



Kootenai Environmental Alliance

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IDWR/North

April 19, 2004

Robert G. Haynes, P.E., Regional Manager
Idaho Department of Water Resources
Northern Region
1910 Northwest Blvd., Suite No. 210
Coeur d'Alene, Idaho 83814-2615

Re: Protest of Application for Permit No. 95-9212, Hayden Lake Irrigation District

Dear Mr. Haynes,

I have discovered a factual error in Kootenai Environmental Alliance's letter protesting Hayden Lake Irrigation District's (HLID) water permit application, No. 95-9212. The error occurred in section 5, third sentence on page 5. It currently reads:

"Moreover, if the District prevails in its current dispute with the City of Coeur d'Alene over the water rights (nos. 95-8273 and 95-8229) that totals 3.12 cfs then, according to the Hayden Lake Irrigation District Water System Master Plan, the application seeks water in excess of its needs."

It should be corrected to read:

"Moreover, if the District prevails in its current dispute with a developer over water rights (Nos. 95-8273 and 95-8229) totaling 3.12 cfs to a well located on property within the HLID service boundary then, according to the Hayden Lake Irrigation District Water System Master Plan, the application seeks water in excess of its needs."

Please note this correction on our protest of the water permit application No. 95-9212 submitted on April 19, 2004. Thank you for your attention to this matter.

Sincerely,

Barry Rosenberg

Barry Rosenberg
Executive Director

cc: Bert Rohrbach



Kootenai Environmental Alliance

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1910 Northwest Blvd., Suite No. 210
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Re: Protest of Application for Permit No. 95-9212, Hayden Lake Irrigation District

Dear Mr. Haynes,

This protest letter is filed on behalf of the Kootenai Environmental Alliance (KEA). Barry Rosenberg, the executive director, is the Protestant's representative for service. KEA phone number is 208-667-9093. The mailing address is P.O. Box 1598, Coeur d'Alene, ID 83814-1598. The \$25.00 protest fee is enclosed.

Sincerely,

Barry Rosenberg

Barry Rosenberg, Executive Director

Scott W. Reed
Attorney at Law
401 Front Street
Coeur d'Alene, Idaho 83814
Attorneys for Protestant

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 95-9212,) **PROTEST**

in the name of HAYDEN LAKE IRRIGATION DISTRICT)
_____)

This protest is submitted on behalf of the Kootenai Environmental Alliance.

A. Interests of Protestant

Kootenai Environmental Alliance (KEA) is a non-profit corporation incorporated in the state of Idaho, with a mission to protect the environment with an emphasis on the Idaho Panhandle and the Coeur d'Alene basin. KEA has members and supporters who live, work and recreate in north Idaho and eastern Washington, including recreating on the Spokane River. KEA members rely upon the Rathdrum Prairie-Spokane Valley Aquifer as a source of water for drinking water supply and to serve the businesses where they work. KEA members participate actively in the current efforts to obtain a federally funded, comprehensive bi-state study of the Aquifer.

The Protestant and its members are and will continue to be adversely affected by water allocation and management decisions, including the instant application, that diminish, over-allocate, or otherwise harm the Rathdrum Prairie-Spokane Valley Aquifer and hydraulically connected water resources, including the Spokane and Little Spokane Rivers.

B. Basis of Protest

The Protestant protests a water permit application filed by the Hayden Lake Irrigation District. Application No. 95-9212 seeks 4.46 cfs or 2.88 million gallons per day, year-round, for municipal purposes. This protest is based on the criteria set forth in Sec. 42-203A, Idaho Code, and the Idaho municipal provider and groundwater statutes, as more specifically set forth below.

The applicant has provided a water supply plan with the application. For a project of this size and complexity, more information will be required pursuant to IDAPA § 37.03.08.040.05. As the applicant provides that information to IDWR, and as more information becomes available through approved discovery processes, Protestants reserve the right to raise additional issues. The application as submitted are inadequate to meet the standards set forth in controlling regulations and statutes and the applicant will not be able to meet its burden of proof under the law.

(1) The project is contrary to the conservation of resources.

The application is contrary to the conservation of water resources in Idaho, in contravention of IC §42-203A(5)(f), insofar as it proposes to withdraw 2.88 million gallons of water per day from the Rathdrum Prairie-Spokane Valley Aquifer. The Hayden Lake Irrigation District has neither promulgated nor implemented a water conservation plan to limit per capita consumption at reasonable levels or otherwise reasonably control municipal water usage.

The 4.46 cfs or approximate 2.88 million gallons per day (continuous, year-round) requested under the application is not justified by a reasonable water balance. These quantities are excessive and wasteful and do not represent an appropriate water duty for

the purposes set forth in the permit application. Water conservation alternatives are available to reduce the amount of water use contemplated by the Hayden Lake Irrigation District. These alternatives should be considered by IDWR in its determination of beneficial use.

(2) The proposed permits should not be granted until a study of the Rathdrum Prairie-Spokane Valley Aquifer is complete.

A Congressionally funded study of the Rathdrum Prairie-Spokane Valley Aquifer has been proposed and endorsed by agencies, municipalities and businesses throughout the bi-state region. The purpose of the study is to determine how much water is available from the Aquifer and the impacts of pumping on existing water users and local surface water resources such as the Spokane and Little Spokane Rivers. It is premature to grant water permits in the amount contemplated by the Hayden Lake Irrigation District's application until a comprehensive scientific study has established water availability for the region.

(3) Water supply is insufficient.

Water supply is insufficient pursuant to IC § 42-203A(5)(b). Recent hydrogeologic studies indicate that the Rathdrum Prairie-Spokane Valley Aquifer is a finite resource that may be fully allocated. Groundwater withdrawals from the bi-state area may already exceed natural recharge within the basin. As a sole source aquifer, the Rathdrum Prairie-Spokane Valley Aquifer is an invaluable resource to the 400,000-plus citizens of the region who depend upon it for drinking water supply.

Pursuant to IC § 42-226, IDWR must determine whether allocated water rights exceed future average annual recharge to the Aquifer. Idaho has not yet assessed how much water has been allocated under existing water rights or how much water is available

for future allocation and use. Until such an analysis is accomplished, it is appropriate to assume that water supply is not sufficient to fulfill the withdrawals proposed under the permit application protested herein, and that the proposed permit will lead to mining of the Rathdrum Prairie-Spokane Valley Aquifer in violation of Idaho law.

(4) The project will harm the local public interest.

Because of the hydraulic connections between the Rathdrum Prairie-Spokane Valley Aquifer and the Spokane River, the applicant's proposed use will deplete flows in the Spokane River, harming fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, transportation and navigation values, and water quality.

Water quality is degraded in the Spokane River with respect to dissolved oxygen, temperature, and other flow-related parameters. Municipal sewage discharge contributes to water quality problems, including violation of water quality standards in Washington State. Withdrawal of water from the Rathdrum Prairie-Spokane Valley Aquifer in the quantity requested in the permit application will deplete flow in the Spokane River, further exacerbating water quality degradation.

The properties to be supplied by the proposed water withdrawal potentially include critical recharge areas for the Rathdrum Prairie-Spokane Valley Aquifer. The development of these properties may reduce recharge to the Aquifer and contribute to groundwater quality degradation.

The cumulative impacts of the proposed Hayden Lake Irrigation District withdrawal, combined with other pending applications and existing water rights will lead to over-allocation of the aquifer, interference with other wells, impacts to the Spokane River and a variety of other potential ills, in violation of the local public interest.

Numerous water right holders in Washington State withdraw water from the Rathdrum Prairie-Spokane Valley Aquifer, including municipal water purveyors that supply virtually the entire population of the Spokane Valley and City of Spokane. The proposed Hayden Lake Irrigation District withdrawals may interfere with the ability of Washington water right holders to access their water rights.

Ultimately, unlimited appropriations will lead to a "race to the bottom" of this finite, sole source aquifer, which will adversely affect citizens and businesses in both states. It is inappropriate for IDWR to grant this and other pending water right applications without full consideration of the impacts of such decisions on bi-state management of the Aquifer. Idaho must engage in water resource management planning that addresses these issues before approving new and sizable water rights, including the instant applications.

(5) The project is speculative.

Pursuant to IC § 42-203A(5)(c), the applicant's proposed water use is for speculative purposes. With reasonable conservation measures Hayden Lake Irrigation District presently possesses water rights adequate to serve present and reasonably anticipated future needs. Moreover, if the District prevails in its current dispute with the City of Coeur d'Alene over the water rights (nos. 95-8273 and 95-8229) that totals 3.12 cfs then, according to the Hayden Lake Irrigation District Water System Master Plan, the application seeks water in excess of its needs. While Idaho's municipal water suppliers, pursuant to IC § 42-219, may obtain water for future needs beyond the usual five year proof of completion required for all other water users, they must provide justification for

the quantity of their requests. Hayden Lake Irrigation District has not provided justification for its 2.88 mgd request.

(6) The requested permit would reduce the quantity of water under existing water rights.

The Rathdrum Prairie-Spokane Valley Aquifer is hydraulically connected to the Spokane River. Pumping from the Aquifer influences the quantity and quality of water flowing in the Spokane River. The pumping of approximately 2.88 million gallons per day may affect Spokane River flows in Idaho and reduce them below the levels set forth in the minimum flow water right. This would lead to a reduction in water available to prior water right users, in violation of Section 42.203A(5)(a).

IDWR has issued hundreds of water rights authorizing withdrawals from the Aquifer in the Rathdrum Prairie region. In addition, there are significant numbers of domestic wells, many drilled prior to March 1978. Water permits issued to the Hayden Lake Irrigation District in the quantities requested will draw down the Aquifer, potentially causing adverse impacts to other water users, including lowering pumping levels to unreasonable depths.

These issues are of particular concern when the effects of this water permit are analyzed cumulatively with other pending applications and active permits and licenses.

Finally, and as discussed in the "local public interest" section above, down-gradient water right holders in Washington state will be adversely affected by the pumping of water proposed in this application.

The applicant has offered no proposal to mitigate the impacts of its proposed water withdrawals.

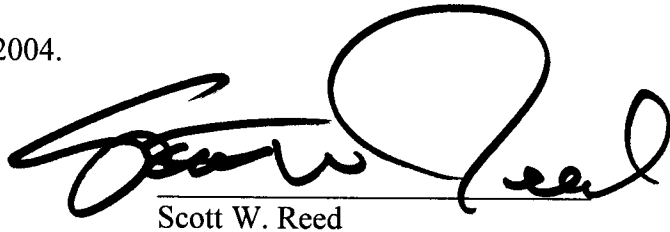
(7) The application is not complete.

Pursuant to IC § 42-202(2), an application for a municipal purpose water permit must contain sufficient information and documentation to establish reasonably anticipated future needs, service area and planning horizons, as defined by statute. The Hayden Lake Irrigation District application does not contain sufficient information and documentation to fulfill this requirement.

C. Relief Sought

For the foregoing reasons, Protestants request that a protest hearing be scheduled and that Hayden Lake Irrigation District Water Permit Application No. 95-9212 be denied or conditioned to mitigate the harms and impacts identified above.

DATED this 19th day of April, 2004.

A handwritten signature in black ink, appearing to read "Scott W. Reed", is written over a horizontal line. The signature is stylized with a large loop at the end.

Scott W. Reed

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of April, 2004, I served a true and correct copy of the within and foregoing document upon the party named below by depositing a copy of the same in the United States mail, postage pre-paid, at the post office a Coeur d'Alene, Idaho.

Burt Rohrbach, Chairman
Hayden Lake Irrigation District
P.O. Box 162
Hayden, Idaho 83835



Scott W. Reed