



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Challis Field Office
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Challis, Idaho 83226

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Department of Water Resources
Eastern Region

In Reply Refer To:
4000 (084)

July 3, 2003

Idaho Department of Water Resources
900 North Skyline Drive
Idaho Falls, Idaho 83402

Dear Idaho Department of Water Resources:

This letter is in response to the Western Watersheds Project (WWP) and Jon Marvel's protest of water right permit application 73-11973, dated October 3, 2002.

The water, which the Bureau of Land Management (BLM) is seeking to appropriate, is from a spring near Opal Springs on the US Geologic Survey quadrangle map but not Opal Springs itself. The new BLM project (Opal Spring Pipeline Extension) is simply an extension of an existing project (Opal Spring Pipeline), which has already developed this source under water right license 73-02209.

The following is in response to points laid out by WWP in their letter of protest:

1. We don't believe the WWP being an Idaho non-profit organization is grounds for protesting water rights under Idaho water law. Absent a specific, legitimate concern, there is no basis for protest.
2. WWP has no interest by virtue of water rights held at their Green-Fire Preserve on the East Fork of the Salmon River. Any BLM water appropriation in the Pahsimeroi watershed does not and cannot affect WWP and its Green-Fire Preserve. Water in the Pahsimeroi does not contribute to water in the East Fork of the Salmon River. Therefore, there is no injury to WWP and its Green-Fire Preserve. "Involvement in livestock grazing management" does not constitute an interest in this water right application. Absent a legitimate concern, there is no basis for protest.
3. As mentioned above, Opal Springs is not the source for this project. The source for this project is a spring that sinks and does not connect to a downstream tributary. There are no fish in these waters. Extending the existing development of this source does not impede "hiking, study, and other scientific, recreational and aesthetic pursuits", as the extension will not

change the nature or character of the source that has already been developed. There are no water rights held at this source for the other purposes mentioned by WWP, such as fishing, hiking or study. Absent a specific, legitimate, concern there is no basis for the protest.

4. Securing water rights for "maximum use and benefit" is the law and policy of the state. Stockwater is identified as a beneficial use in Idaho. Therefore, there is not an inherent problem with our request. Absent a specific, legitimate concern, there is no basis for protest.

5. (1) The Idaho Department of Water Resources (IDWR) under Idaho law is the determiner of the local public interest. Local public interest has to be affected parties. To intervene, WWP must demonstrate to IDWR that they are a legitimate interested and affected party. (2) There is enough water at this source for the existing pipeline as well as the extension of the pipeline during the intended period of use. Further, it is a de minimus quantity of water used for stockwater and is limited to the quantity of water beneficially used by the number of stock within the allotment. (3) WWP has no jurisdiction or authority in unauthorized use situations on federal public land. It is the responsibility of the US Forest Service to deal with unauthorized use on lands managed by the Forest Service, not WWP. Incidentally, the Forest Service developed the existing pipeline in conjunction with the BLM and three of the existing troughs are within a Forest Service grazing allotment. There is nothing in Idaho water law that says the BLM cannot hold water rights to stockwater use (troughs) on Forest Service land and vice versa, especially when dealing with pipelines that cross federal ownership and/or management lines. Absent legitimate concerns, there is no basis for protest.

6. Since there are no other protests, WWP cannot be an intervener in this matter, if their protest does not grant them party status. They are not affected by this water right application. They may not protest based upon general and vague concerns, and not provide any facts to substantiate their accusations. Further, they cannot assert the interests of others who have not filed protests of their own.

It is the BLM's belief that IDWR should summarily dismiss the protest of water right application 73-11973. If IDWR feels there are grounds for protest, then the BLM requests to waive the usual informal conference and proceed to an immediate hearing, as we would still like to construct as soon as possible.

Sincerely,

A handwritten signature in cursive script that reads "Renee Snyder".

Renee Snyder
Field Manager

cc:
Western Watersheds Project
Fred Price