

DEC 01 2017

DEPARTMENT OF
WATER RESOURCES

W. Kent Fletcher, ISB #2248
FLETCHER LAW OFFICE
P.O. Box 248
Burley, Idaho 83318
Telephone: (208) 678-3250
Facsimile: (208) 878-2548
Email: wkf@pmt.org

Attorney for Big Lost River Irrigation District

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

IN THE MATTER OF THE APPLICATION FOR
A MITIGATION AND AQUIFER
ENHANCEMENT PLAN

CM-MP-2017-001

NOTICE OF PROTEST

In the name of the Upper Big Lost River Ground
Water Association Users

Fee Category: Exempt
I.C. § 67-2301

W. Kent Fletcher, on behalf of the Big Lost Irrigation District (Protestant), files this Notice of Protest to the Mitigation and Aquifer Enhancement Plan filed by the Upper Big Lost River Ground Water Association Users (Applicant).

The initial grounds for protest are:

1. Since the Plan acknowledges that it is primarily dependent upon a transfer of the nature of use of a storage right, the Application is premature and should be dismissed based upon the rationale of that *Order Addressing Exceptions and Denying Application for Permit*, filed in the Matter of Application for Permit No. 27-12261 in the name of the City of Blackfoot, dated September 22, 2015, in which the Director of the Idaho Department of Water Resources (IDWR) stated:

“given the uncertainty and complications associated with the City’s yet-to-be-filed transfer, the better approach in this case is to deny the application, without prejudice, for failure to submit sufficient

information for the Department to consider the City's mitigation plan. The analysis of how much water is being consumptively used, what water is available for mitigation credit, and other information regarding the mitigation plan should not be deferred to future proceedings. The analysis of a transfer application... needs to correspond with an analysis of the proposed mitigation plan, and both analyses should be presented to the Department at the same time so IDWR can fully consider the proposed mitigation."

The decision of the Director was upheld by the District Court and by the Idaho Supreme Court.

2. The Applicant has failed to demonstrate there is an adequate water supply available to achieve the goals of the mitigation plan.
3. The Applicant has failed to demonstrate that diversions under this Plan will not injure existing natural flow and storage water rights and storage water carryover.
4. The Applicant has failed to demonstrate how operations pursuant to the Plan will result in delivery of water to water users injured by ground water pumping.
5. The Applicant has failed to demonstrate that the proposed mitigation is sufficient to offset impacts of ground water pumping described in the Application.
6. The Application indicates that individuals can place storage water in the State Water Bank. Legal title to the storage rights is held in the name of the Protestant, and individuals do not have the right to put storage water in the water bank without the consent of the Protestant.
7. The storage rights and natural flow rights described in the Plan do not have mitigation or recharge as a purpose of use.
8. Protestant is the legal owner of the storage rights described in the Application and services approximately 32,000 acres. Historically, surface water deliveries in the Big Lost River Basin are inadequate to deliver irrigation water for an entire irrigation season. There

is no benefit to Protestant or the surface water users of Protestant to authorize an additional use of storage water in order to mitigate for the use of ground water. An additional use of storage water creates more pressure on the system, can impact the ability to deliver surface water at the time of need and can impact the ability of the reservoir to carry over storage water.

9. The Plan does not comply with IDAPA 37.3.11.043 and does not adequately address the factors described in IDAPA 37.03.11.043.03.

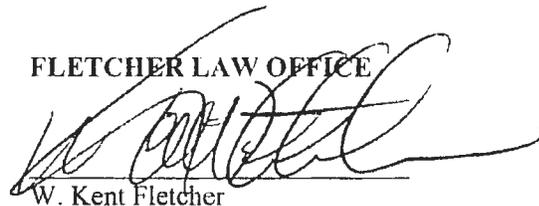
10. The Plan violates the provisions of the water rights held by Protestant and does not comply with the provisions of IDAPA 37.03.12.

11. The Plan does not comply with the Bylaws, Rules and Regulations of Protestant.

12. For such other and further reasons as may be discovered or as may come before the agency at the hearing on this matter.

DATED this 1st day of December, 2017.

FLETCHER LAW OFFICE

A handwritten signature in black ink, appearing to read 'W. Kent Fletcher', is written over a horizontal line.

W. Kent Fletcher

Attorney for Big Lost River Irrigation District

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of December, 2017, I served a copy of the foregoing

NOTICE OF PROTEST, as follows:

By Email as follows:

Idaho Department of Water Resources
gary.spackman@idwr.idaho.gov
garrick.baxter@idwr.idaho.gov

And by U.S. Mail, postage prepaid, to:

Idaho Department of Water Resources
Southern Region
650 Addison Avenue W., Suite 500
Twin Falls, Idaho 83301-5858

Upper Big Lost River Ground Water Association
P.O. Box 122
Mackay, Idaho 83251


W. Kent Fletcher