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Department of Water Resources

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BEFORE THE DIRECTOR OF THE DEPARTMENT OF
WATER RESOURCES OF THE STATE OF IDAHO

IN THE MATTER OF
APPLICATION FOR PERMIT TO
APPROPRIATE WATER,
RIGHT NOS. 21-7574 through 21-7580, IN THE
NAME OF THE STATE OF IDAHO

PETITION TO PROTEST

The Henry's Fork Foundation is an Idaho non-profit corporation representing 1520 members in research, restoration, and stewardship efforts in the Henry's Fork Basin. Henry's Fork Foundation members use and enjoy the Henry's Fork of the Snake and its tributaries for recreation and fishing. Our members work hard to protect and enhance the ecological integrity of the entire Henry's Fork Basin. The Henry's Fork Foundation has a direct and substantial interest in the above proceedings in that many of our members could be negatively impacted by the proposed appropriations of water for groundwater recharge.

The Henry's Fork Foundation is concerned that that the proposed new appropriations from the Henry's Fork near St. Anthony and the Fall River near Chester will adversely affect the river and its fish and wildlife habitat. The proposed recharge diversions would severely deplete minimum streamflows during fall and winter months, thereby reducing the biological viability of the Henry's Fork and Fall Rivers. During the spring runoff period, the proposed diversions could reduce flood peaks by a significant amount. Spring peak flows are critical for fishery habitat formation and maintenance in this section of the Henry's Fork of the Snake River; significant reduction in the size of these flows will result in loss of islands, gravel bars and riparian vegetation.

The total proposed recharge diversions (into the Twin Groves Canal, Salem-Union Canal, Egin Canal, St. Anthony Union Canal, Independent Canal, and Last Chance Canal) requested from the Henry's Fork in the vicinity of St. Anthony are 1897.0 cubic feet per second (c.f.s.). Mean monthly discharge analysis for the Henry's Fork at St. Anthony (1919-1994) indicates that the river would be essentially dewatered following the proposed diversions during all months of the year except May and June. Peak discharge

during these months would be reduced on average by 36%. The proposed diversion of an additional 294 c.f.s. from the Fall River would exacerbate low flow situations.

Additionally, we are concerned that these applications do not limit the timing of the recharge diversions; based on the above analysis, diversion of this quantity of water at any time other than peak flow would have significant consequences for the aquatic ecosystem. Affected fish and wildlife would include native Yellowstone cutthroat trout and several other trout species; bald eagles, herons and other fish-eating birds; and a diverse macroinvertebrate community. At the recent Managed Recharge workshop in Burley it appeared that diversions for recharge were to occur during the winter months below Milner, but no definitive plans were outlined for the timing of recharge diversions at St. Anthony.

No scientific assessment of the biological impacts of recharge diversions on aquatic or riparian communities in the Henry's Fork River corridor has been made. It is likely that diversions of this size would have considerable impact on the downstream ecosystem at any point in the water year, depending on hydrologic conditions at the time. It is also a concern that little scientific data are available to support this recharge effort. In order to divert such large quantities of water out of the mainstem river we feel more justification of the efficacy of recharge is needed. We believe that it is inappropriate to apply for these water rights *before* the necessary scientific studies have been conducted. I.D.W.R. may have the desire to divert the water for recharge, but there is no scientific basis to justify a reasonable certainty that recharge will occur.

In summary, we believe that the approval of this water right application is not in "the local public interest" under IC 42-203A (5); that "the water supply itself is insufficient for the purpose for which it is sought to be appropriated" IC 42-203A (5); that the application has been made for "speculative purposes" IC 42-203A (5); and that it is contrary to the conservation of water resources in the State of Idaho IC 42-203A (5).

The Henry's Fork Foundation recommends that the above water right applications be denied until the following issues are addressed:

1. An assessment of habitat conditions at the range of river flows that would result from the proposed diversions needs to be undertaken to provide an improved understanding of the potential impacts on the river's physical and biological attributes.
2. Scientific evidence should be provided to verify that the proposed diversions will recharge the targeted aquifers.
3. Scientific evidence should be provided to quantify the amount of expected recharge at different times of the year at different locations.
4. Safeguards must be provided that total diversions from a certain river reach will not exceed the amount deemed biologically acceptable.
5. Timing of occurrence of the recharge diversions should be clarified.

After the above issues have been adequately addressed, then we propose two modifications on the original applications:

1. We propose that the amount of water diverted for recharge purposes be based on a percentage of the annual peak or mean monthly flows. This would be calculated both from anticipated runoff based on snow survey data and actual discharge measurements. A committee of representatives from I.D.W.R., Idaho Fish and Game, U.S. Fish and Wildlife Service, the irrigation companies, and Henry's Fork Watershed Council will determine the actual percentage that can be diverted from the Henry's Fork and Fall River for recharge purposes.
2. A certain monthly discharge threshold for the Henry's Fork at St. Anthony and the Fall River at Chester should be established below which diversion for recharge could not occur.

The Henry's Fork Foundation recommends that the listed water rights applications are denied until further public comment and discussion occur. We request that a hearing be scheduled to consider the public impacts that these proposed water rights may have.

Dated 20 July 1998

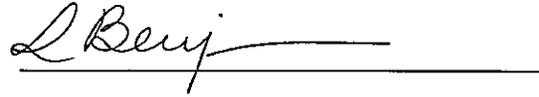


Janice M. Brown
Executive Director
Henry's Fork Foundation
Protestant



Lyn Benjamin
Hydrologist
Henry's Fork Foundation
Protestant Representative

I certify that on this _____ day of _____ 1998, I served a copy of this Protest upon the Idaho Department of Water Resources (and any other parties), by mail with postage attached.

A handwritten signature in cursive script, appearing to read "L Benjamin", is written over a horizontal line.

Lyn Benjamin