

August 16, 2007

AUG 17 2007
IDAHO FISH & GAME

Charles E. "Chip" Corsi
Regional Supervisor
Idaho Department of Fish and Game
2885 West Kathleen Ave.
Coeur d'Alene, Idaho 83815

RECEIVED
SEP 06 2007
IDWR/North

REF; Villelli: 98-7859

Dear Chip:

With regard to your protest of the above application I would be anxious to meet with you and discuss your concerns. I have no intention of dewatering Round Prairie Creek any more than it has been dewatered in the last several years. In fact I feel what I am proposing will in fact help increase the water table and help water flow and thus help fish habitat.

As you probably know I have created a great deal of fish habitat over the last several years and am currently working on two projects that will create more than 50 acres of surface waterways and fish habitat available to the public. My desire on our private property is to promote more fish and game and am happy to consider your thoughts and show you how I believe what I am doing will be beneficial to the local public interest and will in fact positively affect beneficial use.

Please let me know when you would like to meet. I can be reached at 1-208-267-7625. I will be unavailable from Sept 6th until October 9th.

Sincerely,

Richard A. Villelli

✓ C: Robert B Haynes, P. E.

Doreen Ethlyn Williams Trust

13638 S.E. Market
Portland, Oregon, 97233
Phone (503) 255-9411
dodieetwill@comcast.net

RECEIVED
AUG 13 2007
IDWR/North

August 10, 2007

Richard A. Villelli, Trust
HCR 61 Box 169
Bonners Ferry, Idaho, 83805

To Richard A. Villelli, Trustee,

Regarding your letter of 6 August 2007, Water Rights. If you will please see the cover letter of my "Notice of Protest", dated 30 July 2007, you will see that I named John T. Day as my representative, since I was in a three car accident, 21 July 2007. At this time, Timothy Wilson is not my attorney, however, I feel that option is always open to me.

Mr Day will keep me informed of locations and dates of meetings, so if I must attend, I will have time to find adequate transportation.

Sincerely,

Doreen Ethlyn Williams, Trustee
Doreen Ethlyn Williams, Trustee

Cc: Robert G. Haynes, Idaho Water Resources
Cc: John T. Day

987859

98-4012

November 26, 1999

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

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 # 98-7857 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. 208-262-5759
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 _____ Date _____ Time _____

\$25.00 fee Receipted by _____ # _____ Date _____

Protest to Application 98-7859 for Water Rights
-Item 6 Basis for Protest
J. T. Day

7/30/2007

- 3 -

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

Protest to Application 98-7859 for Water Rights
-Item 6 Basis for Protest
J. T. Day

7/30/2007

- 4 -

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 Moyle 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

Protest to Application 98-7859 for Water Rights
-Item 6 Basis for Protest
J. T. Day

7/30/2007**- 5 -**

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.

August 6, 2007

Robert G Haynes, P.E.
Regional Manager
Department of Water Resources
7600 Mineral Drive Suite 100
Coeur d'Alene, Idaho 83815

RECEIVED
AUG 08 2007
IDWR/North

REF: Application to Permit No. 98-7859

Dear Mr. Haynes:

I am enclosing copies of four letters that respond to five different protesters to the above water right application.

Most of the protester have apparently been give some misinformation that I trust, when corrected, will result in some agreement. I have told them that I will be happy to try to work our things to everyone's satisfaction. Per your suggestion I will do our best to get an informal resolution.

Sincerely,



Richard A. Villelli, Trustee

August 6, 2007

Doreen Ethlyn Williams
13638 S.E. Market
Portland, Oregon 97233

John T Day
PO Box 216
Eastport, Id 83826

RECEIVED
AUG 08 2007
IDWR/North

RE: Application to Permit No. 98-7859

Dear Doreen and John:

I have received your Protest of the above water right from the Department of Water Resources. Mr. Day came by to give me another copy. At that time he informed me the Tim Wilson will be representing you and Mr. Day. I did not see that stated in your notice of protest. I did not want to assume that so I will address this to you in case Mr. Wilson is not representing you.

I discussed with Mr. Day when he came to our house that I am happy to do as requested by Robert Haynes, the Regional Manager of The Department of Water Resources and resolve the matter in informal discussions.

I have already discussed this with Tim Wilson regarding another protestant and he seems agreeable to discussions. Please let me know if you wish to participate or if you would like Mr. Wilson to represent you. I am not sending him a copy of this until I know your wishes.

I feel certain we can reach a resolution because in talking with Mr. Day he relayed numerous bits of information from various neighbors that was incorrect. With the corrections of that information I think we can get things resolved.

Sincerely,

Richard A. Villelli, Trustee

 Robert G. Haynes, P. E.

August 6, 2007

John Tesar
HCR 61 Box 161
Bonners Ferry, Id 83805

RECEIVED
AUG 08 2007
IDWR/North

RE: Water Right Application # 98-7859

Dear John:

Thank you for sending me a copy of the protest letter you send to Water Resources. I have contacted the other neighbors that have expressed concerns and am working on a meeting to discuss your concerns and see what we can do to mitigate those as suggested by Robert Haynes the Regional Manager.

If you would like to participate in a discussion or would rather meet in person with just me please call me at 208-267-7625.

I am certain that with the explanation of what we are doing you will be able to achieve a resolution of your protest.

Sincerely,

Richard A. Vilelli, Trustee

✓ c/ Robert G. Haynes, P.E.

August 6, 2007

John T Day
PO Box 216
Eastport, Id 83826

REF: Application to Permit No. 98-7859

RECEIVED
AUG 08 2007
IDWR/North

Dear John:

I received a copy of your protest to the above referenced application.

As I indicated when you were by yesterday, I am more than happy to meet with you or Tim Wilson, who you indicated yesterday was your representative. Because your protest did not name Mr. Wilson I am not sending him a copy of this letter, but if he will be representing you please let me know and I will discuss matters with him.

As I mentioned to you yesterday I am happy to discuss the matter with you. As I told Mrs. Williams some of the information you had heard from neighbors is incorrect and I think we can discuss and straighten those matters out.

I would ask that if you want to discuss this please let me know. Also please do not come on our property as happened last week and previously without first asking permission. Your respect for our property will go a long way towards helping us reach a solution in this matter.

Sincerely,

Richard A. Villelli, Trustee

✓ c/Robert Haynes, P. E.

August 6, 2007

Tim Wilson
PO Box 3009
Bonners Ferry, Id 83805

RECEIVED
AUG 08 2007
IDWR/North

REF: Application to Permit no. 98-7859

Dear Tim:

With regard to the above application, I received a copy of the protest on behalf of Bill Sills and Janet Orndorf. I would be interested in meeting as requested by Robert Haynes the Regional Manager of the Department of Water Resources to see if we can resolve the matter informally. After a discussion with one of the protesters I realize that a number of the neighbors have some misinformation and correcting that should lead to a resolution that will please all concerned.

Tim, I have been informed that you are representing other protesters, but their paperwork did not reflect that. I have corresponded with those people because of that lack of paperwork, but informed them that if you were representing them that they should let me know. If you are in fact representing Mrs. Williams and John Day as Mr. Day indicated yesterday could you please let me know? Also I received a protest letter from John Tesar at 267-5275. I am not trying to make more money for you, but if you were representing him it would seem that it would make a resolution much easier.

If you would like to set up a meeting please give me a call. If you are representing all the protestants then I would be happy to meet with you or you could come to the house to see first hand what we are doing. I can meet with those you are not representing separately if need be.

Thanks for your attention to this matter.

Sincerely,

Richard A. Villelli, Trustee

✓c/ Robert Haynes, P. E.

August 3, 2007

Tim Wilson
6412 Koottenai
Bonners Ferry, Id. 83805

RECEIVED

AUG 06 2007

IDWR/North

RE: Water application 98-7859

Dear Tim:

Enclosed is a copy of the application referenced above.

As I mentioned I would be happy to discuss the application with anyone concerned.

Yesterday some of the people who have protested came onto our property and were hiding in the woods watching Joey and Tommy level dirt in our meadow. When the boys asked them what they were doing they hopped on their four wheeler and ran. The boys caught them before they got off the property and asked them what they were doing. They had no reason just being nosey. I think this is probably not the best way to get answers to their questions.

As suggested by the Department in their letter which you received, informal discussions often lead to resolution. If they are protesting for the sake of protesting then perhaps there is no need to discuss. If they have legitimate concerns then I would assume they are resolvable.

Please let me know if those you are representing would like an explanation of what we are doing.

Sincerely,



Dick Villelli

✓ C: Robert B Haynes, PE