

Timothy S. Folke
FOLKE CPAs, P.C.
Kurt R. Folke

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OCT 22 2009

WATER RESOURCES
WESTERN REGION

October 21, 2009

Dear Mr. Westra:

Thanks for taking the time to talk with us on the phone this morning. We have enclosed Mr. Madsen's complaints as well as our rebuttal to them. We hope this helps to put perspective on this pond issue. If there is anything else we can do to prepare for this hearing, please let us know. Thanks for your help.


Tim Folke


Carolyn Folke

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Rebuttal to Kevin Madsen's Complaints

Point #1:

He states he was a concerned party before the application was submitted in June of 2009.

Our original application was submitted on October 15, 2008 before the pond was built. We first contacted IDWR in early October and were told that it could possibly take 4-6 weeks to procure water rights.

Point #2:

Mr. Madsen states that Grossen Creek is dry. This is untrue. There has been water flowing in the creek all year. It does fluctuate so we know that someone upstream from us must use it. These may be the water rights that Mr. Madsen is referring to although we were unable to locate these rights when we searched the IDWR site on the internet. In any event, just because someone **above** us has water rights doesn't mean we can't also have water rights. This makes no sense.

Mr. Madsen also states that the only water in the creek bed is water that we divert from the East Fork Ditch. This is totally untrue. When we first noticed the water fluctuation, we drove up to Missman Road, which is above/uphill from the East Fork Ditch and under which Grossen Creek flows. Over a period of several weeks in August, we noticed a volume fluctuation, and as of September 15, 2009 (the last time we checked) there was still water flowing in Grossen Creek from its source in the mountains.

We do have a springtime flow of water that crosses our property south of the pond and close to the southern border of our property. This is not diverted in any way by us but flows freely across the property. We don't know if this is part of the East Fork Ditch or not but it does continue into and through town and is pumped by many residents illegally for watering lawns, etc. It has also fluctuated quite a bit through the summer so perhaps it is part of the East Fork Ditch. We are including pictures to show the location of this water flow, which, by the way, appears to be the source of water to the Council Community pond (see point#3, 2nd paragraph below.)

Point #3:

Mr. Madsen is contradicting himself here. He says that Grossen Creek is dry. So, how can our pond affect wildlife below our property? This makes no sense. We built our pond with the advice of the Fish & Game Dept. wildlife habitat biologist Tim Shelton. We wanted to be able to provide vital wildlife habitat, including that for migratory waterfowl which is unavailable down stream in the

area Mr. Madsen cites, as well as preserve the Grossen Creek stream bank from livestock erosion and pollution in the creek itself.

Mr. Madsen states that the water that flows through the creek is used to fill the Council Pond. This is also untrue. We contacted Bruce Gardner (the mayor of Council) and Fred Glemser (a long time resident and real estate agent who has been very involved in city politics), and they both assured us that this is not the case and that the pond is filled with periodic run-off, some of which may come from the East Fork Ditch. The Grossen Creek creek bed can be tracked through town and it obviously does not drain into the Council Pond. It empties into the Weiser River.

Our pond was designed with a spillway to allow water to flow out of our pond and back into the Grossen Creek streambed. This will keep water naturally flowing in the creek bed during the spring and summer months that Grossen Creek naturally flows.

Point #4

Mr. Madsen states we needed a permit and built this pond illegally. Once again, this is untrue. We met all the requirements and proceeded in a legal, orderly fashion to build this pond on our private property.

Point #5:

Mr. Madsen states that this pond was/is a danger to the community. The only dangerous situation that arose from this pond was the over-reaction of one particular under-sheriff in Adams County. He attempted to create undue hysteria out of a situation that Sonny Hornbaker (IDWR dam expert) and Brandi Horton (water master) had well under control. Water had leaked around our head gate due to a high creek water level. We had already contacted our contractor, Lee Else, to repair the head gate area by building a rock and dirt embankment and extending the intake pipe to prevent leakage. Although we had a spillway designed to allow outflow from the pond, we were unaware of the 2 foot free board requirement and the water level was higher than this due to the leakage from around the head gate. This was causing some moisture leakage on the outer side of the pond dam as well. This was immediately remedied by lowering the level of the pond with a pump.

We cooperated fully with Mr. Hornbaker and Miss Horton. Our contractor immediately raised and reinforced our intake head gate area and widened and lowered our spillway to accomplish fulfilling a 2-foot free board requirement requested by Mr. Hornbaker and Mr. Falk of IDWR. (Actually, we have lowered the spillway to the point that minimum freeboard will be 3.50 to 4.00 feet - a margin comfortably in excess of the minimum legal requirement.). The

moisture leakage on the outer side of the pond dam dried up as soon as the pond level was lowered.

We took photos of this and emailed them to Mr. John Falk of IDWR. We have followed every suggestion made by Mr. Hornbaker and Mr. Falk. This pond will improve wildlife habitat and wetlands preservation for ducks, geese, quail, etc. It will also prevent the riparian habitat from increased erosion due to livestock.

Tim Folke 10-21-09

Carolyn Folke 10-21-09

#25- rec'd by dg
8/26/09 : W037833

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AUG 26 2009

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Kevin Madsen
2073 N. Galena Rd
Council, ID 83612

check # 1204 \$25
potlatch
protest fee

State of Idaho
Department of Water Resources
Western Region

2735 Airport Way, Boise, Idaho 83705-5082

August 25, 2009

RE: Application 67-14975

The true reason for the
pond may be for future
sub division of
livestock
Kevin A. Madsen

Dear Vicki Music and whom it may concern:

I hereby request a 60 day extension to
the period to file formal protest. I did not
receive notice till 8/22/09 when I was a
concerned party (affected) before June of 2009 even
before the application was submitted. #1

I protest the application since there is not
Grosven Creek water available. It is dried up
above the proposed diversion point by 1899 and
1918 priority dates. The only water that
reaches this location is floodwater and
East Fork Ditch water. See map. #2

Plus for dam safety, environmental

health, wildlife reasons.

The water that it would divert currently ~~support~~ support wildlife habitat immediately below HWY 95 and water to the Council Community Pond. #3

Plus instead of granting a permit they could be fine for constructing a dangerous pond without a permit. It is immediately above CONEX Gas station and HWY 95. #4

If the into exceeds out-flow the and the Dam breaks/fails massive damage environmentally and possible loss of life (HWY 95 accidents and slow response time by fire and first responders just NW of location) #5
I hereby formally object to this application. Kevin A. Madsen
Kevin A. Madsen 8/25/09