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Working to protect and restore Western Watersheds

**Western
Watersheds
Project**

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MAR 03 2008

Department of Water Resources
Eastern Idaho Regional Office

3rd of March 2008

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 72799 for New POD (Transfer) of Water Right 73-156

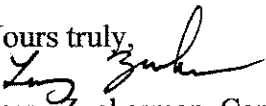
Dear sir/madam:

Please find the attached protest letter for IDWR Application 72799 for a new point-of-diversion of Water Right 73-156 in and along Goldburg Creek in the Pahsimeroi River Basin. The application is by Judd A. Whitworth of Ellis, 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, Judd A. Whitworth, and to the Challis Field Office Manager, Dave Rosekrance.

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

xc: Jon Marvel, Executive Director, WWP, Hailey, Idaho
Laird Lucas, Attorney for WWP, Boise, Idaho
Judd A. Whitworth, Ellis, Idaho
Dave Rosenkrance, Challis Field Office-BLM, Challis, Idaho

*Receipt
#E033820*

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF
APPLICATION 72799, PROPOSING TO)
TRANSFER WATER RIGHT NO. 73-146,)
BY Judd A. Whitworth)

PROTEST TO TRANSFER APPLICATION FOR WATER RIGHT 73-146

Protestant WESTERN WATERSHEDS PROJECT ("WWP"), hereby PROTESTS Transfer Application for water right No. 73-146 by Judd A. Whitworth for reasons set forth below.

This Protest is submitted pursuant to the public notice in the Challis Messenger dated February 21, 2008; 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 1,400 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 (No. 73-146) through many years of involvement in livestock grazing management and water use in the Pahsimeroi Valley in Custer and Lemhi Counties. 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 Pahsimeroi watershed, including Goldburg Creek the believed water source 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 Pahsimeroi basin, including Goldburg Creek and U.S. Bureau of Land Management's Challis Field Office's managed public lands.
4. BLM-managed lands are proposed to be permanently converted from supporting native plants and wildlife for a conveyance channel, new point of diversion (POD), and right-of-way easement for construction of a new diversion and irrigation ditch, maintenance of the new water improvements, and operations of the diversion structure and irrigation ditch; and in furtherance of those interests, 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 Right 73-146 by adding a new POD upstream of the existing POD in and along Goldburg Creek is for the sole benefit and profit of Judd Whitworth, by reducing his costs for irrigation, and thereby increasing his personal profits of his agricultural lands and business.
6. By moving the POD upstream and not eliminating the existing POD, the new water right will dewater a relatively large reach of Goldburg Creek

making it inhospitable to native and ESA-listed bull trout. It will also remove this reach of Goldburg 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 Pahsimeroi River Basin for the recovery of these threatened fishes. By moving the POD upstream, and dewatering the reach of Goldburg Creek between the existing and proposed POD, the natural and scenic values of this special aquatic site and the upland sage brush habitat, which will accommodate the new conveyance ditch, will be irretrievably lost.

7. By not eliminating the existing POD and adding an additional POD, the occupied bull trout habitat and designated critical anadromous salmonid habitats of Goldburg 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, (2) there is insufficient public benefit to outweigh the public cost in losses of natural resources, free-flowing stream channel, and healthy riparian wildlife corridor, (3) there is no evidence that a right-of-way permit to cross Bureau of Land Management administered public land has been secured by Mr. Whitworth 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.

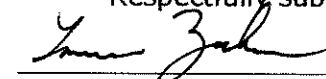
CONCLUSION

For the foregoing reasons, WWP respectfully PROTESTS the transfer of water right application 73-146; 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 right is not in the local public interest and that there is insufficient water available at the source to provide for the proposed diversion.

The requisite filing fee is submitted herewith.

DATED: March 3, 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:

Dave Rosenkrance
Challis Field Office Manager
801 Blue Mountain Road
Challis, Idaho 83226

Judd A. Whitworth
Box 26
Ellis, Idaho 83253



Larry Zuckerman, Central Idaho Director
Western Watersheds Project
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