

APR 13 2010

DEPARTMENT OF
WATER RESOURCES

State of Idaho
Department of Water Resources
ATTN: Jeff Peppersack, Hearing Officer
P.O.B. 83720
Boise, ID 83720-0098

April 5, 2010

Kevin Madsen
2073 Galena RD
Council, ID 83612

Hand Delivered to:
Adams County Sheriffs Department
ATTN: Under-Sheriff RE: Point # 5
Council, ID 83612

Llord J. Brown and Richard Laine
Council, ID 83612

*copy provided to
Folke @ scheduled
hearing in person
4/21/10 JP*

Dear Mr. Peppersack:

I must attend mandatory job training on April 21, 2010 for the Census work, so I will not be able to attend the court hearing. So please supply this letter and requested info to the court. All of Folke's rebuttals show a one sided thought pattern without the full understanding of the facts and are for the most part misleading.

Kevin Madsen's Rebuttal to Folke's March 23, 2010 Rebuttal points 1 – 5

Point #1

They (Tim and Carolyn Folke) state that they applied for a water right prior to building a pond, but build it the winter of 2008 without a water right. I, Kevin Madsen, was an effective party as I submitted emails prior in May, 2009 which warned the department of potential problems with the dam. Why was the original application for a water right on October 15, 2008 not approved? Please also address John Falk, PE correspondences including his Interoffice Memorandum: Subject: Grossen Creek Impoundment dated June 8, 2009. I totally disagree with Falk's statement that a 2 foot high berm would protect Cenex and Highway 95 from a dam failure.

Point #2

I did not say Grossen Creek is dry – I meant surface flows were dried up early above their diversion point in the irrigation season. Therefore, the pond would not have water during the hot summer months. Grossen Creek for all practical purposes is considered dry as soon as the Sourenson Rheinhardt private ditch company adds water to the canyon in May, the water is no longer Grossen Creek water. Their ineffective search did not bring up all the water claims to Grossen Creek and Sourenson Rheinhardt private ditch company water. Therefore, their comments were misleading and not factual.

As I stated above Sourenson Rheinhardt private ditch company water is the only water in Grossen Creek from May to July. Then even Sourenson Rheinhardt private ditch company water is turned off. The waste water he would have to rely on from May to August would be from the East Fork Ditch as I noted in my August 25, 2009 letter. The problem is not with water in September but instead from late May through September.

Regardless if water is pumped illegally by others does not make it less illegal plus they state they do not even know where the East Fork Ditch runs. Then main ditch runs above their property but there is a diversion that supplies surface flow back to Grossen Creek. I can take you to the point noted in my August 25, 2009 letter to show you that the Folke's are in error.

Point #3

Surface water and Subsurface water are entirely different. Subsurface flows provide water to deep rooted plants even if surface flows in Grossen Creek are not present. Building the pond may have reduced subsurface flows to the wildlife are just west of Highway 95, contact Richard Laine. A pond in this location and size would have minimal benefits to migratory waterfowl. Folke's continue to show their ignorance in water flow and right rights – water in Grossen creek is diverted to the Council pond in the spring and the subsurface springs may originate from Grossen creek. The main loss of water would be through seepage toward the Cenex gas station and evaporation. Little if any water would reach the Weiser River. Fred Glemser recently proposed a subdivision on the same property is that the true proposed use of the pond?

Point #4

They already state that they did not have water rights prior to the building of the pond; they had only applied for one. Please show me the permit for the building of the impoundment, prior to receiving a permit one must have water rights. The dam was built large enough to require a permit and was it found to be in potential to fail, read John Falk's letters regarding the dam and its safety. Falk* told Mr. Folke on 6/5/09 that he would have to obtain a water right and approval to store water behind the dam. But Folke should have know that when he applied for a water right in 2008 before constructing the dam.

Point #5

The problem is that the pond is directly above state Highway 95 and the Cenex Gas Station. The weather report for the first part of June 2009 warned of heavy rains, public knowledge. The dam was found unsafe by John Falk (IDWR, Dam Safety Section)* and

*John Falk, PE correspondences including his Interoffice Memorandum: Subject: Grossen Creek Impoundment dated June 8, 2009 and June 10, 2009 letter to Folke.

was pumped to lessen the danger of failing. Who paid for all the County expenses to work on a private pond? They were unaware of the need for a 2 foot free board? They had a leaking headgate and the dam was leaking with a danger of heavy rains, the dam could have been breached and failed. All these steps they taken after the threat of heavy rains had passed so pumping was required to protect against dam failure in addition to a free board of 3.5 to 4 feet being required. Sonny Hornbaker (IDWR), Brandi Horton, and the Folke's would have been responsible for the dam design and failure.

Addendum to Point #3:

As I stated in my letter they have no legal right to use East Fork Ditch water.

Conclusion:

The lack of knowledge of the Folke's on the need for a 2 foot free board and less than adequate design of the pond did place people/property endanger. Plus it cost the County a large sum of money. I will contact the under-sheriff of Adams County so he may respond to Folke's allegations of causing "undue hysteria", paragraph 1 of Point # 5.

Folke's did not address danger of dam failure and its impacts to Highway 95 and the Centex gas station. The facts are they still do not have a permit for an impoundment or water rights over a year after the substandard pond was constructed.

Why does the diversion ditch have to be so large? The diversion ditch size alone increase the chance of dam failure.

One of my major concerns is no one understands the effect of impoundments and subsurface flows in much of Adams County. Impoundments may disrupt subsurface flows and evaporate much of there water.

Before Folke's state that my comments are untrue, they need to know far more about the issues than they do.

In my conversation with Vicki Music (IDWR, Administrative Assistant) in late August 2009, she stated that the department did not know about the pond construction as they do not keep track of every backhoe. The Folke's note that both Sonny Hornbaker (IDWR) and Brandi Horton knew of and were working with them on solving problems with the pond, if that is true when did this start was it after my emails in May? The pond was constructed over several months time and the bulldozer could be heard inside and outside of Council and was very loud at the Adams County Court House and even my house over a quarter of a mile away.

Vicki Music also stated that I was not an affected interest and sent the protest notification which I received about 11 working days before the end of the filing period. Plus is it IDWR policy to charge \$25 to file a protest in order to reduce the number of protest filed,

and not fining for building a substandard pond. Plus why did the department wait from October 22, 2009 till end of March, 2010 to send me a copy of the Rebuttal?

Please look at the height of the dam, water level, and storage amount on 6/5/09. Plus list the regulation it was violating, the cost of pumping the pond etc., and the permit fees not paid.

Sincerely

A handwritten signature in cursive script that reads "Kevin A. Madsen". The signature is fluid and extends to the right.

Kevin A Madsen
Enclosures