

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

IN THE MATTER OF APPLICATION TO	)	
APPROPRIATE WATER NO. 95-9244	)	PRELIMINARY ORDER
IN THE NAME OF NORTH KOOTENAI	)	DISMISSING A PROTEST
WATER DISTRICT	)	AND ISSUING A PERMIT
_____	)	

This matter having come before the Department as a motion for dismissal of protest, the Department finds, concludes, and orders:

FINDINGS OF FACT

1. On August 27, 2004, North Kootenai Water District (applicant) filed application to appropriate water no. 95-9244 (application) seeking to appropriate 2.0 cfs from ground water for municipal purposes.
2. On October 25, 2004, the Department received a protest against the application by the Upper Columbia River Group of the Sierra Club and Friends of the Aquifer (protestants).
3. On June 29, 2009, the Idaho Department of Water Resources (Department) received a Revised Stipulated Motion for Dismissal of Protest (motion), which included a settlement agreement (agreement) signed by the parties.
4. Part C of the agreement, labeled "Mutual Actions", requests that the Department issue water right 95-9244 with the following provisions:

"The diversion and use of water described in this order is subject to additional conditions and limitations agreed to by both Sierra Club/Protestants, and the water right holder under a separate agreement to which the Department is not a party and which is independently enforceable by a court of law."

"This water right is issued subject to the continuing requirements for the water right holder to develop and implement a conservation plan under Section 3.2.1.3 of the Management Plan for the Rathdrum Prairie Ground Water Management Area (September 15, 2005)."

"References this Agreement and includes a copy of this Agreement in the permit file."

5. Part C of the agreement also states: "The conditional motion to withdraw shall be conditioned upon the acceptance and inclusions of the terms set forth in that section by IDWR and approval of the 2008 Annual Review by IDWR."

6. On June 19, 2009, the Department received a copy of the applicant's Water System Conservation Plan (plan).

7. On June 19, 2009, the Department received the applicant's 2008 Annual Review (review) of its plan. The review reported that the three goals for fiscal year 2008 were reached by putting a metering program in place, limiting irrigation hours, and by creating a conservation fund. The review also reported a 12.2% decrease in total gallons sold from fiscal year 2007.

8. Idaho Code § 42-203A states in pertinent part:

In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho, or (g) that it will adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates; the director of the department of water resources may reject such application and refuse issuance of a permit therefore, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions.

CONCLUSIONS OF LAW

1. The conditions proposed by the parties in the agreement are consistent with the local public interest.
2. The applicant's water system conservation plan is consistent with the suggested criteria outlined in the Management Plan for the Rathdrum Prairie Ground Water Management Area.
3. The applicant's 2008 Annual Review is acceptable to the Department.
4. The Department should approve the permit with the conditions proposed by the parties.
5. The Department should dismiss the protestants from this proceeding.

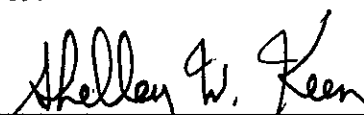
ORDER

IT IS HEREBY ORDERED that application no. 95-9244 is **APPROVED** and the following conditions shall appear on the permit issued on this date in connection with this order:

1. The diversion and use of water described in this order is subject to additional conditions and limitations agreed to by both Sierra Club/Protestants, and the water right holder under a separate agreement to which the Department is not a party and which is independently enforceable by a court of law. A copy of the separate agreement shall be available in the water right record maintained by the Department.
2. This water right is issued subject to the continuing requirements for the water right holder to develop and implement a conservation plan under Section 3.2.1.3 of the Management Plan for the Rathdrum Prairie Ground Water Management Area (September 15, 2005).

IT IS FURTHER HEREBY ORDERED that the protest submitted by Upper Columbia River Group of the Sierra Club and Friends of the Aquifer against the issuance of a permit to North Kootenai Water District is **DISMISSED**.

DATED this 3rd day of September, 2009.



SHELLEY KEEN, Manager
Water Rights Section