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DEC 05 2005
Department of Water Resources
Eastern Region

**BEFORE THE
DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO**

**Exception of PacifiCorp,
an Oregon Corporation, dba
Utah Power**

#197827 v1

Jody L. Williams
Holme Roberts & Owen, LLP
299 South Main Street, Suite 1800
Salt Lake City, Utah 84111-2263

2. Protestant owns water rights in the Bear River and Bear Lake decreed in the matter of *Utah Power & Light Company v. The Last Chance Canal Company, Limited, et al*, in Equity No. 203, July 14, 1920, and *Utah Power & Light Company v. Richmond Irrigation Company, et al*, February 21, 1922, as well as other rights in the Bear River below Claimant's proposed point of diversion.

3. Claimant has filed a Claim to a Water Right for 6.0 cfs to be used for domestic use, stock watering and irrigation.

4. The source for the Claim is a well which is the source for licensed Water Right No. 13-2209. Water from this source is fully appropriated.

5. On August 12, 2001, the Director of the Idaho Department of Water Resources issued the "Order Designating the Bear River Ground Water Management Area. Conclusion of Law No. 4 states that "Diversion and use of ground water for new consumptive purposes in the Bear River Basin generally reduces the amount of surface water available to supply prior water rights."

6. Protestant owns water rights in Bear Lake which is used to deliver supplemental irrigation water to surface water users diverting from the Bear River. The recipients of this supplemental irrigation water have delivery contracts with PacifiCorp. Diversions of water under the Statutory Claim could result in less water for surface water users, causing PacifiCorp to deliver them more water from Bear Lake. Additionally, Claimants' use would leave less water for Protestant to use in its hydroelectric plants under Protestant's nonconsumptive water rights.

7. Using water under both the Statutory Claim and the Licensed Water Right would enlarge both the Claim and the Licensed Water Right.

8. In addition to diminishing the quantity of Bear River water available to satisfy prior existing water rights, Protestant believes that granting the above-referenced Statutory Claim could conflict with the local public interest in the three following areas by reducing groundwater

inflow into the Bear River: First, increased reliance by existing users on supplemental irrigation water delivered from Bear Lake to make up the depletion from Bear River natural flow will stress Protestant's ability to supply the full amount of Bear Lake water already allocated to existing water users. Second, when the level of Bear Lake drops, recreation and other non-consumptive uses at the lake are adversely affected. The Idaho State Parks & Recreation boat launch becomes unusable; the State park receives little use due to its distance from the water; facilities built with State funds are unusable, and visitor days and the attendant revenue they produce for the State plummet. The local economy at the lake suffers. Third, traditional habitat for indigenous fish in Bear Lake may be decreased. Other wildlife species which depend on the lake may have similar problems due to habitat loss. The spread of noxious weeds and tamarisk is accelerated along the lake shore.

9. Claimants Balls and Fannesbeck have filed the Statutory Claim to irrigate acreage presently covered by Licensed Water Right No. 13-2209. Any irrigation on the land covered by Licensed Water Right No. 13-2209 occurring from the date of the application, June 13, 1960, to the present occurred using Water Right No. 13-2209. Now, Claimants assert that they commenced irrigating the land on June 13, 1960 without a water right in order to declare that it was irrigated by the Statutory Claim.

10. Since most of the land now claimed to be irrigated under the Statutory Claim was actually irrigated under the Licensed Water Right, the Statutory Claim must not be accepted.

11. Claimant Balls filed Transfer 70722 on July 29, 2003 to transfer the place of use of Water Right No. 13-2209 to new acreage. Protestant did not protest Transfer 70722 because, at the time filed, it did not appear to enlarge the licensed water right. Claimant Balls appears to have filed Transfer 70722 in order to leave the previously irrigated land "bare" so that Claimants Balls and Fannesbeck could declare that it was being irrigated by the Statutory Claim. If the land was being irrigated under the Statutory Claim, the Transfer must be denied. If the land was being irrigated under the Licensed Water Right, the Statutory Claim must not be accepted.

12. Claimants are including land in the Statutory Claim that has not actually been irrigated or that was not included in the Licensed Water Right lands.

WHEREFORE, Protestant respectfully protests the above-referenced Statutory Claim and requests that it not be accepted, and that Transfer T70722 be evaluated in conjunction with the Statutory Claim.

DATED this 5th day of December, 2005.

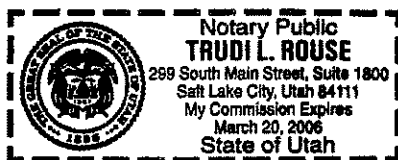
PACIFICORP, dba UTAH POWER

By *Claudia Conder*
Claudia Conder
PacifiCorp
1407 West North Temple, Suite 320
Salt Lake City UT 84116

STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

On this 5th day of December 2005, before me, the undersigned, a notary public in and for said state, personally appeared Claudia Conder, known to me to be the person whose name is subscribed to the within instrument, who duly acknowledged to me that she executed the same.

WITNESS my hand and official seal.



Trudi L. Rouse
Notary Public

MAILING CERTIFICATE

On this 5th day of December, 2005, I mailed a true and correct copy of the foregoing Protest, postage prepaid, to:

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Judi Rouse