



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

April 21, 2008

Donald & Patricia Basso
3940 Southhampton RD
Moorpark CA 93021

RE: Contested Application for Permit 65-22942

Dear Mr. & Mrs. Basso:

I am writing in reference to your recent conversation with Steve Lester on 4/16/08. Unfortunately, the above amended application for permit is still contested by the lower creek waterusers.

Mr. Lester discussed with you the next step--hearing process of a contested application. A hearing takes a great deal of resources and time for involved parties and the Department. In reviewing the file, I am concerned that parties have not made sincere efforts in attempting to negotiate a settlement. I would ask that you set a meeting with the protestants and make a final attempt to negotiate a protest settlement. I understand you will be in the Garden Valley area during early May. **Please provide this office with documentation/notes from the meeting proceedings.** If the meeting does not yield a settlement, an agency hearing officer will be appointed and a hearing date scheduled.

Hearing Participation

An officer is appointed to preside over the hearing and to record the testimony and evidence presented during the proceeding. A preliminary order decision will be issued by the officer following the hearing. The decision is based on the hearing evidence presented and evaluation criteria. Both Parties are required to present a case and arguments. The case may include the testimony of witnesses/experts and submittal of documents /exhibits . Parties may represent themselves or retain an authorized representative (attorney) for representation through the process.

Burden of Proof

The burden of proof is divided between the applicant and protestant for a contested case. The applicant bears the initial burden of coming forward with evidence for items #1 thru #4 of the evaluation criteria. Both applicant and protestant bear the initial burden of evaluation item #5. **However, the applicant bears the ultimate burden of persuasion for all the evaluation criteria.**

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Basso Application

As this is a contested application, I would ask that you discontinue contacting Mr. Lester and direct your correspondence and questions to me only. Please contact me at the Western Regional Office, phone 208-334-2190.

Sincerely,


John Westra
Western Region

Cc: R. Belau
Enclosure: IDAPA Appropriation Rule 40
Evaluation Criteria

Protestant Contact Information: Lower Warm Springs Water Users

Roger Belau
52 Middle Fork Ridge Rd
Garden Valley ID 83622
Phone: 208-462-2060

Primary contact

Dave L Nettleton
14 Valley Hi Rd
Garden Valley Id 83622
Phone 208-462-2101

Secondary contact

John R Alderman
28 Broken Oar RD
Garden Valley ID 83622
Phone 208-462-2002

Secondary contact

04. Burden of Proof.

(7-1-93)

a. Burden of proof is divided into two parts: first, the burden of coming forward with evidence to present a prima facie case, and second, the ultimate burden of persuasion. (7-1-93)

b. The burden of coming forward with evidence is divided between the applicant and the protestant as follows:

i. The applicant shall bear the initial burden of coming forward with evidence for the evaluation of criteria (a) through (d) of Section 42-203A(5), Idaho Code; (7-1-93)

ii. The applicant shall bear the initial burden of coming forward with evidence for the evaluation of criterion (e) of Section 42-203A(5), Idaho Code, as to any factor affecting local public interest of which he is knowledgeable or reasonably can be expected to be knowledgeable. The protestant shall bear the initial burden of coming forward with evidence for those factors relevant to criterion (e) of Section 42-203A(5), Idaho Code, of which the protestant can reasonably be expected to be more cognizant than the applicant. (7-1-93)

iii. The protestant shall bear the initial burden of coming forward with evidence for the evaluation of the public interest criteria of Section 42-203C(2), Idaho Code, and of demonstrating a significant reduction, except that the applicant shall provide details of the proposed design, construction, and operation of the project and directly associated operations to allow the impact of the project to be evaluated. (7-1-93)

c. The applicant has the ultimate burden of persuasion for the criteria of Section 42-203A, Idaho Code, and the protestant has the ultimate burden of persuasion for the criteria of Section 42-203C, Idaho Code. (7-1-93)

d. For unprotested applications or permits to be reprocessed, the director will evaluate the application, information submitted pursuant to Rule 40.05.c. and information in the files and records of the department, and the results of any studies the department may conduct to determine compliance with the appropriate criteria. (7-1-93)

e. In protested matters the director will take official notice of information as described in the department's adopted Rules of Procedure, and will, prior to considering, circulate to the parties information from department studies and field examinations concerning the protested application or permit being reprocessed, if such information has not otherwise been made a part of the hearing record. (7-1-93)

05. Additional Information Requirements.

(7-1-93)