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WATER RESOURCES
WESTERN REGION

August 17, 2020

Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705
ATTN: Director of the Western Region Office

RE: Application 67-15359

To Whom it May Concern:

We are submitting a letter of protest against the approval of the Application for Permit #67-15359 submitted by Paul and Gayle Poorman (Applicants), of Meridian, Idaho. Applicants already have a permit covering this location with diversion from Rush Creek for Township 15, Range 03W, Section 22, Tract NENE for 9 acres under Permit #67-7498, priority date June 15, 1980 and application for new permit should be denied.

We also believe that approval of this permit on their Cambridge property would cause injury and interference to our existing water rights #67-4208 (priority date 1918) and #67-14095 (priority date 1911) as the drainages of the spring snowmelt and runoff cross through our ditch to deposit into Rush Creek.

We noted that Idaho Department of Water Resources (IDWR) separated each location of use from the Applicants initial permit application into 4 individual filings and renamed the source of water to an unnamed stream, with the exception of the so-called Rush Creek Spring. Applicants state the sources of water are Kohlhepp Draw and Edwards Draw. These are names given to the drainages by the Applicants. Neither is a USGS-recognized source of natural flow nor is Rush Creek Spring a documented recognizable source of water. These are not natural watercourses. They are drainages for snowmelt and runoff that goes into Rush Creek in the spring-time. Applicants state in their application that it is for "Spring snowmelt-surface". This is a short-lived source of water that occurs after the initial flush of snowmelt that tapers off over a period of a few weeks depending upon the amount of snowfall for the season. Runoff is generally gone by late March to mid-April.

Our ditch has captured diffused surface water from the Applicants property since it was constructed and granted a water permit from the Idaho State Engineer in 1911. Our water rights are for flood irrigation between 3/15 – 10/31 and a year-round stockwater right from Rush Creek. Each spring we set crossover tarps in our ditch to close the opening where the drainages cross through our ditch on Applicants property for our water delivery. Late in the year before the ground freezes we open these drainages to protect our ditch from the initial flush of runoff from snowmelt that occurs late winter and conditions prevent safe inspection of our ditch.

Applicants claim that our crossover tarps are 'illegal diversions' and yet are seeking protected water rights for diffused surface water in an attempt to interfere with our access, use and operation of our ditch and try to prevent us from setting our crossover tarps in the spring for our water rights until the ending date of May 31.

Below are concerns we have regarding their application:

1 Receipted 08/24/2020
$25.00 W048648 -LE

#4 Location of point(s) of diversion

Again, Applicants are requesting a new water right for an area already covered under an existing water right #67-7498. The Applicant states the source of water is "Spring snowmelt-surface". Again, diffused surface water from spring snowmelt and rains. And, as stated above, the amount of flow will vary year-to-year based upon the weather and the amount of precipitation over the season. A water permit is not needed for diffused surface water.

Maps:

The two maps submitted for this Application for Permit have discrepancies between them as to where the actual point of diversion (POD) and the point of use (POU) are located.

The 8" x 10" satellite map shows that the POD and POU are located up on the steep hillside above our ditch, not in the 'draw' that the Applicants state and illustrate on the map within their application. Does not identify where the storage tank would be placed in relation to our ditch and right of way.

The 3-1/4" x 3-1/2" topography map within their application is very small and difficult to view. Because of the small size of the illustrations of this map it appears to show the POD is below the location where the drainage crosses through our ditch where we place a crossover tarp to deliver water to our property. The storage tank either immediately next to our ditch, in our ditch, or in the area where the drainage and our ditch meet together or on the service road blocking our access to our ditch. The location appears to interfere with our access, use and operation of our ditch and the delivery of our water. Blockage from a tank within the drainage immediately above our ditch could injure, cause erosion or flooding damage to our ditch, embankments, crossing or right-of-way. Placement of plastic pipe, tank and pump on either side of our ditch may interfere with our use of equipment to set the crossover.

The small illustrations appear to show the placement of the plastic pipe be in our ditch or in the crossover itself. Again, Applicants do not show the accurate location of the tank, pump and plastic pipe as to not interfere with our access, use and operation of our irrigation ditch or injure the delivery of our water. What precautions and safeguards will the Applicants propose to use to protect our ditch from failure of their diversion or storage, causing damage to our ditch and right of way?

#5 Water will be used for the following purposes:

.05 cfs for Irrigation purposes from Mar 1 to May 31

There is a discrepancy as to the actual dates of usage between the Applicants permit filed with IDWR and the Applicants Notice of Publication and the Water Report on IDWR's website. The date of beneficial use on the Water Right Report dated 6/22/2020 states from 04/01 to 05/31. The Legal Notice published in the The Record-Reporter published August 5, 2020 and August 12, 2020 show the dates of Irrigation Use are 04/01 to 05/31. The original Application for Permit states 03/01 to 05/31. Which dates are being applied to the application? Season of Use for our area of Water District #67 begins on March 15 not March 1 per IDWR Map and GIS Date Hub Season of Use map. Our area is listed as OBJECTID 40.

This application requests diffused surface water for storage to irrigate not irrigation alone. This application should be a permit for Storage for Irrigation, Irrigation from Storage. And because it is for

storage for irrigation, are these the dates of appropriation for storage? What are the dates for beneficial use from storage for irrigation? The explanation 'to get through the hot summer months' is not very specific. The application does not state how much water would be appropriated for irrigation from storage nor does it include any detail for refill and how it would be regulated.

The dates for appropriation of the diffused surface water for storage is exaggerated. Snowmelt and runoff does not last to the end of May. Runoff is generally finished by April and it tapers off very quickly when the thaw begins. The drainage that crosses our ditch will be closed for our irrigation or stockwater rights to be delivered in the spring and, therefore, if any snowmelt still occurring at this time would be intercepted by our ditch as it has done since 1911. Applicants diversion and storage below our ditch would become dry.

What authority has measured the snowmelt and runoff to prove that this is a sufficient water source to meet the Applicants request of .05cfs through May 31?

#7 Proposed diverting works:
(a)1.0" - 1.25" diameter plastic pipe will be placed in the draws to collect water which will then be diverted to 500 gallon storage tanks with solar pumps.

Applicants have an active water right for this location under Permit #67-7498 and should be denied approval of this permit.

Applicants are requesting permit to divert diffused surface water to storage. Applicants have failed to prove that runoff conditions are sufficient for this type of storage. Even if the amount of snowmelt was sufficient a 500-gallon storage tank would be full at .05 cfs (22.44 gallons per minute) within 23 minutes. Applicants do not include the type of storage tank being proposed. Are they enclosed to prevent loss due to evaporation? Are the enclosed tanks designed with a check valve to release pressure for fill? Are these tanks open stocktanks that would incur evaporation? And when the diffused surface water source (snowmelt) has stopped months before the 'hot summer months' arrive, would the available stored water, including evaporation losses, if any, be sufficient for irrigation during this time? Where is the actual location of diversion, plastic pipe and storage tank in relation to our ditch and right of way? Do Applicants propose to dam up the 'draw' to divert water into the plastic pipe to the storage tank above our ditch? If so, what precautions will be put in place to protect the our ditch from failure of diversion or alteration of the runoff flow causing erosion to our ditch or crossovers?

Applicants are requesting for a permit saved for natural flow water rights on storage of diffused surface water, an unreliable and inconsistent source of water – 'Spring snowmelt-surface'. Again, the application states it would be stored water to be used in 'hot summer months' but yet Applicants do not disclose dates of irrigation from storage, how the storage tank would be refilled during this period of storage, if any, and how it would be regulated when used for irrigation or the amount to be diverted from storage. The Applicants do not supply the make, model or flow rates of the solar pumps they claim will be used. Will they be sufficient for delivery?

What types of solar pumps are being proposed? Are they sufficient to supply the stored water for irrigation in the "hot summer months" to the pine trees that Applicants are proposing to plant? Will they be capable of pumping the water the distance needed or are Applicants planning on planting this

forest close to our irrigation ditch to damage and injure our ditch in the future and to steal water when their stored water runs out in the "hot summer months" like they have in the past?

(e) Irrigation water to be used to water pine, douglas fir, and larch trees for future lumber harvest. The POD and POU on the 8-1/2" x 10" map is on the hill above our ditch . The small topography map appears to show the POU in the drainage and along our ditch embankment for their pine tree plantings. Applicants have been repeatedly asked and told not to plant ponderosa pines or any other kind of vegetation in our ditch, on our ditch, next to our ditch or on our embankments because the expansive root systems will grow into our earthen ditch and embankments which would result in damage to the integrity of the ditch.

#11 Owners of Property of land to be irrigated or place of use?
Applicants do not disclose to IDWR that an irrigation ditch that does not belong to them crosses through sections of their proposed POU and it does not belong to them. They do not own our ditch or right of way.

#12 Does not describe refill plans for the storage tank to 'remain full enough until late in the season to get the trees through the hot summer months'. Does not disclose if storage tank is a closed system or open to the air which would result in evaporation. Is this a request for a one-time fill and, if not, how many refills will Applicant need to keep storage capacity full? What are the dates that Applicants consider 'hot summer months' and how much water would be appropriated from storage? Who regulates such appropriation? Applicant has not proven that the supply of diffused surface water is sufficient to meet their request for storage to meet their needs to 'make it through the hot summer months'.

In conclusion, we are asking IDWR to deny the Application for Permit #67-15359 based upon the following concerns we have in connection with this Application:

1) This proposed appropriation will reduce the quantity of water under existing water rights.

It will directly affect our access to, use and operation of our irrigation and stockwater rights Permit #67-4208 (priority date 1918) and #67-14095 (priority date 1911). Applicants do not need any water right permit to use diffused surface water. The source of water they want to claim is insufficient and inconsistent. They are attempting to create a protected water right for snowmelt/runoff to interfere with our use of a crossover tarp in our ditch to deliver our water rights to our property. They believe that we do not have a right to set our crossover tarps in our ditch until that runoff has completely ceased. They have stated this a past 2015 email to Nick Miller, Western Region Manager of IDWR and in court documents. If they are granted this permit they will prevent our use of crossover tarps across these drainages for our water rights to be delivered until the runoff completely ceases to fulfill their claim that they have a protected right of diffused surface water until May 31, our water rights will be injured.

There are years curtailment on Rush Creek occurs early in the season because of drought or early snowmelt. We are a junior right on Rush Creek and we are the first to be curtailed during drought years on Rush Creek. If we cannot set our crossover tarp until after May 31, it would be damaging to our fields and pastures that have no other water source other than from Rush Creek. It would cause stress, or possibly death, to our cattle to not have water or have to travel long distances under stressful

conditions. We calve after the snowmelts, grasses begin to grow and stockwater is extremely important to their well-being and health at the time of calving.

2) This proposed application is incomplete and inaccurate as to the type of use this permit is being requested, the amount of water requested, the type of storage and diverting works from storage, the POD and POU based upon the errors and omissions of the maps and the omission of time of use of irrigation from storage, amount of diversion from storage and how that would be regulated.

The water source they are asking for is diffused surface water and is "not fed from a natural stream or regular flow of water" nor "percolating waters from a spring". It consists entirely of snowmelt and spring rains. This drainage crosses through our ditch before depositing into Rush Creek. We do not believe that there is sufficient water for their proposal to store water into "the hot summer months" and will steal water from our ditch using their plastic pipe and solar pumps because of the proximity to our ditch. The season of use for 'irrigation' (from storage) does not establish the sufficiency of the water supply collected from the diffused surface water for the season of use. And does the amount of storage equate to the amount to irrigate annually?

3) We believe this application was not made in good faith and is made for speculative purposes. Applicants claim to want to store the snowmelt to 'nuture (sp) and grow evergreen trees for future lumber harvest". Applicants will never harvest these pine trees in the future. During our recent court case against them for filling in our ditch full of dirt from our embankment, they stated in court, under oath, and in court documents that as part of their estate planning they are donating their property to the Nature Conservancy. They did not purchase their property as an investment, but for the "purpose of restoring the natural habitat" and to "enjoy the aesthetics and intrinsic value of the natural habitat....and ... obtained grants and used their own funds in planting and nurturing trees, bushes, and natural grasses, to restore the natural habitat of the Poorman Property". Ponderosa pines they intentionally planted around our ditch that were removed during our maintenance and clean up of our ditch right-of-way and easement, Applicants stated had no commercial value but an aesthetic value, are now claiming that they want to grow pine trees to harvest in the future? This application is another attempt to interfere with our access, use and operation of our ditch and water rights. The source of water Applicants are requesting is diffused surface water that is insufficient and unreliable and should not be granted a permit as a protected water right. Applicants already have a water right permit for this location under Permit #67-7498. It is not our responsibility to show Applicants how to exercise their existing water right.

We are requesting that this Application for Permit be denied. We cannot strongly protested enough. Thank you for allowing us to comment on this matter,

Keith Hood Karen Hood

Keith & Karen Hood
Post Office Box 100
Cambridge, Idaho 83610
208-550-3884

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Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705
ATTN: Director of the Western Region Office\

RE: Application for Permit #67-15358
Application for Permit #67-15359
Application for Permit #67-15360
Application for Permit #67-15361
APPLICANTS: PAUL & GAYLE POORMAN
Post Office Box 62
Cambridge, Idaho 83610

Please find enclosed our protests for the above water permit applications filed by Paul & Gayle Poorman of Meridian, Idaho, for their property located in Cambridge, Idaho.

Also enclosed is our protest fee of $100 ($25 per protest).

As per IDWR directions stated in the newspaper of publication, a copy of each protest has been sent to the Applicants' address as submitted with their applications.

Sincerely,

Keith Hood
Karen Hood

Keith & Karen Hood
Post Office Box 100
Cambridge, Idaho 83610
208-550-3884