the applicant states:

#11a Who owns the property at the point of diversion? Answer: Dan Bilbao

#11c If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: Answer: existing agreement for diversion of right 63-00152B

A prehearing conference was held September 25, 2008 with the following contested matters identified:

- The point of diversion proposed is not on the applicant's property. There is no year round right-of-way/access agreement for the applicant to access the point of diversion.
- The applicant does not have permission from Baxter Ditch waterusers to utilize the ditch for year-round use, nor ditch maintenance/repair access on adjacent landowner's property.
- Increased ditch flow will only promote increased alkaline damage to adjacent croplands.
- As the diversion dam would no longer be irrigation exempt, year round use would require Corps of Engineer and IDWR stream channel alteration approvals.

On October 16, 2008, the applicant requested the application process be placed on "Hold." The "Hold" was granted and acknowledged by IDWR. There has been no correspondence or communication received from the applicant to date. The contested matters remain unsettled.

Notice of Intent to Reject

Applicable Statutes and Rules

Water Appropriation Rule 40 (IDAPA 37.03.08.40.d) states in part:

An applicant may request in writing that commencement of processing of his or her application be delayed for a period not exceed on (1) year or that processing be interrupted for a period not to exceed six (6) months. The director at his discretion may approve the request unless he determines that others will be injured by the delay..... The application processing "Hold" granted by IDWR has expired. There has been no communication or correspondence from the applicants regarding negotiation/settlement efforts with the protestant.

The contested matters identified at the pre-hearing conference have not been addressed by the applicants. The application information provided under #11a and 11c appears unclear and lacking. Idaho Code (IC) 42-203A(5) provides the Director of the Department may reject an application and refuse issuance of a permit if the "*application is not made in good faith.*" Water Appropriation Rule 45 (IDAPA 37.03.08.45.c.i.) outlines the evaluation criteria to determine if the application is made in good faith. Subparagraph "i" states in part:

The applicant shall have legal access to the property necessary to construct and operate the proposed project, has the authority to exercise eminent domain authority to obtain such access.....

Notice

This document will serve to provide notice to applicants Steven L and/or Chris L Stout the following is required by **January 1, 2010** to avoid rejection of Application #63-32238:

1. Provide documents to IDWR showing that you have a year-round right-of-way/legal access to the point of diversion proposed in your application.
2. Provide documents to IDWR showing that you have permission from the Baxter Ditch waterusers to utilize the Baxter Ditch year- round at the flow rate proposed in the application.
3. Provide documentation to IDWR that you have year-round ditch maintenance/repair access permission from property owners adjacent to the Baxter Ditch.

Dated this 9th day of September, 2009


John Westra, Manager

CERTIFICATE OF MAILING

I hereby certify that on the 9th day of September, 2009, I mailed a true and correct copy, postage prepaid of these documents to those on the attached list.



Denise Buffington
Administrative Assistant

Document Sent

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Mailings

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