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RECEIVED

MAY 19 2004

DEPARTMENT OF
WATER RESOURCES

May 19, 2004

Jeff Peppersack
Idaho Department of Water Resources
1301 N. Orchard St.
Boise, ID 83706

HAND DELIVERED

RE: Petition for Reconsideration – Transfer No. 70974
Water Rights 95-8581, 95-7800

Dear Mr. Peppersack:

Enclosed you will find a Petition for Reconsideration in regards to the above referenced transfer pursuant to your approval notice dated May 5, 2004. The Petition fully describes the revisions requested to the preliminary order.

If you have any questions please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Norman C. Young". The signature is fluid and cursive, with the first name "Norman" and last name "Young" clearly distinguishable.

Norman C. Young

NCY:sw

Encl.

cc: Hayden Lake Irrigation District (w/ encl. conformed copy)
Paul Klatt - J-U-B Engineers, Inc. (w/ encl. conformed copy)
Bob Haynes, IDWR (w/ encl. conformed copy)

ERO Resources Corporation
1106 N. Cole Rd., Suite C
Boise, Idaho 83704-8661
Telephone: (208) 373-7983
Facsimile: (208) 373-7985

Consultant for Hayden Lake Irrigation District

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 70974 IN THE)
NAME OF HAYDEN LAKE IRRIGATION)
DISTRICT)
_____)

PETITION FOR
RECONSIDERATION

On May 5, 2004, the Idaho Department of Water Resources ("IDWR") issued a preliminary order approving with conditions Application for Transfer No. 70974 in the name of Hayden Lake Irrigation District ("HLID"). The certificate of service included with the copy of the preliminary order mailed to HLID indicates that the copy was mailed on May 5, 2004.

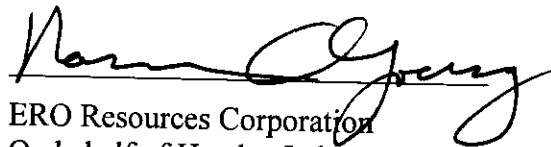
The preliminary order approves Application No. 70974 with a reduction in the annual diversion volume authorized by right No. 95-8581 and attaches conditions to the rights Nos. 95-7800 and 95-8581 limiting the annual diversion volume when these rights are used in combination.

In accordance with Sections 67-5243 and 67-5245, Idaho Code, and Rule 730 of the "Rules of Procedure of the Idaho Department of Water Resources" (IDAPA 37.01.01), HLID requests IDWR to reconsider the annual diversion volume authorized under the preliminary order for right No. 95-8581 and Condition of Approval No. 1 included in the preliminary order for right Nos. 95-7800 and 95-8581. HLID requests that the annual diversion volume of right No. 95-8581 and of right Nos. 95-7800 and 95-8581 when used in combination, be approved without reduction from the annual diversion volume allowed under the licenses confirming these rights. Exhibit A to this petition is a letter dated May 18, 2004, from David Shaw, ERO Resources Corp., to Paul Klatt, J.U.B. Engineers, Inc. describing the revisions requested to the preliminary order and the rationale for the request.

HLID also requests that Condition No. 9 be revised to allow up to five (5) years for construction of the "reliability" wells authorized by approving the transfer or confirmation by IDWR that this condition will not be interpreted as applying to construction of the reliability wells given that HLID now has capacity to divert and use water from existing wells in accordance with the rights as approved under the transfer.

HLID has authorized ERO Resources Corp. to file this petition for reconsideration with IDWR (Exhibit B).

Signed at Boise, Idaho this 19th day of May 2004.

A handwritten signature in black ink, appearing to read "Nam Young", is written over a horizontal line.

ERO Resources Corporation
On behalf of Hayden Lake Irrigation District

May 18, 2004

Paul Klatt
J-U-B Engineers, Inc.
7825 Meadowlark Way, Suite A
Coeur d'Alene, ID 83815

RE: Hayden Irrigation District Water Right Transfer No. 70974

Dear Paul:

At your request I have reviewed the preliminary approval of Application for Transfer of Water Right 70974 for Water Rights 95-7800 and 95-8581. My review focused particularly on the reduction in annual volume of water that can be diverted under the two water rights in the future.

An initial review of the Application for Transfer suggests the annual volume of the two rights after the transfer should be the arithmetic sum of the two water rights before the transfer or 5,489.1 acre-feet per year. The enclosed Memorandum dated March 11, 2004 from Bob Haynes to Transfer File 70974 illustrates the rationale used by IDWR to determine the recommended total annual volume of 5,206.8 acre-feet per year.

I agree with Mr. Haynes analysis of water right 95-7800 in which he determines the annual volume of water that can be diverted under this right is 2,751.1 acre-feet per year for municipal purposes. I believe, however, this analysis should be carried forward to the analysis of water right 95-8581 rather than the analysis shown in the March 11, 2004 Memorandum. My disagreement focuses particularly on the second sentence of Mr. Haynes analysis of water right 95-8581 in which he states, "... combined limits condition for domestic, stock water & commercial uses restrict volumes to those provided by 95-7800."

The actual combined use limits in water right 95-8581 states "This right *when combined with* right 95-7800 shall not exceed 0.11 cfs nor 6.7 afa for stockwater (sic) use." (Emphasis added) If the entire 3.80 cfs of water right 95-7800 is used for municipal purposes, as Mr. Haynes acknowledges, the only source of the 6.7 afa for stock water is right 95-8581 and is included in the 3,407.6 acre-feet per year annual volume limit of that water right. This same analysis applies to all of the volume-limited uses, irrigation, stock water, commercial and domestic use of water right 95-8581.

The question then is, what should be the allowable volume of water for 95-8581? Mr. Haynes correctly calculates the annual volume of the municipal portion of this water right as 1,129.4 acre-feet per year. Is it then reasonable the remaining diversion rate of 11.36 cfs (12.92 cfs - 1.56 cfs) will produce the volume of water licensed under water right 95-8581 for the volume-limited uses? (The diversion rates for the remaining uses are not additive for the remaining licensed diversion rate of 11.36 cfs, therefore, the remaining uses should be analyzed as a group to be certain the resulting volume does

not exceed the water available under remaining diversion rate.) The licensed volume, 3,407.6 acre-feet per year can be produced in 151.2 days ($3,407.6/11.36/1.9835$) with the remaining diversion rate of 11.36 cfs. Most of the volume, 3,075 acre-feet, is for irrigation during the 246-day irrigation season recognized on water right license 95-8581. The remaining diversion rate of 11.36 cfs is not a limitation to production of the licensed 3,407.6 acre-feet per year for water right 95-8581.

The total allowed volume for 95-8581 should be the licensed volume for the volume-limited uses, 3,407.6 acre-feet per year, plus the volume that can be used for municipal uses of 1,129.4 acre-feet per year for a total of 4,537 acre-feet per year. The total annual volume for the two water rights, 95-7800 and 95-8581 should be 7,288.1 acre-feet per year.

Paul, I think it is important to point out in the irrigation district's response to IDWR the volume you are asking for is no more than the district, as the municipal provider for a growing area, is entitled to provide prior to the transfer. IDWR has the responsibility to ensure water rights are not enlarged as the result of a transfer, however, I don't believe it is their purpose to unnecessarily restrict what a municipal provider is already entitled to do.

Please call if you have questions. I will be out of the office on Wednesday but Norm Young will be in the office or my secretary will be able to get messages to me. Thank you again for the opportunity to assist J-U-B and the Hayden Irrigation District.

Yours truly,

/s/

David B. Shaw
Project Manager

Enc.

MEMORANDUM

To: Transfer File 70974
From: Bob Haynes
Date: March 11, 2004
Re: Evaluation of Hayden Lake Irrigation District Transfer

Authority to File

The Hayden Lake Irrigation District originally filed all water rights included in this transfer.

Water Right Validity

The rights are based on licenses issued by the department.

Enlargement of Use

Two licenses are involved with this transfer. Quantify volumes are listed for specific uses & municipal use with no volume. The applicant wishes to retain the licensed rate of diversion. A maximum total volume needs to be specified in order to avoid expansion in the change in nature of use of these rights.

The maximum volume that could be developed under Right 95-7800 would be $3.80 \text{ cfs} \times 365 \times 1.9835 = 2751.1 \text{ af}$ which may be used for municipal purposes. The license limited volume to 2081.3 af for all other uses of which 1748.8 af is for irrigation.

The 2nd right, 95-8581, added additional rate of diversion of 12.92 cfs and also volume. The combined limits condition for domestic, stock water & commercial uses restrict volumes to those provided by 95-7800. However, additional volume is authorized for municipal and irrigation as described below:

Additional volume for irrigation use is $3075 \text{ af total} - 1748.7 \text{ af from } 95-7800 = 1326.3 \text{ af}$.

The additional volume for municipal use is $1.56 \text{ cfs} \times 365 \times 1.9835 = 1129.4 \text{ af}$.

The additional volume from 95-8581 then is $1326.3 \text{ af} + 1129.4 \text{ af} = 2455.7 \text{ af}$.

95-7800	3.80 cfs	2751.1 af
95-8581	12.92 cfs	4537.0 af limited to 2455.7 af
Combined Right Limits	16.72 cfs &	5206.8 af

Since the rights have always been used for municipal purposes, no enlargement of the place of use will occur.

Local Public Interest

The action proposed, adding backup capacity to the district system, by this transfer will permit the district more flexibility in meeting the needs of the residents and is in the local public interest.

Beneficial Use/Conservation of Water Resources

A review of this application finds there is no inconsistency with the criteria set forth in Section 42-222, Idaho Code, which would prevent the approval of this application.

HAYDEN LAKE IRRIGATION DISTRICT

PO BOX 162 • 2160 W. Dakota Ave.
Hayden, Idaho 83835-0162
24 hr (208) 772-2612 • FAX (208) 772-5348
e-mail hlidh2o@hotmail.com
Web page haydenirrigation.com

May 19, 2004

Bob Haynes, P.E.
Department of Water Resources
Northern Region
1910 NW Blvd, Ste 210
Coeur d' Alene, Idaho 83814

Re: Transfer No: 70974-Water Rights 95-8581, 95-7800

Dear Mr. Haynes:
ERO Resources, Inc. of Boise, Idaho has been authorized by Hayden Lake Irrigation District to represent the District for reconsideration of total volume allocations for final water rights transfer.

If you have any questions or comments, please contact our office at 208 772-2612.

Sincerely,

Donna Titwood, Sec.
Bert Rohrbach
Bert Rohrbach

cc: Paul Klatt

NORM YOUNG, ERO RESOURCES, INC.
FAX #
(208) 373-7985

Paul Klatt

License 95-7800

Purpose of Use	Diversion Rate (cfs)	Diversion Volume (afa)
Irrigation	3.80	1748.7
Stockwater	0.11	6.7
Commercial	0.29	17.5
Municipal	3.80	
Domestic	0.84	308.4
Total	3.80	2081.3

Change License 95-7800 to Irrigation and Municipal

Irrigation	3.80	1748.7	(1025 acres)
Municipal	3.80	2751.1	(3.80 x 1.9835 x 365)
Total	3.80	2751.1	

License 95-8581

Purpose of Use	Diversion Rate (cfs)	Diversion Volume (afa)
Irrigation	12.05	3075.0
Stockwater	0.11	6.7
Commercial	0.29	17.5
Municipal	1.56	
Domestic	0.84	308.4
Fire Protection	2.93	
Total	12.92	3407.6

Change License 95-8581 to Irrigation and Municipal

Irrigation	12.05	3075.0	(1025 acres)
Municipal	2.80	1462.0	(1.56 x 1.9835 x 365 + 6.7 + 17.5 + 308.4)
Total	12.92	4537.0	

Combined limit conditions on 95-8581

This right when combined with right 95-7800 shall not exceed 1025 acres and 3075.0 afa for irrigation. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.0 afa per acre for the lands above.

Combined Totals Under Both Licenses

16.72 cfs
7288.1 afa
1025 acres