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*Working to protect and restore Western watersheds*

## BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF  
APPLICATION 73-11973, PROPOSING TO )  
ACQUIRE WATER RIGHT NO. 73-11973, )  
BY US DEPARTMENT OF INTERIOR BLM. )

Receipt # E028216 RECEIVED  
OCT 04 2002  
Department of Water Resources  
Eastern Region

## PROTEST TO APPLICATION FOR WATER RIGHT 73-1193

Protestant WESTERN WATERSHEDS PROJECT ("WWP"), hereby PROTESTS  
Application for water right No. 73-11973 by US Department of interior, Bureau of Land  
Management for reasons set forth below.

This Protest is submitted pursuant to the public notice in the Challis Messenger dated  
September 19, 2002; 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](mailto: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-  
11973) through many years of involvement in livestock grazing management and water use in the



Pahsimeroi Valley, WWP is the owner and manager of the Greenfire Preserve on the East Fork Salmon River, which holds water rights in the Upper Salmon River subbasin; and 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 Opal Springs the believed source of this application; and those uses include fishing, 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 the Lawson Creek and Sulphur Creek grazing allotments and the Opal Springs area on the Challis National Forest; and in furtherance of those interests 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.

4. 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").

5. WWP contends that the application must be denied because it is (1) contrary to the local public interest, (2) there is insufficient water to satisfy the requested right at the source, (3)

there is no evidence that a pipeline permit to cross Forest Service administered public land has been secured and is otherwise unlawful, as WWP will demonstrate.

6. 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.

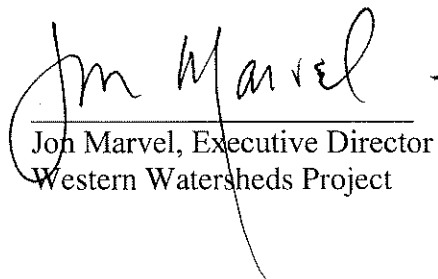
### **CONCLUSION**

For the foregoing reasons, WWP respectfully PROTESTS the water right application 73-11973; 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: October 3, 2002

Respectfully submitted,

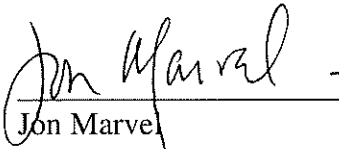
  
Jon Marvel, Executive Director  
Western Watersheds Project

## CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of October, 2002, 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:

Renee Snyder  
Challis Field Office Manager  
801 Blue Mountain Road  
Challis, Idaho 83226

Salmon Office  
Bureau of Land Management  
50 Highway 93 South  
Salmon, Idaho 83467

  
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Jon Marvel  
Executive Director,  
Western Watersheds Project