



**Western
Watersheds
Project**

Central Idaho Director
Post Office Box 1322
Salmon, Idaho 83467
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Working to protect and restore Western Watersheds

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APR 14 2008

11 April 2008

Department of Water Resources
Eastern Idaho

Water Rights Division
Idaho Department of Water Resources
Eastern Idaho Regional Office
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402-6105

RE: Protest IDWR Application 74356 for New Places of Use (Transfer) of Water Rights 74-67, 74-66, 74-111, 74-42, 74-2329, 74-7006, 74-110, 74-7148, 74-15183, and 74-15190

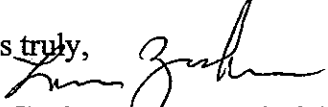
Dear sir/madam:

Please find the attached protest letter for IDWR Application 74356 for a new places of use of Water Rights 74-67, 74-66, 74-111, 74-42, 74-2329, 74-7006, 74-110, 74-7148, 74-15183, and 74-15190 in and along Texas Creek, Big Timber Creek and groundwater from the headwaters of the Lemhi River Basin in the vicinity of Leadore, Idaho. The application is by Ellsworth Angus Ranch of Leadore, Idaho.

Enclosed, please find the required \$25 fee for filing a protest. The protest has been serviced by U.S. Postal Service mail to the applicant, Ellsworth Angus Ranch, and to the BLM - Salmon Field Office Manager, Steve Hartmann.

Thank you for this opportunity to comment and protest this water right transfer application. If you wish to contact WWP, please feel free to call, write, or E-mail the Central Idaho Director, Larry Zuckerman, in Salmon, Idaho, the Executive Director, Jon Marvel, in Hailey, Idaho [(208) 788-2290 or jon@westernwatersheds.org], or our attorney, Laird Lucas, in Boise [(208) 342-7024 or lucas@advocateswest.org].

Yours truly,


Larry Zuckerman, Central Idaho Director
Western Watersheds Project
PO Box 1322
Salmon, Idaho 83467
(208) 756-8000
larry@westernwatersheds.org

Receipt
#E033955

xc: Jon Marvel, Executive Director, WWP, Hailey, Idaho
Laird Lucas, Attorney for WWP, Boise, Idaho
Ellsworth Angus Ranch, Leadore, Idaho
Louise Wagenknecht, WWP Board of Directors, Leadore, Idaho
Steve Hartmann, Salmon Field Office-BLM, Salmon, Idaho

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF

APPLICATION 74356, PROPOSING TO)
TRANSFER WATER RIGHTS NO. 74-67, 74-66, 74-111, 74-42, 74-2329, 74-7006,
74-110, 74-7148, 74-15183, and 74-15190,)
BY Ellsworth Angus Ranch)

PROTEST TO TRANSFER APPLICATION FOR WATER RIGHTS 74-67, 74-66, 74-111,
74-42, 74-2329, 74-7006, 74-110, 74-7148, 74-15183, and 74-15190

Protestant WESTERN WATERSHEDS PROJECT ("WWP"), hereby PROTESTS
Transfer Application for water rights No. 74-67, 74-66, 74-111, 74-42, 74-2329, 74-
7006, 74-110, 74-7148, 74-15183, and 74-15190 by Ellsworth Angus Ranch for
reasons set forth below.

This Protest is submitted pursuant to the public notice in the Recorder-Herald
(Salmon) and the IDWR website; the Idaho Water Code, including but not limited to
I.C. § 42-104, 42-203A, and § 42-222; the IDWR Rules of Procedure; and all other
relevant authorities.

The grounds supporting the above Protest and Motions are set forth below:

1. Protestant WESTERN WATERSHEDS PROJECT ("WWP") is an Idaho non-profit conservation organization, located at Suite M, 16 West Croy Street, PO Box 1770, Hailey ID, 83333, phone: (208) 788-2290, email: wwp@westernwatersheds.org. Until 2001, WWP was known as "Idaho Watersheds Project." WWP has approximately 1,600 members, located in Idaho and other states, and is dedicated to protecting and conserving the watersheds, public lands and natural resources of the American West.
2. WWP has an interest in the specific water right application at issue here (Nos. 74-67, 74-66, 74-111, 74-42, 74-2329, 74-7006, 74-110, 74-7148, 74-15183, and 74-15190) through many years of involvement in livestock grazing management and water use in the Lemhi river Basin in Lemhi County. WWP is deeply involved in many water use and land management issues in the Upper Salmon basin generally.
3. In particular, WWP and its staff and members make extensive use of the public lands, waters and resources of the Upper Lemhi River watershed, including Texas Creek and Big Timber Creek as well as the other surface waters, springs, and wetlands that are dependent on underlying aquifers the believed water sources of this transfer application; and those uses include angling, hiking, study, and other scientific, recreational, and aesthetic pursuits. WWP is concerned with preventing adverse harms to the springs, streams, watersheds, and dependent fish and wildlife in the Lemhi River basin, including Big Timber Creek and Texas Creek and U.S. Bureau of Land Management's Salmon Field Office's managed public lands in the Lemhi Resource Management Area.
4. WWP has undertaken extensive review and surveys of diversions, land use practices, and other human activities in the basin; participation in Federal and state agency proceedings relating to diversions and land use practices in the basin; and has brought Federal court litigation over

- diversions and land use practices in the basin.
5. The Transfer of Water Rights 74-67, 74-66, 74-111, 74-42, 74-2329, 74-7006, 74-110, 74-7148, 74-15183, and 74-15190 by changing the places of use is for the sole benefit and profit of Ellsworth Angus Ranch, by reducing their costs for irrigation, adding irrigation to newly purchased lands not serviced by the sprinkler irrigation system, adding water to another irrigation system that is apparently dry, and thereby increasing his personal profits of their agricultural lands and business.
 6. By moving the places of use, including newly irrigated lands and not recovering water savings for improved efficiency as instream flows and the beneficial use of fish propagation, the new water right will dewater a relatively large reach of Big Timber Creek and Texas Creek, making it inhospitable to native and ESA-listed bull trout. It will also remove these reaches of Texas Creek and Big Timber Creek, which is designated critical habitat for threatened Snake River Basin steelhead and for threatened Snake River spring/summer Chinook salmon, as anadromous salmonid habitat, and eliminate the possibility of future restoration of this portion of the Lemhi River Basin for the recovery of these threatened fishes. By moving the places of use without recovering surface flows for gains in efficiency, the natural and scenic values of these special aquatic sites and the upland sage brush habitat, which will accommodate the new irrigation systems, will be irretrievably lost.
 7. By not eliminating the depletion of surface flows and groundwater supplies, the occupied bull trout habitat and designated critical anadromous salmonid habitats of Big Timber Creek and Texas Creek will be further fragmented, placing the dependent public aquatic resources at further risks because of genetic isolation, fish passage obstruction, and increased chances of entrainment and impingement of fishes by irrigation diversion works.
 8. It is a fundamental tenet of Idaho water law, as in other prior appropriation states, that water may only be diverted for reasonable and beneficial uses and that all diversions must be in the local public interest. *Baker v. Ore-Ida Foods, Inc.*, 95 Idaho 575, 584, 513 P.2d 627 (1973). See also *Poole v. Olaveson*, 356 P.2d 61, 65 (1960) ("policy of the law of this State is to secure the maximum use and benefit, and the least wasteful use, of its water resources"); *Glavin v. Salmon River Canal Co.*, 44 Idaho 583, 258 P. 532 (1927) ("any property rights [in water] must be considered and construed with reference to the reasonableness of the use").
 9. WWP contends that the application must be denied because it is (1) contrary to the local public interest, and (2) there is insufficient public benefit to outweigh the public cost in losses of natural resources, free-flowing stream channel, fragile sagebrush steppe, and healthy riparian wildlife corridor and is otherwise unlawful, as WWP will demonstrate.
 10. Although WWP believes that it automatically becomes a "party" to this proceeding by virtue of its above Protest to the application, to the extent necessary WWP further moves under the IDWR Rules of Procedure to intervene as a party, on grounds that its interests may be adversely affected by this proceeding, no other party will adequately represent those interests, and the public interest support such intervention.

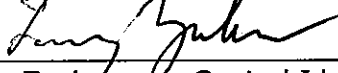
CONCLUSION

For the foregoing reasons, WWP respectfully PROTESTS the transfer of water right application 74356; MOVES TO INTERVENE in said proceeding, to the extent necessary to be a full party and protect its interests; and MOVES FOR DENIAL of the water right application on grounds that the proposed water rights are not in the local public interest and that there is no gain by the other water users and designated beneficial uses of the Lemhi River Basin for increased irrigation efficiency. Instead, the application proposes to allow the applicant to increase the number of acres irrigated, contrary to IDWR policies and recent improvements in water use in the Lemhi River Basin 74.

The requisite filing fee is submitted herewith.

DATED: April 11, 2008

Respectfully submitted,



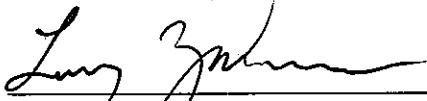
Larry Zuckerman, Central Idaho Director
Western Watersheds Project

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of March, 2008, I caused the foregoing PROTEST, MOTION TO INTERVENE, and MOTION TO DENY TRANSFER to be served via first class mail, postage prepaid, upon the following persons:

Steve Hartmann
Bureau of Land Management
Salmon Field Office Manager
1206 South Challis Street
Salmon, Idaho 83467

Ellsworth Angus Ranch
PO Box 60
Leadore, Idaho 83464



Larry Zuckerman, Central Idaho Director
Western Watersheds Project
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Salmon, Idaho 83467
(208) 756-8000
larry@westernwatersheds.org