

JOHN TIMOTHY and SHARON L. DAY

Post Office Box 216
Eastport, Idaho 83826 USA

Phone 1-208-267-5759

August 1, 2007

Idaho Department of Water Resources
7600 Mineral Drive
Suite 100
Coeur D'Alene, Idaho 83815

Funds received

RECEIVED

AUG 02 2007

IDWR/North

RE: 98-7859

To whom it may concern:

In submitting a protest to the above mentioned water right application, I neglected to enclose the required fee.

Enclosed please find a check in the amount of \$25.00.

Thank you,


John T. Day

November 26, 1999

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

AUG 01 2007

IDWR/North

NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, 42-222 and 42-224, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested GRANT OF WATER RIGHT # 98-7859 IN NAME OF
VILLELLI TRUST ETAL.
2. Name of protestant JOHN TIMOTHY DAY
3. Protestant's Representative for service (If different than protestant)

4. Service mailing address PO BOX 216 EASTPORT, ID. 83824
5. Service telephone no. 208-267-5759
6. Basis of protest (including statement of facts and law upon which the protest is based)
SEE ATTACHED PAGES

(additional pages may be attached to describe nature of the protest)

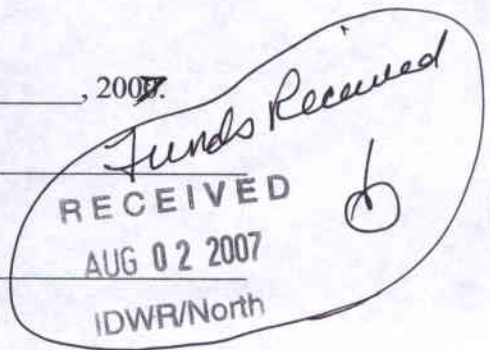
7. What would resolve your protest? DENIAL OF GRANT OF WATER RIGHT

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 27TH day of JULY, 2007.

JOHN T. DAY
Protestant

Protestant's Representative



NOTE:

A protestant is required to timely file a protest with the department together with a \$25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."
 2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.
 3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.
 4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.
 5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.
 6. Specifically describe the nature of the protest.
 7. Describe the relief being sought by the protestant.
-

FOR DEPARTMENT USE ONLY

Received by db Date 8/1/07 Time 1:20p
\$25.00 fee Received by db # N018592 Date 8/2/07 db

OVERVIEW: Mr. Villelli's application for a water right from Round Prairie Creek presents several problems. First, the background of this issue should be explored. Mr. Villelli has been redirecting the water from Round Prairie Creek for many years. This has been accomplished through a culvert under his driveway, which connects Round Prairie Creek with the pond in front of his house.

The water that would normally and naturally flow downstream is, instead impounded in the pond, keeping it full in the dry season. The result of this diversion is that Round Prairie Creek is has been completely dried up from approximately ¼ mile downstream from the point of diversion to the confluence of the Moyie River (a distance of approximately 1.18 mile) for the past two years during the dry months (July through late September). The fish-stock that normally uses the creek for spawning has been completely wiped out.

In the past, I have personally contacted the Idaho Department of Water Resources, (IDWR) the Idaho Department of Fish and Game and the US Army Corps of Engineers regarding what has been an apparent lack of concern by Mr. Villelli for the consequences of his diversion of water.

NOTE: The pond for which the current (1948 & 1988) water rights are granted was artificially created prior to records being kept by a previous owner of the property. According to an anecdotal account, the pond was originally a naturally occurring ground-water swamp feature with no connection to Round Prairie Creek. When a culvert connecting Round Prairie Creek to the pond was installed, the swamp was converted to a pond. It is unknown exactly when this occurred; however it may have been in the late 1940's or early 1950's. Obviously, it is to Mr. Villelli's advantage to continue to refill the pond as the water is drawn or evaporated from the lake during periods of low rainfall or no snow-melt. We are aware of a water right dating back to 1948 which permits the diversion of a portion of the creek to fill the pond.

PROTEST:

1. The granting of this water right will seriously impact the availability of water downstream, both in the aquifer and for the stream and wetlands downstream.
2. The effect of the **currently permitted** draft of water (4.3cfs) from Round Prairie Creek into the pond frequently results in the diminution or complete cessation of stream flow down-stream. The decreased flow of water downstream from the point of diversion might have been unnoticed or not critical to the overall downstream flow in 1948, when the population and demand for ground water was significantly lower. Currently however, there are dwellings downstream whose groundwater wells depend on the water that percolates from Round Prairie Creek into the aquifer. The requested amount of water to be taken amounts to more than three times the current dry season

flow of the creek. **Therefore, NO water would flow beyond the point of withdrawal.**

3. The 100.6 AFA lake proposed would contain 438,126 cubic feet, or 32,780,653 gallons of water, all to be drawn from Round Prairie Creek. Assuming a percolation, seepage and evaporation rate of just 15% per year, the annual draft beyond the initial filling volume would be 4,917,097 gallons or 152,865 cubic feet of water.
4. The volume requested, if permitted, would have to be *pumped* from the creek as the creek cannot provide that volume solely by gravity at high water.

DISCUSSION: The geology of the area is complicated due to the existence of a mix of glacial till soil of unknown depth and of major rock formations that bisect the area of concern. Frankly, I do not know exactly where the hard-rock formation lies, however it is probable that it bisects the creek in the area where the ridge of mountains slopes to the plain to the North. See attached map (1)

The rock ridge appears to form a natural dam that restricts the flow of water down stream. In periods of low flow, the bulk of the flow is held in the wetland behind the Villelli residence. It might appear that there is abundant water in the stream; however the flow downstream is significantly diminished. The draw of water from the creek at this time is critical to the downstream health of the stream *and* the aquifer on the "downstream" side of the rock formation. The "downstream" flow of Round Prairie Creek is the water that migrates into the aquifer in the glacial till formation.

A measurement of the water above the point of withdrawal of the proposed water right but below all known tributaries to Round Prairie Creek revealed that the flow of the creek is now approximately 1.3 cubic feet per second. Obviously, this would dry up all flow of water below the point of withdrawal.

Therefore, it is imperative that at minimum stream flow be established to protect the interests of the public and private interests downstream from this proposed diversion.

The decider must take into account this fact: The amount of water proposed to be diverted and impounded will, in effect greatly diminish the flow downstream, despite the existence of a channel intended to return the flow to the natural channel after having been diverted into a 100.6 acre-foot lake. The reality is that the water diverted at a rate of 4.3 cubic feet per second will not be sufficient to overcome the natural seepage and evaporation especially during the dry period of the year.

Downstream, near the confluence of Round Prairie Creek and the Moyie River, exists an approximately five acre wetland area that has been set aside as a habitat for upland game and water fowl nesting. Currently, Canada Geese, several varieties of ducks and grouse use this area for nesting. Additionally, moose, deer and occasionally elk either

7/30/2007

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inhabit or browse the area. I have seen sign that a black bear spent several weeks during the summer feeding on the berries and other food sources in the area.

Round Prairie Creek flows through the area in a braid of small channels that serves to provide the area with ample water when other sources may be unavailable. When Round Prairie Creek dries up, the area dries out. I have noted that a sizeable stand of cedar trees has died, apparently from the stress of the creek drying up during the past two years.

Mr. Villelli's proposed use of the water of Round Prairie Creek to fill the artificially created pond is a significantly greater diversion of water from Round Prairie Creek, which cannot sustain the diversion of the water *presently* being diverted by Mr. Villelli, his family or his employees.

ADDENDUM - 1
98-7859
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☐ UTM

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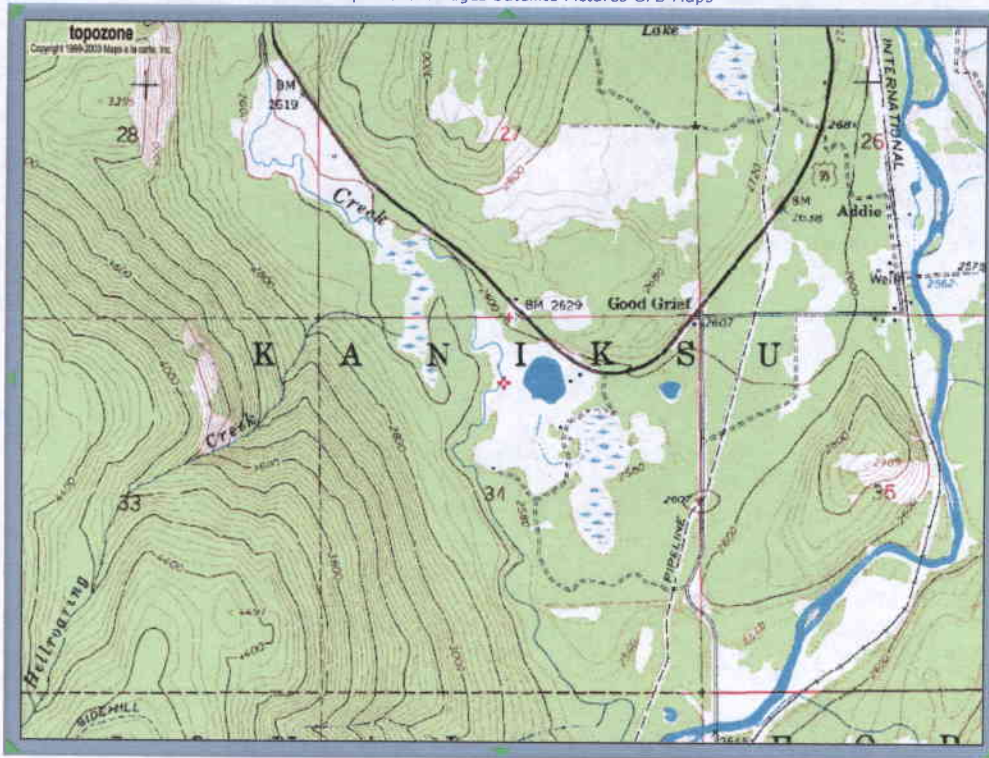
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JOHN TIMOTHY DAY

Phone 1-208-267-5759

Post Office Box 216
Eastport, Idaho 83826 USA

FAX COVER SHEET

TO: Idaho Department of Water Resources
ATTN: Mr. Bob Haynes
FROM: J.T. "Tim" Day 
SUBJECT: Notice of Protest

MESSAGE: Per our telephone conversation of last Friday, here is a protest of the Vilelli Water Right request (98-7859) Due to the difficulty of faxing photo prints, I have omitted them from this fax. They will be included in the US Mail along with the "official" version of this protest. Thank you for the information and insight you provided.

PAGE 1 OF 5 PAGES



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region, 7600 N. Mineral Drive, Suite 100 • Coeur d'Alene, Idaho 83815
Phone: (208) 762-2800 • Fax: (208) 762-2819 • Web Site: www.idwr.idaho.gov

August 02, 2007

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

JOHN T DAY
PO BOX 216
EASTPORT, ID 83826

Application to Permit No. 98-7859

Dear Protestant(s):

The Department of Water Resources acknowledges receipt of your protest against the approval of the above referenced application. A copy of your protest has been sent to the applicant. The Department suggests that you contact the applicant directly for details regarding the application and, if possible, to resolve the matter without action by the Department. In our experience, informal discussion between the parties prior to initiation of formal proceedings often leads to resolution of the protest.

If the protest cannot be resolved informally, the matter will be scheduled for conference and/or hearing. The following are criteria the Department must consider in either approving or denying the application (Section 42-203A, Idaho Code).

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purpose intended?
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?
5. Will the proposed use conflict with the local public interest in the public water resource?
6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?
7. For applications proposing to divert water from one watershed or local area into another, will the proposed use adversely affect the local economy of the watershed or local area where the source of water originates?

You will be notified at a later date of the time and place of the conference and/or hearing. Please contact this office if you have any questions regarding this procedure.

Sincerely,

Robert G. Haynes, P.E.
Regional Manager

cc: Protestant – Villelli Revocable Trust