

APPLICATION FOR PERMIT NO. 78-12245

PROTEST AGREEMENT/WITHDRAWAL

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JUN 01 2006

WATER RESOURCES
WESTERN REGION

Based on discussion at the May 3, 2006 prehearing conference, this agreement is signed by the applicant and the protestants. The protestants designated Joel Chambliss as their agent to sign the agreement. The parties understand that a conditional withdrawal of protest will allow the Idaho Department of Water Resources (IDWR) to approve the application subject to conditions of approval. IDWR will issue the approval as a preliminary order. The parties will have 14 days to appeal the order. The order becomes final if it is not appealed.

The application will be amended to add a small storage pond located away from Little Elk Creek and on the applicant's property. The pond will be filled outside of most of the irrigation season to protect senior water rights. The period of use will therefore be year around subject to limitations described below.

A ½ acre lawn irrigation project associated with a home can be considered domestic use requiring about 2 acre-feet (AF) per year based on IDWR standards for the local area in question. An additional amount of storage will be needed to offset evaporative losses from the pond during the irrigation season. Therefore a pond capacity of about 4 AF will be needed (estimate the capacity as surface area in acres times average depth in feet).

Some concerns remain about the use of a 4-inch diameter pipeline to divert the minor amount of water proposed by the applicant. On the other hand, the local community could benefit from that pipeline (emergency fire suppression). The pipeline would be acceptable only if properly controlled and subject to inspection as needed.

Eventually a water district might be formed for regulating diversions from Little Elk Creek. Regulation would include adjustable, lockable and measurable diverting works. A watermaster would deliver available water based on the seniority or priority system. Junior water rights would be curtailed whenever necessary based on the available water supply.

The applicant owns a domestic well exempted from water right approval under Idaho law (I. C. § 42-111 and 42-227). The well can be used to refresh the pond as needed during periods of surface water shortage or other factors preventing diversion of water from the creek. Use of the well for this purpose will not require any water right approval assuming the limits of exempted ground water use are honored (see attached copy of Idaho law).

If the pond will include a dam above land surface instead of a simple excavated site below land surface, the applicant must file an "Application for Construction of a Small Dam" with IDWR after Application 78-12245 is approved but before building the dam.

Independent confirmation is needed to verify that water is not diverted during restricted periods. Confirmation is also required to show that only 0.02 cfs (9 gpm) is diverted whenever 78-12245 would be in use. This could be covered by the use of adjustable and measurable diverting works.

Diversion of water from Little Elk Creek under 78-12245 shall be limited as follows to protect senior water rights:

1. Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and adjustable controlling works of a type acceptable to IDWR as part of the diverting works.
2. These controls shall include a main valve on the pipeline plus a faucet valve on the pipeline suitable for a 5-gallon bucket measurement. The controls shall be close to the point of diversion at the creek for convenient access and inspection by parties to this agreement and to their successors in interest. The purpose of these controls is to ensure that only 0.02 cfs (9 gpm) is diverted during authorized periods under this right.
3. The right holder shall not divert water from the creek from July 1 through October 31 during any period when a watermaster is not regulating diversions of water from Little Elk Creek. Diversion from the creek shall be subject to watermaster approval regardless of any date restrictions during any period when a watermaster is regulating diversions from this source.
4. Water can be withdrawn from the storage pond to irrigate the ½ acre lawn from April 1 through October 31 (standard irrigation season for the local area).

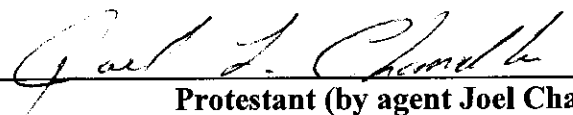
The protest against Application 78-12245 is withdrawn if:

1. The application is amended as described above.
2. The application is approved as described above.
3. The protest is considered totally withdrawn when the final order approving the application becomes effective.

Signatures


Applicant

5-26-06
Date


Protestant (by agent Joel Chambliss)

5/26/06
Date

IDAHO CODE INFORMATION - EXTRACTS

42-111. DOMESTIC PURPOSES DEFINED.

“... The phrase "domestic purposes" or "domestic uses" means:

The use of water for homes ... livestock and for any other purpose in connection therewith, including irrigation of up to one-half (1/2) acre of land, if the total use is not in excess of thirteen thousand (13,000) gallons per day ...”

42-227. DRILLING AND USE OF WELLS FOR DOMESTIC PURPOSES EXCEPTED.

“... The excavation and opening of wells and the withdrawal of water therefrom for domestic purposes shall not be subject to the permit requirement under section 42-229, Idaho Code; providing such wells and withdrawal devices are subject to inspection by the department of water resources and the department of environmental quality ... Rights to ground water for such domestic purposes may be acquired by withdrawal and use...”

IDWR NOTES

Amount of water diverted from an exempted domestic well is limited to the lesser of the amount of water beneficially used or 13,000 gallons/day – cannot divert and waste water simply to reach the maximum of 13,000 gallons/day, for example.

Applicant’s domestic well can serve the home, ½ acre lawn, and/or to refresh the pond under these limitations without additional water right approval from IDWR.

The domestic well is not very productive according to the applicant’s information in the recent meeting. The well might offer some relief for the pond during non-peak domestic use hours, for example.