

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 95-9323	)	ORDER MODIFYING A
IN THE NAME OF FERNAN ESTATES	)	CONDITION OF APPROVAL
CORPORATION	)	
_____	)	

This matter having come before the Department of Water Resources (Department) as a request to modify a condition of approval on a permit, the Department finds, concludes, and orders:

FINDINGS OF FACT

1. On May 18, 2006, the Department issued Permit 95-9323 (permit) to Fernan Estates Corporation (permit holder) for the annual diversion of 44.8 acre-feet of ground water to supply a 40-home subdivision.

2. Prior to issuance of the permit, the permit holder entered into an agreement with Kootenai Environmental Alliance (KEA) to resolve a protest against the permit holder's proposed water use. The agreement signed by KEA and the permit holder contains the following statement in paragraph B.1:

The water would be distributed to allow 900 gallons per day per residence and 100 gallons per day for the common area.

3. In an attempt to be consistent with the agreement between the permit holder and KEA, the Department issued the permit with the following statement listed as condition of approval no. 4:

The daily diversion volume for this municipal right shall not exceed 100 gallons for the common area and 900 gallons per home that has been constructed.

4. On October 6, 2009, the permit holder asked the Department to clarify the meaning of the condition no. 4 by altering it to say:

The *average* daily diversion volume (*based on annual usage*) for this municipal right shall not exceed 100 gallons for the common area and 900 gallons per home that has been constructed.

5. Also on October 6, 2009, KEA submitted a letter requesting the same modification to approval condition no. 4 that the permit holder requests. KEA stated in the letter that the proposed change would "better reflect the intention of our agreement with Fernan Estates Corporation."

CONCLUSIONS OF LAW

1. Approval condition no. 4 of the permit did not clearly communicate the intent of the permit holder and KEA to limit the diversion of water to an average daily amount for each home in the subdivision.
2. Modifying approval condition no. 4 in the manner requested by the permit holder and KEA would not enlarge the permitted water use beyond the annual diversion volume limit of 44.8 acre-feet.
3. To clarify the meaning of the condition, the Department should modify condition of approval no. 4 as requested by the permit holder and KEA.

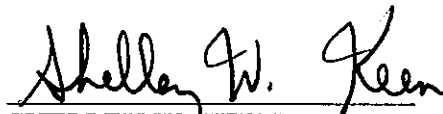
ORDER

IT IS HEREBY ORDERED THAT condition of approval no. 4 of the permit is **MODIFIED** as follows:

The average daily diversion volume (based on annual usage) for this municipal right shall not exceed 100 gallons for the common area and 900 gallons per home that has been constructed.

IT IS FURTHER HEREBY ORDERED THAT the the Department shall **ISSUE** a revised permit document on this date in connection with this order.

Dated this 7th day of October, 2009.


SHELLEY W. KEEN