

Gibson, Deborah

From: Gibson, Deborah
Sent: Thursday, August 28, 2008 12:33 PM
To: 'ccorsi@idfg.idaho.gov'; Haynes, Bob; 'mterrabe@idfg.idaho.gov'; 'villelli@coldreams.com'
Subject: Application no. 98-7859 (Villelli)
Attachments: img-828121856.pdf

Attached is a letter issued today by the hearing officer in the referenced matter. The department will be mailing the letter to the parties, but we wanted you to receive this letter today.

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State of Idaho

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August 28, 2008

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

CHARLES E. CORSI
REGIONAL SUPERVISOR
IDAHO DEPT. OF FISH & GAME
2885 W KATHLEEN AVENUE
COEUR D'ALENE, ID 83815

Re: Water Right Application no. 98-7859

Dear Mr. Corsi:

The Richard Anthony Villelli and Marie Victoria Villelli Revocable Trust ("Villelli") filed an application to appropriate water with the Idaho Department of Water Resources ("IDWR"). IDWR assigned water right no. 98-7859 to the application. The application seeks diversion of 4.3 cfs of water from Round Prairie Creek tributary to the Moyie River and storage of approximately 100 acre-feet of water in a pond. The Idaho Department of Fish and Game ("Fish & Game") protested the application.

On April 25, 2008, you wrote a letter to Keith Franklin of IDWR. The April 25, 2008 letter stated:

We will agree to withdraw our protest if the applicant is willing to agree to: 1) a minimum stream flow of 2.0 cfs for Round Prairie Creek and 2) that under no circumstances should the minimum flow of the Moyie River be violated as a result of this withdrawal.

On August 13, 2008, you wrote a letter to Bob Haynes of IDWR clarifying the language of the April 25, 2008 letter. You explained that the condition requiring "a minimum stream flow of 2.0 cfs" was intended to mean that "no more water would be diverted to fill Mr. Villelli's water right than could be diverted without the stream flow falling below 2.0 cfs." As a result IDWR will condition any approval to prevent diversion that would cause the flow in Round Prairie Creek to diminish below 2.0 cfs.

In the August 13, 2008 letter, you also wrote:

We believe it is also clear from the USGS records for the Moyie that in most years, Mr. Villelli should not be allowed to divert any water for consumptive use, or a use that results in a loss to evaporation, seepage, or other "sink" such that pond outflow back into Round Prairie Creek does not equal pond inflow at any

or a use that results in a loss to evaporation, seepage, or other "sink" such that pond outflow back into Round Prairie Creek does not equal pond inflow at any time that the Moyie is below, or would be caused to fall below, established State of Idaho minimum stream flows. Based on the gage data, those circumstances can be expected to occur in approximately 9 of 10 years during the August through October time frame, and for about half the years during the month of July.

Round Prairie Creek discharges into the Moyie River upstream from the established Moyie River minimum stream flow reach. The IDWR decision approving the minimum stream flow considered data from the USGS gage you referred to that measures flows in the Moyie River, and determined that the gage was too far upstream of the minimum flow reach to determine water availability within the minimum stream flow reach. There is not an active stream gaging station within the minimum flow reach. Furthermore, water rights on the Moyie River are not regulated by a water master. I interpret your statement as general recognition of the first-in-time first-in-right foundation of the prior appropriation doctrine, and not as an expectation of current active regulation. As a result, I would not condition any approval with specific language to address your concerns other than a general condition that would subject the water right to other water rights bearing senior priority dates.

If Fish & Game's withdrawal is dependent on an expectation that any water right approved for the Villelli application will be actively regulated with other water rights, including the Moyie River minimum stream flow, Fish & Game should appear at the hearing and advocate its position as a party. Non-appearance will be interpreted as acquiescence that immediate regulation is not expected.

Sincerely,



Gary Spackman
Hearing Officer

cc. Parties
Northern Region