

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF AMENDMENT OF APPLICATION)
NO. 72669 OF PERMIT NO. 95-9045,) **PROTEST**
Black Rock Utilities, Inc.)

RECEIVED
MAY 08 2006
IDWR/North

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

A. Interests of Protestant

Kootenai Environmental Alliance (KEA) is a 501(c)(3) 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. The KEA office is located at 408 Sherman, Suite 301, Coeur d'Alene, ID 83814. KEA has members and supporters who live, work and recreate in North Idaho and Eastern Washington. KEA members rely upon the Rathdrum Prairie-Spokane Valley Aquifer and Lake Coeur d'Alene as a source of water for drinking, and as a source of water to serve the businesses where they work. KEA members recreate on the Spokane River and Lake Coeur d'Alene and are also actively participating in the current comprehensive bi-state study of the Rathdrum Prairie-Spokane Valley Aquifer.

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

B. Basis of Protest

KEA protests the Amendment No. 72669 for Application for Permit 95-9045 filed by Black Rock Utilities, Inc. Water Permit 95-9045 grants a total of 3.5 CFS (2,262,103 million gallons per day) of water drawn from Lake Coeur d'Alene that is allocated as follows: 2.5 CFS for irrigation for use from 3/15 to 11/15, and 1 CFS for domestic use from 1/01 to 12/31. Application No. 72669 seeks to amend Permit No. 95-9045 to provide 3.5 CFS for municipal use from 1/01 to 12/31. This protest is based on the criteria set forth in Sec. 42-203A, Idaho Code, 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 is 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 existing water permit allows for a total of 3.5 CFS. It provides 1 CFS for domestic and 2.5 CFS for irrigation. The permit stipulates that the period of use for the 2.5 CFS for irrigation is March 15 to November 15. Amending the existing permit to municipal and requesting use from 1/01 to 12/31 would allow the 2.5 CFS currently designated for purposes of irrigation and limited to eight months of the year to be utilized for an additional four months or 119 days. The amended Permit would allow an increase of water consumption totaling approximately 192,278,053 gallons per year over the existing Permit.

The Protestant assumes this would be used for purposes of irrigation, pond creation and other water features since, according to the findings of fact produced by the Kootenai County Building and Planning Department for the Black Rock North application for PUD (4/11/06), the established and permitted three wells are sufficient for providing potable water for the existing and proposed development.

The existing permits, 95-9045 and 95-9055 are sufficient to provide for potable, wastewater and domestic irrigation for Black Rock and Black Rock North developments.

According to Idaho Department of Environmental Quality (DEQ) as noted in DEQ's report on the Planned Unit Development for Black Rock North, (Kootenai County Case No. PUD -55-05) 4/10/06 at page 1, "It appears the existing three wells should be capable of meeting the water production demand imposed by the Black Rock and Black Rock North." (Attachment #1)

Black Rock acknowledges that it is planning on utilizing land application of its wastewater. The April 10, 2006 letter from Gary Gaffney of DEQ to Roger Nelson of Black Rock Utilities refers to the "Revised Sanitary Sewage Collection System Report" submitted to DEQ from Black Rock Utilities. The revised report refers to Black Rock's intent to utilize treated wastewater for land application, and to upgrade the existing system and construct a new system to meet Class B standards, which, according to DEQ "will allow application of the treated wastewater to areas such as the golf course where public access is not limited." Gaffney letter to Nelson, 4/10/06, at page 3. (Attachment #1)

Permit No. 95-9055, and Permit No. 95-9045 in its existing configuration is adequate to supply the current water needs for Black Rock North, especially considering the proposed land application of treated wastewater to be used for irrigation that would reduce the amount of lake water needed solely for irrigation. Therefore, there is no need to approve Amendment 72669, which would amend Permit 95-9045 to Municipal use and will provide an additional 192,278,053 gallons per year.

The additional 192,278,053 gallons per year that would be available should Permit 95-9045 be amended would be excessive and wasteful and does not represent an appropriate water duty for the purposes set forth in the permit application.

(2) The proposed permits should not be granted until a study of the Rathdrum Prairie-Spokane Valley Aquifer and the cumulative effects on Lake CdA withdrawal is completed.

A bi-state study of the Rathdrum Prairie-Spokane Valley Aquifer is currently ongoing. 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 amend Black Rock Utilities' Inc. existing water permit application until a comprehensive scientific study has established water availability for the region.

The cumulative impacts of the proposed Black Rock Utilities, Inc. withdrawal, combined with other pending applications and existing water rights from Lake CdA on summer lake levels and the effects to the aquatic biota of the Spokane River must be determined before issuing an amended application for permit N0. 95-045.

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

Because of the hydraulic connections between the Rathdrum Prairie-Spokane Valley Aquifer, Lake Coeur d'Alene and the Spokane River, the applicant's proposed use will contribute to the depletion of 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 and phosphorus discharge contributes to water quality problems, including violation of water quality standards in Washington State. Withdrawal of water from Lake Coeur d'Alene in the quantity requested in the Amended Application of the existing permit could deplete the flow in the Spokane River, further exacerbating water quality degradation.

The migration of nutrients such as nitrogen and phosphorus to Lake CdA from the application of fertilizers on the golf courses and other irrigated areas would contribute to the violation of the current TMDL in place on the Spokane River, and could lead to suspension of the toxic metals currently captured in the non-suspended sediments on the bottom of Lake CdA.

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

The Rathdrum Prairie-Spokane Valley Aquifer and Lake Coeur d'Alene are hydraulically connected to the Spokane River. Pumping from the Aquifer influences the quantity and quality of water flowing in the Spokane River. Should the Amendment be granted, the additional approximately 192 millions gallons/year that would be available for consumption may affect Spokane River flows in Idaho and reduce them below the levels set forth in the minimum flow water right. This could lead to a reduction in water available to prior water right users, in violation of Section 42.203A(5)(a).

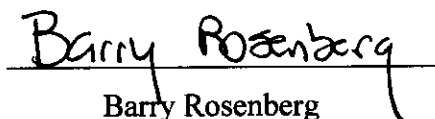
These issues are of particular concern when the effects of this amendment to the existing water permit are analyzed cumulatively with other pending applications and active permits and licenses.

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

C. Relief Sought

For the foregoing reasons, Protestants request that a protest hearing be scheduled and that Black Rock Utilities', Inc. Amendment for Water Permit Application No. 95-9045 be denied or conditioned to mitigate the harms and impacts identified above.

DATED this 8th day of May 2006.


Barry Rosenberg
Executive Director
Kootenai Environmental Alliance
P.O. Box 1598
Coeur d'Alene, ID 83816-1598
(208) 667-9093
barry@kealliance.org

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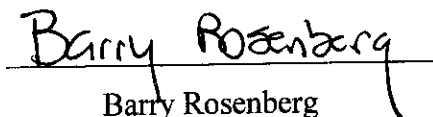
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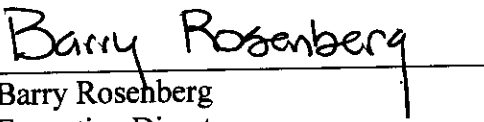


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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of May 2006, 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 in Coeur d'Alene, Idaho.

Black Rock Utilities, Inc.
P.O. Box 3070
Coeur d'Alene, ID 83816


Barry Rosenberg
Executive Director
Kootenai Environmental Alliance
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(208) 667-9093



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

APR 14 2006

2110 Ironwood Parkway • Coeur d'Alene, Idaho 83814-2648 • (208) 769-1422

Dirk Kempthorne, Governor
Toni Hardesty, Director

April 10, 2006

Mr. Roger Nelson
Black Rock Utilities, Inc.
PO Box 3070
Coeur d'Alene, ID 83816

RE: **Planned Unit Development for Black Rock North** (Kootenai County Case No. PUD-55-05)

Dear Mr. Nelson:

Information was provided by your consulting engineers in response to DEQ comments made on December 8, 2005 regarding drinking water and sanitary sewage systems being contemplated to serve the proposed Black Rock North project. We have now reviewed the responses and resolved the following:

Potable Water System:

1. **Water Production Capacity:** Although the Idaho Rules for Public Drinking Water Systems require the capacity of a public drinking water system to be no less than eight hundred (800) gallons per day (gpd) per equivalent residential unit (ERU), the design engineer has proposed a water production criterion of 325 gpd/ERU. For now we are willing to accept the engineer's proposal. If it becomes evident in the future that additional water supply may be necessary, development of proposed Wells #10 and #11 as approved for drilling on May 24, 2005 could be undertaken to secure more water. The engineer should produce actual peak water demand data indexed for occupancy to support the 325 standard.
2. **Well Capacities:** By our records, the total capacity of the Wells #4, #8, and #9 supplying the existing system is 450 gpm from test pumping results with the three wells presently each equipped with 125 gpm pumps for a total supply of 375 gpm into the system. With 381 ERUs possible in Black Rock and 325 ERUs proposed for Black Rock North, the minimum production capacity from the wells based on 325 gpm/ERU for 706 ERUs is 159 gpm. Using a more conservative value of 800 gpd/ERU results in a water production need of 392 gpm. It appears the existing three wells should be capable of meeting the water production demand imposed by the Black Rock and Black Rock North.
3. **Booster Pumping Capacity:** The revised water system design report proposes to directly pump from the existing 124,000 gallon Black Rock water reservoir at 64 gpm up into a proposed 175,000 gallon Black Rock North storage reservoir. As more replenishment water above 64 gpm is needed in the Black Rock North system, appropriate pumping capacities can be upgraded to keep ahead of demand.
4. **Water Reservoir:** The revised report proposes 175,000 gallons of water storage at a high elevation in Black Rock North from which all water supplied to the new development will discharge. This is acceptable.
5. **Water Distribution:** Design of the water distribution system for Black Rock North involves seven pressure zones using 4- and 6-inch piping with all pressures at 40 psi or higher. This is acceptable.

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As we indicated in our previous comment letter, it appears that the concept of expanding the existing Black Rock drinking water system to serve Black Rock North is feasible. Before design of the proposed water system expansion is completed, the design engineer should provide DEQ with an engineering report containing final design selections followed by construction plans and specifications for the water system improvements.

Revised Sanitary Sewage Collection System Report:

1. **Wastewater Type:** The revised wastewater report now proposes to collect septic tank effluent from each connection using a STEP (septic tank effluent pressure) and gravity system similar to the one being used at Black Rock. This is acceptable.
2. **Individual Pumping Units:** Since septic tanks and effluent pumps are part of the wastewater treatment system, DEQ requires that the sewer system owner, Black Rock Utilities, be responsible for operation and maintenance of these units. This is similar to the arrangement in place at Black Rock. It is acceptable for the homeowners to be responsible for initial installation of the septic tanks and effluent pumps in accordance with specific system specifications and a Black Rock Utilities installation and inspection permit. It is not acceptable to DEQ that homeowners be given O&M responsibility for anything past where their building sewer enters the septic tank.
3. **Design Wastewater Flows:** The application and revised report propose a wastewater flow of 100 gpd per capita with 2 capita for about 131 multi-family and 3 capita for 194 single-family connections plus 20 gpcd for inflow/infiltration for a wastewater flow of over 100,000 gpd. The engineer's response has proposed using actual sewage flow data from occupied Black Rock connections to develop flow rates intended for design purposes. Either approach is acceptable to DEQ.

As we indicated in our previous comment letter, planning for a STEP system to serve the proposed Black Rock North development does not present concerns to DEQ.

Wastewater Treatment: On December 9, 2005 James Kimball, P.E. of J-U-B Engineers Inc. submitted to DEQ a revised report dated November 2005 and entitled "Wastewater Treatment System and Land Application Preliminary Engineering Report." We have now reviewed the revised report and offer the following comments:

1. **STEP Collection:** This type of sewage collection system will be expanded into Black Rock North. This is acceptable.
2. **Wastewater Flow Rates:** The revised treatment report assigns a wastewater flow of 67,125 in the winter and 89,500 gpd in the summer which is different from another estimate of over 100,000 gpd. The two engineering consultants need to resolve their differences and arrive at a final value for the wastewater system's design capacity.
3. **Wastewater Treatment:** The report proposes to utilize the existing wastewater treatment system serving Black Rock for sewage from Black Rock North. The report predicted that as the two developments grow, additional FAST treatment units, lagoon storage volume, land application areas, and perhaps treatment enhancements will be added. This appears to be a reasonable approach to the Black Rock North's wastewater needs. However, a mechanism needs to be developed to ensure, when the time comes to expand the sewage treatment system to accommodate increased flows, that the

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RE: **Planned Unit Development for Black Rock North** (Kootenai County Case No. PUD-55-05)

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financial means are in place to effect the improvements. DEQ recommends establishing a capitalization fund for new Black Rock North connections based on an engineering estimate of the improvement costs that will set aside funds needed in the future to construct the necessary improvements.

4. **Wastewater Phasing:** The revised report proposes phasing construction of wastewater treatment and storage improvements to reflect actual needs with financial guarantees in place to build the maximum system reflected by typical municipal design standards should more system become necessary in the future. The design engineers need to describe this type of scenario in more detail as the design concept for the first phase of wastewater system improvements takes shape.
5. **Land Application:** The revised report stated that the wastewater treatment system design will involve upgrading the existing system and constructing the new system to meet Class B standards described in the Idaho Rules for the Reclamation and Reuse of Municipal and Industrial Wastewater. This will allow application of the treated wastewater to areas such as the golf course where public access is not limited. This is acceptable to DEQ and will involve issuance of a new wastewater land application permit for 2007 that reflects the new rules.
6. **Groundwater Monitoring Well #2:** Since our December 2, 2005 meeting, this office has been waiting to receive from Jim DeSmet a ground water contour map and a proposed location for installation of monitoring well #2. This downgradient well is required as a condition in the existing Black Rock wastewater land application permit.
7. **Groundwater Modification:** It has not been conclusively determined to the satisfaction of DEQ the extent by which this development is creating changes to local ground and surface water systems. We will continue to be involved in this determination in an effort to maintain the quality and beneficial uses of any affected water resources.

The proposed wastewater treatment scheme for Black Rock North involving expansion of the existing community sewage system appears to be a feasible approach. More detailed design work will need to be undertaken by the engineer and presented to DEQ as the project advances.

Sincerely,



Gary J. Gaffney, P.E.

c: Jim Kimball, J-U-B Engineers, Inc, CdA
James DeSmet, Quantum Engineering, CdA
Ron Pace, Taylor Engineering, W 106 Mission Ave, Spokane, WA 99201
Rand Wichman, Kootenai County Planning Dept., CdA
Black Rock Utilities pws file. (#9081 at R-85 specs)