



United States Department of the Interior

BUREAU OF RECLAMATION

Snake River Area Office
214 Broadway Avenue
Boise, Idaho 83702-7298

RECEIVED

JUL 29 1998

Department of Water Resources

IN REPLY REFER TO:

SRAO-1000
WTR-4.10

JUL 29 1998

Mr. Karl Dreher
Director
Idaho Department of Water Resources
1301 North Orchard Street
Boise ID 83706

Subject: Protective Protest of Recharge Water Right Applications

Dear Mr. Dreher:

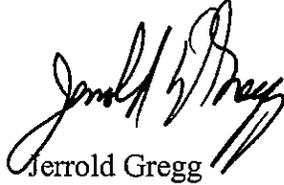
Please find enclosed the Bureau of Reclamation's (Reclamation) protective protests to the 20 recharge applications recently advertised by the Department of Water Resources (Department). We are taking this action to protect the storage rights and the operations of the Minidoka-Palisades Projects (Projects). These Projects are operated for the benefit of some 65 spaceholder entities which provide irrigation water to over 1.1 million acres of land.

Reclamation has participated in the Department's ongoing recharge study, through direct funding and staff participation. We believe the study, scheduled for completion in 1999, will be of significant value in determining how recharge might occur. We are concerned, however, that the recharge applications are premature because they are not consistent with the information being developed in the study, particularly relating to volumes available for recharge and to the times when recharge would occur.

After careful deliberation, Reclamation has determined that the project water rights of the Minidoka-Palisades Projects are at risk of serious injury if the recharge activities are not carefully coordinated with Reclamation project operations. Once the recharge applications are granted, the beneficiaries will have standing to arguably affect the longstanding operation of the Projects. Only carefully developed conditions to the water rights can protect the interests of the United States and project spaceholders. Reclamation needs to participate in developing appropriate conditions, and the only means to assure full protection of these interests is through this protective protest.

I look forward to working with you, the Water Resources Board, and others in addressing Reclamation's concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerrold Gregg". The signature is fluid and cursive, with a large initial "J" and "G".

Jerrold Gregg
Area Manager
Snake River Area Office

Enclosures

cc: Clarence Paar
Chairman
Water Resources Board
1301 North Orchard Street
Boise ID 83706

Timothy Callanan
Assistant Attorney General
PO Box 83720
Boise ID 83448

Applications being Protested

by

Bureau of Reclamation

Application No.	Irrigation Entity	County	City	CFS
01-07131	Progressive I. D.	Jefferson	Idaho Falls	230
01-07132	Enterprise Canal Co.	Jefferson	Idaho Falls	283
01-07133	Snake River Valley I. D.	Bingham	Shelly	682
01-07134	Peoples Canal & I. C.	Bingham	Blackfoot	475
01-07135	New Sweden I. D.	Bonneville	Idaho Falls	949
01-07136	Farmer's Friend I. C.	Bonneville	Ririe	537
01-07137	Harrison Canal & I. C.	Jefferson	Idaho Falls	698
01-07138	Aberdeen Springfield C. C.	Bingham	Aberdeen	1,387
01-07139	Rudy Irrigation Canal Co.	Jefferson	Rigby	110
01-07140	Rigby Canal & Irr. Co.	Jefferson	Rigby	253
01-07141	Burgess Canal & Irr. Co.	Jefferson	Rigby	1,095
02-07473	North Side Canal Co.	Jerome	Twin Falls	2,831
0207474	Twin Falls Canal Co.	Jerome	Twin Falls	3,738
21-07574	Twin Groves Irr & Mfg Co.	Fremont	St. Anthony	160
21-07575	Salem Union Canal Co.	Fremont	Rexburg	339
21-07576	Fall River Irrigation Co.	Fremont	St. Anthony	294
21-07577	Egin Bench C. C.	Fremont	St. Anthony	399
21-07578	St. Anthony Union C. C.	Fremont	St. Anthony	568
21-07579	Independent Canal Co.	Fremont	St. Anthony	337
21-07580	Last Chance Canal Co.	Fremont	St. Anthony	94

JUL 29 1998

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Department of Water Resources

NOTICE OF PROTECTIVE PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains all necessary information.

1. Matter being protested 20 Groundwater Recharge Applications-- See Attached List
2. Name of protestant United States of American, Bureau of Reclamation
3. Protestant's representative for service (if different than protestant)
Jerry Gregg, Manager, Snake River Area Office
4. Service mailing address 214 Broadway Avenue, Boise, Idaho 83702-7298
5. Service telephone number (208) 334-1460
6. Basis of protest (including statement of facts and law upon which the protest is based) _____
SEE ATTACHED SHEET
7. What would resolve your protest? SEE ATTACHED SHEET

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 29th day of July, 19 98.

U.S. Bureau of Reclamation

PROTESTANT Jerrold D. Gregg

Snake River Area Manager

PROTESTANT'S REPRESENTATIVE



NOTE:

a) Not more than two (2) representatives for service of documents may be designated on a protest. If this protest is sign by more than one person without identifying the representative(s) for service of documents, the hearing officer may select the person(s) upon whom documents will be served.

b) A protestant is required to timely file a protest with the department together with a \$25.00 protest fee in order for the protest to be considered by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."
2. Show the name of the protestant.
3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.
4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.
5. Show the telephone number of the authorized representative unless the protestant does designate a service representative.
6. Specifically describe the nature of the protest.
7. Describe the relief being sought by the protestant.

FOR DEPARTMENT USE ONLY

Received by [Signature] Date 7/29/98 Time 2:20pm
\$25.00 fee Received by [Signature] # 1045982 Date 7/29/98

BASIS OF PROTECTIVE PROTEST

By the

BUREAU OF RECLAMATION

a) The recharge rights being sought would be exercised when storage reservoirs of the Bureau of Reclamation's Minidoka and Palisades Projects are being filled pursuant to valid State water rights, as follows:

Reservoir	Type of Right	Number	Acre-feet
Ririe	Permit	25-07004	90,000
Island Park	License	21-02156	114,000
		21-02157	21,000
American Falls	License	01-02064	1,800,000
Little Wood	License	37-02386	1,000
Palisades	License	01-02068	1,400,000
Walcott	Decree	01-10034	210,200

The United States is obligated by contract with project spaceholders to operate its Project reservoirs in a manner to maximize fill. The manner in which the potential recharge water rights may be administered has the potential to affect the fill and operation of Reclamation Project Reservoirs and injure the above water rights of the United States.

(I.C. § 42-203A(5)(a))

b) The Bureau of Reclamation has Winter Water Savings contract provisions with spaceholders of Upper Snake Reservoirs, which have been confirmed by court decrees of the State of Idaho, Aberdeen-Springfield Canal Co. v Henry Eagle, March 12, 1969 and Burley Irrigation District v. Henry Eagle, dated July 10, 1968, and by Federal Law. Under these provisions the owners and operators of certain canal systems, including those listed below, have contracted to forgo winter diversions of water for not less than 150 consecutive days.

Progressive Irrigation District
Enterprise Canal Company
Snake River Valley Irrigation District
Peoples Canal & Irrigation Company
New Sweden Irrigation District
Farmer's Friend Irrigation Company
Harrison Canal & Irrigation Company

Aberdeen Springfield Canal Company
Rudy Irrigation Canal Company
Rigby Canal & Irrigation Company
Burgess Canal & Irrigation Company
North Side Canal Company
Twin Falls Canal Company
Fremont Madison Irrigation District

The Congress of the United States found these Winter Water Savings provisions to be necessary to assure the long term viability of Palisades Reservoir, and were a specific condition of the authorization and construction of Palisades Dam. See the Act of September 30, 1950, ch. 1114, 64 Stat. 1083-84, Sec. 4. The Bureau of Reclamation by notice of this protest reaffirms these provisions and expresses its intent to enforce the provisions of the contracts and decrees to protect its storage water rights. Any exercise of water rights under the recharge water right permits must not interfere with the Winter Water Savings provisions of Reclamation's contracts (I.C. § 42-203A(5)(a)).

c) The Bureau of Reclamation has entered into a cooperative study to determine the points of diversions and quantities of flow that would be most beneficial for managed recharge. The study will not be complete until the end of 1999. Until the study is complete, recharge at the proposed point of diversion can not be firmly identified as a beneficial use of water. The total rates proposed far exceed the volumes that have been considered for diversion for recharge, and the period of use requested (the entire calendar year) clearly includes times when no water would be available for recharge and for which recharge has never been proposed. For these reasons, the permit is speculative and premature (I.C. § 42-203A(5)(c)).

d) The Bureau of Reclamation reserves the right to protest the plan and map of the proposed works for the diversion and application of the water to a beneficial use (I.C. § 42-202(4)). The proposed plans do not address impacts on the local public interest (I.C. § 42-203A(5)(e)).

e) The Bureau of Reclamation is filing this protest as a protective measure. Reclamation's willingness to consider recharge as an appropriate use of water is demonstrated by its funding and participation in the recharge study with the Idaho Department of Water Resources. The Bureau of Reclamation believes that the applications are premature and should be withdrawn pending completion of the recharge study and determination of the terms and conditions necessary to protect the operation of Reclamation Project Dams.

f) The Bureau of Reclamation requests a hearing within 60 days or an agreeable time among the parties.