

Jai Nelson, Protestant
15192 Gate 7 Ridge Road
Coeur d' Alene ID 83814

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

IN THE MATTER OF APPLICATION FOR	)	REQUEST FOR SUBMISSION
AMENDMENT FOR PERMIT NO	)	OF RECENT FINDINGS,
95-9045 BLACK ROCK UTILITIES INC.	)	REOPENING OF HEARING OR
	)	DENIAL OF APPLICATION

Pursuant to the above protest, Jai Nelson "Protestant" respectfully submits a **REQUEST FOR SUBMISSION OF RECENT FINDINGS, REOPENING OF HEARING OR DENIAL OF APPLICATION** based on the following recent new information and facts relative to Black Rock Utilities and Black Rock North Development which is served by Black Rock Utilities, the president of Black Rock Utilities being Marshall Chesrown.

1.) Lenders have filed foreclosure action on Black Rock North and Marshal Chesrown for 14.6 million plus interest, late charges and legal fees. Additionally, contractor liens have been filed against Black Rock North by various North Idaho contractors totally nearly 3.6 million. In an April 9, 2009 article in the Coeur d' Alene Press Marshall Chesrown describes his cash flow as; "Zero." When referring to market sales Chesrown is quoted stating; "Nothing's selling." Furthermore, Marshall Chesrown has additional pending liens and lawsuits involving numerous other developments and projects in which he holds controlling interest in North Idaho and Eastern Washington.

2.) Black Rock North has not received final plat from Kootenai County Building and Planning. At present the project cannot proceed in any capacity.

3.) The vast majority of the aesthetic water features and storage areas have not been constructed and the applicant is deficient in the financial resources required to complete, manage, maintain and support any new features or manage, maintain and support the existing aspects of the development.

4.) The applicant has been in financial distress for an extensive time period leading up to the foreclosure filing. This information was deliberately suppressed by the applicant. During the hearing process, the Protestant requested financial information and this information was not provided. Specifically, in the Protestants Interrogatories filed October 17, 2008 financial information was requested as follows:

INTERROGATORY No. 7:

Provide financial data relative to the ability for full project completion and build-out of the Club at Black Rock, Black Rock North, infrastructure and water features. Include copies of required bonds and posted bonds.

5.) The applicant's pretense of repeatedly requesting an accelerated process and schedule, noting specifically in the MOTION IN LIMINE dated November 3, 2008 "Black Rock's fervent desire not to lose the hearing date..." was fraudulent. With the recent financial information finally disclosed, here again, the Department was been denied a complete representation of the relevant facts and full extent of applicant data in order to make an appropriate decision.

6.) The applicant, by not disclosing the financial state of Marshall Chesrown and the development, has cost the taxpayers of the State of Idaho untold dollars. This is not in the Public Interest.

7.) In the Protestants closing statement the speculation aspects of this application were specifically addressed as well as requesting the Department to evaluate the application based upon whether the application was filed in good faith or for delay or speculative purposes and if the applicant had sufficient financial resources in order to complete the project, specifically testifying:

*The applicant is requesting an additional 32,859,267 gallons and **100.84** acre feet aesthetic storage (again this amount does not include seepage and evaporation quantities) at Black Rock North—a **335% increase**—over 4 times the amount at the original Club Black Rock.*

I am asking the Department to fully evaluate this application per the Hardy v. Higginson ruling. In 1993 the Idaho Supreme Court ruled on Hardy v. Higginson ruling that there is no practical difference in the public interest evaluation of 1) application of new permits 2) amendment of pending permit applications 3)

applications for transfers of licensed, decreed and beneficial use rights, and 4) applications for amendment of permits.

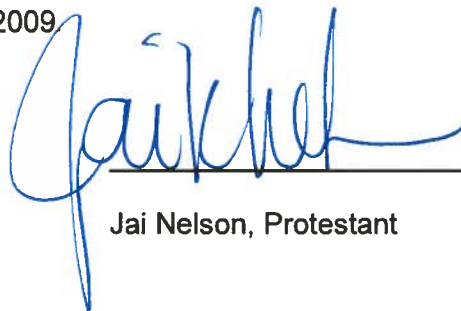
Therefore, this application should be evaluated in terms of the seven (7) criteria required for approving or denying an application found in Section 42-203A. Specifically, in terms of # 1) Will the use reduce the quantity of water under existing water rights #3) Is the application made in good faith or for delay or speculative purposes? #4) Has the applicant sufficient financial resources with which to complete the project? #6) Will the proposed use be contrary to the conservation of water resources within the State of Idaho?

In the application document on page 9, Black Rock suggests modifying condition 8, revised to item 7--this is the key to this issue. The applicant has not fully utilized their 1,215 acre-feet and now wants to change this aspect from irrigation under municipal to municipal for all uses including storage. This is speculation.

Due to this new and alarming financial information which the Protestant did not have a reasonable opportunity to address in the hearing and thus inhibited the Protestants ability to depose further potential witness's and produce applicable exhibits, the Protestant's case was severely compromised and limited due the deceitful actions of the applicant. The Applicant failed to comply with the Discovery request, which delayed, prejudiced and fractured the ability of the Protestant to address specific financial information thereby significantly diluting and encumbering the Protestant's ability to adequately prepare for and present at the hearings.

Therefore, due to the above factors the Protestant respectfully requests the Department to allow the submission of these relevant findings, reopen the hearing process or deny the application in full at this time.

Dated this 10th day of April, 2009

A handwritten signature in blue ink, appearing to read "Jai Nelson", is written over a horizontal line.

Jai Nelson, Protestant

Attachments:

Spokesman-Review Article, April 3, 2009 Black Rock North Faces Foreclosure
Coeur d' Alene Press Article, April 4, 2009 Black Rock North Faces Foreclosure
Coeur d' Alene Press Article, April 9, 2009 Chesrown: Black Rock Tightening Belt

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing STATE OF IDAHO DEPARTMENT OF WATER RESOURCES **REQUEST FOR SUBMISSION OF RECENT FINDINGS, REOPENING OF HEARING OR DENIAL OF APPLICATION** relating to Black Rock Utilities Inc. 95-9045 Water Permit Amendment addressed to the person(s) as shown below on the date set forth below by the following method or methods:

[X] By mailing full, true and correct copies thereof, in sealed, first-class postage-prepaid envelopes, addressed to the person(s) as shown below with the United States Post Office at Coeur d' Alene, Idaho on the date set forth below as listed.

Department of Water Resources of the State of Idaho
Gary Spackman, Hearing Examiner
P.O. Box 83720
Boise, Idaho 83720-0098

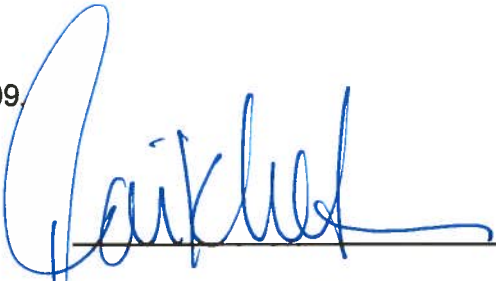
Department of Water Resources of the State of Idaho
Robert Haynes, Regional Manager
7600 Mineral Drive, Suite 100
Coeur d' Alene ID 83814

Kootenai Environmental Alliance
Barry Rosenberg, Executive Director
PO 1598
Coeur d' Alene 83816

Givens Pursley
Christopher Meyer
PO Box 2720
Boise ID 83701

Black Rock Utilities
Kyle Capps
PO Box 3070
Coeur d' Alene 83816

Dated this 10th day of April, 2009.



Jai K. Nelson, Protestant