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MICHAEL McLAUGHLIN

NO. _____
FILED
A.M. _____ P.M. _____

NOV 19 2012

CHRISTOPHER D. RICH, Clerk
By ELYSHIA HOLMES
DEPUTY

Attorney for Petitioner Idaho
Conservation League

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

IDAHO CONSERVATION LEAGUE,)
an Idaho non-profit organization,)
)
Petitioner,)
)
vs.)
)
BOARD OF ADA COUNTY)
COMMISSIONERS,)
)
Respondent.)
_____)

Case No. **CV 00 1221165**

**PETITION FOR
JUDICIAL REVIEW**

INTRODUCTION

1. Petitioner IDAHO CONSERVATION LEAGUE seeks judicial review of the October 23, 2012 decisions by Respondent Ada County Board of Commissioners to approve Resolution No. 1863 affirming the creation of an industrial park at Hidden Hollow Sanitary Landfill, and to enter into Agreement No. 9814 leasing land at the Landfill to Dynamis Energy, LLC.

2. Because the challenged decisions were adopted in violation of procedural and substantive requirements of Idaho law, and are arbitrary, capricious, and abuse of discretion, the Court should reverse and remand them pursuant to Idaho Code § 31-1506; the Idaho Administrative Procedure Act, Idaho Code § 67-5270 *et seq.* (“Idaho APA”); and Idaho Rule of Civil Procedure 84.

PARTIES

3. Petitioner IDAHO CONSERVATION LEAGUE (“ICL”) is a non-profit conservation organization incorporated under the laws of Idaho with its principal place of business in Boise, Idaho. ICL’s mission is to protect Idaho’s environment.

4. Among other issues, ICL and its approximately 20,000 members and supporters are greatly concerned with protecting air quality and human health in Idaho, including the Treasure Valley where many ICL members and staff live, work, and recreate. ICL and its staff, members and supporters are active in public education, administration, and legislation of conservation issues in Idaho, including air quality issues.

5. As an organization, ICL has been actively engaged in advocacy work related to the proposed Dynamis “waste-to-energy” project at the Hidden Hollow Landfill in Ada County, which poses potential threats to the air quality and health of Treasure Valley residents. For example, ICL has attended and participated in meetings held by Ada County regarding Dynamis. And ICL has been in regular contact with the Idaho Department of Environmental Quality regarding Dynamis’s pending application for an air quality permit.

6. ICL members live, work, frequently use and enjoy land, and own land in the vicinity of the Ada County Landfill and the Dynamis lease site. And ICL members have been actively

involved in Dynamis related proceedings before Ada County.

7. The substantial interests of ICL and its members are adversely affected and prejudiced by the decisions challenged herein.

8. Respondent ADA COUNTY BOARD OF COMMISSIONERS (“Board”) is the elected governing body of Ada County, a political subdivision of the State of Idaho. The Commissioners passed Resolution No. 1863 and Agreement No. 9814, the decisions challenged herein.

JURISDICTION AND VENUE

9. This Court has jurisdiction of the parties and subject matter of this action pursuant to Idaho Code § 31-1506.

10. Because Respondent Board governs Ada County, Idaho, proper venue lies in the District Court for Ada County. I.C. § 31-1506(2).

FACTUAL ALLEGATIONS

11. The proposed Dynamis “waste-to-energy” project has been the subject of substantial public controversy and uncertainty concerning the project’s technical feasibility, financing, promotion and approval so far, and potential adverse environmental impacts.

12. The Ada County Board of Commissioners has previously approved a contract and lease relating to the proposed Dynamis facility without any public hearing.

13. On October 23, 2012, the Ada County Board of Commissioners passed by a two-to-one vote Resolution No. 1863, entitled “Resolution Affirming Industrial Park, Affirming Name, and Restricting Uses Therein” (hereinafter “Industrial Park Resolution”). While the Board allowed

limited public comment on the Industrial Park Resolution, it did not hold a public hearing.

14. The Industrial Park Resolution purports to affirm the creation of the Ada Renewable Technology Industrial Complex (“ARTIC”) at the Hidden Hollow Landfill, the formation of which the Board initially announced on June 30, 2010. The Resolution states that the purpose of ARTIC is to “take advantage of renewable energy sources unique to the site and landfill use.”

15. On October 23, 2012, the Board also approved by a two-to-one vote and without public hearing Agreement No. 9814, entitled “Lease Agreement Between Ada County and Dynamis Energy, LLC” (hereinafter “Lease Agreement”).

16. Pursuant to the Lease Agreement, Ada County would lease approximately 10 acres at the Landfill to Dynamis for an initial term of 30 years, beginning October 1, 2012, at a base rent of \$100 per year. Included in the Findings and Recitals of the Lease Agreement is that ARTIC is an industrial park created pursuant to Idaho Code § 31-836(3) and that Dynamis proposes to “engage in the processing of municipal solid waste and the production of energy in ARTIC in compliance with the purposes established for ARTIC.”

17. No public auction was held to lease the site.

18. On November 2, 2012, a nearby landowner submitted a motion for reconsideration by the Board of the decisions above and others relating to the Dynamis proposal. Petitioner is informed and believes, and alleges thereon, that the Board denied the motion for reconsideration at its meeting on November 15, 2012.

19. On November 8, 2012, the Ada County Planning and Zoning Commission (“Commission”) held the County’s first-ever public meeting on the proposed Dynamis facility, at which large numbers of concerned residents voiced concerns with and opposition to the proposed

facility and the County's handling of this matter. However, the Commission has been by-passed in the County's approval of the Dynamis contract and lease to date; and it currently has no jurisdiction over the project. These public meeting proceedings are relevant to this Petition for Judicial Review, since they were presumably available to the Board of Commissioners prior to their rendering of a final decision herein.

REQUEST FOR TRANSCRIPTS

20. ICL requests a transcript of the portion of the October 23, 2012 meeting of the Board of Ada County Commissioners regarding the Industrial Park Resolution and the Lease Agreement; and of the November 8, 2012 public meeting before the Commission. ICL is informed and believes that these hearings were recorded by audio recording and/or stenograph methods by staff or personnel of Ada County.

STATEMENT OF THE ISSUES

ICL anticipates raising the following issues on judicial review:

- I. Whether the Dynamis facility does not qualify as an "industrial park" as defined in Idaho Code § 31-836(3), and since it does not, whether the Board therefore violated Idaho Code § 31-836(1) by leasing the site to Dynamis without holding a public auction.
- II. Whether the Board violated Idaho Code § 31-836 by failing to determine Dynamis's rent by unanimous vote.

ICL reserves the right to raise additional issues as they are discovered. *See* I.R.C.P.

84(d)(5).

PRAYER FOR RELIEF

WHEREFORE, ICL respectfully prays the Court to reverse and remand the Respondents' challenged decisions as being in violation of the constitutional or statutory authority of the agency, in excess of the statutory authority of the agency, not supported by substantial evidence in the record, and/or arbitrary, capricious, or an abuse of discretion, and to grant all other relief which may be sought hereafter.

ICL also requests attorney's fees pursuant to Idaho Code § 12-117 and any other applicable fee provisions.

DATED: November 19, 2012

Respectfully Submitted,



Bryan Hurlbutt
Attorney for Petitioner Idaho Conservation League

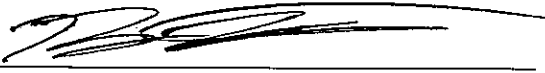
I.R.C.P. 84(d) CERTIFICATION

I hereby certify that on this November 19, 2012, I caused to be served true and correct copies of the foregoing PETITION FOR JUDICIAL REVIEW in this matter by hand delivery upon the following persons:

Christopher Rich
Ada County Clerk
200 W. Front St., Rm 1196
Boise, ID 83702

Theodore Argyle
Ada County Prosecutor's Office
200 W. Front St., Rm 3191
Boise, ID 83702

I further hereby certify that on this same date, I caused payment to be made to Respondents, via service upon Christopher Rich, a check to Ada County in the amount of \$250 representing the estimated fee for the preparation of the record and the requested transcripts.



Bryan Hurlbutt