

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, 42-222 and 42-224, 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 TRANSFER No. 74356 - Ellsworth Angus Ranch
2. Name of protestant JAMES WHITTAKER
3. Protestant's Representative for service (If different than protestant)

4. Service mailing address P.O. 240 LEADORE, IDAHO 83464
5. Service telephone no. 208-768-2491 Email Address: JWhitt@Yahoo.com
6. Basis of protest (including statement of facts and law upon which the protest is based)

Applicant enlarging POU from 734.5 acres to 925 acres. Applicant apparently plans to run wells full time, where initially they were used to supplement. Wells need to be measured and conjunctively managed.
(additional pages may be attached to describe nature of the protest)

7. What would resolve your protest? Deny Transfer.
See Attached Letter

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 14 day of April, 2008.

James Whittaker
Protestant

Protestant's Representative

RECEIVED

APR 14 2008

Department of Water Resources
Eastern Region

Receipt
#ED33958

BRIAN D. HIGGS, P.G.
Licensed Professional Geologist
Office Phone (208)522-0399
Cell Phone (208)604-1280



6330 West 33rd South
Idaho Falls, ID 83402-5641
Email: higgs@ida.net
Fax: (208)542-0399

April 12, 2008

James Whittaker
Two Dot Ranch
PO Box 240
Leadore, Idaho 83464

Re: Transfer 74356

Dear James,

As you requested I have reviewed the Ellsworth Angus Ranch application for transfer number 74356. The only information available to me at this time is the transfer application and associated documents posted on the Idaho Department of Water Resources web site.

You have very good reason to be concerned about the impacts of this transfer on your water rights. The transfer is requesting to move water from areas with water rights to areas with no water rights. It is also requesting to combine all the rights listed on the transfer form.

The reasons for concern are many; however, I will list a few of the most important ones.

1. According to Basin 74 General Provisions the conjunctive management rules are not in effect in the area of concern. This transfer is requesting a combination of surface and ground water rights to be used in conjunction and supplementary on the same acres. Supplementary water rights are to be used only when the surface water is no longer available and not in conjunction. In addition, the transfer is requesting that surface water be diverted from several different creeks, laterals, and ditches to transport the water to the petitioner's desired location. Policing these changes are going to be extremely difficult if not impossible. I have visited the area and the measuring devices for groundwater and surface water are wholly inadequate to grant this transfer.
2. The groundwater and surface water of the area interact regardless of the general provisions excluding use of the conjunctive management rules. A change in volume at a given point of diversion (POD), on a stream or a well, can significantly change flow to springs and other POD's whether surface water or groundwater.
3. The implementation of this transfer is complicated enough to request a plan from the water master(s) explaining his (her) ability, given the measuring devices of the area, to enforce distribution.

A protest to this transfer is absolutely necessary to allow ample time to request additional documentation of the transfer. For example, it is necessary to know the volumes that are expected to be diverted from which POD's, time of use, and place of use. Detailed maps need to be studied to determine possible injury to nearby rights once the diversion rates are quantified.

Please call if I can assist you further.

Sincerely,

Brian Higgs, P.G. 