

RECEIVED

SEP 25 2018

WATER RESOURCES
WESTERN REGION

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

SEP 24 2018

DEPARTMENT OF
WATER RESOURCES

NOTICE OF PROTEST

1. Matter being protested Application for Permit No. 63-34403 in the name of Cat Creek Energy, LLC.
2. Name of Protestant United States Department of the Interior, Bureau of Reclamation
3. Protestant's representative for service (if different than Protestant)
E.Gail McGarry, PN-6100, Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise Idaho 83706
4. Service mailing address
E.Gail McGarry, PN-6100, Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise Idaho 83706
5. Service telephone number E. Gail McGarry (208) 378-5306
6. Basis of protest (including statement of facts and law upon which the protest is based)
The applicant seeks to appropriate water for hydropower purposes. Pursuant to Idaho Code §§ 42-203A(5)(e)-(f) and 42-203B, any permit issued under this application should be subordinated to future development of water from the South Fork of the Boise River by the Bureau of Reclamation.
7. What would resolve your protest?
Resolution of the issue identified in #6 above.

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 24th day of September, 2018

United States Department of the Interior, Bureau of Reclamation
Protestant

E. Gail McGarry
PROTESTANT'S REPRESENTATIVE

C105709

RECEIVED

SEP 25 2018

WATER RESOURCES
WESTERN REGION

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

RECEIVED

SEP 24 2018 ✓

DEPARTMENT OF
WATER RESOURCES

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

1. Matter being protested App. for Permit No. 63-34403 in the name of Cat Creek Energy LLC
2. Name of protestant Idaho Conservation League
3. Protestant's Representative for service (If different than protestant)
Marie Callaway Kellner
4. Service mailing address P.O. Box 844, Boise, ID 83701
5. Service telephone no. 208-345-6933 Ext 32 Email Address: mkellner@idahoconservation.org
6. Basis of protest (including statement of facts and law upon which the protest is based)

Please see Attachment A.

(additional pages may be attached to describe nature of the protest)

7. What would resolve your protest? Please see Attachment A.

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 20th day of September, 2018.

Idaho Conservation League

Protestant

Marie Callaway Kellner
Protestant's Representative

C105705

Attachment A: 6. ICL Basis of Protest in App. for Permit No. 63-34403

Pursuant to Idaho Code § 42-203A(4), the Idaho Conservation League ("ICL") respectfully submits this protest to Application for Permit No. 63-34403, in the name of Cat Creek Energy LLC, seeking 9,996 cfs for Diversion to Storage, 101,353 af for Power Storage, and 100,000 af for Power from Storage, all year-round uses, from the South Fork Boise River.

As allowed by I.C. § 42-203A(5)(b)-(e)&(g), ICL contends that: the water supply is insufficient for the purpose for which it is sought; that the application is made for delay or speculative purposes; that the applicant does not have sufficient resources with which to complete the work involved; that this proposed use of water is not in the local public interest as defined in I.C. § 42-202B(3); and, to the extent that any water will be consumptively lost to the basin of origin, that it will adversely affect the local economy of the watershed within which the source of water for the proposed use originates.

The application seeks water without demonstrating that the water is available. Related, the application seeks to remove water from the South Fork Boise River which is not only an important recreational fishery in Idaho, but also critical habitat for bull trout, a species protected by the federal Endangered Species Act. Moreover, water diverted up and out of Anderson Ranch Reservoir on a potential daily basis at a rate of 9,996 cfs poses an extreme hazard to all fish within the reservoir.

The application does not include a water availability analysis, engineering or other project design information, cost estimates, nor does it include a narrative explaining this unique proposal. For these reasons, ICL is unable to determine that the application is not speculative or that the applicant has sufficient financial resources to complete it.

Additionally, the application proposes to utilize and, to some extent, remove water from the most populated watershed in Idaho to a different watershed. While the applicant has reached out to ICL, the application makes no mention of coordinated efforts with or support of the numerous impacted downstream municipalities, businesses, irrigated agricultural community, other interested stakeholders or the citizens of that watershed of origin. As this proposed use stands to injure the all of these entities, it is inappropriate and should be denied.

ICL reserves the right to amend this protest on additional grounds as they may be discovered.

Relief Sought

For the foregoing reasons, ICL requests that Application for Permit No. 63-34403 be denied or, if possible, conditioned to mitigate the impacts identified above.

ORIGINAL

07/2008
RECEIVED
SEP 25 2018

WATER RESOURCES
WESTERN REGION

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
SEP 24 2018
DEPARTMENT OF
WATER RESOURCES

NOTICE OF PROTEST

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

1. Matter being protested: **Application 63-34403 in the name of Cat Creek Energy, LLC**
2. Name of protestant: **Boise Project Board of Control**
3. Protestant's Representative for service (if different than protestant)

Shelley M. Davis
Barker Rosholt & Simpson LLP
4. Service mailing address: **1010 W. Jefferson St., Ste. 102, P.O. Box 2139, Boise, ID 83701-2139**
5. Service telephone no. **208-336-0700** Email address: **smd@idahowaters.com**
6. Basis of protest (including statement of facts and law upon which the protest is based).
Protestant delivers water on behalf of the five Boise Project Irrigation Districts in the Bureau of Reclamation Boise Project. These Districts contract with Reclamation for the majority of the storage water in Anderson Ranch Reservoir from which applicant seeks to divert the water for this application. The Boise Project is concerned that diversion of the water could interfere with its' contract storage and delivery of water to the Districts' Patrons. The Boise Project is also concerned that the application may conflict with portions of I.C. § 42-203A(5).
7. What would resolve your protest?
Assurances by the Applicant and IDWR the application will not conflict with the ability to store and deliver the Districts' Anderson Ranch water to their Patrons.

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.

C105708

07/2008

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
SEP 24 2013
WATER RESOURCES
WESTERN REGION

NOTICE OF PROTEST

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

1. Matter being protested Application for Permit No. 63-34403 in the name of Cat Creek Energy, LLC

2. Name of protestant SUEZ Water Idaho Inc.

3. Protestant's Representative for service (If different than protestant)

Michael P. Lawrence and Christopher H. Meyer, Givens Pursley LLP

4. Service mailing address 601 W. Bannock Street, Boise, ID 83702

5. Service telephone no. 208-388-1200 Email Address: mpl@givenspursley.com

chm@givenspursley.com

6. Basis of protest (including statement of facts and law upon which the protest is based)

See Attachment A

(additional pages may be attached to describe nature of the protest)

7. What would resolve your protest? See Attachment A

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 24th day of September, 20 18.

Protestant


Protestant's Representative

W046787
Received by RN

ORIGINAL

Attachment A

to SUEZ Water Idaho Inc.'s Notice of Protest to
Application for Permit No. 63-34403 in the name of Cat Creek Energy, LLC

Item 6. Basis of Protest: The Application's intent and its relationship with other projects is unclear. Notably, there appears to be a connection between this Application and Elmore County's application for permit no. 63-34348, which is proposed from the same source. SUEZ understands that the Applicant and Elmore County have entered, or may enter, an agreement whereby the Applicant's project is used to divert water out of Basin 63 for beneficial use in another basin, which is unacceptable to SUEZ and is contrary to Idaho law. Accordingly, for this and other reasons, it is unclear that the Application conforms to applicable statutes and regulations, or satisfies the criteria for approval set forth in Idaho Code § 42-203A(5). SUEZ also has an interest in ensuring that the Application is consistent with the pending settlement of the Basin 63 refill litigation and that that any condition or other provision regarding refill priority is proper under Idaho law. SUEZ reserves the right to identify additional questions and concerns as further information becomes available.

Item 7. Potential resolution of Protest: A demonstration and commitment that the proposed diversion and use of water under the Applicant's project will occur only in Basin 63 and will not otherwise support or facilitate other inter-basin transfers.



IDAHO DEPARTMENT OF FISH AND GAME

MAGIC VALLEY REGION

324 South 417 East, Suite 1

Jerome, Idaho 83338

RECEIVED

SEP 21 2018

WATER RESOURCES
WESTERN REGION

C.L. "Butch" Otter / Governor

Virgil Moore / Director

September 21, 2018

Nick Miller, Western Regional Manager
Idaho Department of Water Resources, Western Region
2735 Airport Way
Boise ID 83705

Re: Protest of Water Appropriation Application-for-Permit No. 63-34403; Cat Creek Energy, LLC

Dear Mr. Miller:

The Idaho Department of Fish and Game's (IDFG) mission is to protect, preserve, and manage Idaho's fish and wildlife resources for the public interest (Idaho Code 36-103). Accordingly, IDFG has reviewed Application-for-Permit No. 63-34403 submitted by Cat Creek Energy, LLC to appropriate public waters from the South Fork Boise River for power production, for potential effects on these resources.

IDFG neither supports nor opposes the application. However, IDFG is concerned that the requested water diversion and associated hydroelectric project could adversely affect important public fisheries and Endangered Species Act protected bull trout populations within affected river and reservoir reaches of the Boise River system (IDFG Fisheries Management Plan 2013-2018, <http://fishandgame.idaho.gov/public/fish/planFisheries.pdf>).

Because the application contains limited information to assess fishery and recreation effects, IDFG is filing this protest per Idaho Code §42-203A(4) to offer the Idaho Department of Water Resources (IDWR) technical assistance with decision making and recommendations to avoid, minimize, or mitigate adverse effects on public interest fisheries (Idaho Code §42-203A(5)(e); IDAPA 37.03.08.45.01.e.ii). Please initiate Interagency Billing for the \$25.00 fee (PCA 11406; B799) to the attention of Walt Poole, Ph.D., Idaho Department of Fish and Game, P.O. Box 25, Boise ID 83707).

Thank you for the opportunity to review and comment. If information becomes available to alleviate concerns about potential adverse fishery effects, IDFG may amend or remove this protest. For questions and to arrange informal follow-up discussions, please contact Frank Edelmann (Environmental Staff Biologist) or Doug Megargle (Fishery Manager) at this office.

Sincerely,

Craig White
Magic Valley Regional Supervisor

Cc: Sharon Kiefer, IDFG
Walt Poole, IDFG

Keeping Idaho's Wildlife Heritage

07/2008

RECEIVED

SEP 21 2018

WATER RESOURCES
WESTERN REGION

ORIGINAL

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

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

1. Matter being protested Cat Creek Energy, LLC Application for Permit 63-34403
2. Name of protestant City of Boise City,
3. Protestant's Representative for service (If different than protestant) Abigail Germaine, Boise City
Attorney's Office.
4. Service mailing address P.O. Box 500, Boise Idaho 83701
5. Service telephone no. (208) 608-7950 Email Address: agermaine@cityofboise.org
6. Basis of protest (including statement of facts and law upon which the protest is based)
 - 1) The Application lacks sufficient information to determine if it has met the requirements of Idaho Code 42-203A(5).
 - 2) The Application may cause injury to existing water users in Basin 63.
 - 3) For other such reasons as may be set forth at the hearing on this matter.
(additional pages may be attached to describe nature of the protest)
7. What would resolve your protest? Additional information supporting the requirements of Idaho Code 42-203(5) and potential conditioning to ensure compliance with such requirements.

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 20 day of September, 2018.

City of Boise
Protestant

Abigail Germaine
Protestant's Representative

W046775
Received by AK

Daniel V. Steenson [ISB # 4332]
S. Bryce Farris [ISB # 5636]
Andrew J. Waldera [ISB # 6608]
SAWTOOTH LAW OFFICES, PLLC
1101 W. River Street, Suite 110
P.O. Box 7985
Boise, Idaho 83707-7985
T (208) 629-7447
F (208) 629-7559
E dan@sawtoothlaw.com
bryce@sawtoothlaw.com
andy@sawtoothlaw.com

RECEIVED

SEP 21 2018

WATER RESOURCES
WESTERN REGION

Attorneys for Protestants

Ballentyne Ditch Company, Boise Valley Irrigation Ditch Company,
Canyon County Water Company, Eureka Water Company,
Farmers' Co-operative Ditch Company, Middleton Mill Ditch Company,
Middleton Irrigation Association, Inc., Nampa & Meridian Irrigation District,
New Dry Creek Ditch Company, Pioneer Ditch Company,
Pioneer Irrigation District, Settlers Irrigation District,
South Boise Water Company, and Thurman Mill Ditch Company

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

IN THE MATTER OF APPLICATION FOR
PERMIT NO. 63-34403 IN THE NAME
OF CAT CREEK ENERGY, LLC

NOTICE OF PROTEST

COMES NOW, Ballentyne Ditch Company, Boise Valley Irrigation Ditch Company,
Canyon County Water Company, Eureka Water Company, Farmers' Co-operative Ditch
Company, Middleton Mill Ditch Company, Middleton Irrigation Association, Inc., Nampa &
Meridian Irrigation District, New Dry Creek Ditch Company, Pioneer Ditch Company, Pioneer
Irrigation District, Settlers Irrigation District, South Boise Water Company, and Thurman Mill
Ditch Company (collectively, the "Protestants"), by and through their attorneys of record
Sawtooth Law Offices, PLLC,¹ hereby file this Notice of Protest to Application for Permit

¹ Protestants advise, for purposes of service of documents in this matter, that multiple sets are not required, and request that a single set of service documents be provided to Sawtooth Law Offices.

W046789
Received by TK

No. 63-34403 ("Application"), filed in the name of Cat Creek Energy, LLC.

The bases for the Protest are:

1. The Application will cause injury to existing water rights, specifically those of the Protestants.
2. The Application is contrary to, or may conflict with Idaho Code Section 42-203A(5), subsections (a) through (g).
3. For such other and further reasons as may be set forth at the hearing on this matter.

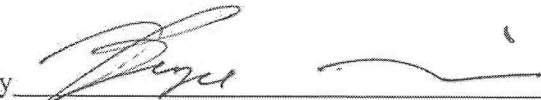
RELIEF REQUESTED

The Protestants respectfully request that for the above listed reasons, proposed Application for Permit No. 63-34403 be denied in all respects. In the alternative, the Protestants respectfully request that any approval of Application for Permit No. 63-34403 be conditioned upon complete protection of the Protestants' existing water rights.

DATED this 21st day of September, 2018.

SAWTOOTH LAW OFFICES, PLLC

By


S. Bryce Farris

Attorneys for Protestants Ballentyne Ditch Company, Boise Valley Irrigation Ditch Company, Canyon County Water Company, Eureka Water Company, Farmers' Co-operative Ditch Company, Middleton Mill Ditch Company, Middleton Irrigation Association, Inc., Nampa & Meridian Irrigation District, New Dry Creek Ditch Company, Pioneer Ditch Company, Pioneer Irrigation District, Settlers Irrigation District, South Boise Water Company, and Thurman Mill Ditch Company