

07/2008

STATE 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 City of Pocatello Application for leasing of water for Hydro
2. Name of protestant Idaho Irrigation District
3. Protestant's Representative for service (If different than protestant)
Alan Kelsch
4. Service mailing address 7466 S 15th W, Idaho Falls, ID 83402
5. Service telephone no. 208-339-2307 Email Address: akelsch@bdhsi.com
6. Basis of protest (including statement of facts and law upon which the protest is based)
See attachment

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

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 21st day of July, 2008.

Idaho Irrigation District

Protestant

Alan D. Kelsch
Protestant's Representative

RECEIVED

JUL 21 2008

Department of Water Resources
Eastern Region

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.
-

FOR DEPARTMENT USE ONLY

Received by _____ Date _____ Time _____

\$25.00 fee Receipted by _____ # _____ Date _____

Idaho Irrigation District
496 East 14th Street
Idaho Falls, ID 83404

July 21, 2008

Mr. David R Tuthill
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

In the matter of application for leasing of water for hydroelectric generation pursuant to Idaho Code Sections 42-108A and 42-108B between City of Pocatello and Idaho Power Company, Idaho Irrigation District wishes to protest this water lease for the following reasons:

1. If this lease is approved, Idaho Irrigation District's WATER RIGHT NO. 1-2068J of 45,760 acre feet in Palisades Reservoir could be impacted in 2009 if the system doesn't fill. If this lease is approved, Palisades' storage would be reduced up to 20,000 acre feet in 2008 therefore requiring a demand of 20,000 more acre feet on the 2009 fill. We would need 20,000 acre feet more of fill in the system in 2009 in order to make Idaho Irrigation District's allocation in 2009 to be the same as if this lease didn't occur. We feel that due to the potential impacts on Idaho Irrigation District storage fill in 2009 this lease should be denied.

2. Pursuant to Idaho Code 42-1765, the Water Resource Board has appointed the Committee of Nine to "...facilitate the rental of stored water" in Water District 1. Idaho Code 42-1765 also states "When so appointed, the committee shall have the authority to market stored water between consenting owners and consenting renters under rules and regulations adopted by the board." The Water District 1 Rental Pool Procedures have been set up and adopted by the Committee of Nine under the authority of the Water Resource Board and have been approved by the Board. By the authority vested to the Committee of Nine by the Water Resource Board, Idaho Irrigation District believes that Idaho Power Company should only rent water through the Water District 1 Rental Pool. The Committee of Nine has worked for several years to perfect a set of procedures that ensures water for rental through the Water District 1 Rental Pool. The Water District 1 Rental Pool Procedures set up priorities, to assure water is available for agriculture, flow augmentation, and if agriculture demand is reduced in any year then water is made available for water rental below Milner. The current procedures stipulate that up to 55,000 acre feet be provided for rental each year through late season fill by the rental pool. Rule 5.1 of the Rental Pool Procedures states the priorities for renting this water. Rental for uses below Milner has the fourth priority after agriculture and other uses above Milner. As of July 15, 2008, Water District 1 has received requests for rentals of 7,157 acre feet of this water. This leaves 47,843 acre feet available for rentals in 2008. Applicants have up to two weeks to apply for rental of this water after final storage allocation has been made. To our knowledge, the Rental Pool or the Committee of Nine has not been approached by Idaho Power Company to rent water from this block of water for 2008. We believe that Idaho Power Company should use the Rental Pool as an avenue for renting water rather than this private lease. The Rental Pool Procedures also

have a very extensive method of dealing with impacts to spaceholders the following year from any water rentals. They are set up in a very fair and equitable way and should be preserved when dealing with any water rentals in Water District 1. We believe that all water rentals in Water District 1 should be transacted through the Water District 1 Rental Pool so that impacts can be properly calculated and every spaceholder in the system be made whole as much as possible.

3. We also object to this lease because Idaho Irrigation District may suffer a pecuniary loss due to this lease not going through the Water District 1 Rental Pool. As a participant in the Rental Pool we are entitled to a fair portion of the proceeds of the Rental Pool. If Idaho Power Company leased this water through the Rental Pool then the benefits would be paid to all the participants of the Rental Pool, thereby all spaceholders would receive their equitable share of the proceeds and Idaho Irrigation District could receive a substantial payment.

In summary, we ask this application for leasing of water for hydroelectric generation from the City of Pocatello to Idaho Power Company be denied. We would ask that Idaho Power Company be directed to work directly with the Committee of Nine and use the Water District 1 Rental Pool as an avenue for renting water for any hydroelectric uses below Milner. This way proper preservation for agricultural uses may be sustained, proper accounting of impacts may be calculated allowing impacted spaceholders to be made whole as possible, and benefits from rental proceeds may be equitably shared by all participating spaceholders in Water District 1.

Thank You,

Idaho Irrigation District
Authorized Representative
Alan D. Kelsch – member of the Board
7466 S 15th West
Idaho Falls, ID 83402
208-339-2307

cc: City of Pocatello
attn: A. Dean Tranmer, City Attorney
P.O. Box 4169
Pocatello, ID 83205