

# **STARTING LEFT SIDE OF FILE**

SCANNED  
MAR 05 2008

FORM 202  
12/99

Ident. No.

11541  
95-9244STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES  
**APPLICATION FOR PERMIT**

To appropriate the public waters of the State of Idaho

**RECEIVED****AUG 27 2004****IDWR/North**1. Name of Applicant NORTH KOOTENAI WATER DISTRICT Phone \_\_\_\_\_  
Mailing address P.O. BOX 2290 HAYDEN, ID 838352. Source of water supply RATHDRUM AQUIFER which is a tributary of \_\_\_\_\_3. Location of point of diversion is Township 51N Range 4W Sec. 23, in the \_\_\_\_\_  
NE  $\frac{1}{4}$ , SE  $\frac{1}{4}$ , Govt. Lot \_\_\_\_\_, B.M., \_\_\_\_\_ County;additional points of diversion if any: SEE TABLE 1

4. Water will be used for the following purposes:

Amount 2cfs for MUNICIPAL purposes from 01/01 to 12/31 (both dates inclusive)  
(cfs or acre-feet per annum)Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre-feet per annum)Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre-feet per annum)Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre-feet per annum)Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre-feet per annum)Amount \_\_\_\_\_ for \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ (both dates inclusive)  
(cfs or acre-feet per annum)5. Total quantity to be appropriated is (a) 2cfs and/or (b) \_\_\_\_\_  
cubic feet per second acre feet per annum

6. Proposed diverting works:

a. Describe type and size of devices used to divert water from the source WELLb. Height of storage dam \_\_\_\_\_ feet; active reservoir capacity \_\_\_\_\_ acre-feet; total  
reservoir capacity \_\_\_\_\_ acre-feetc. Proposed well diameter is 18 inches; proposed depth of well is 350 feet

d. Is ground water with a temperature of greater than 85°F being sought? \_\_\_\_\_

e. If well is already drilled, when? N/A; Drilling firm \_\_\_\_\_;  
Well was drilled for (well owner) \_\_\_\_\_; Drilling Permit No. \_\_\_\_\_7. Time required for completion of works and application of water to proposed beneficial use is 1 years (minimum 1 year)

8. Description of proposed uses (if irrigation only, go to item 9):

a. Hydropower; show total feet of head and proposed capacity in kW. \_\_\_\_\_

b. Stockwatering; list number and kind of livestock. \_\_\_\_\_

c. Municipal; show name of municipality. NORTH KOOTENAI WATER DIST. HONEYSUCKLE HILLS OWNERS ASSO

d. Domestic; show number of households. \_\_\_\_\_

e. Other; describe fully. \_\_\_\_\_

3. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. If water is used for other purposes, place a symbol of the use (example: *D* for Domestic) in the corresponding place of use below. See instructions for standard symbols.

REFER TO TABLE 2

| TWP | RGE | SEC | NE |    |    |    | NW |    |    |    | SW |    |    |    | SE |    |    |    | TOTALS |
|-----|-----|-----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--------|
|     |     |     | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE |        |
|     |     |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |        |
|     |     |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |        |
|     |     |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |        |
|     |     |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |        |
|     |     |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |        |
|     |     |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |        |
|     |     |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |        |
|     |     |     |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |        |

Total number of acres to be irrigated N/A

10. Describe any other water rights used for the same purposes as described above. REFER TO TABLE 3

11. a. Who owns the property at the point of diversion? HONEYSUCKLE HILLS OWNER'S ASSOCIATION
- b. Who owns the land to be irrigated or place of use? SERVICE AREA OF NKWD AND HONEYSUCKLE HILLS
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: \_\_\_\_\_

12. Remarks: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

13. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

REFER TO FIGURE 1

BE IT KNOWN that the undersigned hereby makes this application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Bainhurst, Dist. Mgr.  
 Signature of Applicant (and title, if applicable)

Received by [Signature] Date 8/27/04 Time 2:35P Preliminary check by [Signature]  
 Fee \$ 290.00 Receipted by [Signature] # N010518 Date 8/27/04  
 Publication prepared by [Signature] Date 9/29/04 Published in COAP News 10/7+14/04  
 Publication approved [Signature] Date 10/15/04

North Kootenai Water District  
Applications for New Water Rights

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Table 1:  
North Kootenai Water District Points of Diversion and Description of Diversion Works

| Well                     | Lot | 1/4 | 1/4 | 1/4 | Sec. | Twp. | Rge | County   | Local name for diversion | Description of Diversion Works                                 |
|--------------------------|-----|-----|-----|-----|------|------|-----|----------|--------------------------|----------------------------------------------------------------|
| Ohio Match               |     |     | NW  | SE  | 18   | 52N  | 3W  | Kootenai | Rathdrum Aquifer         | 6" Well with 52 gpm Submersible Pump and Motor                 |
| Finucane                 |     |     | NW  | SW  | 24   | 51N  | 4W  | Kootenai | Rathdrum Aquifer         | 16" Well with 460 gpm Deep Well Turbine Pump and 75 HP Motor   |
| Hayden Well <sup>1</sup> |     |     | NE  | SE  | 23   | 51N  | 4W  | Kootenai | Rathdrum Aquifer         | 16" Well with 1100 gpm Deep Well Turbine Pump and 200 HP Motor |
| Hayden Pines             |     |     | NE  | SE  | 23   | 51N  | 4W  | Kootenai | Rathdrum Aquifer         | 8" Well with 40 gpm Submersible Pump and 30HP Motor            |
| GTE 1                    |     |     | SE  | SW  | 23   | 51N  | 4W  | Kootenai | Rathdrum Aquifer         | 16" Well with 500 gpm Submersible Pump and 50HP Motor          |
| GTE 2                    |     |     | SW  | SE  | 23   | 51N  | 4W  | Kootenai | Rathdrum Aquifer         | 10" Well with 250 gpm Submersible Pump and 30HP Motor          |
| Tree Farm                |     |     | SE  | SE  | 17   | 52N  | 4W  | Kootenai | Rathdrum Aquifer         | 8" Well with 170 gpm Submersible Well Pump and Motor           |
| Tree Farm                |     |     | SE  | SE  | 17   | 52N  | 4W  | Kootenai | Rathdrum Aquifer         | 10" Well with 170 gpm Submersible Well Pump and Motor          |
| Echo Beach               | 1   |     | SE  | NE  | 6    | 52N  | 4W  | Kootenai | Rathdrum Aquifer         | 8" Well with 230 gpm Submersible Well Pump and Motor           |
| Rimrock                  |     |     | NW  | NW  | 11   | 51N  | 4W  | Kootenai | Rathdrum Aquifer         | 16" Well with 1100 gpm Well and 200 HP Motor                   |
| Rimrock                  |     |     | NW  | NE  | 11   | 51N  | 4W  | Kootenai | Rathdrum Aquifer         | 10" Well with 400 gpm Pump and Motor                           |
| Rimrock                  |     |     | SE  | SW  | 2    | 51N  | 4W  | Kootenai | Rathdrum Aquifer         | 16" Well with 980 gpm Pump and 200 HP Motor                    |
| Hayden Orchard           |     |     | NW  | NE  | 14   | 51N  | 4W  | Kootenai | Rathdrum Aquifer         | 8" Well with Pump and 15 HP Motor                              |
| Chilco                   |     |     | SE  | NE  | 7    | 52N  | 3W  | Kootenai | Rathdrum Aquifer         | 12" well with 250 gpm Pump and 10 HP Motor                     |
| Chilco                   |     |     | SW  | NW  | 8    | 52N  | 3W  | Kootenai | Rathdrum Aquifer         | 10" well with 300 gpm Submersible Pump and 10 HP Motor         |
| Atlas                    |     |     | NE  | SE  | 28   | 52N  | 4W  | Kootenai | Rathdrum Aquifer         | 8" Well with 58 gpm Pump and 10 HP Motor                       |
| Mt View                  |     |     | NE  | SW  | 32   | 51N  | 5W  | Kootenai | Rathdrum Aquifer         | 6" Well with 92 gpm Submersible Pump and 7.5 HP Motor.         |
| Mt View                  |     |     | SE  | SW  | 32   | 51N  | 5W  | Kootenai | Rathdrum Aquifer         | 10" Well with 425 gpm Deep Well Turbine Pump and 50 HP Motor.  |
| Meadowland Acres         |     |     | SE  | SE  | 23   | 51N  | 5W  | Kootenai | Rathdrum Aquifer         | 260 gpm Submersible Pump and Motor                             |
| Valley Green             | 7   |     | SW  | SE  | 15   | 51N  | 4W  | Kootenai | Rathdrum Aquifer         | 8" Well with 75 gpm Pump and 10 HP Motor                       |

1. This well is owned by Honeysuckle Hills. Honeysuckle Hills and NKWD have an agreement allowing NKWD to utilize 60% of the current pumping capacity for municipal use to serve its customers.

Table 2:  
NKWD Place of Use

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Table 2:  
NKWD Place of Use

| TWP | RANGE | SEC. | NE ¼ |     |     |     | NW ¼ |     |     |     | SW ¼ |     |     |     | SE ¼ |     |     |     | TOTALS |
|-----|-------|------|------|-----|-----|-----|------|-----|-----|-----|------|-----|-----|-----|------|-----|-----|-----|--------|
|     |       |      | NE¼  | NW¼ | SW¼ | SE¼ | NE¼  | NW¼ | SW¼ | SE¼ | NE¼  | NW¼ | SW¼ | SE¼ | NE¼  | NW¼ | SW¼ | SE¼ |        |
| 51N | 3W    | 5    |      |     |     |     |      |     |     |     | M    | M   | M   | M   | M    | M   | M   | M   |        |
|     |       | 6    |      |     | M   | M   |      |     | M   | M   | M    | M   | M   | M   | M    | M   | M   | M   |        |
|     |       | 7    | M    | M   | M   | M   | M    | M   | M   | M   | M    | M   | M   | M   | M    | M   | M   | M   |        |
|     |       | 8    | M    | M   | M   | M   | M    | M   | M   | M   | M    | M   | M   | M   | M    | M   | M   | M   |        |
|     |       | 17   |      | M   | M   |     | M    | M   | M   | M   |      |     |     |     |      |     |     |     |        |
|     |       | 18   | M    | M   | M   | M   | M    | M   | M   | M   |      |     |     |     |      |     |     |     |        |
|     |       | 19   |      |     |     |     |      | M   | M   | M   | M    | M   | M   | M   | M    | M   | M   | M   |        |
|     |       | 20   | M    | M   | M   | M   | M    |     |     | M   | M    | M   | M   | M   | M    | M   | M   | M   |        |
|     |       | 21   |      |     |     |     |      |     | M   |     | M    | M   | M   | M   |      |     |     |     |        |
|     |       | 30   | M    |     |     |     | M    | M   |     |     |      |     |     |     |      |     |     |     |        |
| 51N | 4W    | 1    |      |     |     |     |      | M   | M   |     | M    | M   | M   | M   | M    | M   | M   | M   |        |
|     |       | 2    | M    | M   | M   | M   | M    | M   | M   | M   | M    | M   | M   | M   | M    | M   | M   | M   |        |
|     |       | 10   | M    |     |     |     |      |     |     |     |      |     |     |     |      |     |     |     |        |
|     |       | 11   | M    | M   |     |     | M    | M   |     |     |      |     |     |     |      |     |     |     |        |
|     |       | 12   | M    | M   | M   | M   | M    | M   |     |     |      |     |     |     | M    | M   | M   | M   |        |
|     |       | 14   |      | M   |     |     |      |     |     |     |      |     |     |     |      |     |     |     |        |
|     |       | 15   |      |     |     |     |      |     |     |     | M    |     |     | M   |      | M   | M   |     |        |
|     |       | 23   |      |     |     |     |      |     |     |     | M    |     | M   | M   | M    | M   | M   | M   |        |
|     |       | 24   | M    | M   | M   | M   |      |     |     |     | M    |     |     | M   | M    | M   | M   | M   |        |
|     |       | 26   | M    | M   |     |     |      |     |     |     |      |     |     |     |      |     |     |     |        |
| 51N | 5W    | 23   |      |     |     |     |      |     |     |     |      |     |     |     | M    | M   | M   | M   |        |
|     |       | 32   |      |     |     |     |      |     |     |     | M    | M   | M   | M   |      |     |     |     |        |
| 52N | 3W    | 4    |      |     |     |     |      | M   | M   |     |      | M   |     |     |      |     |     |     |        |
|     |       | 5    | M    |     | M   | M   |      |     |     |     | M    |     |     | M   | M    | M   | M   | M   |        |
|     |       | 6    |      |     |     |     | M    | M   | M   | M   | M    | M   | M   | M   | M    | M   | M   | M   |        |
|     |       | 7    | M    | M   | M   | M   | M    |     | M   | M   | M    | M   |     |     |      |     |     |     |        |
|     |       | 8    | M    |     |     | M   | M    | M   | M   | M   |      |     |     |     |      |     |     |     |        |
|     |       | 17   |      |     |     |     |      |     | M   |     | M    | M   | M   | M   |      |     |     |     |        |
|     |       | 18   |      |     |     |     |      |     | M   | M   |      |     |     |     | M    | M   | M   | M   |        |
|     |       | 19   | M    | M   | M   |     |      |     |     |     |      |     |     |     |      |     |     |     |        |
|     |       | 20   |      |     |     |     |      | M   |     |     |      |     |     |     |      |     |     |     |        |
| 52N | 4W    | 5    | M    | M   | M   |     | M    | M   | M   | M   | M    | M   |     | M   |      | M   | M   | M   |        |
|     |       | 6    | M    | M   | M   | M   | M    | M   |     |     |      |     |     |     | M    |     |     |     |        |
|     |       | 8    | M    | M   | M   | M   |      |     |     | M   | M    |     | M   | M   | M    | M   | M   | M   |        |
|     |       | 9    | M    | M   | M   | M   | M    | M   | M   | M   | M    | M   | M   | M   | M    | M   | M   | M   |        |
|     |       | 16   | M    | M   | M   | M   | M    | M   | M   | M   | M    | M   | M   | M   | M    | M   | M   | M   |        |
|     |       | 17   | M    | M   | M   | M   | M    | M   | M   | M   | M    | M   |     | M   | M    | M   | M   | M   |        |
|     |       | 18   |      |     |     |     |      |     |     |     |      |     |     |     |      |     |     |     |        |
|     |       | 28   |      |     | M   | M   |      |     |     |     |      |     |     |     | M    | M   | M   | M   |        |
|     |       | 35   |      |     | M   | M   |      |     |     | M   | M    | M   | M   | M   | M    | M   | M   | M   |        |
|     |       | 36   |      |     |     |     |      |     | M   |     |      | M   | M   |     |      |     |     |     |        |
| 53N | 3W    | 32   |      |     |     |     |      |     |     |     |      |     |     |     |      |     |     |     | M      |
|     |       | 33   |      |     |     |     |      |     |     |     |      |     |     | M   |      |     |     |     |        |
| 53N | 4W    | 31   |      |     |     | M   |      |     | M   | M   | M    | M   | M   | M   | M    | M   | M   | M   |        |
|     |       | 32   |      |     |     |     |      |     | M   |     |      | M   | M   |     |      |     |     |     |        |
| 53N | 5W    | 36   |      |     |     |     |      |     |     |     |      |     |     |     |      |     |     | M   |        |

Total number of acres to be irrigated N/A

# **NORTH KOOTENAI WATER DISTRICT SUMMARY/STATUS OF WATER RIGHTS**

TABLE 3: Existing Water Rights

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| Water System                | Well Name         | Legal Description |     |     |         |          |       | DATE WELL ESTABLISHED              | WELLS | IDEQ PWS NO. | EXISTING IDWR PERMIT NO. 1-4 | PERMITTED DIVERSION RATE (CFS) | CURRENT WATER DIVERSION (Well Capacity CFS) |
|-----------------------------|-------------------|-------------------|-----|-----|---------|----------|-------|------------------------------------|-------|--------------|------------------------------|--------------------------------|---------------------------------------------|
|                             |                   | 1/4               | 1/4 | 1/4 | Section | Township | Range |                                    |       |              |                              |                                |                                             |
| Atlas Acres                 | Atlas Acres       |                   | NE  | SE  | 28      | 52N      | 4W    | Jun-78                             | 1     | 1280005      | 95-9199                      | —                              | 0.13                                        |
| Rimrock                     | Lancaster Well #2 |                   | NW  | NE  | 11      | 51N      | 4W    | Jun-90                             | 1     | 1280009      | 95-8639                      | 1                              | 0.89                                        |
| Rimrock                     | Lancaster Well #1 | NW                | NW  | NE  | 11      | 51N      | 4W    | Jun-80                             | 1     | 1280009      | 95-9199                      | —                              | 2.56                                        |
| Rimrock                     | Lancaster Well #3 | SE                | SW  | SW  | 2       | 51N      | 4W    | Jun-02                             | 1     | 1280009      | 95-9199                      | —                              | 2.18                                        |
| Chilco                      | Chilco #1         |                   | SE  | NE  | 7       | 52N      | 3W    | Apr-78                             | 1     | 1280048      | 95-7827                      | 0.2                            | 0.56                                        |
| Chilco                      | Chilco #2         |                   | SW  | NW  | 8       | 52N      | 3W    | Nov-94                             | 1     | 1280048      | 95-9199                      | —                              | 0.67                                        |
| Hayden Orchard              | Hayden Orchard    |                   | NW  | NE  | 14      | 51N      | 4W    | Jul-77                             | 1     | 1280088      | 95-9199                      | —                              | 0.27                                        |
| Hillside                    | Finucane Well     |                   | NW  | SW  | 24      | 51N      | 4W    | RIGHT ESTABLISHED<br>NOVEMBER 1975 | 1     | 1280095      | PENDING                      | 0                              | 1.02                                        |
| Hillside                    | Hayden Well       |                   | NE  | SE  | 23      | 51N      | 4W    | Oct-77                             | 1     | 1280095      | 95-7763                      | 0                              | 0                                           |
| Twin Lakes                  | Echo Beach        |                   | SE  | NE  | 6       | 52N      | 4W    | NO WELL LOG (PRE-1972)             | 1     | 1280099      | 95-9199                      | 0                              | 0.51                                        |
| Twin Lakes                  | Tree Farm #1      |                   | SE  | SE  | 17      | 52N      | 4W    | Feb-75                             | 1     | 1280099      | 95-8522                      | 0                              | 0.38                                        |
| Twin Lakes                  | Tree Farm #2      |                   | SE  | SE  | 17      | 52N      | 4W    | Dec-85                             | 1     | 1280099      | 95-8522                      | 0.61                           | 0.38                                        |
| Mountain View               | Mountain View #1  |                   | NE  | SW  | 32      | 51N      | 5W    | NO WELL LOG (PRE-1936)             | 1     | 1280123      | PENDING                      | —                              | 0.2                                         |
| Mountain View               | Mountain View #2  |                   | SE  | SW  | 32      | 51N      | 5W    | NO WELL LOG (PRE-1963)             | 1     | 1280123      | PENDING                      | —                              | 0.95                                        |
| Ohio Match                  | Ohio Match        |                   | NW  | SE  | 18      | 52N      | 3W    | Jul-76                             | 1     | 1280127      | 95-7713                      | 0.04                           | 0.12                                        |
| Valley Green                | Valley Green      |                   | SW  | SE  | 15      | 51N      | 4W    | Jan-77                             | 1     | 1280195      | 95-9199                      | —                              | 0.17                                        |
| Meadows                     | GTE Inner         |                   | SE  | SW  | 23      | 51N      | 4W    | NO WELL LOG (PRE-1979)             | 1     | 1280257      | 95-9199                      | —                              | 0.56                                        |
| Hayden Pines/Grouse Meadows | GTE Outer         |                   | SW  | SE  | 23      | 51N      | 4W    | Dec-77                             | 1     | 1280257      | 95-9199                      | —                              | 1.11                                        |
| Hayden Pines/Grouse Meadows | Hayden Pines      |                   | NE  | SE  | 23      | 51N      | 4W    | Jul-71                             | 1     | 1280257      | 95-7138                      | 0.14                           | 0.09                                        |
| Meadowland Acres            | Meadowland Acres  |                   | SE  | SE  | 23      | 51N      | 5W    | NO WELL LOG                        | 1     | 1280277      | 95-9199                      | —                              | 0.58                                        |
| TOTAL                       |                   |                   |     |     |         |          |       |                                    |       |              |                              | 1.99                           | 13.33                                       |

1. NEW APPLICATION (#95-9199) INCLUDES A MAXIMUM DIVERSION CAPACITY OF 8.83 CFS AND CAN BE USED INTERCHANGEABLY BETWEEN ALL DISTRICT WELLS.
2. TRANSFER APPLICATION (#70394) INCLUDES A MAXIMUM DIVERSION CAPACITY OF 1.99 CFS AND CAN BE USED INTERCHANGEABLY BETWEEN ALL DISTRICT WELLS.
3. A 2ND NEW APPLICATION FOR A MAXIMUM DIVERSION RATE OF 2.51 CFS WAS FILED IN JANUARY 2004 TO RECOVER WATER RIGHT CAPACITY LOST THROUGH 2 NON-APPLICABLE WATER RIGHTS.
4. ALL WATER RIGHTS ARE MUNICIPAL.

Don Vandenberg Pres

Dean Kasler VP

Maimie Moore Sec

Linda Doms Bd Mbr

Jack Berger - -

Richard Fairbank Stm Mgr

Info from most recent  
but older app.

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# NORTH KOOTENAI WATER DISTRICT SUMMARY/STATUS OF WATER RIGHTS

TABLE 3: Existing Water Rights

RECEIVED

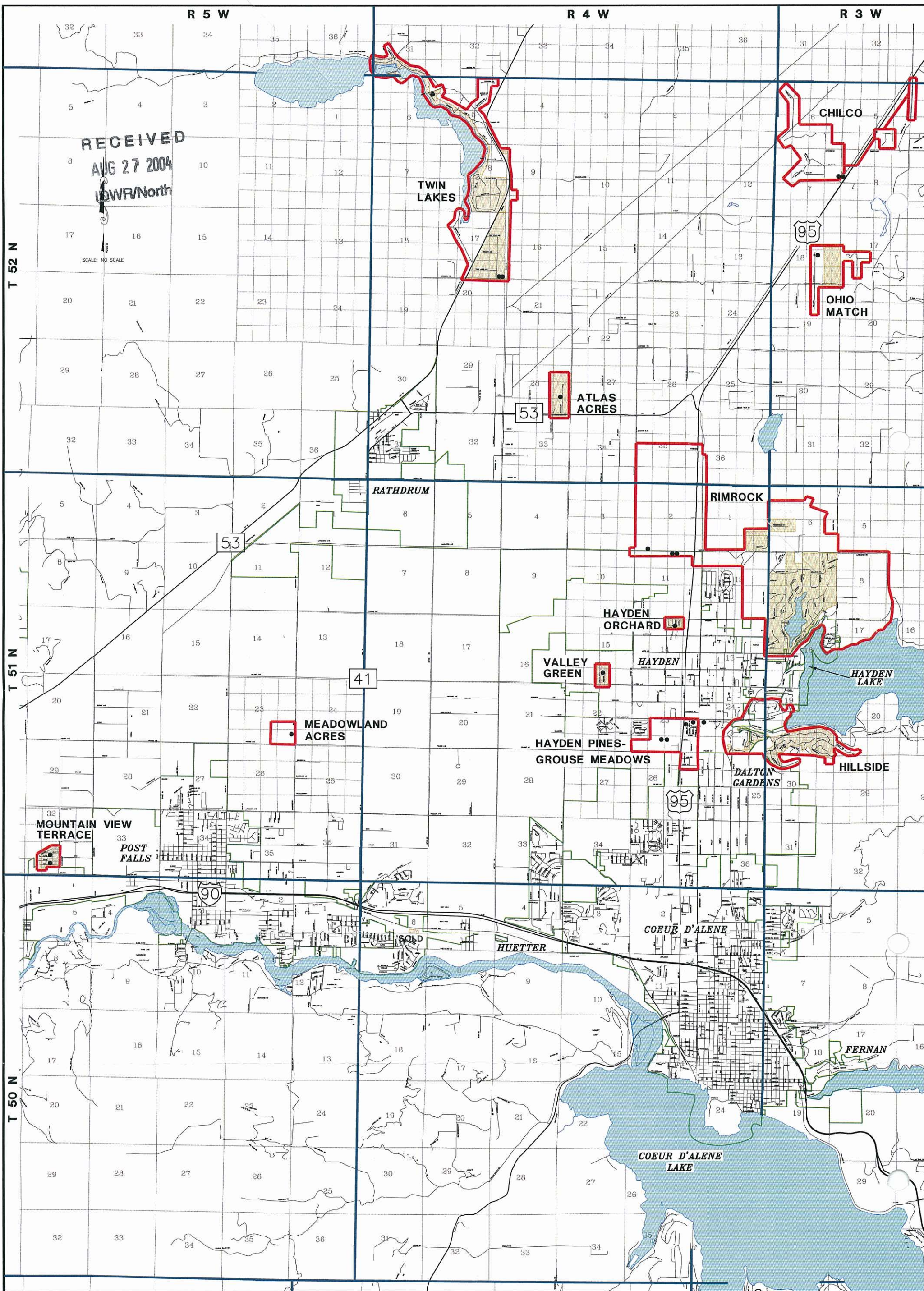
AUG 27 2004

IDWR/North

| Water System                | Well Name         | Legal Description |     |     |         |          |       | DATE WELL ESTABLISHED           | WELLS | IDEQ PWS NO. | EXISTING IDWR PERMIT NO. <sup>1-4</sup> | PERMITTED DIVERSION RATE (CFS) | CURRENT WATER DIVERSION (Well Capacity CFS) |
|-----------------------------|-------------------|-------------------|-----|-----|---------|----------|-------|---------------------------------|-------|--------------|-----------------------------------------|--------------------------------|---------------------------------------------|
|                             |                   | 1/4               | 1/4 | 1/4 | Section | Township | Range |                                 |       |              |                                         |                                |                                             |
| Atlas Acres                 | Atlas Acres       |                   | NE  | SE  | 28      | 52N      | 4W    | Jun-78                          | 1     | 1280005      | 95-9199                                 | ---                            | 0.13                                        |
| Rimrock                     | Lancaster Well #2 |                   | NW  | NE  | 11      | 51N      | 4W    | Jun-90                          | 1     | 1280009      | 95-8639                                 | 1                              | 0.89                                        |
| Rimrock                     | Lancaster Well #1 | NW                | NW  | NE  | 11      | 51N      | 4W    | Jun-80                          | 1     | 1280009      | 95-9199                                 | ---                            | 2.56                                        |
| Rimrock                     | Lancaster Well #3 | SE                | SW  | SW  | 2       | 51N      | 4W    | Jun-02                          | 1     | 1280009      | 95-9199                                 | ---                            | 2.18                                        |
| Chilco                      | Chilco #1         |                   | SE  | NE  | 7       | 52N      | 3W    | Apr-78                          | 1     | 1280048      | 95-7827                                 | 0.2                            | 0.56                                        |
| Chilco                      | Chilco #2         |                   | SW  | NW  | 8       | 52N      | 3W    | Nov-94                          | 1     | 1280048      | 95-9199                                 | ---                            | 0.67                                        |
| Hayden Orchard              | Hayden Orchard    |                   | NW  | NE  | 14      | 51N      | 4W    | Jul-77                          | 1     | 1280088      | 95-9199                                 | ---                            | 0.27                                        |
| Hillside                    | Finucane Well     |                   | NW  | SW  | 24      | 51N      | 4W    | RIGHT ESTABLISHED NOVEMBER 1975 | 1     | 1280095      | PENDING                                 | 0                              | 1.02                                        |
| Hillside                    | Hayden Well       |                   | NE  | SE  | 23      | 51N      | 4W    | Oct-77                          | 1     | 1280095      | 95-7763                                 | 0                              | 0                                           |
| Twin Lakes                  | Echo Beach        |                   | SE  | NE  | 6       | 52N      | 4W    | NO WELL LOG (PRE-1972)          | 1     | 1280099      | 95-9199                                 | 0                              | 0.51                                        |
| Twin Lakes                  | Tree Farm #1      |                   | SE  | SE  | 17      | 52N      | 4W    | Feb-75                          | 1     | 1280099      | 95-8522                                 | 0                              | 0.38                                        |
| Twin Lakes                  | Tree Farm #2      |                   | SE  | SE  | 17      | 52N      | 4W    | Dec-85                          | 1     | 1280099      | 95-8522                                 | 0.61                           | 0.38                                        |
| Mountain View               | Mountain View #1  |                   | NE  | SW  | 32      | 51N      | 5W    | NO WELL LOG (PRE-1936)          | 1     | 1280123      | PENDING                                 | ---                            | 0.2                                         |
| Mountain View               | Mountain View #2  |                   | SE  | SW  | 32      | 51N      | 5W    | NO WELL LOG (PRE-1963)          | 1     | 1280123      | PENDING                                 | ---                            | 0.95                                        |
| Ohio Match                  | Ohio Match        |                   | NW  | SE  | 18      | 52N      | 3W    | Jul-76                          | 1     | 1280127      | 95-7713                                 | 0.04                           | 0.12                                        |
| Valley Green                | Valley Green      |                   | SW  | SE  | 15      | 51N      | 4W    | Jan-77                          | 1     | 1280195      | 95-9199                                 | ---                            | 0.17                                        |
| Meadows                     | GTE Inner         |                   | SE  | SW  | 23      | 51N      | 4W    | NO WELL LOG (PRE-1979)          | 1     | 1280257      | 95-9199                                 | ---                            | 0.56                                        |
| Hayden Pines/Grouse Meadows | GTE Outer         |                   | SW  | SE  | 23      | 51N      | 4W    | Dec-77                          | 1     | 1280257      | 95-9199                                 | ---                            | 1.11                                        |
| Hayden Pines/Grouse Meadows | Hayden Pines      |                   | NE  | SE  | 23      | 51N      | 4W    | Jul-71                          | 1     | 1280257      | 95-7138                                 | 0.14                           | 0.09                                        |
| Meadowland Acres            | Meadowland Acres  |                   | SE  | SE  | 23      | 51N      | 5W    | NO WELL LOG                     | 1     | 1280277      | 95-9199                                 | ---                            | 0.58                                        |
|                             |                   |                   |     |     |         |          |       |                                 |       |              | <b>TOTAL</b>                            | <b>1.99</b>                    | <b>13.33</b>                                |

1. NEW APPLICATION (#95-9199) INCLUDES A MAXIMUM DIVERSION CAPACITY OF 8.83 CFS AND CAN BE USED INTERCHANGEABLY BETWEEN ALL DISTRICT WELLS.
2. TRANSFER APPLICATION (#70394) INCLUDES A MAXIMUM DIVERSION CAPACITY OF 1.99 CFS AND CAN BE USED INTERCHANGEABLY BETWEEN ALL DISTRICT WELLS.
3. A 2ND NEW APPLICATION FOR A MAXIMUM DIVERSION RATE OF 2.51 CFS WAS FILED IN JANUARY 2004 TO RECOVER WATER RIGHT CAPACITY LOST THROUGH 2 NON-APPLICABLE WATER RIGHTS.
4. ALL WATER RIGHTS ARE MUNICIPAL.

95-9199  
Also permit



**LEGEND**

- NORTH KOOTENAI WATER DISTRICT SERVICE AREAS
- NORTH KOOTENAI WATER DISTRICT BOUNDARIES
- NKWD WELLS

*Figure 1:*  
**NORTH KOOTENAI WATER DISTRICT  
BOUNDARIES AND DISTRICT SERVICE AREAS**



ADAPTED FROM KOOTENAI COUNTY  
ASSESSOR'S MAP JUNE 19, 1998

**STARTING  
RIGHT  
SIDE OF  
FILE**

BEFORE THE DEPARTMENT OF WATER RESOURCES  
FOR THE STATE OF IDAHO

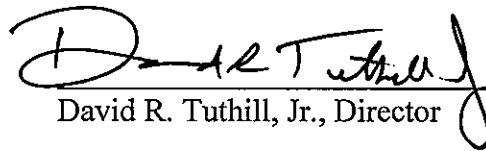
|                                    |   |                         |
|------------------------------------|---|-------------------------|
| IN THE MATTER OF APPLICATION       | ) |                         |
| TO APPROPRIATE WATER, NO. 95-9244, | ) |                         |
| IN THE NAME OF NORTH               | ) |                         |
| KOOTENAI WATER DISTRICT            | ) | <b>SECOND</b>           |
| _____                              | ) | <b>ORDER APPOINTING</b> |
|                                    | ) | <b>HEARING OFFICER</b>  |

This matter having come before the Idaho Department of Water Resources ("Department"), as a result of protests filed against the referenced application and David R. Tuthill being appointed as Director for the Department, the Department makes the following Order:

**ORDER**

IT IS HEREBY ORDERED that Gary Spackman is appointed effectively June 25<sup>th</sup>, 2008 to serve as hearing officer, and is authorized to hear this matter on behalf of the Idaho Department of Water Resources pursuant to IDAPA Rules 37.01.01.410-413 and the provisions of chapter 52, title 67, Idaho Code.

Dated this 25<sup>th</sup> day of June, 2008.

  
\_\_\_\_\_  
David R. Tuthill, Jr., Director

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 26<sup>th</sup> day of June, 2008, a true and correct copy of the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following

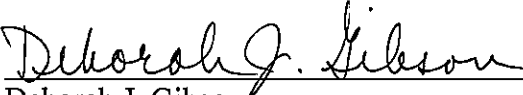
Document(s) Served: Order Appointing Hearing Officer

NORTH KOOTENAI WATER DISTRICT  
ATTN PETER G SCOTT  
GOUGH SHANAHAN JOHNSON &  
WATERMAN  
33 SOUTH LAST CHANCE GULCH  
HELENA MT 59601

RICHARD K EICHSTAEDT  
CENTER FOR JUSTICE  
35 W MAIN STE 300  
SPOKANE WA 99201

RACHAEL PASCHAL OSBORN  
2421 W MISSION AVE  
SPOKANE WA 99201

IDWR – NORTHERN REGION  
1910 NORTHWEST BLVD STE 210  
COEUR D'ALENE ID 83814-2615

  
\_\_\_\_\_  
Deborah J. Gibson  
Administrative Assistant

Peter G. Scott  
Gough, Shanahan, Johnson & Waterman  
33 South Last Chance Gulch  
Helena, MT 59601  
Telephone: 406.442.8560  
Facsimile : 406.442.8783  
E-mail: [pgs@gsjw.com](mailto:pgs@gsjw.com)

RECEIVED  
FEB 01 2007  
IDWR/North

Attorneys for Applicant

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

IN THE MATTER OF APPLICATION )  
FOR PERMIT NO. 95-9244 )  
IN THE NAME OF NORTH )  
KOOTENAI WATER DISTRICT )

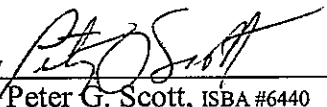
**NOTICE OF APPEARANCE**

PLEASE TAKE NOTICE that Peter G. Scott of Gough, Shanahan, Johnson & Waterman does appear as attorney of record for Applicant North Kootenai Water District in the above referenced matter effective January 30, 2007. Please direct all future correspondence, notices, pleadings, and other documents to counsel at the address below:

Gough, Shanahan, Johnson & Waterman  
33 South Last Chance Gulch  
Helena, MT 59601  
Telephone: 406.442.8560  
Facsimile : 406.442.8783  
E-mail: [pgs@gsjw.com](mailto:pgs@gsjw.com)

DATED this 30th day of January 2007.

GOUGH, SHANAHAN, JOHNSON  
& WATERMAN

By   
Peter G. Scott, ISBA #6440  
Attorneys for Applicant  
North Kootenai Water District

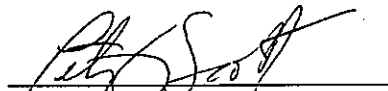
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 30, 2007, a true and correct copy of the NOTICE OF APPEARANCE was served on the following by faxing a copy of the same to the following:

IDWR - NORTHERN REGION  
C/O Robert Haynes  
7600 Mineral Drive, Ste. 100  
Coeur d'Alene, ID 83815  
Fax: (208) 762-2800

RICHARD K. EICHSTAEDT  
CENTER FOR JUSTICE  
35 W. Main St., Ste. 300  
Spokane WA 99201  
Fax: (509) 835-3867

RACHAEL PASCHAL OSBORN  
2421 W. Mission Ave.  
Spokane WA 99201  
Fax: (509) 328-8144

  
Peter G. Scott

GOUGH, SHANAHAN, JOHNSON & WATERMAN  
Attorneys at Law

JOCK O. ANDERSON  
JULIANNE C. BURKHARDT  
ROBERT CAMERON  
DAVID C. DALTHORP  
KD FEEBACK  
TIMOTHY C. FOX  
ROLAND D. GRAHAM (Of Counsel)  
THOMAS E. HATTERSLEY, III  
JEFFREY M. HINDOEN  
DANA L. HUPP  
JULIE A. JOHNSON  
ALAN L. JOSCELYN  
DENNIS R. LOPACH  
WILLIAM L. MacBRIDE, JR.  
JON METROPOULOS  
JON G. MOOG  
SARAH M. POWER  
PETER G. SCOTT (ID, OR, WA)  
FRANCIS J. RAUCCI (Of Counsel)  
WARD A. SHANAHAN  
TERI A. WALTER  
RONALD F. WATERMAN

33 SOUTH LAST CHANCE GULCH  
HELENA, MONTANA 59601

MAILING ADDRESS:

P.O. BOX 1715  
HELENA, MONTANA 59624-1715

CORDELL JOHNSON (Retired)

TAYLOR B. WEIR (1883-1962)  
EDWIN S. BOOTH (1907-1976)  
NEWELL GOUGH (1913-2001)  
WILLIAM H. COLDIRON (1916-2005)

Managing Partner  
JOCK O. ANDERSON

TELEPHONE (406) 442-8560  
TELECOPIER (406) 442-8783

E-MAIL: [jonmetro@gsjw.com](mailto:jonmetro@gsjw.com)  
WEBSITE: [WWW.GSJW.COM](http://WWW.GSJW.COM)

January 30, 2007

RECEIVED  
FEB 01 2007  
IDWR/North

Mr. Robert Haynes  
Idaho Department of Water Resources  
N. Regional Office  
7600 Mineral Drive, Ste. 100  
Coeur d'Alene, ID 83815

Re: Substitution of Counsel for the North Kootenai Water District  
(Application for Permit No. 95-9244)

Dear Mr. Haynes:

Please find attached to this letter a notice of appearance in the Matter of Application for Permit No. 95-9244 in the Name of North Kootenai Water District. I will be the primary attorney from this firm working on that matter and I ask that you direct all communications to me at the address given above. My email address is [pgs@gsjw.com](mailto:pgs@gsjw.com).

I have reviewed Mr. Covington's files and am generally familiar with the issues presented. Also, I had a short conversation with Ms. Debbie Gibson in your Boise office regarding scheduling. It is my understanding that the Department is looking at setting a hearing date, perhaps as soon as April.

There are two reasons why I think a hearing date should not be set that soon. First, the District's engineer is in the process of substantially revising the draft conservation plan prepared by the District last year. It is hoped that, once completed, the revised plan will obviate any need to address some of the issues raised. Second, the joint study of the Rathdrum Prairie/Spokane Valley Aquifer is scheduled for release in May, 2007. That report bears directly on this matter. Therefore, it makes sense to await the report before moving forward with a contested case hearing.

Gough, Shanahan, Johnson & Waterman.

Robert Haynes, IDWR

In the Matter of Application for Permit No. 95-9244

January 31, 2007

Page - 2 -

I would like to suggest that the Department convene a telephonic status conference in mid-February to discuss the matter and set a hearing schedule that takes in to account the factors mentioned above. I look forward to your thoughts.

Very truly yours,

GOUGH, SHANAHAN, JOHNSON & WATERMAN

A handwritten signature in black ink, appearing to read 'P. G. Scott', with a stylized flourish at the end.

Peter G. Scott

Cc: Mike Galante, District Manager  
Mike Ormsby, K&L Gates  
Service List

A

OCT 12 2006

DEPARTMENT OF  
WATER RESOURCES

Richard K. Eichstaedt  
Idaho Bar #5801  
Center for Justice  
35 W. Main, Suite 300  
Spokane, WA 99201  
Telephone: (509) 835.5211  
Fax: (509) 835.3867

Rachael Paschal Osborn  
2421 W. Mission Ave.  
Spokane, WA 99201  
Telephone: (509) 328.1087  
Fax: (509) 328.8144

Attorneys for Protestants

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

**IN THE MATTER OF APPLICATION  
FOR  
PERMIT NO. 95-9244 IN THE NAME OF  
NORTH KOOTENAI WATER DISTRICT**

**MOTION FOR ESTABLISHMENT OF  
REVISED DISCOVERY SCHEDULE AND  
HEARING DATE**

COMES NOW the Protestants and, move the Idaho Department of Water Resources for an order establishing a revised discovery schedule and hearing date in this matter.

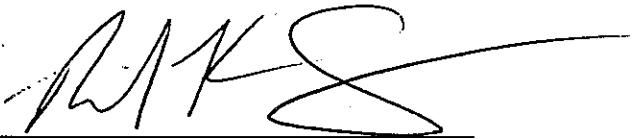
During the telephonic status conference, parties in this matter agreed to one more attempt at settlement of this dispute. The parties, including Protestants' conservation expert, along with Bob Haynes from IDWR, met on September 22, 2006 at the IDWR office in Coeur d'Alene. These discussions focused on efforts to reach agreement on the revision and completion of the Applicants' proposed conservation plan. Unfortunately, no agreement was

ORIGINAL

reached, despite the best efforts of Protestants to suggest changes that would make the document acceptable.

Accordingly, Protestants respectfully request that a revised discovery schedule and hearing date be set for resolving this matter.

DATED this 9<sup>th</sup> day of October, 2006.

A handwritten signature in black ink, appearing to read 'RAKES', with a long horizontal stroke extending to the right.

RICHARD K. EICHSTAEDT  
IDAHO BAR #5801  
ATTORNEY FOR PROTESTANTS

Richard K. Eichstaedt  
Idaho Bar #5801  
Center for Justice  
35 W. Main, Suite 300  
Spokane, WA 99201  
Telephone: (509) 835.5211  
Fax: (509) 835.3867

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

|                                             |   |                          |
|---------------------------------------------|---|--------------------------|
| <b>IN THE MATTER OF APPLICATION</b>         | } | <b>NOTICE OF MAILING</b> |
| <b>FOR</b>                                  |   |                          |
| <b>PERMIT NO. 95-9244, IN THE NAME OF</b>   |   |                          |
| <b><u>NORTH KOOTENAI WATER DISTRICT</u></b> |   |                          |

I hereby certify that I served the foregoing **MOTION FOR ESTABLISHMENT OF REVISED DISCOVERY SCHEDULE AND HEARING DATE** by the following indicated method or methods:

- [X] By **mailing** via First Class U.S. Mail, a true and correct copy thereof in sealed, envelopes, addressed to the person(s) as shown below, the last-known address(es) of the person(s), and deposited at Spokane, Washington on the date set forth below.

**Robert E. Covington III**  
**Lockhaven Square**  
**8884 N. Government Way, Suite A**  
**Hayden, ID 83835**

DATED this 9<sup>th</sup> day of October, 2006.

  
Debi Bacot

Hearing Officer Notes - D. Tuttle

Telephonic Status Conference

8/16/06

10:00 MDST

513 027

9:00 am PDT

Participants:

- Bob Carrington, applicant's attorney
  - Richard Eichstaedt
  - Rachael Osborn
- > Protestants' attorneys

Background: Extensive history

Third Notice of Hearing June 13<sup>th</sup> 2006

Before June 30, 2006 Expert witnesses

Answers to discovery by July 10, 2006

By July 21: Depositions

By Aug 4: Exhibits

July 18: Protestants: Second Motion to Compel Discovery

Aug 7: Applicants: Motion to Continue Hearing

Aug 8: Motion to Enter Default Judgment & Request for Expedited Determination / Response to Applicant's Request for Continuance

Corington:

- Settlement discussion: is settlement possible
- Schedule a settlement conference? Do this if there is a chance at settlement, or
- 1. IDWR review conservation p

Eichstadt:

Meeting held in January

Draft conservation plan exchanged

- Comments returned to applicant after 2 weeks
- 3 months later, <sup>had</sup> received no response - prepared for hearing

- Prepared experts for hearing

- Matter has been allowed to drag on and on

- Rock solid discovery deadlines and

Should seriously consider default

Corington:

- After application was filed, worked w/ IDWR
- IDWR staff member departed
- Work has been conducted in this regard

Eichstadt:

- Each preparation for trial requires time and expense
- Were preparing for hearing - spent time and funds
- Applicant has burden for proof of each element

Corington - has participated in the process in a reasonable fashion

- Need for additional water will not go away
- Entering a default will not advance the process

Eichstaedt - While there is a requirement for conservation guidance is not approved.

Proposal by D. Tuttle: Order conference / vacate hearing

Corington:

- Have conference mid-September
- What information would be useful to protestants?
- Could be prepared within 60 days for a hearing

Eichstaedt

- Hearing officer should set date for <sup>informal</sup> conf
- Status conf shortly thereafter
- Prior to that - formal notification of experts at meeting
- Experts on both sides will be helpful
- Not unreasonable to require reasonable fees

Corington -

- ✓ Date specified
- ✓ follow-up status conf
- Experts present at meeting?

Corington: - Not sure about what expects at conf  
 - Some concern about cons plan - need input from IDWR - what items should be required? What is IDWR view? Guidelines? This is a big part of settlement effort. Mechanism for IDWR comment. Settlement conf should be scheduled with this in mind.

Eichstaedt: Early Sept discussion of cons. plan OK.

Corington: - Settlement conf in early Sept  
 - Conservation plan not finalized yet

Eichstaedt: - To provide dates to Debbie Gibson by end of week  
 - Corington has flexibility  
 - Haynes to conduct conference  
 - Order to address existing motions  
 - No costs awarded yet

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

|                                         |   |                             |
|-----------------------------------------|---|-----------------------------|
| <b>IN THE MATTER OF APPLICATION FOR</b> | ) |                             |
| <b>PERMIT TO APPROPRIATE WATER NO.</b>  | ) | <b>NOTICE OF TELEPHONIC</b> |
| <b>95-9244 IN THE NAME OF NORTH</b>     | ) | <b>STATUS CONFERENCE</b>    |
| <b>KOOTENAI WATER DISTRICT</b>          | ) |                             |
| <hr/>                                   | ) |                             |

On July 18, 2006, Richard K. Eichstaedt and Rachael Paschal Osborn, Attorneys for Protestants in this matter filed with the Idaho Department of Water Resources (IDWR) a Second Motion to Compel Answer to Discovery. The Protestants indicated they had received no response to their discovery requests from the Applicant, and they requested an extension of the "deadline for depositions to ensure that discovery has been answered and to allow its utilization in the depositions of the Applicant's expert witnesses."

On August 7, 2006, Robert E. Covington, Attorney for the Applicant, filed a Motion to Continue Hearing to allow time for the parties to finalize settlement efforts and to develop a conservation plan that will resolve the protests filed against their application.

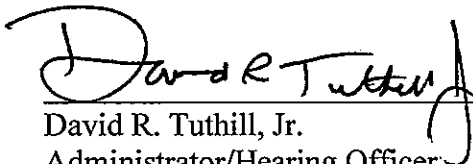
On August 8, 2006, the Attorneys for the Protestants filed by facsimile the following documents: Motion to Enter Default Judgment and Request for Expedited Determination; and, Response to Applicant's Request for Continuance and Request for Telephonic Hearing.

Accordingly, the hearing officer has consented to hold an informal status conference for the Applicant and Protestants to resolve the issues referenced above, on **Wednesday, August 16, 2006, beginning at 10:00 a.m. MDST (9:00 a.m. PDT)**. In order to participate, the parties are to contact AT&T teleconference services by calling **(713) 577-1201** on or before the time set for

the start of this conference, and to access this conference are to dial a participation code **504265**. The conference is expected to last fifteen to thirty minutes. If you have any problems accessing this conference call, please contact Deborah Gibson at (208)287-4942.

The telephonic conference will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Procedure of the Department of Water Resources, and Rules 40 and 45 of the adopted Rules of Water Appropriation of the Department of Water Resources.

Dated this 15<sup>th</sup> day of August, 2006.

  
\_\_\_\_\_  
David R. Tuthill, Jr.  
Administrator/Hearing Officer  
Water Management Division

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 15<sup>th</sup> day of August, 2006, a true and correct copy of the above and foregoing document was served on the following by faxing a copy of the same to the following

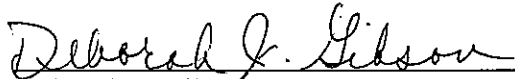
Document(s) Served: Notice of Telephonic Status Conference

NORTH KOOTENAI WATER DIST  
C/O ROBERT E COVINGTON III  
8884 N GOVERNMENT WY STE A  
HAYDEN LAKE ID 83835  
Fax: (208)762-4546

RICHARD K EICHSTAEDT  
CENTER FOR JUSTICE  
35 W MAIN STE 300  
SPOKANE WA 99201  
Fax: (509) 835-3867

RACHAEL PASCHAL OSBORN  
2421 W MISSION AVE  
SPOKANE WA 99201  
Fax: (509) 328-8144

IDWR – NORTHERN REGION  
1910 NORTHWEST BLVD STE 210  
COEUR D'ALENE ID 83814-2615  
Fax: (208) 769-1454

  
Deborah J. Gibson  
Administrative Assistant

\* \* \* Journal ( Aug. 15. 2006 2:24PM ) \* \* \*

1) Idaho Dept of Water Resources  
2)

(Manual print)

| < TX >   |         |                      |        |        |      |        |           |      | File |
|----------|---------|----------------------|--------|--------|------|--------|-----------|------|------|
| Date     | Time    | Destination          | Mode   | TXtime | Page | Result | User Name | No.  |      |
| Aug. 14. | 11:30AM | IDWR Fax             | TSM@   | 0'01"  | P.   | 4 --   |           | 0685 |      |
|          | 11:38AM | IDWR Fax             | TSM@   | 0'01"  | P.   | 1 --   |           | 0686 |      |
|          | 12:26PM | IDWR Fax             | TDM@   | 0'01"  | P.   | 2 --   |           | 0688 |      |
|          | 12:33PM | IDWR Fax             | TSM@   | 0'01"  | P.   | 5 --   |           | 0689 |      |
|          | 12:37PM | IDWR Fax             | TSM@   | 0'01"  | P.   | 6 --   |           | 0690 |      |
|          | 1:47PM  | IDWR Fax             | TDM@   | 0'01"  | P.   | 1 --   |           | 0692 |      |
|          | 3:27PM  | IDWR Fax             | TSM@   | 0'01"  | P.   | 3 --   |           | 0693 |      |
|          | 3:32PM  | IDWR Fax             | TSM@   | 0'01"  | P.   | 3 --   |           | 0694 |      |
|          | 4:00PM  | Western Region       | G3TESM | 0'20"  | P.   | 1 OK   |           | 0695 |      |
|          | 4:24PM  | IDWR Fax             | TSM@   | 0'01"  | P.   | 3 --   |           | 0698 |      |
|          | 5:24PM  | IDWR Fax             | TSM@   | 0'01"  | P.   | 2 --   |           | 0699 |      |
|          | 6:46AM  | IDWR Fax             | TSM@   | 0'01"  | P.   | 1 --   |           | 0700 |      |
|          | 8:03AM  | IDWR Fax             | TDM@   | 0'01"  | P.   | 1 --   |           | 0701 |      |
|          | 8:09AM  | -- LAN-Fax -->       | *DM    | 0'01"  | P.   | 1 OK   |           | 0702 |      |
| Aug. 15. | 8:09AM  | +2083424034          | G3TEDM | 0'34"  | P.   | 1 OK   |           | 0702 |      |
|          | 8:22AM  | IDWR Fax             | TSM@   | 0'01"  | P.   | 2 --   |           | 0703 |      |
|          | 8:23AM  | -- LAN-Fax -->       | *DM    | 0'01"  | P.   | 2 OK   |           | 0704 |      |
|          | 8:23AM  | 2083880000           | G3TESM | 0'32"  | P.   | 2 OK   |           | 0704 |      |
|          | 10:00AM | IDWR Fax             | TSM@   | 0'01"  | P.   | 1 --   |           | 0707 |      |
|          | 10:16AM | IDWR Fax             | TDM@   | 0'01"  | P.   | 6 --   |           | 0708 |      |
|          | 10:18AM | 1 208 879 4902       | G3TES> | 0'21"  | P.   | 2 OK   |           | 0711 |      |
|          | 10:56AM | IDWR Fax             | TDM@   | 0'01"  | P.   | 4 --   |           | 0712 |      |
|          | 11:07AM | -- LAN-Fax -->       | *DM    | 0'01"  | P.   | 2 OK   |           | 0713 |      |
|          | 11:07AM | 912084637500         | G3TEDM | 0'35"  | P.   | 2 OK   |           | 0713 |      |
|          | 11:08AM | -- LAN-Fax -->       | *DM    | 0'01"  | P.   | 2 OK   |           | 0714 |      |
|          | 11:08AM | 912084637500         | G3TEDM | 0'35"  | P.   | 2 OK   |           | 0714 |      |
|          | 11:12AM | -- LAN-Fax -->       | *DM    | 0'01"  | P.   | 2 OK   |           | 0715 |      |
|          | 11:13AM | 912084637500         | G3TEDM | 0'31"  | P.   | 2 OK   |           | 0715 |      |
|          | 1:01PM  | 5032885579           | G3TESM | 1'13"  | P.   | 4 OK   |           | 0716 |      |
|          | 2:16PM  | 208 762 4546         | G3TES> | 0'44"  | P.   | 3 OK   |           | 0717 |      |
|          | 2:18PM  | (509) 8353867        | G3TES> | 0'44"  | P.   | 3 OK   |           | 0718 |      |
|          | 2:19PM  | 509 328 8144         | G3TES> | 0'43"  | P.   | 3 OK   |           | 0719 |      |
|          | 2:21PM  | -- LAN-Fax -->       | *DM    | 0'01"  | P.   | 2 OK   |           | 0720 |      |
|          | 2:21PM  | 208 525 7177         | G3TDM  | 1'48"  | P.   | 2 OK   |           | 0720 |      |
|          | 2:23PM  | IDWR NORTHERN REGION | G3TES  | 0'29"  | P.   | 3 OK   |           | 0722 |      |

| < RX >   |         |                      |       |        |      |        |           |      | File |
|----------|---------|----------------------|-------|--------|------|--------|-----------|------|------|
| Date     | Time    | Sender               | Mode  | RXtime | Page | Result | User Name | No.  |      |
| Aug. 14. | 11:38AM | IDWR NORTHERN REGION | G3RES | 0'16"  | P.   | 1 OK   |           | 0686 |      |
|          | 12:25PM | 541 889 2074         | G3RED | 0'38"  | P.   | 2 OK   |           | 0688 |      |
|          | 12:30PM | 2083926072           | G3RS  | 2'31"  | P.   | 6 E    |           | 0689 |      |
|          | 12:33PM | 2083926072           | G3RS  | 3'50"  | P.   | 6 OK   |           | 0690 |      |
|          | 1:46PM  |                      | G3RED | 0'25"  | P.   | 1 OK   |           | 0692 |      |
|          | 3:26PM  |                      | G3RES | 1'04"  | P.   | 3 OK   |           | 0693 |      |
|          | 3:32PM  | IDWR NORTHERN REGION | G3RES | 0'28"  | P.   | 3 OK   |           | 0694 |      |
|          | 4:23PM  |                      | G3RES | 0'32"  | P.   | 3 OK   |           | 0698 |      |
|          | 5:24PM  | 2083445600           | G3RES | 0'24"  | P.   | 2 OK   |           | 0699 |      |
|          | 6:45AM  | 410 423 2194         | G3RES | 0'26"  | P.   | 1 OK   |           | 0700 |      |
| Aug. 15. | 8:03AM  |                      | G3RED | 0'51"  | P.   | 1 OK   |           | 0701 |      |
|          | 8:21AM  | 2082367235           | G3RS  | 0'53"  | P.   | 2 OK   |           | 0703 |      |
|          | 9:59AM  | 3779202              | G3RES | 0'33"  | P.   | 1 OK   |           | 0707 |      |
|          | 10:14AM | 1 208 879 4902       | G3RED | 2'00"  | P.   | 6 OK   |           | 0708 |      |
|          | 10:54AM | 2087884455           | G3RED | 1'44"  | P.   | 4 OK   |           | 0712 |      |

TX Count 030321

RX Count 019834

# : Batch  
M : Memory  
S : Standard  
> : Reduction  
Q : RX Notice Req.

C : Confidential  
L : Send later  
D : Detail  
H : Stored/D. Server  
A : RX Notice

\$ : Transfer  
@ : Forwarding  
F : Fine  
\* : LAN-Fax

P : Polling  
E : ECM  
U : Super Fine  
+ : Delivery

Confirmation of faxed re: Notice of Telephonic Status Conf

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15<sup>th</sup> day of August, 2006, a true and correct copy of the above and foregoing document was served on the following by faxing a copy of the same to the following

Document(s) Served: Notice of Telephonic Status Conference

NORTH KOOTENAI WATER DIST  
C/O ROBERT E COVINGTON III  
8884 N GOVERNMENT WY STE A  
HAYDEN LAKE ID 83835  
✓Fax: (208)762-4546

RICHARD K EICHSTAEDT  
CENTER FOR JUSTICE  
35 W MAIN STE 300  
SPOKANE WA 99201  
✓Fax: (509) 835-3867

RACHAEL PASCHAL OSBORN  
2421 W MISSION AVE  
SPOKANE WA 99201  
Fax: (509) 328-8144

IDWR - NORTHERN REGION  
1910 NORTHWEST BLVD STE 210  
COEUR D'ALENE ID 83814-2615  
Fax: (208) 769-1454

  
Deborah J. Gibson  
Administrative Assistant

|                   |                    |      |         |                |   |
|-------------------|--------------------|------|---------|----------------|---|
| Post-it® Fax Note | 7671               | Date | 8/15/06 | # of pages     | 3 |
| To                | Interested Parties |      | From    | D. Gibson      |   |
| Co./Dept.         |                    |      | Co.     | IDWR           |   |
| Phone #           |                    |      | Phone # | (208) 287-4942 |   |
| Fax #             |                    |      | Fax #   | (208) 287-6700 |   |

|                   |               |      |         |                |   |
|-------------------|---------------|------|---------|----------------|---|
| Post-it® Fax Note | 7671          | Date | 8/15/06 | # of pages     | 3 |
| To                | Bob Haynes    |      | From    | D. Gibson      |   |
| Co./Dept.         | Northern Reg. |      | Co.     | IDWR           |   |
| Phone #           | FYI           |      | Phone # | (208) 287-4942 |   |
| Fax #             |               |      | Fax #   |                |   |

Wd  
RECEIVED  
AUG 11 2006  
DEPARTMENT OF  
WATER RESOURCES

CENTER FOR JUSTICE

COMMUNITY BUILDING  
35 WEST MAIN AVENUE  
SUITE 300

SPOKANE, WA 99201

TELEPHONE: 509.835.5211

FAX: 509.835.3867

ATTORNEYS & ADVOCATES

JIM SHEEHAN  
Founder  
BREEAN BEGGS  
Chief Catalyst

BONNE BEAVERS  
RICK EICHSTAEDT  
ANDREA POPLAWSKI  
JOHN SKLUT  
TERRI SLOYER

August 8, 2006

Deborah Gibson, Administrative Assistant  
Idaho Department of Water Resources  
P.O. Box 83720  
Boise, Idaho 83620-0098

**RE: Sierra Club & FOA Protest of North Kootenai  
Water District Water Right Application No. 95-9244**

**SENT VIA US MAIL AND FAX (208/287-6700)**

Dear Ms. Gibson;

Please find attached Protestants' Response to Motion for Continuance and Request for Telephonic Hearing and Certificate of Service in the above titled matter. I would be available all week in the event Mr. Tuthill would want to conduct a hearing on this and the other pending motions.

Thank you for your assistance.

Sincerely,



Rick Eichstaedt  
Attorney for Sierra Club and  
Friends of the Aquifer

MISSION STATEMENT

THE CENTER FOR JUSTICE IS A NON-PROFIT LAW FIRM COMMITTED TO THE EXPERIENCE OF JUSTICE WITH THOSE OF LIMITED OR NO RESOURCES OR INFLUENCE THROUGH COMPASSION AND AN AWARENESS OF THE SACREDNESS OF THE EARTH.

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COPY

AUG 11 2006

RESPONSE TO MOTION FOR CONTINUANCE - 1

critical to note that the protest of this matter was filed nearly two years ago on October 25, 2004.

Protestants object to the request for the continuance and argue that the Department should grant Protestant's Motion for Default Judgment. In response to the Applicant's motion, Protestants

First, the Applicant incorrectly asserts that settlement is ongoing and additional time is necessary to facilitate that process. While initial efforts were made to reach an amicable resolution to this matter, Protestants indicated by letter to counsel for the Applicant in April "[w]hile we are very interested in reaching an amicable settlement of this matter, it appears that your clients are not interested in settlement of this dispute ... [W]e will need to refocus our efforts in this matter entirely upon the upcoming hearing." While it is correct that the Applicant provided a settlement proposal on July 26<sup>th</sup>, this was the first communication of any settlement offer from the Applicant since January and Protestants had already made it clear of their intent to proceed to a hearing. Further, Protestants have rejected the offer of settlement.

Second, the Applicant somehow asserts that more time is needed to prepare expert witnesses. This ignores the fact that this Department previously ordered the parties to complete discovery, exchange witnesses and exhibits lists in its Third Notice of Hearing, Order Authorizing Discovery, and Prehearing Order. More fundamentally, it is unimaginable how more time would be needed. Protestants clearly indicated their intent to proceed to hearing and no settlement discussions had transpired since January. The Applicant has had months to

prepare for this matter. Protestants diligently responded to the Applicant's discovery requests and produced witness and exhibit lists. Given the lack of any settlement discussions since January, it is inconceivable how or why more time would be needed.

Third, the Applicant raises the need for depositions. However, as indicated in the Motion for Default Judgment, any delay in the ability to conduct depositions is the Applicant's creation. As stated in great detail in Protestants' Motion for Default Judgment, the Applicant has completely failed to comply with any aspects of the Department's Discovery Order. This has hampered Protestants' ability to proceed with depositions. However, Protestants' witnesses have been disclosed for sometime.

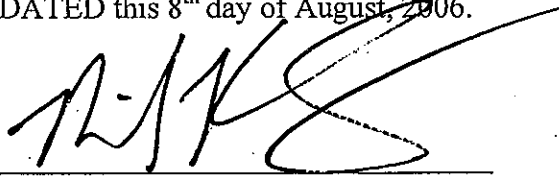
Lastly, Protestants will, in fact, be prejudiced by the continued delay of this matter. Protestants have five expert witnesses that are prepared to testify at the hearing. Significant time and expense has been spent thus far. Continued delay requires the recoordination of five expert witness schedules, as well as associated travel and preparation time.

Given the failure of the Applicant to diligently proceed with the adjudication of this matter, it is clear that continued delay is not in interest of the Department or the parties. Accordingly, the Department should deny the request for the continuance, grant Protestants' Motion for Default Judgment, and vacate the hearing.

Lastly, given the three outstanding motions before the Department (Protestants' Second Motion to Compel and Motion for Default Judgment and Applicant's Motion for Continuance),

Protestants request that a telephonic hearing be scheduled to provide an opportunity to provide additional argument on these matters and to ascertain the status of this matter.

DATED this 8<sup>th</sup> day of August, 2006.

A handwritten signature in black ink, appearing to read 'R. K. EICHSTAEDT', written over a horizontal line.

RICHARD K. EICHSTAEDT  
IDAHO BAR #5801  
ATTORNEY FOR PROTESTANTS

STATE OF WASHINGTON )  
 ) ss:  
COUNTY OF SPOKANE )

RICHARD K. EICHSTAEDT, being first duly sworn on oath, deposes and says:

On October 25, 2004, Protestants, Upper Columbia Group of the Sierra Club and Friends of the Aquifer, filed a protest of the North Kootenai Water District's Water Permit No. 95-9244.

On May 10, 2006, Protestants caused to be filed their First Motion to Compel Discovery for the failure of the Applicant to answer discovery requests. The Applicant did not object to this Motion and did not file any answers to the discovery requests.

On June 13, 2006, the Hearing Officer issued a Discovery Order granting additional time for discovery and directing the parties to produce a list of expert witnesses by June 30, 2006, to serve answers to discovery on the opposing party by July 10, 2006, to complete depositions by July 21, 2006, and to serve an exhibit list by August 4, 2006. This order set this matter for hearing on August 14-16, 2006.

Protestants did not receive answers to discovery by the deadline set by the Department. On July 14, 2006, Protestants caused to be filed their Second Motion to Compel Discovery. The Applicant did not object to this Motion and did not file any answers to the discovery requests.

As of this date, Protestants have received no answers to any discovery requests, have not received an updated list of witnesses, and have not been served a list of exhibits. On August 8,

2006, Protestant filed a motion seeking a default judgment against the Applicant for its failure to comply with the Department's Discovery Order.

Protestants fully complied with the Discovery Order. On March 16, 2006, Protestants submitted an Expert Witness List, which was supplemented by its June 1, 2006 request to the Department. On May 1, 2006, Protestants answered Applicant's discovery requests and supplemented those answers on July 28, 2006. On July 28, 2006, Protestants filed an Exhibit List (updating the previously list submitted on May 1, 2006).

Representatives of the Protestants and Applicant did meet to endeavor to settle this matter since the filing of the protest. The last settlement meeting occurred on January 5, 2006 with Bob Haynes at the IDWR office in Coeur d'Alene. On January 31, 2006, Protestants sent counsel for the Applicant revisions to a proposed settlement offer. On April 3, 2006, after Protestants sent the Applicant a letter stating, "While we are very interested in reaching an amicable settlement of this matter, it appears that your clients are not interested in settlement of this dispute. Unless we are reassured otherwise by the production of a revised conservation plan, we will need to refocus our efforts in this matter entirely upon the upcoming hearing." No further settlement offer was received until July 26, 2006. Protestants accordingly prepared to proceed with a hearing on this matter. Concurrent with preparing for hearing, Protestants did review the offer, had several conversations with counsel for the Applicant, but ultimately indicated that the offer of settlement was not acceptable.

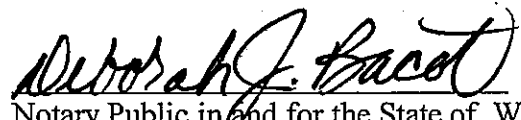
This failure to answer discovery, produce a witness list, and disclose a list of exhibits and continued delay of the hearing in this matter adversely impacts Protestants. Answers to discovery requests and a list of witnesses were necessary to adequately conduct depositions of Applicant's expert witnesses. Despite this, Protestants have spent significant resources retaining experts and preparing for hearing in this matter. Continued delay coupled with the failure to comply with discovery will result in spending additional time and expense in this matter.



RICHARD K. EICHSTAEDT  
IDAHO BAR #5801  
ATTORNEY FOR PROTESTANTS

SUBSCRIBED AND SWORN TO before me this 8<sup>th</sup> day of August, 2006.

Notary Public  
State of Washington  
Deborah J Bacot  
Commission Expires 07/31/08



Notary Public in and for the State of Washington,  
Spokane County  
My Commission Expires: 7/31/08

**COPY**

**IN THE MATTER OF APPLICATION  
FOR  
PERMIT NO. 95-9244, IN THE NAME OF  
NORTH KOOTENAI WATER DISTRICT**

RESPONSE TO MOTION FOR CONTINUANCE - 8

WR  
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Chief Catalyst

BONNE BEAVERS  
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ANDREA POPLAWSKI  
JOHN SKLUT  
TERRI SLOYER

RECEIVED

AUG 11 2006

DEPARTMENT OF  
WATER RESOURCES

August 8, 2006

Deborah Gibson, Administrative Assistant  
Idaho Department of Water Resources  
P.O. Box 83720  
Boise, Idaho 83620-0098

**RE: Sierra Club & FOA Protest of North Kootenai  
Water District Water Right Application No. 95-9244**

**SENT VIA US MAIL AND FAX (208/287-6700)**

Dear Ms. Gibson;

Please find attached Protestants' Motion to Enter Default Judgment and Request for Expedited Determination, Draft Order, and Certificate of Service in the above titled matter. As indicated in our motion, we request a prompt determination of our motion given the impending hearing scheduled in this matter. I would be available all week in the event Mr. Tuthill would want to conduct a telephonic hearing on this motion.

Thank you for your assistance.

Sincerely,



Rick Eichstaedt  
Attorney for Sierra Club and  
Friends of the Aquifer

MISSION STATEMENT

THE CENTER FOR JUSTICE IS A NON-PROFIT LAW FIRM COMMITTED TO THE EXPERIENCE OF JUSTICE WITH THOSE OF LIMITED OR NO RESOURCES OR INFLUENCE THROUGH COMPASSION AND AN AWARENESS OF THE SACREDNESS OF THE EARTH.

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AUG 11 2006

DEPARTMENT  
WATER RESOURCES

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35 W. Main, Suite 300  
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Rachael Paschal Osborn  
2421 W. Mission Ave.  
Spokane, WA 99201  
Telephone: (509) 328.1087  
Fax: (509) 328.8144

Attorneys for Protestants

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

**IN THE MATTER OF APPLICATION  
FOR  
PERMIT NO. 95-9244 IN THE NAME OF  
NORTH KOOTENAI WATER DISTRICT**

**MOTION TO ENTER DEFAULT  
JUDGMENT AND REQUEST FOR  
EXPEDITED DETERMINATION**

COMES NOW the Protestants and, pursuant to Idaho Department of Water Resources Rule of Procedure 531 and Idaho Rule of Civil Procedure 37(b)(2)(C), move the Idaho Department of Water Resources for an order finding the Applicant North Kootenai Water District in default and dismissing its water right application for repeated failure to comply with the Department's Third Notice Of Hearing, Order Authorizing Discovery, and Prehearing Order (Discovery Order) in this matter.

ORIGINAL

Protestants further request expedited consideration of this motion because of the timing of the matter. The hearing in this matter is scheduled for next week, August 14-16. Protestants' preparation for hearing is underway and requires reserving time from the schedules of our expert witnesses and, for one expert, purchasing airline tickets for travel.

The Department required that discovery and the production of a witness list and exhibit list be completed by now. The Discovery Order specifically states:

1. On or before June 30, 2006, each party must disclose to all other parties, in writing, the identity of all expert witnesses that will or may testify at the hearing.
2. Answers to written discovery must be served on the requesting party on or before July 10, 2006.
3. All depositions shall be completed on or before July 21, 2006.

IT IS FURTHER ORDERED that, on or before August 4, 2006, each party must serve on all other parties copies of exhibits that may be offered at the hearing. Service of prospective exhibits is not complete unless the documents are delivered to the receiving party on or before August 4, 2006.

IT IS FURTHER ORDERED that, the Motion to Compel is addressed by the scheduling for discovery above.

Discovery Order at 1. As indicated in the attached Affidavit of Richard Eichstaedt, the Applicant has failed to comply with any element of this Discovery Order. Despite the extension of time to come into compliance granted by the Department in its June 13, 2006 order, the Applicant has failed to: (1) respond to the Protestants' discovery requests; (2) provide the Department and the Protestants with an updated list of witnesses; and (3) provide the Department and the Protestants with the required list of exhibits. The failure to answer discovery requests and provide a list of witnesses has eliminated the ability to conduct

depositions. Despite the lack of compliance, Protestants have diligently complied with the Department's Discovery Order by providing its witness list, discovery responses (including supplementation thereto), and exhibit list.

The Applicant's lack of compliance makes it nearly impossible to proceed to hearing. The Applicant failed to provide any basis or support for its water right application. As noted by the Department in the November 14, 2005 Notice of Conference, the applicant has the initial burden of proof to demonstrate that the water right application meets the requirements of Idaho Code § 42-203A. Without the disclosures and answers to interrogatories and requests for production Protestants cannot adequately prepare to respond to the "proof" that will be submitted by the Applicant at next week's hearing.

Further, Protestants have spent considerable time and expense responding to the Applicant's discovery requests, preparing for hearing, and filing two previous motions requesting the Department to order the Applicant to come into compliance with and adhere to the discovery schedule. Protestants would be severely prejudiced if required to go to hearing without discovery responses from the Applicant.

The failure to comply and resulting prejudice to Protestants warrant a default order by the Department dismissing the Applicant's water right application. The remedy is authorized by agency regulations and the Idaho Rules of Civil Procedure. Idaho Department of Water Resources Rule of Procedure 531 specifically provides, "The agency may impose all sanctions recognized by statute or rules for failure to comply with an order compelling discovery,

including but not limited to the sanctions listed in paragraphs (A), (B), and (C) of Rule 37(b)(2) of the Idaho Rules of Civil Procedure.”

Idaho Rule of Civil Procedure 37(b)(2) provides, in part:

If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

- (C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or *rendering a judgment by default against the disobedient party.*

Idaho Department of Water Resources Rule of Procedure 700 further authorizes the issuance of a default judgment against the Applicant stating that, if an applicant “fails to respond to a written information inquiry, the presiding officer may serve upon all parties a notice of a proposed default order denying the application or claim.”

Given the Applicant’s failure to comply with the Department’s Discovery Order as described above and in the attached affidavit, Protestants respectfully request that the Department: (1) find the Applicant in default for failing to comply with the Department’s Discovery Order; (2) dismiss the water right application (Permit No. 95-9244); (3) vacate the hearing scheduled for August 14-16, 2006; and (4) award costs and reasonable attorney fees associated with the production of this motion pursuant to Idaho Rule of Civil Procedure 37(a)(4).

Finally, given the impending date for the hearing and the additional time and expenses associated with finalizing the preparation for this hearing, including time and travel for experts, Protestant request that the Department expeditiously rule on this motion.

DATED this 8<sup>th</sup> day of August, 2006.

A handwritten signature in black ink, appearing to read 'RKE', with a long horizontal line extending from the end of the signature.

---

RICHARD K. EICHSTAEDT  
IDAHO BAR #5801  
ATTORNEY FOR PROTESTANTS

STATE OF WASHINGTON )  
 ) ss:  
COUNTY OF SPOKANE )

RICHARD K. EICHSTAEDT, being first duly sworn on oath, deposes and says:

That on March 16, 2006 Protestants caused Protestants' First Set of Interrogatories and Requests for Production to be served upon the Applicant North Kootenai Water District's attorney. Protestants have not received the Answers to these documents, nor have any objections been served or filed.

Over the past several months, Protestants have made several attempts in good faith, both verbally and in writing (including email), to obtain answers to the discovery requests. The last effort was made last Wednesday via email. To date, Applicant has not been willing to comply with Protestants' numerous requests for the discovery responses.

On May 10, 2006, Protestants caused to be filed their First Motion to Compel Discovery. The Applicant did not object to this Motion and did not file any answers to the discovery requests.

On June 13, 2006, the Hearing Officer issued a Discovery Order granting additional time for discovery and directing the parties to produce a list of expert witnesses by June 30, 2006, to serve answers to discovery on the opposing party by July 10, 2006, to complete depositions by July 21, 2006, and to serve an exhibit list by August 4, 2006.

Protestants did not receive answers to discovery by the deadline set by the Department. On July 14, 2006, Protestants caused to be filed their Second Motion to Compel Discovery.

The Applicant did not object to this Motion and did not file any answers to the discovery requests.

As of this date, Protestants have received no answers to any discovery requests, have not received an updated list of witnesses, and have not been served a list of exhibits.

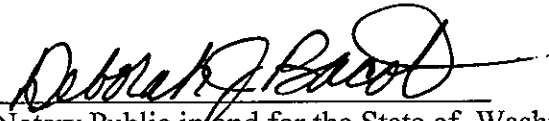
Protestants, on the other hand, have made good faith efforts to fully comply with the Discovery Order. On March 16, 2006, Protestants submitted an Expert Witness List, which was supplemented by its June 1, 2006 request to the Department. On May 1, 2006, Protestants answered Applicant's discovery requests and supplemented those answers on July 28, 2006. On July 28, 2006, Protestants filed an Exhibit List (updating the previously list submitted on May 1, 2006).

This failure to answer discovery, produce a witness list, and disclose a list of exhibits adversely impacts the ability of Protestants to move toward the completion of this matter. Answers to discovery requests and a list of witnesses were necessary to adequately conduct depositions of Applicant's expert witnesses. The material required by the Department's Discovery Order, including depositions and answers to discovery, is necessary to have a meaningful adjudication of Applicant's water right permit. Without the material required to be produced by the Department's Discovery Order, Protestants have no understanding of the basis for the Applicant's water right application and have been prejudiced by the amount of time and expenses associated with preparing answers to Applicant's discovery requests, retaining experts, and preparing three motions in response to Applicant's failure to comply.



RICHARD K. EICHSTAEDT  
IDAHO BAR #5801  
ATTORNEY FOR PROTESTANTS

SUBSCRIBED AND SWORN TO before me this 8<sup>th</sup> day of August, 2006.



Notary Public in and for the State of Washington

[Print Name] Spokane City

My Commission Expires: 7/31/08

**Notary Public  
State of Washington  
Deborah J Bacot  
Commission Expires 07/31/08**

Richard K. Eichstaedt  
 Idaho Bar #5801  
 Center for Justice  
 35 W. Main, Suite 300  
 Spokane, WA 99201  
 Telephone: (509) 835.5211  
 Fax: (509) 835.3867

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

|                                      |   |                   |
|--------------------------------------|---|-------------------|
| IN THE MATTER OF APPLICATION         | ) | NOTICE OF MAILING |
| FOR                                  | ) |                   |
| PERMIT NO. 95-9244, IN THE NAME OF   | ) |                   |
| <u>NORTH KOOTENAI WATER DISTRICT</u> | ) |                   |

I hereby certify that I served the foregoing **MOTION TO ENTER DEFAULT  
 JUDGMENT AND REQUEST FOR EXPEDITED DETERMINATION and DRAFT  
 MOTION** by the following indicated method or methods:

- ☒ By **mailing** via First Class U.S. Mail, a true and correct copy thereof in sealed, envelopes, addressed to the person(s) as shown below, the last-known address(es) of the person(s), and deposited at Spokane, Washington on the date set forth below.

**Robert E. Covington III  
 Lockhaven Square  
 8884 N. Government Way, Suite A  
 Hayden, ID 83835**

DATED this 8<sup>th</sup> day of August, 2006.

  
 Debi Bacot

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

**IN THE MATTER OF APPLICATION  
FOR  
PERMIT NO. 95-9244 IN THE NAME OF  
NORTH KOOTENAI WATER DISTRICT**

**DRAFT ORDER**

On August 8, 2006, Protestants, Upper Columbia River group of the Sierra Club and Friends of the Aquifer, filed a Motion to Enter Default Judgment against the Applicant, North Kootenai Water District, for its failure to comply with the Department's Third Notice of Hearing, Order Authorizing Discovery, and Prehearing Order.

Having reviewed this motion and the record in this matter, the Department orders as follows:

**ORDER**

IT IS HEREBY ORDERED that the Applicant is found in default for its failure to comply with the orders of this Department. Accordingly, the Department finds and orders:

1. Permit No. 95-9244 is hereby dismissed.
2. The hearing scheduled for August 14-16, 2006 is vacated.
3. The Applicant shall pay all costs and reasonable attorney fees associated with the completion of its Motion to Enter Default Judgment. Protestants shall file a bill of costs to the Department and the Applicant within 10 days.

Dated this \_\_\_\_\_ day of August, 2006.

---

David R. Tuthill, Jr.  
Hearing Officer

## Gibson, Deborah

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**From:** Tuthill, Dave  
**Sent:** Wednesday, August 09, 2006 8:34 AM  
**To:** Gibson, Deborah  
**Subject:** FW: water rights/conservation plan

-----Original Message-----

**From:** Haynes, Bob  
**Sent:** Tuesday, August 08, 2006 5:14 PM  
**To:** Tuthill, Dave  
**Subject:** FW: water rights/conservation plan

-----Original Message-----

**From:** Bob Covington [mailto:rcovington@icehouse.net]  
**Sent:** Monday, August 07, 2006 11:18 AM  
**To:** Haynes, Bob  
**Subject:** water rights/conservation plan

Bob: I have attached the conservation plan that is under consideration by the NKWD Board and has be proffered to Sierra Club. If a conservation plan is one of the requirements for the 2 cfs request that is pending, we would like to know whether IDWR would deem this an adequate plan at this time. Is its adequacy an issue for the hearing officer in the Sierra Club protest? Does it make sense to determine whether the conservation plan is adequate before determining whether NKWD should have the additional 2 cfs that is requested?

Thank you for your consideration of these issues.

Bob Covington

8/9/2006

**Water Conservation Plan**  
**For the**  
**North Kootenai Water District**  
**July 2006**

**1. INTRODUCTION**

The North Kootenai Water District (NKWD) is comprised of 14 separate, unconnected municipal water systems. The District was organized under the authority of the State of Idaho as a political subdivision. Most systems within the District rely on the Spokane Valley – Rathdrum Prairie Aquifer as the source of supply even though many of the customers do not live over the aquifer.

The Spokane Valley – Rathdrum Prairie Aquifer has been designated a sole source aquifer. The Aquifer supplies drinking water to over 500,000 people. The Aquifer ranges from 150 to 600 feet thick. It covers 322 square miles in two states and contains about 10 trillion gallons. The Spokane Valley – Rathdrum Prairie Aquifer Atlas, 2004 Update, indicates that the estimated Aquifer recharge is 650 million gallons per day with an average withdrawal rate of 146 million gallons per day and a peak summer withdrawal of about 450 million gallons per day.

The Aquifer is truly a unique resource but the District recognizes that is not an unlimited resource. It can be managed and used for the benefit of the existing users as well as provide for substantial future demand. However, for the long-term benefit of the aquifer, all of those depending on this source of water must do their part to avoid wasting or squandering this valuable resource. As a water purveyor that depends on the aquifer, North Kootenai Water District has a responsibility to help our customers conserve water and protect the resource

**2. SYSTEM OVERVIEW**

The following table establishes baseline information for NKWD's water use. This information will serve as a base from which to measure the effectiveness of our water conservation efforts.

(SEE FOLLOWING TABLE)



# North Kootenai Water District Use Summary and Capacity Requirements

Updated March 16, 2006

|                                                                                 | CURRENT     |                              |                                                  | PROJECTED AT CURRENT PLATTED LOT BUILDOUT<br>Additional 1228 Lots |                               | PENDING COMMITMENTS<br>(additional 420 Lots) |                               |
|---------------------------------------------------------------------------------|-------------|------------------------------|--------------------------------------------------|-------------------------------------------------------------------|-------------------------------|----------------------------------------------|-------------------------------|
|                                                                                 | 2005        | August, 2005<br>(Peak Month) | Est. 2006 Peak Month<br>(Based on 2003 Dry Year) | Est. Annual                                                       | Est. Peak Month<br>(Dry Year) | Annual                                       | Est. Peak Month<br>(Dry Year) |
|                                                                                 |             |                              |                                                  |                                                                   |                               |                                              |                               |
| Total Water Use                                                                 | 601,933,201 | 109,983,800                  | 138,100,050                                      | 810,798,409                                                       | 180,907,650                   | 882,234,392                                  | 212,785,1                     |
| Honeysuckle Hills Homeowners                                                    | -9,904,900  | -1,235,900                   | -1,296,403                                       | -13,341,808                                                       | -1,698,256                    | -14,517,298                                  | -1,997,5                      |
| Industrial Connections                                                          | -28,012,800 | -2,781,500                   | -2,917,667                                       | -37,732,980                                                       | -3,822,071                    | -41,057,472                                  | -4,495,5                      |
| Parks & Commercial Irrigation                                                   | -23,821,000 | -7,612,800                   | -7,985,481                                       | -32,086,665                                                       | -10,460,782                   | -34,913,684                                  | -12,304,1                     |
| Commercial Connections                                                          | -33,102,600 | -5,028,200                   | -5,274,353                                       | -44,588,894                                                       | -6,909,272                    | -48,517,430                                  | -8,126,7                      |
| Vertical Shaft Turbine Lube Meters                                              | -12,814,500 | -1,195,700                   | -1,195,700                                       | -12,814,500                                                       | -1,566,337                    | -18,781,806                                  | -1,842,3                      |
| Total Residential Use                                                           | 494,277,401 | 92,129,700                   | 119,430,447                                      | 670,233,562                                                       | 156,450,931                   | 724,446,702                                  | 184,019,1                     |
| <b>EQUIVALENT RESIDENTIAL USE DATA</b>                                          |             |                              |                                                  |                                                                   |                               |                                              |                               |
| Residential ER's                                                                | 3,539       | 3539                         | 3639                                             | 4,767                                                             | 4,767                         | 5,187                                        | 5,607                         |
| Measured Average Day Demand (ADD) (Yearly use/365 days) gal/ER                  | 383         |                              |                                                  | 385                                                               |                               | 383                                          |                               |
| WashDOH Water System Design Manual ADD Design Value (E <sup>n</sup> 5-3) gal/ER | 507         |                              |                                                  | 507                                                               |                               | 507                                          |                               |
| Measured Peak Month ADD (Aug. Use/ 31 days) gal/ER                              |             | 840                          | 1,059                                            |                                                                   | 1,059                         |                                              | 1,059                         |
| Estimated Maximum Day Demand (= 1.05 x Peak Month ADD) gal/ER                   |             | 882                          | 1,112                                            |                                                                   | 1,112                         |                                              | 1,112                         |
| WashDOH Water System Design Manual MDD Design Value (2xADD) gal/ER              |             | 1,014                        | 1,014                                            |                                                                   | 1014                          |                                              | 1,014                         |
| <b>SYSTEM CAPACITY REQUIREMENTS - Based on Total Water Use</b>                  |             |                              |                                                  |                                                                   |                               |                                              |                               |
| Estimated Peak Hour Demand (=1.45 x MDD Aug Use/31/1440) gpm                    |             | 3,573                        | 4,486                                            |                                                                   | 5,876                         |                                              | 6,912                         |
| Estimated Peak Instantaneous (=2.1 x MDD Aug Use/31/1440) gpm                   |             | 5,433                        | 6,821                                            |                                                                   | 8,936                         |                                              | 10,511                        |
| Current IDWR Authorized Diversion Capacity GPM (15.41 cfs = 6900 gpm)           |             | 6,900                        | 6,900                                            |                                                                   | 6,900                         |                                              | 6,900                         |
| Surplus (Deficit) gpm                                                           |             | 1,467                        | 79                                               |                                                                   | -2,036                        |                                              | -3,611                        |
| Surplus (Deficit) cfs                                                           |             | 3.28                         | 0.18                                             |                                                                   | -4.54                         |                                              | -8.06                         |

## Notes:

1. Peak Hour Demand (PHD) peaking factor is estimated at 1.45 based on America Water Works Association Manual M32 "Distribution Network Analysis"
2. Peak Instantaneous Factor is based on the average of physical observations of the Rimrock and Hillside Systems Correlating Maximum Day Demand to Peak Instantaneous Demand
3. Estimated 2006 Peak Month (Dry Year) is based on 2003 Aug water usage (115,368,000 gal), which was the peak water usage in the past five

years (2000 to 2005). The total use was scaled up to reflect the current number of ER's. An additional 100 connections are projected for 2006. The commercial use is also increased to reflect increased usage during a dry year. No additional commercial connections are included in projected values.

4. Non-Residential water usage is estimated to increase at the same rate as the Residential usage.

### **3. DEMAND FORCAST**

Water conservation efforts will likely result in reduced consumption. The success of these efforts will reduce the long-term water demand from the existing customer base. However, Kootenai County is a rapidly growing area and it is reasonable to assume that growth within existing service areas will increase overall demand. In addition, growth that will be occurring in new areas that will be annexed into the district will also push water demand higher. For that reason, it will be important to complete the demand analysis process identified in IDWR guidelines. An analysis of demand for the immediate future is included in Water Use Summary and Capacity Requirements chart in section 2 above. NKWD will complete a longer term demand forecast before applying for any additional water rights for the system..

### **4. GOALS & STRATEGY**

During a Strategic Planning effort begun in 2004, The District identified a number of Trends and Challenges. Among these include the recognition that:

- Area population is growing and the rate of growth is accelerating.
- Technological innovations to improve efficiency may be available
- Available water supply is limited
- Parcel size will continue to shrink as new subdivisions are developed
- Water usage on a per capita basis is increasing

The District also developed an initial vision statement as follows:

*The North Kootenai Water District is a well-organized, financially sound and efficiently managed public utility district that has a solid reputation of providing safe, reliable, high quality domestic water to our customers at a reasonable and justifiable price. We endeavor to serve the domestic water needs of northern Kootenai County in a manner that protects the interests of our constituents. We are a growing entity that structures it's decisions upon consideration of the current economic situation, future economic and service implications and the opportunity to improve, through water service, the quality of life for our current constituents and those petitioning for our assistance.*

In an effort to meet the needs of a growing community and to achieve the goals set forth in the vision statement, the District recognizes that there is a need for a plan that will help with long-term water conservations efforts. The District is also directed in its water rights approvals from the State to develop a water conservation plan.

The ultimate goal of any water conservation strategy is the reduction of water consumption. The amount of reduction will depend on the current levels of use and on the success of conservation efforts. The current data indicate that NKWD customers consume significantly less than reasonable use standards identified in June 1999 Water System Design Manual from the Washington Department of Health. Therefore, reductions in their use may be limited. NKWD will strive to promote water usage at levels that are lower than current consumption, primarily through water pricing and secondarily through customer education.

## **5. CONSERVATION MEASURES**

**This document will serve as an initial water conservation plan. It will be subject to regular review by the Board of Directors and will be revised as appropriate. The action items under this plan will be segregated under the following components**

- **Goal Setting**
- **Education Efforts**
- **Economic Incentives or Disincentives**
- **Engineering Actions**
- **Effectiveness Evaluation**

**Under each of these components, we have identified potential action items that can be implemented to encourage water conservation. The costs and the potential effectiveness of each of these action items vary significantly. It is anticipated that the actions will be implemented on a sequential basis as program monitoring indicates the need for additional efforts.**

**Under each component, the specific action items shown with implementation dates have been selected for implementation. Other items have been identified as having potential viability but have either not been analyzed or have not been selected for implementation at this time..**

### **Goal Setting**

**Water conservation planning and implementation requires funding, staffing and institutional commitments. It is important for water purveyors to understand current usage as a basis for establishing goals for conservation. Goal setting provides an important framework for water conservation programs.**

**NKWD shall:**

- **Investigate, determine and publish per capita, household and commercial water use demand figures for average and peak use on annual and peak month bases.**
- **Set goals for water demand in each category of use. These goals shall reflect aggressive, reasonable water conservation. These goals should include reduction of use in the respective categories of use to levels that are below current typical levels in similar water systems.**
- **Prepare an “action plan” for each component of the NKWD Comprehensive Water Conservation Plan, including action description, timelines for implementation, financial expenditures and estimated water savings.**
- **Issue a “Water conservation annual report” that includes (1) a report card identifying previous years’ savings and other accomplishments by activity and comparing those figures to NKWD goals and (2) conservation initiatives for the coming year**

**NKWD shall also develop internal management policies that include dedicated staff time to development and implementation of NKWD’s Water Conservation Plan.**

## **Education**

Although education alone is not expected to induce significant water consumption reductions on a per capita basis, it is an important component of a plan to reduce water consumption by developing constituent awareness and support for NKWD's efforts. This component will involve direct efforts by the District to develop and distribute educational material to the District constituents. It will also involve cooperative efforts with other groups or agencies to provide our constituents with information that will allow and encourage them to reduce water consumption. Education alone may not induce significant water use conservation, but it is an important component of a comprehensive conservation plan

- **Develop and distribute brochures with water conservation tips.**  
In 2005, the District developed a simple tri-fold brochure showing water conservation tips. The brochure was mailed to every water customer in the District in the spring and is available in the District office.  
Planned Implementation: 2005      Completed: 2005 and annually
- **Ensure water conservation messages are posted on the District web site.**  
The District recognizes the need to do utilize the Internet as a way to communicate with our customers and the public. As part of our website, we will include a water conservation page and ensure that water conservation and aquifer protection information is included. Links directing consumers to additional internet sources of information regarding water conservation will be provided in the District's website.  
Planned Implementation: 2006      Completed: 2006 and on-going
- **Prepare and mail an annual water conservation reminder to every customer**  
at least once each year, the District will include a water conservation message in our regular mailings to each customer.  
Planned Implementation: 2005 and on-going
- **Inform customers of prior years consumption on their monthly statements**
- **Distribute information on adoption of low flow technologies**
- **Emphasize native plant landscaping to reduce water consumption**
- **Develop a water conservation review team to work with individual customers who are identified as high use consumers to assist them in moderating their consumption.**
- **Work with local sprinkler companies to help develop low volume irrigation plans for NKWD customers**
- **Explore feasibility of facilitating a conference of local water purveyors to discuss water conservation issues**
- **Work with other water purveyors and landscape/garden suppliers to sponsor a workshop for homeowners on high efficiency landscape watering techniques and drought tolerant/ low water plantings.**
- **Work with other agencies and groups to produce and distribute educational material to develop an awareness of Aquifer protection needs.**
- **Work with schools to help carry the water conservation message to students.**
- **Adopt and publicize a District policy of refraining from irrigation during the 10:00 AM to 5:00 PM periods.**
- **Adopt and publicize a District policy of alternate day irrigation.**

## **Economics**

This component will involve water conservation efforts that may include economic incentives for conservation or disincentives for excessive consumption. Adoption of any of these items will have to be done within the guidance of the vision statement to provide “domestic water to our customers at a reasonable and justifiable price.” The rate structure that was adopted and implemented in May, 2006 exemplifies the commitment and emphasis of the District on economics as a principal component of its conservation plan.

- **Implement a rate structure with the objective of providing an incentive to conserve**  
The District currently has a progressive rate schedule with the cost per 1000 gal going up as consumption increases. This structure will be periodically reevaluated to help enhance water conservation without causing undue hardship on low-income customers.  
Planned Implementation: 2006      Completed: May, 2006
- **Evaluate opportunities to develop an incentive program to subsidize low water and efficient use technology**
- **Work with local jurisdictions to encourage use of high efficiency appliances and fixtures as well as low water landscaping.**
- **The District will evaluate the costs and effectiveness of rebate and credit programs that are directed toward installation of higher efficiency water fixtures**
- **The District will coordinate with local jurisdictions to enhance the utilization of higher efficiency water fixtures in their jurisdictions**

## **Engineering**

This component includes structural or design improvements to our system infrastructure or in our system operation to help reduce water losses and monitor on a real time basis consumption.

- **Determine per capita household and commercial water use figures on an annual average and a peak month basis.**  
Planned Implementation 2006      Completed: April, 2006
- **Monitor and track water losses in each portion of the system**  
Develop a comparison of metered water pumped and metered water sales to identify possible system leakage.  
Planned Implementation 2006 and continuing
- **Quantify and reduce system leakage**  
As system leaks are identified, make repairs in a timely manner and provide consumers with lead detection and repair techniques  
Implemented and on-going
- **Continue to install radio-read meters on high usage systems. Monitor individual homes with above normal usage.**  
Implemented 2005 and continuing
- **Add additional SCADA systems to facilitate monitoring of water use and consumption patterns**  
Implemented and continuing

## **Evaluation**

**The effectiveness of any plan or program must be continuously evaluated. This component will address actions that the District will undertake to measure and document the effectiveness of the above conservation actions.**

- **Measure and plot year-to-year comparisons of water consumption per connection for each individual system**  
**Planned Implementation: 2006 and continuing**
- **On an annual basis the District will conduct a publicly noticed hearing that is devoted to evaluating the water consumption of its constituents and receiving and considering proposed modifications to the policies of the District that may offer the prospect of additional water conservation measures that are supported by the constituents of the District.**  
**Planned Implementation: 2006 and continuing**

**ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2006.**

## **Board of Directors**

---

**Linda Davis, President**

---

**Jack Berger, Vice-President**

---

**Richard Fairhurst, Secretary**

---

**Maimie Moore**

---

**Tom Crimmins**

**CENTER FOR JUSTICE**

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Founder

BREAN BEGGS  
Chief Catalyst

BONNE BEAVERS  
RICK EICHSTAEDT  
ANDREA POPLAWSKI  
JOHN SKLUT  
TERRI SLOYER

August 8, 2006

Deborah Gibson, Administrative Assistant  
Idaho Department of Water Resources  
P.O. Box 83720  
Boise, Idaho 83620-0098

**RE: Sierra Club & FOA Protest of North Kootenai  
Water District Water Right Application No. 95-9244**

**SENT VIA US MAIL AND FAX (208/287-6700)**

Dear Ms. Gibson;

Please find attached Protestants' Response to Motion for Continuance and Request for Telephonic Hearing and Certificate of Service in the above titled matter. I would be available all week in the event Mr. Tuthill would want to conduct a hearing on this and the other pending motions.

Thank you for your assistance.

Sincerely,



Rick Eichstaedt  
Attorney for Sierra Club and  
Friends of the Aquifer

**MISSION STATEMENT**

THE CENTER FOR JUSTICE IS A NON-PROFIT LAW FIRM COMMITTED TO THE EXPERIENCE OF JUSTICE WITH THOSE OF LIMITED OR NO RESOURCES OR INFLUENCE THROUGH COMPASSION AND AN AWARENESS OF THE SACREDNESS OF THE EARTH.

100% RECYCLED PAPER

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**Rachael Paschal Osborn**  
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## Attorneys for Protestants

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

**IN THE MATTER OF APPLICATION  
FOR  
PERMIT NO. 95-9244 IN THE NAME OF  
NORTH KOOTENAI WATER DISTRICT**

**RESPONSE TO APPLICANT'S  
REQUEST FOR CONTINUANCE AND  
REQUEST FOR TELEPHONIC  
HEARING**

Protestants, Upper Columbia Group of the Sierra Club and Friends of the Aquifer, responds to the Applicant's motion for a continuance in the above titled matter. As initial matter, Protestants have earlier filed a Motion for a Default Judgment in this matter for the Applicant's failure to comply with the Department's Discovery Order, including the production of a witness list, list of exhibits, and failure to answer Protestants' discovery requests. The Applicant's motion provides further evidence of the unwillingness to comply in a timely matter with the Department's orders resulting in perpetual delay of the adjudication of this matter. It is

critical to note that the protest of this matter was filed nearly two years ago on October 25, 2004.

Protestants object to the request for the continuance and argue that the Department should grant Protestant's Motion for Default Judgment. In response to the Applicant's motion, Protestants

First, the Applicant incorrectly asserts that settlement is ongoing and additional time is necessary to facilitate that process. While initial efforts were made to reach an amicable resolution to this matter, Protestants indicated by letter to counsel for the Applicant in April "[w]hile we are very interested in reaching an amicable settlement of this matter, it appears that your clients are not interested in settlement of this dispute ... [W]e will need to refocus our efforts in this matter entirely upon the upcoming hearing." While it is correct that the Applicant provided a settlement proposal on July 26<sup>th</sup>, this was the first communication of any settlement offer from the Applicant since January and Protestants had already made it clear of their intent to proceed to a hearing. Further, Protestants have rejected the offer of settlement.

Second, the Applicant somehow asserts that more time is needed to prepare expert witnesses. This ignores the fact that this Department previously ordered the parties to complete discovery, exchange witnesses and exhibits lists in its Third Notice of Hearing, Order Authorizing Discovery, and Prehearing Order. More fundamentally, it is unimaginable how more time would be needed. Protestants clearly indicated their intent to proceed to hearing and no settlement discussions had transpired since January. The Applicant has had months to

prepare for this matter. Protestants diligently responded to the Applicant's discovery requests and produced witness and exhibit lists. Given the lack of any settlement discussions since January, it is inconceivable how or why more time would be needed.

Third, the Applicant raises the need for depositions. However, as indicated in the Motion for Default Judgment, any delay in the ability to conduct depositions is the Applicant's creation. As stated in great detail in Protestants' Motion for Default Judgment, the Applicant has completely failed to comply with any aspects of the Department's Discovery Order. This has hampered Protestants' ability to proceed with depositions. However, Protestants' witnesses have been disclosed for sometime.

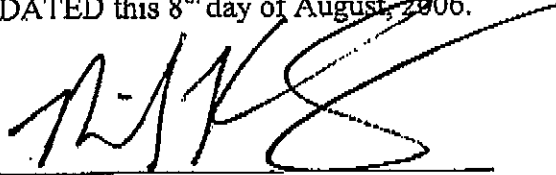
Lastly, Protestants will, in fact, be prejudiced by the continued delay of this matter. Protestants have five expert witnesses that are prepared to testify at the hearing. Significant time and expense has been spent thus far. Continued delay requires the recoordination of five expert witness schedules, as well as associated travel and preparation time.

Given the failure of the Applicant to diligent proceed with the adjudication of this matter, it is clear that continued delay is not in interest of the Department or the parties. Accordingly, the Department should deny the request for the continuance, grant Protestants' Motion for Default Judgment, and vacate the hearing.

Lastly, given the three outstanding motions before the Department (Protestants' Second Motion to Compel and Motion for Default Judgment and Applicant's Motion for Continuance),

Protestants request that a telephonic hearing be scheduled to provide an opportunity to provide additional argument on these matters and to ascertain the status of this matter.

DATED this 8<sup>th</sup> day of August, 2006.

A handwritten signature in black ink, appearing to read 'R. K. EICHSTAEDT', written over a horizontal line.

RICHARD K. EICHSTAEDT  
IDAHO BAR #5801  
ATTORNEY FOR PROTESTANTS

STATE OF WASHINGTON )  
 ) ss:  
COUNTY OF SPOKANE )

RICHARD K. EICHSTAEDT, being first duly sworn on oath, deposes and says:

On October 25, 2004, Protestants, Upper Columbia Group of the Sierra Club and Friends of the Aquifer, filed a protest of the North Kootenai Water District's Water Permit No. 95-9244.

On May 10, 2006, Protestants caused to be filed their First Motion to Compel Discovery for the failure of the Applicant to answer discovery requests. The Applicant did not object to this Motion and did not file any answers to the discovery requests.

On June 13, 2006, the Hearing Officer issued a Discovery Order granting additional time for discovery and directing the parties to produce a list of expert witnesses by June 30, 2006, to serve answers to discovery on the opposing party by July 10, 2006, to complete depositions by July 21, 2006, and to serve an exhibit list by August 4, 2006. This order set this matter for hearing on August 14-16, 2006.

Protestants did not receive answers to discovery by the deadline set by the Department. On July 14, 2006, Protestants caused to be filed their Second Motion to Compel Discovery. The Applicant did not object to this Motion and did not file any answers to the discovery requests.

As of this date, Protestants have received no answers to any discovery requests, have not received an updated list of witnesses, and have not been served a list of exhibits. On August 8,

2006, Protestant filed a motion seeking a default judgment against the Applicant for its failure to comply with the Department's Discovery Order.

Protestants fully complied with the Discovery Order. On March 16, 2006, Protestants submitted an Expert Witness List, which was supplemented by its June 1, 2006 request to the Department. On May 1, 2006, Protestants answered Applicant's discovery requests and supplemented those answers on July 28, 2006. On July 28, 2006, Protestants filed an Exhibit List (updating the previously list submitted on May 1, 2006).

Representatives of the Protestants and Applicant did meet to endeavor to settle this matter since the filing of the protest. The last settlement meeting occurred on January 5, 2006 with Bob Haynes at the IDWR office in Coeur d'Alene. On January 31, 2006, Protestants sent counsel for the Applicant revisions to a proposed settlement offer. On April 3, 2006, after Protestants sent the Applicant a letter stating, "While we are very interested in reaching an amicable settlement of this matter, it appears that your clients are not interested in settlement of this dispute. Unless we are reassured otherwise by the production of a revised conservation plan, we will need to refocus our efforts in this matter entirely upon the upcoming hearing." No further settlement offer was received until July 26, 2006. Protestants accordingly prepared to proceed with a hearing on this matter. Concurrent with preparing for hearing, Protestants did review the offer, had several conversations with counsel for the Applicant, but ultimately indicated that the offer of settlement was not acceptable.

This failure to answer discovery, produce a witness list, and disclose a list of exhibits and continued delay of the hearing in this matter adversely impacts Protestants. Answers to discovery requests and a list of witnesses were necessary to adequately conduct depositions of Applicant's expert witnesses. Despite this, Protestants have spent significant resources retaining experts and preparing for hearing in this matter. Continued delay coupled with the failure to comply with discovery will result in spending additional time and expense in this matter.



RICHARD K. EICHSTAEDT  
IDAHO BAR #5801  
ATTORNEY FOR PROTESTANTS

SUBSCRIBED AND SWORN TO before me this 8<sup>th</sup> day of August, 2006.

Notary Public  
State of Washington  
Deborah J Bacot  
Commission Expires 07/31/08



Notary Public in and for the State of Washington,  
Spokane County  
My Commission Expires: 7/31/08

Richard K. Eichstaedt  
Idaho Bar #5801  
Center for Justice  
35 W. Main, Suite 300  
Spokane, WA 99201  
Telephone: (509) 835.5211  
Fax: (509) 835.3867

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

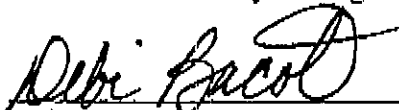
**IN THE MATTER OF APPLICATION      }  
FOR                                            }  
PERMIT NO. 95-9244, IN THE NAME OF   }  
NORTH KOOTENAI WATER DISTRICT       }** **NOTICE OF MAILING**

I hereby certify that I served the foregoing **RESPONSE TO MOTION FOR  
CONTINUANCE AND REQUEST FOR TELEPHONIC HEARING** by the following  
indicated method or methods:

**[X]** By mailing via First Class U.S. Mail, a true and correct copy thereof in sealed,  
envelopes, addressed to the person(s) as shown below, the last-known address(es) of the  
person(s), and deposited at Spokane, Washington on the date set forth below.

**Robert E. Covington III  
Lockhaven Square  
8884 N. Government Way, Suite A  
Hayden, ID 83835**

DATED this 8<sup>th</sup> day of August, 2006.

  
Debi Bacot

**CENTER FOR JUSTICE****COMMUNITY BUILDING  
35 WEST MAIN AVENUE  
SUITE 300****SPOKANE, WA 99201**

TELEPHONE: 509.835.5211

FAX: 509.835.3867

**ATTORNEYS & ADVOCATES****JIM SHESHAN  
Founder  
BREBAN BEGGS  
Chief Catalyst****BONNE BEAVERS  
RICK EICHSTAEDT  
ANDREA POPLAWSKI  
JOHN SKLUT  
TERRI SLOYER**

August 8, 2006

Deborah Gibson, Administrative Assistant  
Idaho Department of Water Resources  
P.O. Box 83720  
Boise, Idaho 83620-0098

**RE: Sierra Club & FOA Protest of North Kootenai  
Water District Water Right Application No. 95-9244**

**SENT VIA US MAIL AND FAX (208/287-6700)**

Dear Ms. Gibson:

Please find attached Protestants' Motion to Enter Default Judgment and Request for Expedited Determination, Draft Order, and Certificate of Service in the above titled matter. As indicated in our motion, we request a prompt determination of our motion given the impending hearing scheduled in this matter. I would be available all week in the event Mr. Tuthill would want to conduct a telephonic hearing on this motion.

Thank you for your assistance.

Sincerely,



Rick Eichstaedt  
Attorney for Sierra Club and  
Friends of the Aquifer

**MISSION STATEMENT**

THE CENTER FOR JUSTICE IS A NON-PROFIT LAW FIRM COMMITTED TO THE EXPERIENCE OF JUSTICE WITH THOSE OF LIMITED OR NO RESOURCES OR INFLUENCE THROUGH COMPASSION AND AN AWARENESS OF THE SACREDNESS OF THE EARTH.

100% RECYCLED PAPER

Richard K. Eichstaedt  
 Idaho Bar #5801  
 Center for Justice  
 35 W. Main, Suite 300  
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 Telephone: (509) 835.5211  
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 2421 W. Mission Ave.  
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Attorneys for Protestants

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

**IN THE MATTER OF APPLICATION  
 FOR  
 PERMIT NO. 95-9244 IN THE NAME OF  
NORTH KOOTENAI WATER DISTRICT**

**MOTION TO ENTER DEFAULT  
 JUDGMENT AND REQUEST FOR  
 EXPEDITED DETERMINATION**

COMES NOW the Protestants and, pursuant to Idaho Department of Water Resources Rule of Procedure 531 and Idaho Rule of Civil Procedure 37(b)(2)(C), move the Idaho Department of Water Resources for an order finding the Applicant North Kootenai Water District in default and dismissing its water right application for repeated failure to comply with the Department's Third Notice Of Hearing, Order Authorizing Discovery, and Prehearing Order (Discovery Order) in this matter.

Protestants further request expedited consideration of this motion because of the timing of the matter. The hearing in this matter is scheduled for next week, August 14-16. Protestants' preparation for hearing is underway and requires reserving time from the schedules of our expert witnesses and, for one expert, purchasing airline tickets for travel.

The Department required that discovery and the production of a witness list and exhibit list be completed by now. The Discovery Order specifically states:

1. On or before June 30, 2006, each party must disclose to all other parties, in writing, the identity of all expert witnesses that will or may testify at the hearing.
2. Answers to written discovery must be served on the requesting party on or before July 10, 2006.
3. All depositions shall be completed on or before July 21, 2006.

IT IS FURTHER ORDERED that, on or before August 4, 2006, each party must serve on all other parties copies of exhibits that may be offered at the hearing. Service of prospective exhibits is not complete unless the documents are delivered to the receiving party on or before August 4, 2006.

IT IS FURTHER ORDERED that, the Motion to Compel is addressed by the scheduling for discovery above.

Discovery Order at 1. As indicated in the attached Affidavit of Richard Eichstaedt, the Applicant has failed to comply with any element of this Discovery Order. Despite the extension of time to come into compliance granted by the Department in its June 13, 2006 order, the Applicant has failed to: (1) respond to the Protestants' discovery requests; (2) provide the Department and the Protestants with an updated list of witnesses; and (3) provide the Department and the Protestants with the required list of exhibits. The failure to answer discovery requests and provide a list of witnesses has eliminated the ability to conduct

depositions. Despite the lack of compliance, Protestants have diligently complied with the Department's Discovery Order by providing its witness list, discovery responses (including supplementation thereto), and exhibit list.

The Applicant's lack of compliance makes it nearly impossible to proceed to hearing. The Applicant failed to provide any basis or support for its water right application. As noted by the Department in the November 14, 2005 Notice of Conference, the applicant has the initial burden of proof to demonstrate that the water right application meets the requirements of Idaho Code § 42-203A. Without the disclosures and answers to interrogatories and requests for production Protestants cannot adequately prepare to respond to the "proof" that will be submitted by the Applicant at next week's hearing.

Further, Protestants have spent considerable time and expense responding to the Applicant's discovery requests, preparing for hearing, and filing two previous motions requesting the Department to order the Applicant to come into compliance with and adhere to the discovery schedule. Protestants would be severely prejudiced if required to go to hearing without discovery responses from the Applicant.

The failure to comply and resulting prejudice to Protestants warrant a default order by the Department dismissing the Applicant's water right application. The remedy is authorized by agency regulations and the Idaho Rules of Civil Procedure. Idaho Department of Water Resources Rule of Procedure 531 specifically provides, "The agency may impose all sanctions recognized by statute or rules for failure to comply with an order compelling discovery,

including but not limited to the sanctions listed in paragraphs (A), (B), and (C) of Rule 37(b)(2) of the Idaho Rules of Civil Procedure.”

Idaho Rule of Civil Procedure 37(b)(2) provides, in part:

If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

- (C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or *rendering a judgment by default against the disobedient party.*

Idaho Department of Water Resources Rule of Procedure 700 further authorizes the issuance of a default judgment against the Applicant stating that, if an applicant “fails to respond to a written information inquiry, the presiding officer may serve upon all parties a notice of a proposed default order denying the application or claim.”

Given the Applicant’s failure to comply with the Department’s Discovery Order as described above and in the attached affidavit, Protestants respectfully request that the Department: (1) find the Applicant in default for failing to comply with the Department’s Discovery Order; (2) dismiss the water right application (Permit No. 95-9244); (3) vacate the hearing scheduled for August 14-16, 2006; and (4) award costs and reasonable attorney fees associated with the production of this motion pursuant to Idaho Rule of Civil Procedure 37(a)(4).

Finally, given the impending date for the hearing and the additional time and expenses associated with finalizing the preparation for this hearing, including time and travel for experts, Protestant request that the Department expeditiously rule on this motion.

DATED this 8<sup>th</sup> day of August, 2006.

A handwritten signature in black ink, appearing to read 'R. K. Eichstaedt', written over a horizontal line.

RICHARD K. EICHSTAEDT  
IDAHO BAR #5801  
ATTORNEY FOR PROTESTANTS

STATE OF WASHINGTON )  
 ) ss:  
COUNTY OF SPOKANE )

RICHARD K. EICHSTAEDT, being first duly sworn on oath, deposes and says:

That on March 16, 2006 Protestants caused Protestants' First Set of Interrogatories and Requests for Production to be served upon the Applicant North Kootenai Water District's attorney. Protestants have not received the Answers to these documents, nor have any objections been served or filed.

Over the past several months, Protestants have made several attempts in good faith, both verbally and in writing (including email), to obtain answers to the discovery requests. The last effort was made last Wednesday via email. To date, Applicant has not been willing to comply with Protestants' numerous requests for the discovery responses.

On May 10, 2006, Protestants caused to be filed their First Motion to Compel Discovery. The Applicant did not object to this Motion and did not file any answers to the discovery requests.

On June 13, 2006, the Hearing Officer issued a Discovery Order granting additional time for discovery and directing the parties to produce a list of expert witnesses by June 30, 2006, to serve answers to discovery on the opposing party by July 10, 2006, to complete depositions by July 21, 2006, and to serve an exhibit list by August 4, 2006.

Protestants did not receive answers to discovery by the deadline set by the Department. On July 14, 2006, Protestants caused to be filed their Second Motion to Compel Discovery.

The Applicant did not object to this Motion and did not file any answers to the discovery requests.

As of this date, Protestants have received no answers to any discovery requests, have not received an updated list of witnesses, and have not been served a list of exhibits.

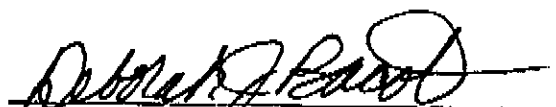
Protestants, on the other hand, have made good faith efforts to fully comply with the Discovery Order. On March 16, 2006, Protestants submitted an Expert Witness List, which was supplemented by its June 1, 2006 request to the Department. On May 1, 2006, Protestants answered Applicant's discovery requests and supplemented those answers on July 28, 2006. On July 28, 2006, Protestants filed an Exhibit List (updating the previously list submitted on May 1, 2006).

This failure to answer discovery, produce a witness list, and disclose a list of exhibits adversely impacts the ability of Protestants to move toward the completion of this matter. Answers to discovery requests and a list of witnesses were necessary to adequately conduct depositions of Applicant's expert witnesses. The material required by the Department's Discovery Order, including depositions and answers to discovery, is necessary to have a meaningful adjudication of Applicant's water right permit. Without the material required to be produced by the Department's Discovery Order, Protestants have no understanding of the basis for the Applicant's water right application and have been prejudiced by the amount of time and expenses associated with preparing answers to Applicant's discovery requests, retaining experts, and preparing three motions in response to Applicant's failure to comply.



RICHARD K. EICHSTAEDT  
IDAHO BAR #5801  
ATTORNEY FOR PROTESTANTS

SUBSCRIBED AND SWORN TO before me this 8<sup>th</sup> day of August, 2006.



Notary Public in and for the State of Washington

[Print Name] Spokane, WA

My Commission Expires: 7/31/08

**Notary Public**  
**State of Washington**  
**Deborah J Bacot**  
**Commission Expires 07/31/08**

Richard K. Eichstaedt  
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**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION    )  
FOR                                    )  
PERMIT NO. 95-9244, IN THE NAME OF   )  
NORTH KOOTENAI WATER DISTRICT    )

**NOTICE OF MAILING**

I hereby certify that I served the foregoing **MOTION TO ENTER DEFAULT  
JUDGMENT AND REQUEST FOR EXPEDITED DETERMINATION and DRAFT  
MOTION** by the following indicated method or methods:

- ☒ By mailing via First Class U.S. Mail, a true and correct copy thereof in sealed, envelopes, addressed to the person(s) as shown below, the last-known address(es) of the person(s), and deposited at Spokane, Washington on the date set forth below.

**Robert E. Covington III  
Lockhaven Square  
8884 N. Government Way, Suite A  
Hayden, ID 83835**

DATED this 8<sup>th</sup> day of August, 2006.

  
Debi Bacot

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

**IN THE MATTER OF APPLICATION  
FOR  
PERMIT NO. 95-9244 IN THE NAME OF  
NORTH KOOTENAI WATER DISTRICT**

# DRAFT ORDER

On August 8, 2006, Protestants, Upper Columbia River group of the Sierra Club and Friends of the Aquifer, filed a Motion to Enter Default Judgment against the Applicant, North Kootenai Water District, for its failure to comply with the Department's Third Notice of Hearing, Order Authorizing Discovery, and Prehearing Order.

Having reviewed this motion and the record in this matter, the Department orders as follows:

## ORDER

IT IS HEREBY ORDERED that the Applicant is found in default for its failure to comply with the orders of this Department. Accordingly, the Department finds and orders:

1. Permit No. 95-9244 is hereby dismissed.
2. The hearing scheduled for August 14-16, 2006 is vacated.
3. The Applicant shall pay all costs and reasonable attorney fees associated with the completion of its Motion to Enter Default Judgment. Protestants shall file a bill of costs to the Department and the Applicant within 10 days.

Dated this \_\_\_\_\_ day of August, 2006.

David R. Tuthill, Jr.  
Hearing Officer

# ROBERT E. COVINGTON, III

ATTORNEY AT LAW  
8884 N. GOVERNMENT WAY, SUITE A  
HAYDEN LAKE, ID 83835

TELEPHONE: (208) 762-4545  
FAX: (208) 762-4546

August 7, 2006

David Tuthill, Hearing Officer  
Idaho Department of Water Resources  
322 E. Front Street  
PO Box 83720  
Boise, ID 83720-0098

**BY FAX TO: 208-287-6700**

Re: Application for Permit No. 95-9244  
North Kootenai Water District, Applicant

Dear Mr. Tuthill:

Please find the following enclosed filing in the above matter:

Motion for Continuance

Mr. Eichstaedt and I remain in good contact as we work on our case. We have just discussed several items in our conservation plan proposal that he wished to clarify. I am expecting to obtain his comments and response to our settlement offer tomorrow. Let us know if you have any questions or comments.

Very truly yours,

  
Robert Covington

REC/ac  
Cc: client  
Eichstaedt

**ROBERT E. COVINGTON**  
Attorney at Law  
N. 8884 Government Way, Suite A  
Hayden, Idaho 83835  
Phone: (208) 762-4545  
Fax: (208) 762-4546  
Attorney for Plaintiff  
ISB# 2312

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

|                                   |   |                           |
|-----------------------------------|---|---------------------------|
| <b>IN THE MATTER OF THE</b>       | ) |                           |
| <b>APPLICATION FOR PERMIT</b>     | ) |                           |
| <b>NO. 95-9244 IN THE NAME OF</b> | ) | <b>MOTION TO CONTINUE</b> |
| <b>NORTH KOOTENAI WATER</b>       | ) | <b>HEARING</b>            |
| <b>DISTRICT</b>                   | ) |                           |
| <hr/>                             | ) |                           |

Comes now the North Kootenai Water District, the applicant in this matter, through its attorney, Robert Covington, to request that the date for hearing the above matter be continued from the current date of August 14, 2006 to a later date in the vicinity of September 18, 2006.

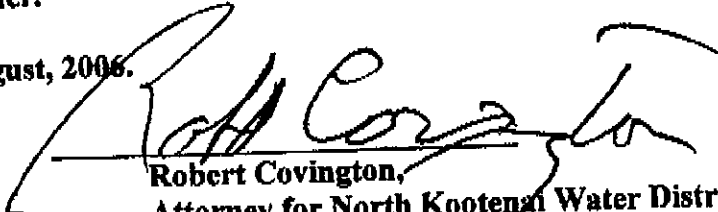
This motion is made for the following reasons:

1. The applicant has tendered a settlement offer including a proposed conservation plan to the protestants on July 25, 2006 anticipating a prompt reply and possibly further negotiation toward a resolution. As of this date, no response to the settlement offer has been received. The applicant has deferred preparation of its experts and witnesses pending the outcome of its settlement efforts such that the seven remaining days are not sufficient to adequately prepare for a presentation of data and evidence regarding the impact of a new 2 cfs diversion right on wells in the vicinity of the diversion point or the aquifer. This data can be developed and assessed by the applicant's expert within 21 days for several wells in vicinity of the proposed point of diversion. The testimony of this expert is expected to be critical to an understanding of the nature of the impact of the

requested two cfs diversion right in application on the aquifer and other users of the aquifer.

2. The applicant has submitted to IDWR for review its proposed conservation plan to address a requirement of the applicable ground water management plan. The conservation plan has been reviewed and extensively discussed with the protestant as it appears to be a principal item of concern. The applicant believes that an agreement with the protestant on the content of the conservation plan will be instrumental in narrowing the issues for consideration by the hearing examiner and thereby reduce the time and cost of the hearing process, if the entire matter is not agreed upon to the extent that the protest is withdrawn.
3. No depositions have been taken by either party at this time. The applicant believes that depositions of the experts and fact witnesses will be of benefit in focusing the presentation of evidence at the hearing on the issues in dispute. Thirty days will be sufficient time within which to procure the necessary depositions.
4. A continuance of the scheduled hearing will not prejudice the rights or interests of any party in a material manner.

Dated this 7<sup>th</sup> day of August, 2006.

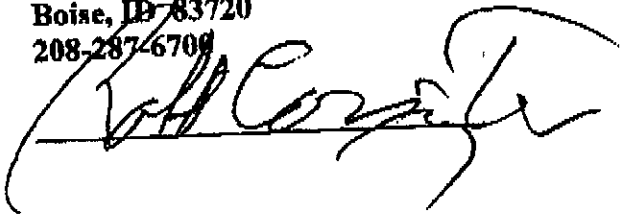
  
Robert Covington,  
Attorney for North Kootenai Water District

#### **CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing Motion to Continue Hearing was transmitted by facsimile on August 7, 2006, to:

Richard K. Eichstaedt  
Center for Justice  
35 West Main, Suite 300  
Spokane, WA 99201  
Tel: 509-835-5211  
Fax: 509-835-3867

David Tuthill  
Idaho Department of Water Resources  
The Idaho Water Center  
322 East Front Street  
Boise, ID 83720  
208-287-6700

A handwritten signature in black ink, appearing to read 'David Tuthill', is written over a horizontal line.

*Dave*

RECEIVED

JUL 31 2006

DEPARTMENT OF  
WATER RESOURCES

Richard K. Eichstaedt  
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Attorneys for Protestants

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

**IN THE MATTER OF APPLICATION )  
FOR PERMIT NO. 95-9244, IN THE )  
NAME OF NORTH KOOTENAI WATER )  
DISTRICT )**

**PROTESTANTS' EXHIBIT LIST**

Protestants, by and through their counsel, submit the following updated list of exhibits proposed for submission at the hearing in this matter. Protestants reserve the right to utilize all exhibits and materials designated and submitted by Applicant North Kootenai Water District, as well as all document in the applicant file and other pertinent documents held by the Idaho Department Water Resources, including the Idaho Department of Water Resource's database. Protestants further reserve the right to supplement this exhibit list as new information becomes available through the discovery process.

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PROTESTANTS' PRELIMINARY EXHIBIT LIST  
Page 1 of 5

CENTER FOR JUSTICE  
35 W. MAIN, SUITE 300  
SPOKANE, WA 99201  
509-835-5211

ORIGINAL

Exhibit Designation    Exhibit Description

- A Sole Source Federal Register Listing, 42 Fed. Reg. 5749 (Jan. 31, 1977) and 43 Fed. Reg. 5566 (February 2, 1978).
- B The Spokane Valley Rathdrum Prairie Aquifer Atlas (August 2000 version and 2004 version).
- C Chart, Estimates of Aquifer Groundwater at the Idaho-Washington State Line.
- D 2006 Inland Northwest Demographics: Population & Dwelling Unit Estimates & Projections
- E Article, *University of Idaho Announces \$5.5M Renewal Plan*, COEUR D'ALENE PRESS (April 19, 2006)
- F Panhandle Health District, Ground-water Quality Monitoring (March 1977)
- G Rathdrum Prairie Open Space Project, *Benefits of Open Spaces* (May 2005)
- H Bob Raucher, *The Value of Water: What It Means, Why It's Important, and How Water Utility Managers Can Use It*, 97 Journal AWWA 90 (April 2005).
- I USGS, Estimated Use of Water in the United States in 2000 (2004).
- J James P. Heanet, et al., *Nature of Residential Water Use and Effectiveness of Conservation Programs*, available at <http://bcn.boulder.co.us/basin/local/heaney.html>.
- K Results from the Seattle Home Conservation Study, available at <http://www.aquacraft.com/Publications/seattle.htm>.
- L Western Resource Advocates, Water Rate Structures in New Mexico: How New Mexico Cities Compare Using This Important Water Use Efficiency Tool (February 2006).
- M Avista, Spokane River Hydroelectric Project Application for New License, Volume II, Preliminary Draft Environmental Assessment (July 2005)(Excerpt).

- 1 N Parametrix, Rainbow Trout Radio-Tracking Survey 2004 – Final Report  
(November 2004).
- 2
- 3 O Hal Beecher, et al., Spokane River Instream Flow Recommendation (July  
30, 2004).
- 4 P IDWR, et al, Spokane Valley – Rathdrum Prairie Hydrologic Study  
5 Proposed Project Scope (July 2003).
- 6 Q Environmental Research Foundation, *The Precautionary Principle in a*  
7 *Nutshell* (August 27, 2005), available at  
[http://www.precaution.org/lib/prn\\_pp\\_def.htm](http://www.precaution.org/lib/prn_pp_def.htm).
- 8 R Washington Department of Ecology, Draft Total Maximum Daily Load to  
9 Restore and Maintain Dissolved Oxygen in the Spokane River and Lake  
Spokane (October 2004).
- 10 S Washington Department of Ecology, 2004 Water Quality Assessment  
11 (Final) - Category 5 Listings for WRIA 57 (November 2, 2005).
- 12 T Washington Department of Ecology, Spokane River and Lake Spokane  
13 (Long Lake) Pollutant Loading Assessment for Protecting Dissolved  
Oxygen (February 2004)(Excerpt).
- 14 U HDR, Spokane River Hydroelectric Project: Current Operations Water  
15 Quality Report (May 9, 2005)(Excerpt).
- 16 V NHC & HDI, Instream Flow and Fish Habitat Assessment (June 2004).
- 17 W Chart, Timeframes for Bistate Aquifer Study.
- 18 X Various Charts from Sue C. Kahle, et al., Compilation of Geologic,  
19 Hydrologic, and Ground-Water Flow Modeling Information for the  
Spokane Valley–Rathdrum Prairie Aquifer, Spokane County, Washington,  
20 and Bonner and Kootenai Counties, Idaho (2005).
- 21 Y Chart, Aquifer Recharge/Discharge Rates.
- 22 Z Chart, SVRP Recharge-Discharge Components Current Levels.
- 23 AA Various Charts from Jon E. Hortness, et al., Streamflow Trends in the  
24 Spokane River and Tributaries, Spokane Valley/Rathdrum Prairie, Idaho  
and Washington (2005).

- 1 BB Chart from Rodney R. Caldwell, et al., Surface-Water/Ground-Water  
2 Interaction of the Spokane River and the Spokane Valley/Rathdrum  
3 Prairie Aquifer, Idaho and Washington (2003).
- 4 CC Chart from USGS & Washington Department of Ecology, Spokane River  
5 Flow Annual Minimum.
- 6 DD Chart, Idaho Water Rights SVRP Appropriations Since 2001.
- 7 EE Climate Impacts Group, *PNW Temperature Trends by Station*, available at  
8 <http://www.cses.washington.edu/cig> (March 10, 2006).
- 9 FF Climate Impacts Group, *Snow Water Equivalent Trends*, available at  
10 <http://www.cses.washington.edu/cig>.
- 11 GG Climate Impacts Group, *Main Impact (II): Altered Streamflows*, available  
12 at <http://www.cses.washington.edu/cig>.
- 13 HH AWWARF, *Residential Water Use Summary* (1999).
- 14 II San Antonio Water System, Water Resource Plan Update (June 21, 2005).
- 15 JJ Spokane County, WRIA 57 Watershed Management Plan (June  
16 2003)(Excerpt).
- 17 KK North Kootenai Water District, Use Summary and Capacity Requirements  
18 (March 16, 2006).
- 19 LL Tom Fox, PE, Curriculum Vitae.
- 20 MM Gary Andres, Curriculum Vitae.
- 21 NN Kenneth W. Lustig, Curriculum Vitae.
- 22 OO Chris Donley, Curriculum Vitae.
- 23 PP Brian Crossley, Curriculum Vitae.
- 24 QQ Spokane River Fishery Evaluation (1991).
- 25 RR Underwood and Bennett, *Effects of Fluctuations Flows on the Population*  
*Dynamics of Rainbow Trout in the Spokane River of Idaho*, 66 Northwest  
Science 261 (1992).

1 SS Bailey and Saltes, Fisheries Assessment of the Upper Spokane River (June  
2 1982).

3 TT Bennett and Underwood, Population Dynamics and Factors Affecting  
4 Rainbow Trout (*Salmo gairdneri*) in the Spokane River, Idaho (February  
5 1988).

6 UU Letter from Eric Johnson, Fisheries Biologist, WWP, to Ray Duff, WDFW  
7 (December 28, 2005).

8 VV Washington Department of Fish and Wildlife's Comments,  
9 Recommendations, Terms and Conditions for Avista's Spokane River  
10 Project (July 17, 2006).

11 DATED this 28<sup>th</sup> day of July, 2006.

12 

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Rick Eichstaedt  
13 Counsel for Protestants  
14 Sierra Club and Friends of the Aquifer  
15  
16  
17  
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19  
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23  
24

1 Richard K. Eichstaedt  
Idaho Bar #5801  
2 Center for Justice  
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5 **BEFORE THE DEPARTMENT OF WATER RESOURCES**  
6 **OF THE STATE OF IDAHO**

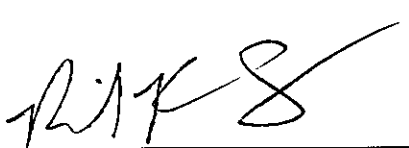
7 **IN THE MATTER OF APPLICATION** )  
8 **FOR** ) **NOTICE OF MAILING**  
9 **PERMIT NO..95-9244, IN THE NAME OF** )  
10 **NORTH KOOTENAI WATER DISTRICT** )

11 I hereby certify that I served the foregoing **PROTESTANTS' EXHIBIT LIST** and  
12 **PROTESTANTS' SUPPLEMENTAL RESPONSE TO INTERROGATORIES AND**  
13 **REQUESTS FOR PRODUCTION** by the following indicated method or methods:

14 ☒ By first class U.S. Mail, a full, true, and correct copies thereof in sealed, envelopes,  
15 addressed to the person(s) as shown below, the last-known address(es) of the person(s),  
and deposited at Spokane, Washington on the date set forth below.

16 **Robert E. Covington III**  
17 **Lockhaven Square**  
18 **8884 N. Government Way, Suite A**  
**Hayden, ID 83835**

19 DATED this 28<sup>th</sup> day of July, 2006.

20   
21 \_\_\_\_\_  
22 Rick Eichstaedt

1 Richard K. Eichstaedt  
Idaho Bar #5801  
2 Center for Justice  
35 W. Main, Suite 300  
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5 Rachael Paschal Osborn  
6 Washington State Bar#21618  
2421 W. Mission Ave.  
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Attorneys for Protestants  
9

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JUL 25 2005  
IDWR/North

10 BEFORE THE DEPARTMENT OF WATER RESOURCES  
11 OF THE STATE OF IDAHO

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25 )  
IN THE MATTER OF APPLICATION FOR  
PERMIT NO. 95-9244 IN THE NAME OF  
NORTH KOOTENAI WATER DISTRICT

REQUEST FOR PREHEARING  
CONFERENCE

15 Pursuant to Rule of Procedure 510 of the Idaho Department of Water Resources,  
16 protestants, North Kootenai Water District and Sierra Club, Upper Columbia River Group,  
17 respectfully request the scheduling of a prehearing conference in the above entitled matter. The  
18 protest in this matter was filed on October 25, 2004, and no prehearing conference has yet  
19 occurred in this matter.

20 Accordingly, protestants request a prehearing conference for the purpose of establishing a  
21 schedule for the expeditious resolution of this matter.

22 DATED this 21st day of July, 2005.

23   
24 RICHARD K. EICHSTAEDT  
IDAHO BAR #5801

25 REQUEST FOR PREHEARING CONFERENCE- 1

CENTER FOR JUSTICE  
35 W. MAIN, SUITE 300  
SPOKANE, WA 99201  
509-835-5211

ORIGINAL

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that I have this 21<sup>st</sup> day of July, 2005, served the foregoing **Request for PreHearing Conference** document upon all parties of record in this proceeding, by mailing a copy thereof, properly addressed with postage prepaid, to:

Robert Haynes  
Idaho Department of Water Resources  
Northern Region Office  
1910 Northwest Blvd., Suite 210  
Coeur d'Alene, ID 83814-2615

Teresa A. Hampton, Esq.  
Hampton & Elliott  
Attorneys at Law  
P.O. Box 1352  
Boise, ID 83701-1352

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JUL 25 2005

IDWR/North

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2421 W. Mission Ave.  
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Debi Bacot, Paralegal

RECEIVED

JUL 18 2006

DEPARTMENT OF  
WATER RESOURCES

Richard K. Eichstaedt  
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35 W. Main, Suite 300  
Spokane, WA 99201  
Telephone: (509) 835.5211  
Fax: (509) 835.3867  
Attorney for Protestants

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

**IN THE MATTER OF APPLICATION  
FOR  
PERMIT NO. 95-9244 IN THE NAME OF  
NORTH KOOTENAI WATER DISTRICT**

**SECOND MOTION TO COMPEL  
ANSWER TO DISCOVERY**

COMES NOW the Protestants and move the Idaho Department of Water Resources for an Order compelling Applicant North Kootenai Water District to answer Protestants' First Set of Interrogatories and Requests for Production pursuant to Idaho Department of Water Resources Rule of Procedure 521 and Idaho Rule of Civil Procedure 37. In addition, Protestants requests an extension of at least one week of the deadline for depositions to ensure that discovery has been answered and to allow its utilization in the depositions of Applicant's expert witnesses.

DATED this 14<sup>th</sup> day of July, 2006.



RICHARD K. EICHSTAEDT  
IDAHO BAR #5801  
ATTORNEY FOR PROTESTANTS

ORIGINAL

STATE OF WASHINGTON )  
 ) ss:  
COUNTY OF SPOKANE )

RICHARD K. EICHSTAEDT, being first duly sworn on oath, deposes and says:

That on March 16, 2006 Protestants caused Protestants' First Set of Interrogatories and Requests for Production to be served upon the Applicant North Kootenai Water District's attorney. Protestants have not received the Answers to these documents, nor have any objections been served or filed.

Over the past several months, Protestants have made several attempts in good faith, both verbally and in writing, to obtain a date when answers to the discovery requests could be expected. To date, Applicant has not been willing to comply with Protestants' numerous requests for the discovery responses.

On May 10, 2006, Protestants caused to be filed their First Motion to Compel Discovery.

On June 13, 2006, the Hearing Officer issued an order directing the parties to produce a list of expert witnesses by June 30, 2006 and to serve answers to discovery on the opposing party by July 10, 2006. Depositions are scheduled to be completed by July 21, 2006.

As of this date, Protestants have received no answers to any discovery requests and have not produced an updated list of witnesses.

This failure to produce discovery adversely impacts the ability of Protestants to move toward the completion of this matter. Answers to discovery requests are necessary to

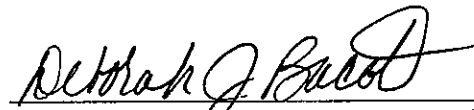
adequately conduct depositions of Applicant's expert witnesses. Without answers to discovery requests, Protestants have been forced to request additional time to conduct depositions and may be ultimately need to request a further delay of the hearing on this matter.



RICHARD K. EICHSTAEDT  
IDAHO BAR #5801  
ATTORNEY FOR PROTESTANTS

SUBSCRIBED AND SWORN TO before me this 14<sup>th</sup> day of July, 2006.

**Notary Public**  
**State of Washington**  
**Deborah J Bacot**  
**Commission Expires 07/31/08**



Notary Public in and for the State of Washington  
[Print Name ] Deborah J. Bacot  
My Commission Expires: 7/31/08

Richard K. Eichstaedt  
Idaho Bar #5801  
Center for Justice  
35 W. Main, Suite 300  
Spokane, WA 99201  
Telephone: (509) 835.5211  
Fax: (509) 835.3867

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

**IN THE MATTER OF APPLICATION  
FOR  
PERMIT NO. 95-9244, IN THE NAME OF  
NORTH KOOTENAI WATER DISTRICT**

**NOTICE OF MAILING**

I hereby certify that I served the foregoing **MOTION TO COMPEL ANSWER TO  
DISCOVERY** by the following indicated method or methods:

- ☒ By **mailing** via First Class U.S. Mail, a true, and correct copies thereof in sealed, envelopes, addressed to the person(s) as shown below, the last-known address(es) of the person(s), and deposited at Spokane, Washington on the date set forth below.

**Robert E. Covington III  
Lockhaven Square  
8884 N. Government Way, Suite A  
Hayden, ID 83835**

DATED this 14<sup>th</sup> day of July, 2006.

  
Debi Bacot

## SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

RACHAEL PASCHAL OSBORN  
2421 W MISSION AVE  
SPOKANE W

## COMPLETE THIS SECTION ON DELIVERY

A. Signature

*R P Osborn* ☐ Agent  
☒ Addressee

B. Received by (Printed Name)

R P Osborn

C. Date of Delivery

6-20-06

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

## SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

RICHARD K EICHSTAEDT  
CENTER FOR JUSTICE  
35 W MAIN ST  
SPOKANE

## COMPLETE THIS SECTION ON DELIVERY

A. Signature

*Rosie Ennis* ☐ Agent  
☒ Addressee

B. Received by (Printed Name)

ROSIE ENNIS

C. Date of Delivery

6-19-06

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

3. Service Type

## SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

NORTH KOOTENAI WATER DIST  
C/O ROBERT E COVINGTON III  
8884 N GOVERNMENT WY STE A  
HAYDEN LAKE ID 83835

## COMPLETE THIS SECTION ON DELIVERY

A. Signature

*Amanda Cutts* ☒ Agent  
☐ Addressee

B. Received by (Printed Name)

Amanda Cutts

C. Date of Delivery

6/16/06

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

3. Service Type

- ☒ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from)

7005 1160 0000 1544 4433

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

9244 4451 0000 0911 5005

**U.S. Postal Service™**  
**CERTIFIED MAIL™ RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

|                                                   |    |
|---------------------------------------------------|----|
| Postage                                           | \$ |
| Certified Fee                                     |    |
| Return Receipt Fee<br>(Endorsement Required)      |    |
| Restricted Delivery Fee<br>(Endorsement Required) |    |
| Total Postage & Fees                              | \$ |

6/14/06  
 Postmark Here  
*[Signature]*

Sent To  
 Street, Apt. or PO Box  
 City, State

**RACHAEL PASCHAL OSBORN**  
**2421 W MISSION AVE**  
**SPOKANE WA 99201**

PS Form 3800, June 2002

5344 4451 0000 0911 5005

**U.S. Postal Service™**  
**CERTIFIED MAIL™ RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

|                                                   |    |
|---------------------------------------------------|----|
| Postage                                           | \$ |
| Certified Fee                                     |    |
| Return Receipt Fee<br>(Endorsement Required)      |    |
| Restricted Delivery Fee<br>(Endorsement Required) |    |
| Total Postage & Fees                              | \$ |

6/14/06  
 Postmark Here  
*[Signature]*

Sent To  
 Street, Apt. or PO Box  
 City, State

**NORTH KOOTENAI WATER DIST**  
**C/O ROBERT E COVINGTON III**  
**8884 N GOVERNMENT WY STE A**  
**HAYDEN LAKE ID 83835**

PS Form 3800, June 2002

0440 4451 0000 0911 5005

**U.S. Postal Service™**  
**CERTIFIED MAIL™ RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

|                                                   |    |
|---------------------------------------------------|----|
| Postage                                           | \$ |
| Certified Fee                                     |    |
| Return Receipt Fee<br>(Endorsement Required)      |    |
| Restricted Delivery Fee<br>(Endorsement Required) |    |
| Total Postage & Fees                              | \$ |

6/14/06  
 Postmark Here  
*[Signature]*

Sent To  
 Street, Apt. or PO Box  
 City, State

**RICHARD K EICHSTAEDT**  
**CENTER FOR JUSTICE**  
**35 W MAIN STE 300**  
**SPOKANE WA 99201**

PS Form 3800, June 2002

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

|                                         |          |                         |
|-----------------------------------------|----------|-------------------------|
| <b>IN THE MATTER OF APPLICATION FOR</b> | <b>)</b> | <b>THIRD NOTICE OF</b>  |
| <b>PERMIT TO APPROPRIATE WATER NO.</b>  | <b>)</b> | <b>HEARING, ORDER</b>   |
| <b>95-9244 IN THE NAME OF NORTH</b>     | <b>)</b> | <b>AUTHORIZING</b>      |
| <b>KOOTENAI WATER DISTRICT</b>          | <b>)</b> | <b>DISCOVERY, AND</b>   |
| <hr/>                                   | <b>)</b> | <b>PREHEARING ORDER</b> |

On April 24, 2006, the Applicant, North Kootenai Water District, and the Protestants, Upper Columbia River Group of the Sierra Club and Friends of the Aquifer, by and through their attorneys of record, jointly requested a continuance of hearing and adjustment of the discovery schedule in the above-titled matter.

**ORDER**

IT IS HEREBY ORDERED that the parties may continue discovery as previously ordered with the following changes:

1. On or before June 30, 2006, each party must disclose to all other parties, in writing, the identity of all expert witnesses that will or may testify at the hearing.
2. Answers to written discovery must be served on the requesting party on or before July 10, 2006.
3. All depositions shall be completed on or before July 21, 2006.

IT IS FURTHER ORDERED that, on or before August 4, 2006, each party must serve on all other parties copies of exhibits that may be offered at the hearing. Service of prospective exhibits is not complete unless the documents are delivered to the receiving party on or before August 4, 2006.

IT IS FURTHER ORDERED that, the Motion to Compel is addressed by the scheduling for discovery above.

**NOTICE OF HEARING**

**PLEASE TAKE NOTICE** that the hearing set for May 1 – 3, 2006 has been vacated at the request of the protestants. The hearing has been rescheduled for **August 14, 15, & 16, 2006 beginning at 9:00 a.m.** at the Idaho Department of Water Resources' office located at 1910 Northwest Blvd., Suite 210, Coeur d'Alene, Idaho (Telephone: 208-769-1450).

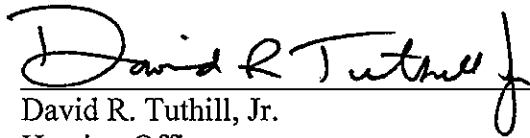
If you plan to offer exhibits for the record at the hearing, note that Rule 606 of the department's Rules of Procedure requires that a copy be provided to each party and to the presiding officer.

The presiding officer at the hearing will be David R. Tuthill, Jr.

The hearing will be held in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the department. IDAPA 37.01.01. A copy of the rules may be obtained from the department upon request.

The hearing will be conducted in accordance with the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within twenty-four hours prior to the hearing. Inquires about scheduling, hearing facilities, etc., should be directed to Deborah Gibson, Administrative Assistant, Idaho Department of Water Resources, P.O. Box 83720, Boise, ID 83720-0098, telephone (208)287-4942, fax (208) 287-6700.

Dated this 13<sup>th</sup> day of June, 2006.

  
David R. Tuthill, Jr.  
Hearing Officer

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14<sup>th</sup> day of June, 2006, a true and correct copy of the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following

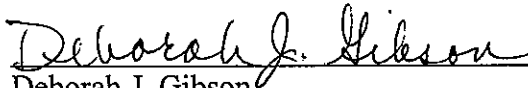
Document(s) Served: Third Notice of Hearing, Order Authorizing Discovery, and Prehearing Order

NORTH KOOTENAI WATER DISTRICT  
C/O ROBERT E COVINGTON III  
8884 N GOVERNMENT WY STE A  
HAYDEN LAKE ID 83835

RICHARD K EICHSTAEDT  
CENTER FOR JUSTICE  
35 W MAIN STE 300  
SPOKANE WA 99201

RACHAEL PASCHAL OSBORN  
2421 W MISSION AVE  
SPOKANE WA 99201

IDWR – NORTHERN REGION  
1910 NORTHWEST BLVD STE 210  
COEUR D'ALENE ID 83814-2615

  
Deborah J. Gibson  
Administrative Assistant

**RECEIVED****JUN 05 2006****DEPARTMENT OF  
WATER RESOURCES**

Richard K. Eichstaedt  
Idaho Bar #5801  
Center for Justice  
35 W. Main, Suite 300  
Spokane, WA 99201  
Telephone: (509) 835.5211  
Fax: (509) 835.3867

Rachael Paschal Osborn  
Washington State Bar #21618  
2421 W. Mission Ave.  
Spokane, WA 99201  
Telephone: (509) 328.1087  
Fax: (509) 328.8144  
Attorneys for Protestants

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

|                                       |   |                                      |
|---------------------------------------|---|--------------------------------------|
| <b>IN THE MATTER OF APPLICATION</b>   | ) | <b>PROTESTANTS' REQUEST TO AMEND</b> |
| <b>FOR PERMIT NO. 95-9244, IN THE</b> | ) | <b>EXPERT WITNESS LIST</b>           |
| <b>NAME OF NORTH KOOTENAI WATER</b>   | ) |                                      |
| <b>DISTRICT</b>                       | ) |                                      |

Protestants, Upper Columbia River Group of the Sierra Club and Friends of the Aquifer, respectfully request leave to amend the previously submitted list of expert witnesses to include the two witnesses identified below to testify at the hearing in above titled matter.

No party will be prejudiced by the addition of these witnesses. As indicated by Protestants' motion for a hearing date, depositions in this matter have yet to occur, thus affording the Applicant an opportunity to depose these witnesses in this matter. In addition, Protestants have previously disclosed, through responses to Applicant's discovery requests, that then- unidentified witnesses would testify on the matters to which the witnesses identified below will

1 testify. Given the timing of discovery and the previous disclosure, no parties will be harmed or  
2 otherwise prejudiced by allowing the amendment of Protestants' list of expert witnesses.

3 Additional Witnesses

- 4 1. Brian Crossley  
5 Spokane Tribe  
6 P.O. Box 100  
Wellpinit, Washington 99040

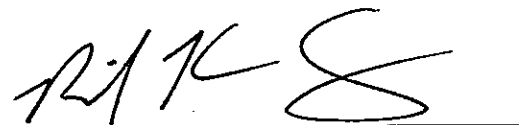
7 Mr. Crossley will testify concerning water quality issues in the Spokane River and water quality  
8 impacts associated with diminished and/or altered flows.

- 9 2. Chris Donley  
10 Washington Department of Fish and Wildlife  
2315 N Discovery Place  
11 Spokane Valley, Washington 99216-1566

12 Mr. Donley will testify regarding fisheries resources in the Spokane River and the impacts of  
13 diminished/altered flows on those resources.

14 Protestants further reserve the right to amend this list based upon the outcome of  
15 discovery.

16 DATED this 1<sup>st</sup> day of June, 2006.

17   
18 Rick Eichstaedt  
19 Counsel for Protestants  
20 Sierra Club and Friends of the Aquifer  
21  
22  
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7 **BEFORE THE DEPARTMENT OF WATER RESOURCES**  
8 **OF THE STATE OF IDAHO**

9 **IN THE MATTER OF APPLICATION**  
10 **FOR PERMIT NO. 95-9244 IN THE**  
11 **NAME OF NORTH KOOTENAI WATER**  
12 **DISTRICT**

**CERTIFICATE OF SERVICE**

13 DEBI BACOT states that I am a citizen of the United States of America and of the  
14 State of Washington, over the age of 21 years, not a party to the above-entitled action, and  
15 competent to be a witness therein; that on June 1, 2006, I caused to be served a true and correct  
16 copy of the foregoing document(s):

17 **REQUEST TO AMEND EXPERT WITNESS LIST**

18 By the method indicated below, and addressed to the following:

19 **David L. Tuthill, Jr., Hearings Officer**  
20 **Idaho Dept. of Water Resources**  
21 **The Idaho Water Center**  
22 **322 E. Front St.**  
**Boise, ID 83720-009**

☐ Personal Service  
☒ U.S. Mail  
☐ Hand-Delivered  
☐ Overnight Mail  
☒ Facsimile

23 **Robert E. Covington, III**  
24 **Lockhaven Square**  
**8884 N. Government Way, Ste. A**  
25 **Hayden, ID 83835**

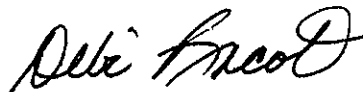
☐ Personal Service  
☒ U.S. Mail  
☐ Hand-Delivered  
☐ Overnight Mail  
☐ Facsimile

Certificate of Mailing - 1

Center For Justice  
Community Building  
35 West Main, Suite 300  
Spokane, Washington  
Telephone: 509 835 5211  
Fax: 509 835 3867

1 I certify under penalty of perjury under the laws of the State of Washington that the  
2 foregoing is true and correct.  
3

4 DATED this 1<sup>st</sup> day of June, 2006.

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6 DEBI BACOT  
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RECEIVED

MAY 19 2006

Department of Water Resources

Richard K. Eichstaedt  
Idaho Bar #5801  
Center for Justice  
35 W. Main, Suite 300  
Spokane, WA 99201  
Telephone: (509) 835.5211  
Fax: (509) 835.3867

Rachael Paschal Osborn  
Washington State Bar#21618  
2421 W. Mission Ave.  
Spokane, WA 99201  
Telephone: (509) 328.1087  
Fax: (509) 328.8144  
Attorneys for Protestants

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR )  
PERMIT NO. 95-9244 IN THE NAME OF ) REQUEST FOR ESTABLISHMENT OF  
NORTH KOOTENAI WATER DISTRICT ) HEARING DATE AND ADJUSTMENT OF  
DISCOVERY

Protestants, Upper Columbia River Group of the Sierra Club and Friends of the Aquifer, respectfully request an order establishing a hearing date for the above titled matter. The previous hearing date was vacated due to a joint request of the parties in this matter. However, a new hearing date has not yet been established. According to agency staff, Debbie Gibson, counsel for the Applicant has been unresponsive to efforts to reschedule the hearing. Given this unresponsiveness, Protestants request that a new date simply be established to allow this matter to proceed.

Protestants further request an adjustment of the discovery deadline to allow the completion of discovery within a reasonable period prior to the hearing. As indicated by

REQUEST FOR ESTABLISHMENT OF HEARING  
DATE AND ADJUSTMENT OF DISCOVERY - 1

CENTER FOR JUSTICE  
35 W. MAIN, SUITE 300  
SPOKANE, WA 99201  
509-835-5211

ORIGINAL

1 Protestants' Motion to Compel, the Applicant has failed to respond to written discovery requests.  
2 The failure to respond has hampered efforts to conduct depositions of the Applicant's identified  
3 expert witnesses. Accordingly, Protestants request that the agency take prompt action to order  
4 the production of the requested discovery and then allow a reasonable period of time following  
5 that to conduct depositions.

6 DATED this 16<sup>th</sup> day of May, 2006.

7  
8 

9 RICHARD K. EICHSTAEDT  
10 IDAHO BAR #5801  
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TUTHILL  
RECEIVED

MAY 19 2006

DEPARTMENT OF  
WATER RESOURCES

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION  
FOR PERMIT NO. 95-9244 IN THE  
NAME OF NORTH KOOTENAI WATER  
DISTRICT

CERTIFICATE OF SERVICE

DEBI BACOT states that I am a citizen of the United States of America and of the State of Washington, over the age of 21 years, not a party to the above-entitled action, and competent to be a witness therein; that on May 16, 2006, I caused to be served a true and correct copy of the foregoing document(s):

REQUEST FOR ESTABLISHMENT OF HEARING DATE AND ADJUSTMENT  
OF DISCOVERY

By the method indicated below, and addressed to the following:

David L. Tuthill, Jr., Hearings Officer  
Idaho Dept. of Water Resources  
The Idaho Water Center  
322 E. Front St.

|                                     |                  |
|-------------------------------------|------------------|
| <input type="checkbox"/>            | Personal Service |
| <input checked="" type="checkbox"/> | U.S. Mail        |
| <input type="checkbox"/>            | Hand-Delivered   |
| <input type="checkbox"/>            | Overnight Mail   |
| <input type="checkbox"/>            | Facsimile        |

Certificate of Mailing - 1

ORIGINAL

Center For Justice  
Community Building  
35 West Main, Suite 300  
Spokane, Washington  
Telephone: 509 835 5211  
Fax: 509 835 3867

1 **Robert E. Covington, III**  
2 **Lockhaven Square**  
3 **8884 N. Government Way, Ste. A**  
4 **Hayden, ID 83835**

☐ Personal Service  
☒ U.S. Mail  
☐ Hand-Delivered  
☐ Overnight Mail  
☐ Facsimile

5 I certify under penalty of perjury under the laws of the State of Washington that the  
6 foregoing is true and correct.

7 DATED this 16<sup>th</sup> day of MAY, 2006.

8   
9 DEBI BACOT

RECEIVED

MAY 15 2006

DEPARTMENT OF  
WATER RESOURCES

Richard K. Eichstaedt  
Idaho Bar #5801  
Center for Justice  
35 W. Main, Suite 300  
Spokane, WA 99201  
Telephone: (509) 835.5211  
Fax: (509) 835.3867  
Attorney for Protestants

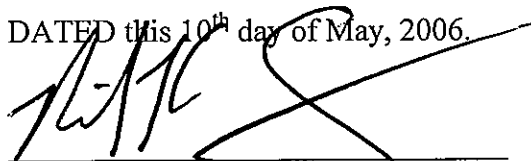
BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION  
FOR  
PERMIT NO. 95-9244 IN THE NAME OF  
NORTH KOOTENAI WATER DISTRICT

MOTION TO COMPEL ANSWER TO  
DISCOVERY

COMES NOW the Protestants and move the Idaho Department of Water Resources for an Order compelling Applicant North Kootenai Water District to answer Protestants' First Set of Interrogatories and Requests for Production pursuant to Idaho Department of Water Resources Rule of Procedure 521 and Idaho Rule of Civil Procedure 37.

DATED this 10<sup>th</sup> day of May, 2006.



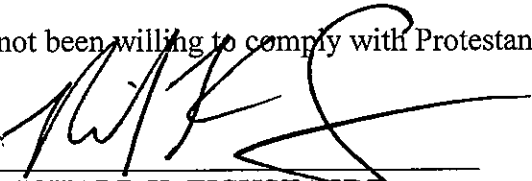
RICHARD K. EICHSTAEDT  
IDAHO BAR #5801  
ATTORNEY FOR PROTESTANTS

STATE OF WASHINGTON )  
 ) ss:  
COUNTY OF SPOKANE )

RICHARD K. EICHSTAEDT, being first duly sworn on oath, deposes and says:

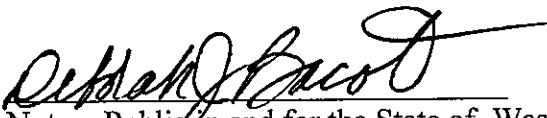
That on March 16, 2006 Protestants caused Protestants' First Set of Interrogatories and Requests for Production to be served upon the Applicant North Kootenai Water District's attorney. Protestants have not received the Answers to these documents, nor have any objections been served or filed.

Protestants have made several attempts in good faith, both verbally and in writing, to obtain a date when answers to the discovery requests could be expected. To date, Applicant has not been willing to comply with Protestants' numerous requests for the discovery responses.

  
\_\_\_\_\_  
RICHARD K. EICHSTAEDT  
IDAHO BAR #5801  
ATTORNEY FOR PROTESTANTS

SUBSCRIBED AND SWORN TO before me this 10<sup>th</sup> day of May, 2006.

Notary Public  
State of Washington  
Deborah J Bacot  
Commission Expires 07/31/08

  
\_\_\_\_\_  
Notary Public in and for the State of Washington  
[Print Name] Deborah J. Bacot  
My Commission Expires: 7/31/08

Richard K. Eichstaedt  
Idaho Bar #5801  
Center for Justice  
35 W. Main, Suite 300  
Spokane, WA 99201  
Telephone: (509) 835.5211  
Fax: (509) 835.3867

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

**IN THE MATTER OF APPLICATION  
FOR  
PERMIT NO. 95-9244, IN THE NAME OF  
NORTH KOOTENAI WATER DISTRICT**

**NOTICE OF MAILING**

I hereby certify that I served the foregoing **MOTION TO COMPEL ANSWER TO  
DISCOVERY** by the following indicated method or methods:

- ☒ By **mailing** via First Class U.S. Mail, a true, and correct copies thereof in sealed, envelopes, addressed to the person(s) as shown below, the last-known address(es) of the person(s), and deposited at Spokane, Washington on the date set forth below.

**Robert E. Covington III  
Lockhaven Square  
8884 N. Government Way, Suite A  
Hayden, ID 83835**

DATED this 10<sup>th</sup> day of May, 2006.

  
Debi Bacot

Richard K. Eichstaedt  
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Washington State Bar#21618  
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Attorneys for Protestants

RECEIVED  
MAY 05 2003  
DEPARTMENT OF  
WATER RESOURCES

*Done*

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

|                                                                                                                      |                       |                                                  |
|----------------------------------------------------------------------------------------------------------------------|-----------------------|--------------------------------------------------|
| <b>IN THE MATTER OF APPLICATION<br/>FOR PERMIT NO. 95-9244, IN THE<br/>NAME OF NORTH KOOTENAI WATER<br/>DISTRICT</b> | )<br>)<br>)<br>)<br>) | <b>PROTESTANTS' PRELIMINARY<br/>EXHIBIT LIST</b> |
|----------------------------------------------------------------------------------------------------------------------|-----------------------|--------------------------------------------------|

Protestants, by and through their counsel, submit the following list of exhibits proposed for submission at the hearing in this matter. Protestants reserve the right to utilize all exhibits and materials designated and submitted by Applicant North Kootenai Water District, as well as all document in the applicant file and other pertinent documents held by the Idaho Department Water Resources, including the Idaho Department of Water Resource's database. Protestants further reserve the right to supplement this exhibit list as new information becomes available through the discovery process.

///

///

PROTESTANTS' PRELIMINARY EXHIBIT LIST  
Page 1 of 4

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SPOKANE, WA 99201  
509-835-5211

Exhibit Designation    Exhibit Description

- A                    Sole Source Federal Register Listing, 42 Fed. Reg. 5749 (Jan. 31, 1977) and 43 Fed. Reg. 5566 (February 2, 1978).
- B                    The Spokane Valley Rathdrum Prairie Aquifer Atlas (August 2000 version and 2004 version).
- C                    Chart, Estimates of Aquifer Groundwater at the Idaho-Washington State Line.
- D                    2006 Inland Northwest Demographics: Population & Dwelling Unit Estimates & Projections
- E                    Article, *University of Idaho Announces \$5.5M Renewal Plan*, COEUR D'ALENE PRESS (April 19, 2006)
- F                    Panhandle Health District, Ground-water Quality Monitoring (March 1977)
- G                    Rathdrum Prairie Open Space Project, *Benefits of Open Spaces* (May 2005)
- H                    Bob Raucher, *The Value of Water: What It Means, Why It's Important, and How Water Utility Managers Can Use It*, 97 Journal AWWA 90 (April 2005).
- I                    USGS, Estimated Use of Water in the United States in 2000 (2004).
- J                    James P. Heanet, et al., *Nature of Residential Water Use and Effectiveness of Conservation Programs*, available at <http://bcn.boulder.co.us/basin/local/heaney.html>.
- K                    Results from the Seattle Home Conservation Study, available at <http://www.aquacraft.com/Publications/seattle.htm>.
- L                    Western Resource Advocates, Water Rate Structures in New Mexico: How New Mexico Cities Compare Using This Important Water Use Efficiency Tool (February 2006).
- M                    Avista, Spokane River Hydroelectric Project Application for New License, Volume II, Preliminary Draft Environmental Assessment (July 2005)(Excerpt).

- 1 N Parametrix, Rainbow Trout Radio-Tracking Survey 2004 – Final Report  
2 (November 2004).
- 3 O Hal Beecher, et al., Spokane River Instream Flow Recommendation (July  
4 30, 2004).
- 5 P IDWR, et al, Spokane Valley – Rathdrum Prairie Hydrologic Study  
6 Proposed Project Scope (July 2003).
- 7 Q Environmental Research Foundation, *The Precautionary Principle in a*  
8 *Nutshell* (August 27, 2005), available at  
9 [http://www.precaution.org/lib/prn\\_pp\\_def.htm](http://www.precaution.org/lib/prn_pp_def.htm).
- 10 R Washington Department of Ecology, Draft Total Maximum Daily Load to  
11 Restore and Maintain Dissolved Oxygen in the Spokane River and Lake  
12 Spokane (October 2004).
- 13 S Washington Department of Ecology, 2004 Water Quality Assessment  
14 (Final) - Category 5 Listings for WRIA 57 (November 2, 2005).
- 15 T Washington Department of Ecology, Spokane River and Lake Spokane  
16 (Long Lake) Pollutant Loading Assessment for Protecting Dissolved  
17 Oxygen (February 2004)(Excerpt).
- 18 U HDR, Spokane River Hydroelectric Project: Current Operations Water  
19 Quality Report (May 9, 2005)(Excerpt).
- 20 V NHC & HDI, Instream Flow and Fish Habitat Assessment (June 2004).
- 21 W Chart, Timeframes for Bistate Aquifer Study.
- 22 X Various Charts from Sue C. Kahle, et al., Compilation of Geologic,  
23 Hydrologic, and Ground-Water Flow Modeling Information for the  
24 Spokane Valley–Rathdrum Prairie Aquifer, Spokane County, Washington,  
25 and Bonner and Kootenai Counties, Idaho (2005).
- Y Chart, Aquifer Recharge/Discharge Rates.
- Z Chart, SVRP Recharge-Discharge Components Current Levels.
- AA Various Charts from Jon E. Hortness, et al., Streamflow Trends in the  
Spokane River and Tributaries, Spokane Valley/Rathdrum Prairie, Idaho  
and Washington (2005).

- 1 BB Chart from Rodney R. Caldwell, et al., Surface-Water/Ground-Water  
2 Interaction of the Spokane River and the Spokane Valley/Rathdrum  
3 Prairie Aquifer, Idaho and Washington (2003).
- 4 CC Chart from USGS & Washington Department of Ecology, Spokane River  
5 Flow Annual Minimum.
- 6 DD Chart, Idaho Water Rights SVRP Appropriations Since 2001.
- 7 EE Climate Impacts Group, *PNW Temperature Trends by Station*, available at  
8 <http://www.cses.washington.edu/cig> (March 10, 2006).
- 9 FF Climate Impacts Group, *Snow Water Equivalent Trends*, available at  
10 <http://www.cses.washington.edu/cig>.
- 11 GG Climate Impacts Group, *Main Impact (II): Altered Streamflows*, available  
12 at <http://www.cses.washington.edu/cig>.
- 13 HH AWWARF, *Residential Water Use Summary* (1999).
- 14 II San Antonio Water System, Water Resource Plan Update (June 21, 2005).
- 15 JJ Spokane County, WRIA 57 Watershed Management Plan (June  
16 2003)(Excerpt).
- 17 KK North Kootenai Water District, Use Summary and Capacity Requirements  
18 (March 16, 2006).
- 19 LL Tom Fox, PE, Curriculum Vitae.
- 20 MM Gary Andres, Curriculum Vitae.
- 21 NN Kenneth W. Lustig, Curriculum Vitae.

22 DATED this 1<sup>st</sup> day of May, 2006.

23   
24 Rick Eichstaedt  
25 Counsel for Protestants  
Sierra Club and Friends of the Aquifer

Richard K. Eichstaedt  
Idaho Bar #5801  
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**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

**IN THE MATTER OF APPLICATION ) NOTICE OF MAILING  
FOR )  
PERMIT NO. 95-9244, IN THE NAME OF )  
NORTH KOOTENAI WATER DISTRICT )**

I hereby certify that I served the foregoing **PROTESTANTS' PRELIMINARY  
EXHIBIT LIST and PROTESTANTS' RESPONSE TO INTERROGATORIES AND  
REQUESTS FOR PRODUCTION** by the following indicated method or methods:

☒ By first class U.S. Mail, a full, true, and correct copies thereof in sealed, envelopes,  
addressed to the person(s) as shown below, the last-known address(es) of the person(s),  
and deposited at Spokane, Washington on the date set forth below.

**Robert E. Covington III  
Lockhaven Square  
8884 N. Government Way, Suite A  
Hayden, ID 83835**

DATED this 1<sup>st</sup> day of May, 2006.

  
Rick Eichstaedt

# ROBERT E. COVINGTON, III

ATTORNEY AT LAW  
8884 N. GOVERNMENT WAY, SUITE A  
HAYDEN LAKE, ID 83835

TELEPHONE: (208) 762-4545  
FAX: (208) 762-4546

RECEIVED

APR 24 2006  
DEPARTMENT OF  
WATER RESOURCES

April 21, 2006

Gary Spackman, Hearing Officer  
Idaho Department of Water Resources  
322 E. Front Street  
PO Box 83720  
Boise, ID 83720-0098

Re: Application for Permit No. 95-9244  
North Kootenai Water District, Applicant

Dear Mr. Spackman:

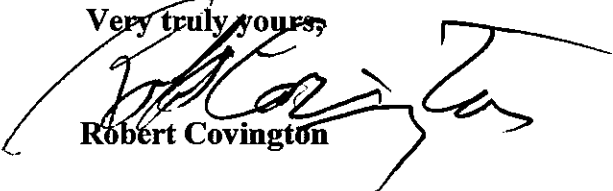
Please find the following enclosed filing in the above matter:

Stipulated Request for Continuance and Adjustment of Discovery Schedule

Mr. Eichstaedt and I remain in good contact as we work through our discovery. We believe that the new schedule is workable for both of us. Let us know if you have any questions or comments.

The suggested hearing dates are available for both of us. Let us know if the dates are not workable for you.

Very truly yours,

  
Robert Covington

REC/ac

Cc: client

Eichstaedt

Richard K. Eichstaedt  
Idaho Bar #5801  
Center for Justice  
35 W. Main, Suite 300  
Spokane, WA 99201  
Telephone: (509) 835.5211  
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Telephone: (509) 328.1087  
Fax: (509) 328.8144  
Attorneys for Protestants

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

IN THE MATTER OF APPLICATION

FOR

PERMIT NO. 95-9244 IN THE NAME OF  
NORTH KOOTENAI WATER DISTRICT

STIPULATED REQUEST FOR  
CONTINUANCE AND ADJUSTMENT OF  
DISCOVERY SCHEDULE

Pursuant to Rule of Procedure 561 of the Idaho Department of Water Resources,  
Applicant, North Kootenai Water District, and Protestants, Upper Columbia River Group of the  
Sierra Club and Friends of the Aquifer, jointly request an order extending the time frame for  
discovery and rescheduling the dates for the hearing in the above titled matter. Due to  
scheduling difficulties, the parties have been unable to complete discovery in a sufficient period  
of time prior to the hearing.

Accordingly, Applicant and Protestants jointly request that the dates be adjusted as  
follows to allow ample time for discovery:

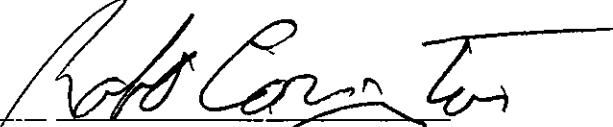
Answers to Written Discovery/Disclosure of List of Exhibits: April 26, 2006  
STIPULATED REQUEST FOR CONTINUANCE  
AND ADJUSTMENT OF DISCOVERY SCHEDULE-

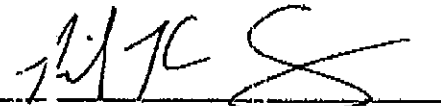
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SPOKANE, WA 99201  
509-835-5211

1 Completion of Deposition: May 15, 2006

2 Hearing Date: May 31-June 2, 2006

3 DATED this 20<sup>th</sup> of April, 2006.

4   
5  
6 ROBERT ELIJAH COVINGTON III  
ATTORNEY FOR APPLICANT

7   
8  
9 RICHARD K. EICHSTAEDT  
10 ATTORNEY FOR PROTESTANTS

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24  
25 STIPULATED REQUEST FOR CONTINUANCE  
AND ADJUSTMENT OF DISCOVERY SCHEDULE-

2

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SPOKANE, WA 99201  
509-835-5211

# **NORTH KOOTENAI WATER DISTRICT SUMMARY/STATUS OF WATER RIGHTS**

TABLE 3: Existing Water Rights

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AUG 27 2004

IDWR/North

| Water System                | Well Name         | Legal Description |     |     |         |          |       | DATE WELL ESTABLISHED           | WELLS | IDEQ PWS NO. | EXISTING IDWR PERMIT NO. 14 | PERMITTED DIVERSION RATE (CFS) | CURRENT WATER DIVERSION (Well Capacity CFS) |
|-----------------------------|-------------------|-------------------|-----|-----|---------|----------|-------|---------------------------------|-------|--------------|-----------------------------|--------------------------------|---------------------------------------------|
|                             |                   | 1/4               | 1/4 | 1/4 | Section | Township | Range |                                 |       |              |                             |                                |                                             |
| Atlas Acres                 | Atlas Acres       |                   | NE  | SE  | 28      | 52N      | 4W    | Jun-78                          | 1     | 1280005      | 95-9199                     | ---                            | 0.13                                        |
| Rimrock                     | Lancaster Well #2 |                   | NW  | NE  | 11      | 51N      | 4W    | Jun-90                          | 1     | 1280009      | 95-8639                     | 1                              | 0.89                                        |
| Rimrock                     | Lancaster Well #1 | NW                | NW  | NE  | 11      | 51N      | 4W    | Jun-80                          | 1     | 1280009      | 95-9199                     | ---                            | 2.56                                        |
| Rimrock                     | Lancaster Well #3 | SE                | SW  | SW  | 2       | 51N      | 4W    | Jun-02                          | 1     | 1280009      | 95-9199                     | ---                            | 2.18                                        |
| Chilco                      | Chilco #1         |                   | SE  | NE  | 7       | 52N      | 3W    | Apr-78                          | 1     | 1280048      | 95-7827                     | 0.2                            | 0.56                                        |
| Chilco                      | Chilco #2         |                   | SW  | NW  | 8       | 52N      | 3W    | Nov-94                          | 1     | 1280048      | 95-9199                     | ---                            | 0.67                                        |
| Hayden Orchard              | Hayden Orchard    |                   | NW  | NE  | 14      | 51N      | 4W    | Jul-77                          | 1     | 1280088      | 95-9199                     | ---                            | 0.27                                        |
| Hillside                    | Finucane Well     |                   | NW  | SW  | 24      | 51N      | 4W    | RIGHT ESTABLISHED NOVEMBER 1975 | 1     | 1280095      | PENDING                     | 0                              | 1.02                                        |
| Hillside                    | Hayden Well       |                   | NE  | SE  | 23      | 51N      | 4W    | Oct-77                          | 1     | 1280095      | 95-7763                     | 0                              | 0                                           |
| Twin Lakes                  | Echo Beach        |                   | SE  | NE  | 6       | 52N      | 4W    | NO WELL LOG (PRE-1972)          | 1     | 1280099      | 95-9199                     | 0                              | 0.51                                        |
| Twin Lakes                  | Tree Farm #1      |                   | SE  | SE  | 17      | 52N      | 4W    | Feb-75                          | 1     | 1280099      | 95-8522                     | 0                              | 0.38                                        |
| Twin Lakes                  | Tree Farm #2      |                   | SE  | SE  | 17      | 52N      | 4W    | Dec-85                          | 1     | 1280099      | 95-8522                     | 0.61                           | 0.38                                        |
| Mountain View               | Mountain View #1  |                   | NE  | SW  | 32      | 51N      | 5W    | NO WELL LOG (PRE-1936)          | 1     | 1280123      | PENDING                     | ---                            | 0.2                                         |
| Mountain View               | Mountain View #2  |                   | SE  | SW  | 32      | 51N      | 5W    | NO WELL LOG (PRE-1963)          | 1     | 1280123      | PENDING                     | ---                            | 0.95                                        |
| Ohio Match                  | Ohio Match        |                   | NW  | SE  | 18      | 52N      | 3W    | Jul-76                          | 1     | 1280127      | 95-7713                     | 0.04                           | 0.12                                        |
| Valley Green                | Valley Green      |                   | SW  | SE  | 15      | 51N      | 4W    | Jan-77                          | 1     | 1280195      | 95-9199                     | ---                            | 0.17                                        |
| Meadows                     | GTE Inner         |                   | SE  | SW  | 23      | 51N      | 4W    | NO WELL LOG (PRE-1979)          | 1     | 1280257      | 95-9199                     | ---                            | 0.56                                        |
| Hayden Pines/Grouse Meadows | GTE Outer         |                   | SW  | SE  | 23      | 51N      | 4W    | Dec-77                          | 1     | 1280257      | 95-9199                     | ---                            | 1.11                                        |
| Hayden Pines/Grouse Meadows | Hayden Pines      |                   | NE  | SE  | 23      | 51N      | 4W    | Jul-71                          | 1     | 1280257      | 95-7138                     | 0.14                           | 0.09                                        |
| Meadowland Acres            | Meadowland Acres  |                   | SE  | SE  | 23      | 51N      | 5W    | NO WELL LOG                     | 1     | 1280277      | 95-9199                     | ---                            | 0.58                                        |
| <b>TOTAL</b>                |                   |                   |     |     |         |          |       |                                 |       |              |                             | <b>1.99</b>                    | <b>13.33</b>                                |

1. NEW APPLICATION (#95-9199) INCLUDES A MAXIMUM DIVERSION CAPACITY OF 8.83 CFS AND CAN BE USED INTERCHANGEABLY BETWEEN ALL DISTRICT WELLS.
2. TRANSFER APPLICATION (#70394) INCLUDES A MAXIMUM DIVERSION CAPACITY OF 1.99 CFS AND CAN BE USED INTERCHANGEABLY BETWEEN ALL DISTRICT WELLS.
3. A 2ND NEW APPLICATION FOR A MAXIMUM DIVERSION RATE OF 2.51 CFS WAS FILED IN JANUARY 2004 TO RECOVER WATER RIGHT CAPACITY LOST THROUGH 2 NON-APPLICABLE WATER RIGHTS.
4. ALL WATER RIGHTS ARE MUNICIPAL.

95-9199

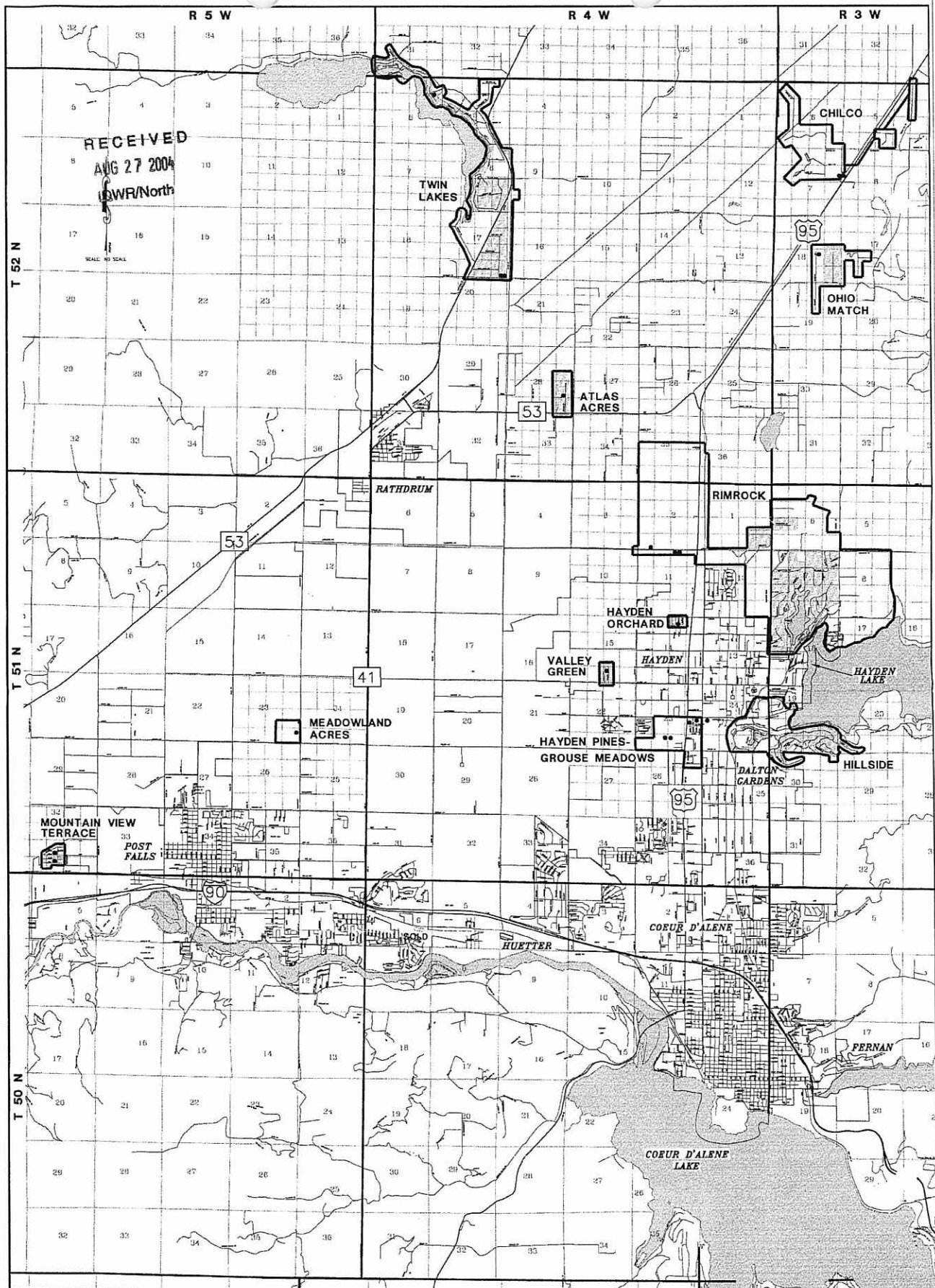


Figure 1:  
NORTH KOOTENAI WATER DISTRICT  
BOUNDARIES AND DISTRICT SERVICE AREAS

Don Vandenberg Pres  
Dean Kasler VP  
Maimie Moore Sec  
Linda Davis Bd Mbr  
Jack Berger - -  
Richard Fairhurst Dir Mgr

Info from most recent  
but older app.

Ⓟ

BEFORE THE DEPARTMENT OF WATER RESOURCES  
FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR )  
PERMIT TO APPROPRIATE WATER NO. )  
95-9244 IN THE NAME OF NORTH )  
KOOTENAI WATER DISTRICT )  
\_\_\_\_\_ )

**ORDER APPOINTING  
HEARING OFFICER**

This matter having come before the Director of the Idaho Department of Water Resources ("Department"), as a result of protests filed against the referenced application, the Department makes the following Order:

**ORDER**

IT IS THEREFORE, HEREBY ORDERED that David L. Tuthill, Jr., is appointed effectively April 18, 2006 to serve as hearing officer, and is authorized to hear this matter on behalf of the Department pursuant to IDAPA Rules 37.01.01.410-413 and the provisions of chapter 52, title 67, Idaho Code.

Dated this 20<sup>th</sup> day of April, 2006.

  
\_\_\_\_\_  
KARL J. DREHER  
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21<sup>st</sup> day of April, 2006, a true and correct copy of the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following

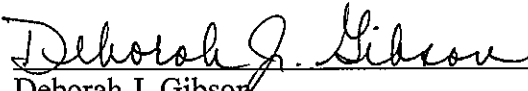
Document(s) Served: Order Appointing Hearing Officer

NORTH KOOTENAI WATER DISTRICT  
ATTN MIKE GALANTE  
PO BOX 2290  
HAYDEN, ID 83835

RICHARD K EICHSTAEDT  
CENTER FOR JUSTICE  
35 W MAIN STE 300  
SPOKANE WA 99201

RACHAEL PASCHAL OSBORN  
2421 W MISSION AVE  
SPOKANE WA 99201

IDWR – NORTHERN REGION  
1910 NORTHWEST BLVD STE 210  
COEUR D'ALENE ID 83814-2615

  
Deborah J. Gibson  
Administrative Assistant

# IDAHO DEPARTMENT OF WATER RESOURCES

## FAX

|               |                                                                    |               |                                                   |
|---------------|--------------------------------------------------------------------|---------------|---------------------------------------------------|
| <b>To:</b>    | <b>Richard K. Eichstaedt</b>                                       | <b>From:</b>  | <b>Deborah J. Gibson</b><br><b>(208) 287-4942</b> |
| <b>Fax:</b>   | <b>(509)835-3867</b>                                               | <b>Date:</b>  | <b>April 5, 2006</b>                              |
| <b>Phone:</b> |                                                                    | <b>Pages:</b> | <b>4</b>                                          |
| <b>Re:</b>    | <b>North Kootenai Water District's<br/>application no. 95-9244</b> | <b>CC:</b>    |                                                   |

☐ Urgent      ☐ For Review      ☐ Please Comment      ☐ Please Reply      ☐ Please Recycle

As you have requested, I am faxing a copy of the Order Granting Request to Adjust Discovery Schedule in the above-referenced matter.

Please contact me at the above number if you have any questions or problems with the transmission of this fax.

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

|                                         |   |                               |
|-----------------------------------------|---|-------------------------------|
| <b>IN THE MATTER OF APPLICATION</b>     | ) | <b>ORDER GRANTING REQUEST</b> |
| <b>FOR PERMIT TO APPROPRIATE WATER</b>  | ) | <b>TO ADJUST DISCOVERY</b>    |
| <b>NO. 95-9244 IN THE NAME OF NORTH</b> | ) | <b>SCHEDULE</b>               |
| <b>KOOTENAI WATER DISTRICT</b>          | ) |                               |
|                                         | ) |                               |

---

On March 2, 2006, the hearing officer issued a *Second Notice of Hearing, Order Authorizing Discovery, and Prehearing Order* in the above contested case. The order required disclosure of all expert witnesses and service of all written discovery on or before March 17, 2006.

On March 17, 2006, Robert Covington, Attorney for North Kootenai Water District, signed a *Request of Adjustment of Discovery Schedule*. The Idaho Department of Water Resources (IDWR) received the document on March 20, 2006. The document requested an extension of the deadline for disclosure of expert witnesses and service of written discovery until March 24, 2006.

On March 23, 2006, Richard Eichstaedt, Attorney for Protestants Upper Columbia River Group of the Sierra Club and Friends of the Aquifer, faxed a copy of a *Response to Applicant's Request for Adjustment of Discovery Schedule* to IDWR. The document did not object to the extension for discovery, but requested additional delays in other discovery deadlines and a delay in the hearing. Eichstaedt argued that other requested extensions, and most importantly, the request to delay the hearing, should be granted because the extensions of expert disclosure and filing of discovery deadlines would shorten an already tight discovery schedule.

On March 23, 2006, Robert Covington signed and mailed *Applicant's Supplemental Expert Witness List*. IDWR received the document on March 27, 2006.

At the present time no prejudice has been shown for extending the time for disclosing experts and serving written discovery. Nonetheless, if the protestants can show that the extension of discovery and disclosure impeded or will impede hearing preparation, the hearing officer will postpone the hearing scheduled for May 1 – May 3, 2006.

**ORDER**

IT IS HEREBY ORDERED that North Kootenai Water District's *Request of Adjustment of Discovery Schedule* is **Granted** as follows:

1. The time for disclosing expert witnesses is extended to March 24, 2006 (although already expired).

2. The time for service of written discovery is extended until March 24, 2006 (although already expired).

3. Answers to written discovery must be physically served (not just mailed) upon the requesting party on or before April 19, 2006.

4. All depositions shall be completed on or before April 19, 2006.

IT IS FURTHER ORDERED that, on or before April 26, 2006, each party must physically serve (not just mail) on all other parties copies of exhibits that may be offered at the hearing.

IT IS FURTHER ORDERED that, upon a showing by the protestants that the extensions of discovery and disclosure deadlines impeded or will impede hearing preparation, the hearing officer will postpone the hearing scheduled for May 1 – May 3, 2006.

Dated this 4<sup>th</sup> day of April, 2006.

A handwritten signature in cursive script, reading "Gary Spackman", written over a horizontal line.

Gary Spackman  
Hearing Officer

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4<sup>th</sup> day of April, 2006, a true and correct copy of the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following

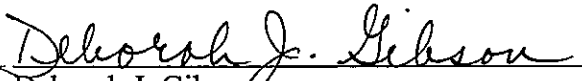
Document(s) Served: Order Granting Request to Adjust Discovery Schedule

NORTH KOOTENAI WATER DISTRICT  
ATTN MIKE GALANTE  
PO BOX 2290  
HAYDEN, ID 83835

RICHARD K EICHSTAEDT  
CENTER FOR JUSTICE  
35 W MAIN STE 300  
SPOKANE WA 99201

RACHAEL PASCHAL OSBORN  
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IDWR – NORTHERN REGION  
1910 NORTHWEST BLVD STE 210  
COEUR D'ALENE ID 83814-2615

  
Deborah J. Gibson  
Administrative Assistant

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MAR 27 2006

DEPARTMENT OF  
WATER RESOURCES

1 Richard K. Eichstaedt  
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3 Center for Justice  
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5 Rachael Paschal Osborn  
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Telephone: (509) 328.1087  
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9 Attorneys for Protestants

10 BEFORE THE DEPARTMENT OF WATER RESOURCES  
11 OF THE STATE OF IDAHO

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IN THE MATTER OF APPLICATION FOR  
PERMIT NO. 95-9244 IN THE NAME OF  
NORTH KOOTENAI WATER DISTRICT

RESPONSE TO APPLICANT'S REQUEST  
FOR ADJUSTMENT OF DISCOVERY  
SCHEDULE

16 Protestants, Upper Columbia River Group of the Sierra Club and Friends of the Aquifer,  
17 hereby respond to Applicant's request for an order adjusting the discovery schedule and  
18 additional time to finalize the list of witnesses. Specifically, Applicant requested an additional  
19 week to serve discovery and finalize its list of witnesses.

20 While Protestants do not specifically object to Applicant's request, Protestants request  
21 that the entire schedule in this proceeding be adjusted to reflect any extension afforded to the  
22 Applicant. Protestants properly and timely served discovery and filed their list of witnesses as  
23 required by the schedule. Given the extremely tight frames established by the existing schedule  
24 and in the interest of equity and avoiding prejudice to any party, Protestants respectfully request  
25 RESPONSE TO REQUEST FOR ADJUSTMENT OF  
DISCOVERY SCHEDULE- 1

CENTER FOR JUSTICE  
35 W. MAIN, SUITE 300  
SPOKANE, WA 99201  
509-835-5211

ORIGINAL

1 that all the deadlines established for completion of discovery be extended by the one-week  
2 requested by the Applicant and that the hearing date be pushed back by at least one week, to the  
3 week of May 7, 2006, or later. If the request for extension is allowed, that schedule will provide  
4 insufficient time to allow for completion of discovery prior to the hearing in this matter.

5 DATED this 23<sup>rd</sup> of March, 2006.

6 Respectfully submitted,

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9 RICHARD K. EICHSTAEDT  
10 IDAHO BAR #5801  
11 ATTORNEY FOR PROTESTANTS  
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7 **BEFORE THE DEPARTMENT OF WATER RESOURCES**  
8 **OF THE STATE OF IDAHO**

9 )  
10 )  
11 **IN THE MATTER OF APPLICATION** )  
12 **FOR PERMIT NO. 95-9244 IN THE** )  
13 **NAME OF NORTH KOOTENAI WATER** )  
14 **DISTRICT** )  
15 )

**CERTIFICATE OF SERVICE**

16 Debi Bacot states that I am a citizen of the United States of America and of the  
17 State of Washington, over the age of 21 years, not a party to the above-entitled action, and  
18 competent to be a witness therein; that on March 23, 2006, I caused to be served a true and  
19 correct copy of the foregoing document(s):

20 **Response to Applicant's Request for Adjustment of Discovery Schedule**

21 By the method indicated below, and addressed to the following:

22 Gary Speckman  
23 Idaho Dept of Water Resources  
24 The Idaho Water Center  
322 E. Front St.  
Boise, Idaho 83720-0098

- ☐ Personal Service  
☒ U.S. Mail  
☐ Hand-Delivered  
☐ Overnight Mail  
☒ Facsimile

25 Certificate of Mailing - 1

Center For Justice  
Community Building  
35 West Main, Suite 300  
Spokane, Washington  
Telephone: 509 835 5211  
Fax: 509 835 3867

**ORIGINAL**

1 Robert E. Covington III  
2 Lockhaven Square  
3 8884 N. Government Way, Ste. A  
4 Hayden, ID 83835

☐ Personal Service  
☒ U.S. Mail  
☐ Hand-Delivered  
☐ Overnight Mail  
☒ Facsimile

5 I certify under penalty of perjury under the laws of the State of Washington that the  
6 foregoing is true and correct.

7 DATED this 23<sup>rd</sup> day of MARCH, 2006.

8   
9 \_\_\_\_\_  
10 Debi Bacot

**ROBERT E. COVINGTON**  
Attorney at Law  
N. 8884 Government Way, Suite A  
Hayden, Idaho 83835  
Phone: (208) 762-4545  
Fax: (208) 762-4546  
Attorney for Plaintiff  
ISB# 2312

**RECEIVED**  
**MAR 26 2006**  
IDWR/North

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

|                                   |   |                                 |
|-----------------------------------|---|---------------------------------|
| <b>IN THE MATTER OF THE</b>       | ) |                                 |
| <b>APPLICATION FOR PERMIT</b>     | ) |                                 |
| <b>NO. 95-9244 IN THE NAME OF</b> | ) | <b>APPLICANT'S SUPPLEMENTAL</b> |
| <b>NORTH KOOTENAI WATER</b>       | ) | <b>EXPERT WITNESS LIST</b>      |
| <b>DISTRICT</b>                   | ) |                                 |
|                                   | ) |                                 |

---

**Applicant will call the following expert witnesses at the hearing of this matter.**

**Philip Boyd, P.E.**  
**Welch Comer & Associates, Inc.**  
**1626 Lincoln Way**  
**Coeur d'Alene, ID 83814**

**Mr. Boyd will testify regarding the water system of the applicant, the growing demand for water by present and future constituents of the applicant, current levels of consumption by the customers of the applicant and its water rate structure.**

**John Church**  
**12477 West Edna**  
**Boise, ID 83713**

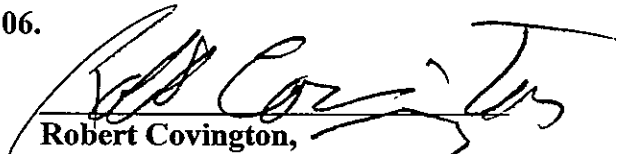
**Mr. Church will testify regarding water system economics including the impact of various conservation measures on water consumption and the financing and operation of public water supply systems.**

**Dale Ralston  
Ralston Hydrologic Services, Inc.  
1122 East B. Street  
Moscow, ID 83843**

**He will testify about the studies and conclusions regarding the hydrology of the Aquifer, including the impact of the proposed diversion of 2cfs on surrounding wells and other Idaho water right holders.**

**At this time the applicant does know what evidence Protestants will introduce at the hearing and therefore, cannot identify rebuttal witnesses or described their testimony.**

**Dated this 23<sup>rd</sup> day of March, 2006.**

  
**Robert Covington,  
Attorney for North Kootenai Water District**

### **CERTIFICATE OF SERVICE**

**I certify that a true and correct copy of the foregoing Supplemental Expert Witness List was transmitted by facsimile on March 23, 2006, to:**

**Richard K. Eichstaedt  
Center for Justice  
35 West Main, Suite 300  
Spokane, WA 99201  
Tel: 509-835-5211  
Fax: 509-835-3867**



**CENTER FOR JUSTICE****COMMUNITY BUILDING****35 WEST MAIN, SUITE 300****Spokane, Washington 99201***Telephone: 509.835.5211**Fax: 509.835.3867*

**DATE:** March 23, 2006

**TO:** Gary Speckman, Hearing Officer for Idaho Dept. of Water  
Resources

**FROM:** Rick Eichstaedt, Attorney

**FAX NO:** 208.287.6700

**RE:** Response to Applicant's Request for Adjustment of Discovery  
Schedule

**NUMBER OF PAGES INCLUDING COVER SHEET:** 5

**NOTES:**

UNLESS OTHERWISE INDICATED, THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS INFORMATION PROTECTED BY THE ATTORNEY-CLIENT AND/OR ATTORNEY- WORK PRODUCT PRIVILEGES. IT IS INTENDED ONLY FOR THE INDIVIDUAL NAMED ABOVE, AND THE PRIVILEGES ARE NOT WAIVED BY VIRTUE OF THIS HAVING BEEN SENT BY FACSIMILE. IF THE READER OF THIS FACSIMILE, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE NAMED RECIPIENT IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THE COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. WE WILL PROMPTLY REIMBURSE YOU FOR THE TELEPHONE AND POSTAGE EXPENSE. THANK YOU.

Richard K. Eichstaedt  
Idaho Bar #5801  
Center for Justice  
35 W. Main, Suite 300  
Spokane, WA 99201  
Telephone: (509) 835.5211  
Fax: (509) 835.3867

Rachael Paschal Osborn  
Washington State Bar #21618  
2421 W. Mission Ave.  
Spokane, WA 99201  
Telephone: (509) 328.1087  
Fax (509) 328.8144  
Attorneys for Protestants

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR  
PERMIT NO. 95-9244 IN THE NAME OF  
NORTH KOOTENAI WATER DISTRICT

RESPONSE TO APPLICANT'S REQUEST  
FOR ADJUSTMENT OF DISCOVERY  
SCHEDULE

Protestants, Upper Columbia River Group of the Sierra Club and Friends of the Aquifer,  
hereby respond to Applicant's request for an order adjusting the discovery schedule and  
additional time to finalize the list of witnesses. Specifically, Applicant requested an additional  
week to serve discovery and finalize its list of witnesses.

While Protestants do not specifically object to Applicant's request, Protestants request  
that the entire schedule in this proceeding be adjusted to reflect any extension afforded to the  
Applicant. Protestants properly and timely served discovery and filed their list of witnesses as  
required by the schedule. Given the extremely tight frames established by the existing schedule  
and in the interest of equity and avoiding prejudice to any party, Protestants respectfully request  
RESPONSE TO REQUEST FOR ADJUSTMENT OF  
DISCOVERY SCHEDULE- 1

CENTER FOR JUSTICE  
35 W. MAIN, SUITE 300  
SPOKANE, WA 99201  
509-835-5211

1 that all the deadlines established for completion of discovery be extended by the one-week  
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4 insufficient time to allow for completion of discovery prior to the hearing in this matter.

5 DATED this 23<sup>rd</sup> of March, 2006.

6 Respectfully submitted,

7   
8

9 RICHARD K. EICHSTAEDT

10 ID# HO BAR #5801

11 ATTORNEY FOR PROTESTANTS  
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25 RESPONSE TO REQUEST FOR ADJUSTMENT OF  
DISCOVERY SCHEDULE- 2

CENTER FOR JUSTICE  
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SPOKANE, WA 99201  
509-835-5211

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION  
FOR PERMIT NO. 95-9244 IN THE  
NAME OF NORTH KOOTENAI WATER  
DISTRICT

CERTIFICATE OF SERVICE

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State of Washington, over the age of 21 years, not a party to the above-entitled action, and  
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1 Robert E. Covington III  
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5 I certify under penalty of perjury under the laws of the State of Washington that the  
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7 DATED this 23<sup>rd</sup> day of MARCH, 2006.

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10 Debi Bacot

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# ROBERT E. COVINGTON, III

ATTORNEY AT LAW  
8884 N. GOVERNMENT WAY, SUITE A  
HAYDEN LAKE, ID 83835

TELEPHONE: (208) 762-4545  
FAX: (208) 762-4546

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MAR 20 2006  
DEPARTMENT OF  
WATER RESOURCES

March 17, 2006

Gary Spackman, Hearing Officer  
Idaho Department of Water Resources  
322 E. Front Street  
PO Box 83720  
Boise, ID 83720-0098

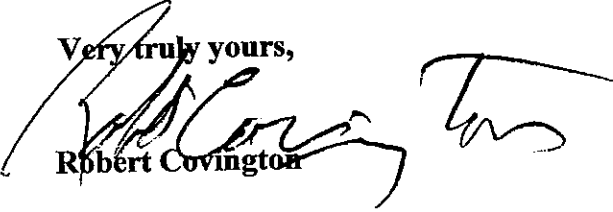
Re: Application for Permit No. 95-9244  
North Kootenai Water District, Applicant

Dear Mr. Spackman:

Please find the following enclosed filing in the above matter:

1. Applicant's Partial Expert Witness List
2. Request for Adjustment of Discovery Schedule

Very truly yours,

  
Robert Covington

REC/ac

**ROBERT E. COVINGTON**  
**Attorney at Law**  
**N. 8884 Government Way, Suite A**  
**Hayden, Idaho 83835**  
**Phone: (208) 762-4545**  
**Fax: (208) 762-4546**  
**Attorney for Plaintiff**  
**ISB# 2312**

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

|                                   |   |                                   |
|-----------------------------------|---|-----------------------------------|
| <b>IN THE MATTER OF THE</b>       | ) |                                   |
| <b>APPLICATION FOR PERMIT</b>     | ) |                                   |
| <b>NO. 95-9244 IN THE NAME OF</b> | ) | <b>APPLICANT'S PARTIAL EXPERT</b> |
| <b>NORTH KOOTENAI WATER</b>       | ) | <b>WITNESS LIST</b>               |
| <b>DISTRICT</b>                   | ) |                                   |
|                                   | ) |                                   |

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**Coeur d'Alene, ID 83814**

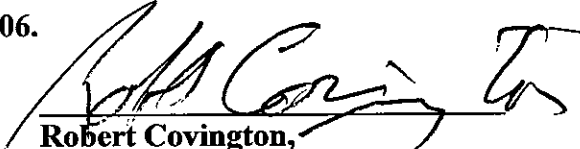
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**John Church**  
**12477 West Edna**  
**Boise, ID 83713**

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**The applicant intends to supplement this list within seven days with one or more experts to testify regarding the hydrology of the Rathdrum Aquifer including the impact of the requested diversion on the Aquifer and other uses of the resource.**

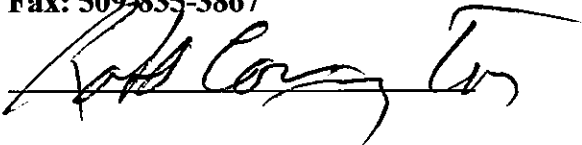
**Dated this 17<sup>th</sup> day of March, 2006.**

  
**Robert Covington,**  
**Attorney for North Kootenai Water District**

**CERTIFICATE OF SERVICE**

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8 RICHARD K. EICHSTAEDT

9 ID# HO BAR #5801

10 ATTORNEY FOR PROTESTANTS

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25 RESPONSE TO REQUEST FOR ADJUSTMENT OF  
DISCOVERY SCHEDULE-2

CENTER FOR JUSTICE  
35 W. MAIN, SUITE 300  
SPOKANE, WA 99201  
509-835-5211

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION  
FOR PERMIT NO. 95-9244 IN THE  
NAME OF NORTH KOOTENAI WATER  
DISTRICT

CERTIFICATE OF SERVICE

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9 Debi Bacot

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Fax: 509 835 3867

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MAR 20 2006  
DEPARTMENT OF  
WATER RESOURCES

# ROBERT E. COVINGTON, III

ATTORNEY AT LAW  
8884 N. GOVERNMENT WAY, SUITE A  
HAYDEN LAKE, ID 83835

TELEPHONE: (208) 762-4545  
FAX: (208) 762-4546

March 17, 2006

Gary Spackman, Hearing Officer  
Idaho Department of Water Resources  
322 E. Front Street  
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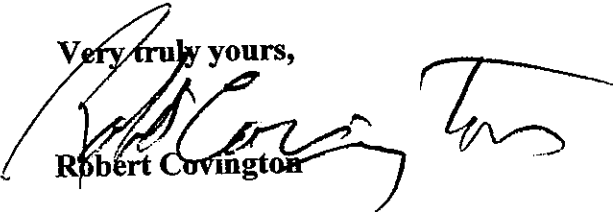
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North Kootenai Water District, Applicant

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Very truly yours,

  
Robert Covington

REC/ac

**ROBERT E. COVINGTON**  
**Attorney at Law**  
**N. 8884 Government Way, Suite A**  
**Hayden, Idaho 83835**  
**Phone: (208) 762-4545**  
**Fax: (208) 762-4546**  
**Attorney for Plaintiff**  
**ISB# 2312**

**BEFORE THE DEPARTMENT OF WATER RESOURCES**

**OF THE STATE OF IDAHO**

|                                   |   |                                   |
|-----------------------------------|---|-----------------------------------|
| <b>IN THE MATTER OF THE</b>       | ) |                                   |
| <b>APPLICATION FOR PERMIT</b>     | ) |                                   |
| <b>NO. 95-9244 IN THE NAME OF</b> | ) | <b>APPLICANT'S PARTIAL EXPERT</b> |
| <b>NORTH KOOTENAI WATER</b>       | ) | <b>WITNESS LIST</b>               |
| <b>DISTRICT</b>                   | ) |                                   |
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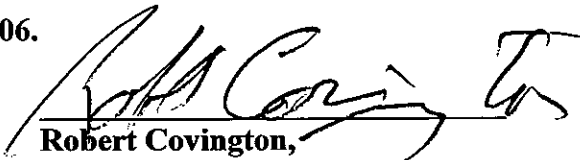
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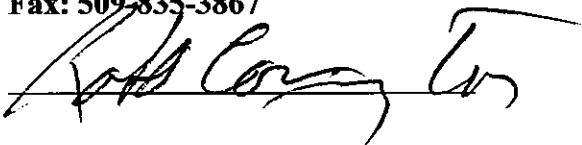
Dated this 17<sup>th</sup> day of March, 2006.

  
Robert Covington,  
Attorney for North Kootenai Water District

### CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Expert Witness List was transmitted by facsimile on March 17, 2006, to:

Richard K. Eichstaedt  
Center for Justice  
35 West Main, Suite 300  
Spokane, WA 99201  
Tel: 509-835-5211  
Fax: 509-835-3867



**ROBERT E. COVINGTON**  
Attorney at Law  
N. 8884 Government Way, Suite A  
Hayden, Idaho 83835  
Phone: (208) 762-4545  
Fax: (208) 762-4546  
Attorney for Plaintiff  
ISB# 2312

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

|                                   |   |                              |
|-----------------------------------|---|------------------------------|
| <b>IN THE MATTER OF THE</b>       | ) |                              |
| <b>APPLICATION FOR PERMIT</b>     | ) |                              |
| <b>NO. 95-9244 IN THE NAME OF</b> | ) | <b>REQUEST OF ADJUSTMENT</b> |
| <b>NORTH KOOTENAI WATER</b>       | ) | <b>OF DISCOVERY SCHEDULE</b> |
| <b>DISTRICT</b>                   | ) |                              |
| _____                             | ) |                              |

Comes now the North Kootenai Water District, the applicant in this matter, through its attorney, Robert Covington, to request that the time it is allowed for disclosure of some of the experts that it may call at the hearing of this matter and service of written discovery be extended until March 24, 2006. This request is made on the grounds that the applicant has not yet been able to confirm the participation of experts to testify regarding the hydrology of the Rathdrum Prairie Aquifer and water conservation including the economics of water conservation strategies. The participation of these experts in forming discovery is necessary to the applicant. The applicant anticipates that it will have confirmation of the participation of such experts and its written discovery within seven days of this date. The testimony of this expert is expected to be critical to an understanding of the impact of the requested two cfs diversion right in application on the aquifer and other users of the aquifer. Further, a delay of one week in the identification of these experts and delivery of written discovery will not materially prejudice the protestant.

Dated this 17<sup>th</sup> day of March, 2006,

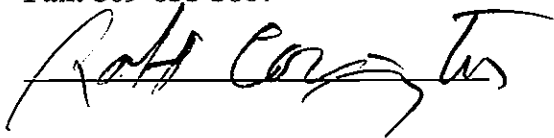


Robert Covington,  
Attorney for North Kootenai Water District

**CERTIFICATE OF SERVICE**

**I certify that a true and correct copy of the foregoing Request for Adjustment of Discovery Schedule was transmitted by facsimile on March 17, 2006, to:**

**Richard K. Eichstaedt  
Center for Justice  
35 West Main, Suite 300  
Spokane, WA 99201  
Tel: 509-835-5211  
Fax: 509-835-3867**

A handwritten signature in black ink, appearing to read "R. K. Eichstaedt", is written over a horizontal line.

RECEIVED

MAR 17 2006

DEPARTMENT OF  
WATER RESOURCES

Richard K. Eichstaedt  
Idaho Bar #5801  
Center for Justice  
35 W. Main, Suite 300  
Spokane, WA 99201  
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Attorneys for Protestants

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

**IN THE MATTER OF APPLICATION )  
FOR ) PROTESTANTS' EXPERT WITNESS  
PERMIT NO. 95-9244, IN THE NAME OF ) LIST  
NORTH KOOTENAI WATER DISTRICT )**

Protestants will call the following expert witnesses at the hearing in this matter to be held  
May 1-3, 2006.

1. Gary Andres  
Land and Water Consulting, Inc.  
P.O. Box 990  
Veradale, Washington 99037

Mr. Andres will testify concerning the hydrogeology of the Rathdrum Prairie-Spokane Valley  
Aquifer and the Spokane River.

2. Thomas P. Fox, P.E.  
616 29<sup>th</sup> Avenue, East # 2  
Seattle, Washington 98112

PROTESTANTS' EXPERT WITNESS LIST  
Page 1 of 2

CENTER FOR JUSTICE  
35 W. MAIN, SUITE 300  
SPOKANE, WA 99201  
509-835-5211

**ORIGINAL**

1 Mr. Fox will testify concerning municipal water supply management, water conservation, and  
2 other water operation measures.

3 3. Kenneth W. Lustig  
4 5722 W. Pinegrove  
5 Coeur d'Alene, Idaho 83815

6 Mr. Lustig will testify concerning aquifer management, water quality, and other hydrological  
7 matters.

8 Protestants reserve the right to amend this list based upon the outcome of discovery.

9 DATED this 16<sup>th</sup> day of April, 2006.

10   
11

12 Rick Eichstaedt  
13 Counsel for Protestants  
14 Sierra Club and Friends of the Aquifer  
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RECEIVED

MAR 17 2006

DEPARTMENT OF  
WATER RESOURCES

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BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION ) NOTICE OF MAILING  
FOR )  
PERMIT NO. 95-9244, IN THE NAME OF )  
NORTH KOOTENAI WATER DISTRICT )

I hereby certify that I served the foregoing **PROTESTANTS' EXPERT WITNESS**  
**LIST** and **PROTESTANTS 1<sup>st</sup> SET OF INTERROGATORIES AND REQUESTS FOR**  
**PRODUCTION TO NORTH KOOTENAI WATER DISTRICT** by the following indicated  
method or methods:

☒ By **mailing** via Federal Express full, true, and correct copies thereof in sealed, envelopes,  
addressed to the person(s) as shown below, the last-known address(es) of the person(s),  
and deposited at Spokane, Washington on the date set forth below.

**Robert E. Covington III**  
**Lockhaven Square**  
**8884 N. Government Way, Suite A**  
**Hayden, ID 83835**

DATED this 16<sup>th</sup> day of March, 2006.

  
Debi Bacot

CERTIFICATE OF MAILING  
Page 1 of 1

CENTER FOR JUSTICE  
35 W. MAIN, SUITE 300  
SPOKANE, WA 99201  
509-835-5211

ORIGINAL

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete item 1, 2, and 3 for additional services.
- Complete item 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

Do you wish to receive the following services (for an extra fee):

- 1. ☐ Addressee's Address
- 2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

RICHARD K EICHSTAEDT  
CENTER FOR JUSTICE  
35 N MAIN STE 300  
SPOKANE WA 99201

95-9244

14a. Article Number

7003 0500 0003 1969 6773

4b. Service Type

- ☐ Registered ☐ Certified
- ☐ Express Mail ☐ Insured
- ☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

3/2/06

you for using Return Receipt Service.

5. Received By: (Print Name)

Rosie En

6. Signature: (Addressee or Agent)

X ROSIE EN

PS Form 3811, December 1

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete item 1, 2, and 3 for additional services.
- Complete item 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

Do you wish to receive the following services (for an extra fee):

- 1. ☐ Addressee's Address
- 2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

RACHAEL PASCHAL OSBORN  
2421 W MISSION AVE  
SPOKANE WA 99201

95-9244

14a. Article Number

7003 0500 0003 1969 6766

4b. Service Type

- ☐ Registered ☒ Certified
- ☐ Express Mail ☐ Insured
- ☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

3-06-06

5. Received By: (Print Name)

Rachael Osborn

6. Signature: (Addressee or Agent)

X Rachael Osborn

8. Addressee's Address (Only if requested and fee is paid)

Thank you for using Return Receipt Service.

**SENDER: COMPLETE THIS SECTION**

- Complete item 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

NORTH KOOTENAI WATER DISTRICT  
ATTN MIKE GALANTE  
PO BOX 2290  
HAYDEN ID 83835

95-9244

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Print Clearly) B. Date of Delivery

Michael Galante

C. Signature

X Michael Galante

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

3. Service Type

- ☒ Certified Mail ☐ Express Mail
- ☐ Registered ☐ Return Receipt for Merchandise
- ☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

7003 0500 0003 1969 6780

U.S. Postal Service™  
**CERTIFIED MAIL™ RECEIPT**

(~~A~~ Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

|                                                   |    |
|---------------------------------------------------|----|
| Postage                                           | \$ |
| Certified Fee                                     |    |
| Return Receipt Fee<br>(Endorsement Required)      |    |
| Restricted Delivery Fee<br>(Endorsement Required) |    |
| Total Postage & Fees                              | \$ |

3/3/06

Postmark  
Here

dg

Sent To Rachael Paschal Olsen  
Street, Apt. No.,  
or PO Box No. 2421 W 1  
City, State, ZIP+4 Spokane WA  
PS Form 3800, June 2002

U.S. Postal Service™  
**CERTIFIED MAIL™ RECEIPT**

(~~A~~ Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

|                                                   |    |
|---------------------------------------------------|----|
| Postage                                           | \$ |
| Certified Fee                                     |    |
| Return Receipt Fee<br>(Endorsement Required)      |    |
| Restricted Delivery Fee<br>(Endorsement Required) |    |
| Total Postage & Fees                              | \$ |

3/3/06

Postmark  
Here

dg

Sent To North Kootenai WA  
Street, Apt. No.,  
or PO Box No.  
City, State, ZIP+4

U.S. Postal Service™  
**CERTIFIED MAIL™ RECEIPT**

(~~A~~ Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

|                                                   |    |
|---------------------------------------------------|----|
| Postage                                           | \$ |
| Certified Fee                                     |    |
| Return Receipt Fee<br>(Endorsement Required)      |    |
| Restricted Delivery Fee<br>(Endorsement Required) |    |
| Total Postage & Fees                              | \$ |

3/3/06

Postmark  
Here

dg

Sent To Richard K. Eichstaedt  
Street, Apt. No.,  
or PO Box No. 35 W Main Ste 300  
City, State, ZIP+4 Spokane, WA 99201  
PS Form 3800, June 2002

See Reverse for Instructions

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

|                                         |          |                         |
|-----------------------------------------|----------|-------------------------|
| <b>IN THE MATTER OF APPLICATION FOR</b> | <b>)</b> | <b>SECOND NOTICE OF</b> |
| <b>PERMIT TO APPROPRIATE WATER NO.</b>  | <b>)</b> | <b>HEARING, ORDER</b>   |
| <b>95-9244 IN THE NAME OF NORTH</b>     | <b>)</b> | <b>AUTHORIZING</b>      |
| <b>KOOTENAI WATER DISTRICT</b>          | <b>)</b> | <b>DISCOVERY, AND</b>   |
| <hr/>                                   | <b>)</b> | <b>PREHEARING ORDER</b> |

On February 24, 2006, the Protestants, Upper Columbia River Group of the Sierra Club and Friends of the Aquifer, by and through their attorneys of record, Richard K. Eichstaedt and Rachael Paschal Osborn, requested a continuance of hearing and adjustment of the discovery schedule in the above-entitled matter.

**ORDER**

IT IS HEREBY ORDERED that the parties may engage in discovery as follows:

1. General discovery may continue as previously ordered.
2. On or before March 17, 2006, each party must disclose to all other parties, in writing, the identity of all expert witnesses that will or may testify at the hearing.
3. All written discovery requests shall be served on or before March 17, 2006. Answers to written discovery must be served on the requesting party on or before April 17, 2006.
4. Written requests for discovery must be either interrogatories or requests for documents. (Requests for admission are not allowed). No more than 10 interrogatories may be served by any party (or the attorney for several parties) on another party, and no more than 10 unanswered interrogatories served by any party (or the attorney for several parties) may be pending. Each question posed will be considered as one interrogatory.
5. All depositions shall be completed on or before April 17, 2006.

IT IS FURTHER ORDERED that, on or before April 26, 2006, each party must serve on all other parties copies of exhibits that may be offered at the hearing.

**NOTICE OF HEARING**

**PLEASE TAKE NOTICE** that the hearing set for March 21-23, 2006 has been vacated at the request of the protestants. The hearing has been rescheduled for **May 1, 2 & 3, 2006, beginning at 9:00 a.m.** at the Idaho Department of Water Resources, located at 1910 Northwest Blvd., Suite 210, Coeur d'Alene, Idaho (Telephone: 208-769-1450).

If you plan to offer exhibits for the record at the hearing, note that Rule 606 of the department's Rules of Procedure requires that a copy be provided to each party and to the presiding officer.

The presiding officer at the hearing will be Gary Spackman.

The hearing will be held in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the department. IDAPA 37.01.01. A copy of the rules may be obtained from the department upon request.

The hearing will be conducted in accordance with the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within twenty-four hours prior to the hearing. Inquires about scheduling, hearing facilities, etc., should be directed to Deborah Gibson, Administrative Assistant, Idaho Department of Water Resources, P.O. Box 83720, Boise, ID 83720-0098, telephone (208)287-4942, fax (208) 287-6700.

Dated this 2<sup>nd</sup> day of March, 2006.

A handwritten signature in black ink that reads "Gary Spackman". The signature is written in a cursive style and is positioned above a horizontal line.

Gary Spackman  
Hearing Officer

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3<sup>rd</sup> day of March, 2006, a true and correct copy of the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following

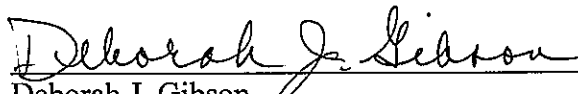
Document(s) Served: Second Notice of Hearing, Order Authorizing Discovery, and Prehearing Order

NORTH KOOTENAI WATER DISTRICT  
ATTN MIKE GALANTE  
PO BOX 2290  
HAYDEN, ID 83835

RICHARD K EICHSTAEDT  
CENTER FOR JUSTICE  
35 W MAIN STE 300  
SPOKANE WA 99201

RACHAEL PASCHAL OSBORN  
2421 W MISSION AVE  
SPOKANE WA 99201

IDWR – NORTHERN REGION  
1910 NORTHWEST BLVD STE 210  
COEUR D'ALENE ID 83814-2615

  
Deborah J. Gibson  
Administrative Assistant

COPY

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that I have this 21<sup>st</sup> day of February, 2006, served the foregoing **Request for Continuance and Adjustment Discovery Schedule** document upon all parties of record in this proceeding, by mailing a copy thereof, properly addressed with postage prepaid, to:

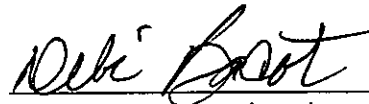
Gary Spackman, Hearing Officer  
Idaho Department of Water Resources  
322 E. Front St  
PO Box 83720  
Boise, Idaho 83720-0098

Robert Haynes  
Idaho Department of Water Resources  
Northern Region Office  
1910 Northwest Blvd., Suite 210  
Coeur d'Alene, ID 83814-2615

Rachael Paschal Osborn  
Attorney at Law  
2421 W. Mission Ave.  
Spokane, WA 99201

Robert Elijah Covington III  
Lockhaven Square  
8884 N. Government Way, Suite A  
Hayden, Idaho 83835

RECEIVED  
FEB 23 2006  
IDWR/North

  
Debi Bacot, Paralegal

1 Richard K. Eichstaedt  
Idaho Bar #5801  
2 Center for Justice  
35 W. Main, Suite 300  
3 Spokane, WA 99201  
Telephone: (509) 835.5211  
4 Fax: (509) 835.3867

5 Rachael Paschal Osborn  
6 Washington State Bar #21618  
2421 W. Mission Ave.  
7 Spokane, WA 99201  
Telephone: (509) 328.1087  
8 Fax: (509) 328.8144  
9 Attorneys for Protestants

RECEIVED  
FEB 23 2006  
IDWR/North

10 BEFORE THE DEPARTMENT OF WATER RESOURCES  
11 OF THE STATE OF IDAHO

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IN THE MATTER OF APPLICATION FOR  
PERMIT NO. 95-9244 IN THE NAME OF  
NORTH KOOTENAI WATER DISTRICT

REQUEST FOR CONTINUANCE AND  
ADJUSTMENT OF DISCOVERY  
SCHEDULE

16 Pursuant to Rule of Procedure 561 of the Idaho Department of Water Resources,  
17 Protestants, Upper Columbia River Group of the Sierra Club and Friends of the Aquifer,  
18 respectfully request an order extending the time frame for discovery and rescheduling the dates  
19 for the hearing in the above titled matter. The current schedule provides insufficient time to  
20 allow for completion of discovery and allows insufficient time for discovery to be completed  
21 prior to the hearing in this matter. Further, the parties are currently attempting to resolve this  
22 matter through settlement discussions and additional time is needed to accommodate these  
23 efforts.

24 ///

25 REQUEST FOR CONTINUANCE AND  
ADJUSTMENT OF DISCOVERY SCHEDULE- 1

CENTER FOR JUSTICE  
35 W. MAIN, SUITE 300  
SPOKANE, WA 99201  
509-835-5211

1 Accordingly, Protestants request that the dates be adjusted as follows to allow ample time  
2 for discovery and, if possible, amicable settlement of this matter:

3 Disclosure of Experts/Submission of Written Discover: March 14, 2006.

4 Answers to Written Discovery/Completion of Depositions: April 15, 2006.

5 Hearing Date: 1<sup>st</sup> week of May.

6  
7 DATED this 21<sup>st</sup> day of February, 2006.

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9 \_\_\_\_\_  
10 RICHARD K. EICHSTAEDT  
11 IDAHO BAR #5801  
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**CENTER FOR JUSTICE****COMMUNITY BUILDING****35 WEST MAIN, SUITE 300****Spokane, Washington 99201***Telephone: 509.835.5211**Fax: 509.835.3867***DATE:** February 22, 2006**TO:** Gary Spackman, Hearing Officer for The State of Idaho  
Department of Water Resources**FROM:** Debi Bacot, Paralegal to Attorney, Rick Eichstaedt**FAX NO:** (208) 287-6700**RE:** Request for Continuance & Adjustment Discovery Schedule**NUMBER OF PAGES INCLUDING COVER SHEET:** 4**NOTES:**

To give you an advance copy for review, I am faxing this courtesy copy of the filing that was mailed to your office yesterday, February 21, 2006.

UNLESS OTHERWISE INDICATED, THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS INFORMATION PROTECTED BY THE ATTORNEY-CLIENT AND/OR ATTORNEY-WORK PRODUCT PRIVILEGES. IT IS INTENDED ONLY FOR THE INDIVIDUAL NAMED ABOVE, AND THE PRIVILEGES ARE NOT WAIVED BY VIRTUE OF THIS HAVING BEEN SENT BY FACSIMILE. IF THE READER OF THIS FACSIMILE, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE NAMED RECIPIENT IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THE COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. WE WILL PROMPTLY REIMBURSE YOU FOR THE TELEPHONE AND POSTAGE EXPENSE. THANK YOU.

Richard K. Eichstaedt  
 Idaho Bar #5801  
 Center for Justice  
 35 W. Main, Suite 300  
 Spokane, WA 99201  
 Telephone: (509) 835.5211  
 Fax: (509) 835.3867

Rachael Paschal Osborn  
 Washington State Bar #21618  
 242 W. Mission Ave.  
 Spokane, WA 99201  
 Telephone: (509) 328.1087  
 Fax: (509) 328.8144  
 Attorneys for Protestants

BEFORE THE DEPARTMENT OF WATER RESOURCES  
 OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR )  
 PERMIT NO. 95-9244 IN THE NAME OF ) REQUEST FOR CONTINUANCE AND  
 NORTH KOOTENAI WATER DISTRICT ) ADJUSTMENT OF DISCOVERY  
 SCHEDULE

Pursuant to Rule of Procedure 561 of the Idaho Department of Water Resources,  
 Protestants, Upper Columbia River Group of the Sierra Club and Friends of the Aquifer,  
 respectfully request an order extending the time frame for discovery and rescheduling the dates  
 for the hearing in the above titled matter. The current schedule provides insufficient time to  
 allow for completion of discovery and allows insufficient time for discovery to be completed  
 prior to the hearing in this matter. Further, the parties are currently attempting to resolve this  
 matter through settlement discussions and additional time is needed to accommodate these  
 efforts.

///

REQUEST FOR CONTINUANCE AND  
 ADJUSTMENT OF DISCOVERY SCHEDULE- 1

CENTER FOR JUSTICE  
 35 W. MAIN, SUITE 300  
 SPOKANE, WA 99201  
 509-835-5211

1 Accordingly, Protestants request that the dates be adjusted as follows to allow ample time  
2 for discovery and, if possible, amicable settlement of this matter:

3 Disclosure of Experts/Submission of Written Discovery: March 14, 2006.

4 Answers to Written Discovery/Completion of Depositions: April 15, 2006.

5 Hearing Date: 1<sup>st</sup> week of May.

6  
7 DATED this 21<sup>st</sup> day of February, 2006.

8   
9 RICHARD K. EICHSTAEDT  
10 IDAHO BAR #5801

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25 REQUEST FOR CONTINUANCE AND  
ADJUSTMENT OF DISCOVERY SCHEDULE- 2

CENTER FOR JUSTICE  
35 W. MAIN, SUITE 300  
SPOKANE, WA 99201  
509-835-5211

**ORIGINAL****CERTIFICATE OF MAILING**

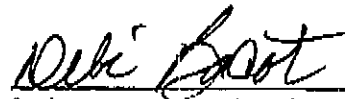
I HEREBY CERTIFY that I have this 21<sup>st</sup> day of February, 2006, served the foregoing **Request for Continuance and Adjustment Discovery Schedule** document upon all parties of record in this proceeding, by mailing a copy thereof, properly addressed with postage prepaid, to:

Gary Spackman, Hearing Officer  
Idaho Department of Water Resources  
322 E. Front St  
PO Box 83720  
Boise, Idaho 83720-0098

Robert Haynes  
Idaho Department of Water Resources  
Northern Region Office  
1910 Northwest Blvd., Suite 210  
Coeur d'Alene, ID 83814-2615

Rachael Paschal Osborn  
Attorney at Law  
2421 W. Mission Ave.  
Spokane, WA 99201

Robert Elijah Covington III  
Lockhaven Square  
8884 N. Government Way, Suite A  
Hayden, Idaho 83835

  
Debi Bacot, Paralegal

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

**IN THE MATTER OF APPLICATION FOR  
PERMIT TO APPROPRIATE WATER NO.  
95-9244 IN THE NAME OF NORTH  
KOOTENAI WATER DISTRICT**

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**ORDER AUTHORIZING  
DISCOVERY AND  
PREHEARING ORDER**

Protestants Upper Columbia River Group of the Sierra Club and Friends of the Aquifer requested an order authorizing discovery and also requested a schedule for conducting discovery.

**ORDER**

IT IS HEREBY ORDERED that the parties may engage in discovery as follows:

1. General discovery can begin immediately.
2. On or before February 28, 2006, each party must disclose to all other parties, in writing, the identity of all expert witnesses that will or may testify at the hearing.
3. All written discovery requests shall be served on or before February 28, 2006. Answers to written discovery must be served on the requesting party on or before March 15, 2006.
4. Written requests for discovery must be either interrogatories or requests for documents. (Requests for admission are not allowed). No more than 10 interrogatories, may be served by any party (or the attorney for several parties) on another party, and no more than 10 unanswered interrogatories served by any party (or the attorney for several parties) may be pending. Each question posed will be considered as one interrogatory.
5. All depositions shall be complete on or before March 15, 2006.

IT IS FURTHER ORDERED that, on or before March 15, 2006, each party must serve on all other parties copies of exhibits that may be offered at the hearing.

Dated this 14<sup>th</sup> day of February, 2006.



Gary Spackman  
Hearing Officer

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15<sup>th</sup> day of February, 2006, a true and correct copy of the above and foregoing document was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following

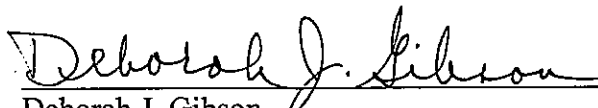
Document(s) Served: Order Authorizing Discovery and Prehearing Order

NORTH KOOTENAI WATER DISTRICT  
PO BOX 2290  
HAYDEN, ID 83835

RACHAEL PASCHAL OSBORN  
2421 W MISSION AVE  
SPOKANE WA 99201

RICHARD K EICHSTAEDT  
CENTER FOR JUSTICE  
35 W MAIN STE 300  
SPOKANE WA 99201

IDWR – NORTHERN REGION  
1910 NORTHWEST BLVD STE 210  
COEUR D'ALENE ID 83814-2615

  
Deborah J. Gibson  
Administrative Assistant

RECEIVED  
FEB 09 2006  
IDWR/North

Richard K. Eichstaedt  
Idaho Bar #5801  
Center for Justice  
35 W. Main, Suite 300  
Spokane, WA 99201  
Telephone: (509) 835.5211  
Fax: (509) 835.3867

Rachael Paschal Osborn  
Washington State Bar #21618  
2421 W. Mission Ave.  
Spokane, WA 99201  
Telephone: (509) 328.1087  
Fax: (509) 328.8144  
Attorneys for Protestants

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR  
PERMIT NO. 95-9244 IN THE NAME OF  
NORTH KOOTENAI WATER DISTRICT

REQUEST FOR ORDER AUTHORIZING  
DISCOVERY

Pursuant to Rule of Procedure 521 of the Idaho Department of Water Resources,  
protestants, Upper Columbia River Group of the Sierra Club and Friends of the Aquifer,  
respectfully request an order authorizing discovery in the above titled matter. Protestants further  
request for a schedule for conducting and completing discovery that allows for ample time prior  
to the hearing in this matter.

DATED this 8<sup>th</sup> day of February, 2006.

  
\_\_\_\_\_  
RICHARD K. EICHSTAEDT  
IDAHO BAR #5801

REQUEST FOR ORDER AUTHORIZING  
DISCOVERY- 1

CENTER FOR JUSTICE  
35 W. MAIN, SUITE 300  
SPOKANE, WA 99201  
509-835-5211

ORIGINAL

## CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 8<sup>th</sup> day of February, 2006, served the foregoing **Request for Order Authorizing Discovery** document upon all parties of record in this proceeding, by mailing a copy thereof, properly addressed with postage prepaid, to:

Robert Haynes  
Idaho Department of Water Resources  
Northern Region Office  
1910 Northwest Blvd., Suite 210  
Coeur d'Alene, ID 83814-2615

Rachael Paschal Osborn  
Attorney at Law  
2421 W. Mission Ave.  
Spokane, WA 99201

Robert Elijah Covington III  
Lockhaven Square  
8884 N. Government Way, Suite A  
Hayden, Idaho 83835

  
Debi Bacot, Paralegal

ORIGINAL

# BEFORE THE DEPARTMENT OF WATER RESOURCES

## OF THE

### SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

#### 1. Article Addressed to:

FRIENDS OF THE AQUIFER &  
SIERRA CLUB  
C/O RACHAEL OSBORN  
2421 W MISSION AVE  
SPOKANE WA 99201

### COMPLETE THIS SECTION ON DELIVERY

A. Signature *X RPOslon* ☐ Agent ☐ Addressee  
B. Received by (Printed Name) *Rachael Osborn* C. Date of Delivery *2-6-06*  
D. Is delivery address different from item 1? ☐ Yes ☐ No  
If YES, enter delivery address below:

RECEIVED  
FEB 07 2006

3. Service Type *IDWR/North*  
☒ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise

### SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

#### 1. Article Addressed to:

NO. KOOTENAI WATER DIST  
PO BOX 2290  
HAYDEN ID 83835

### COMPLETE THIS SECTION ON DELIVERY

A. Signature *X Michael R. Galante* ☐ Agent ☐ Addressee  
B. Received by (Printed Name) *Michael R. Galante* C. Date of Delivery *2-6-06*  
D. Is delivery address different from item 1? ☐ Yes ☐ No  
If YES, enter delivery address below:

RECEIVED  
FEB 07 2006

3. Service Type *IDWR/North*  
☒ Certified Mail ☐ Express Mail

### SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

#### 1. Article Addressed to:

FRIENDS OF THE AQUIFER &  
SIERRA CLUB  
C/O RICHARD K EICHSTAEDT  
CENTER FOR JUSTICE  
35 W MAIN STE 300  
SPOKANE WA 99201

### COMPLETE THIS SECTION ON DELIVERY

A. Signature *X Rosie Ennis* ☐ Agent ☐ Addressee  
B. Received by (Printed Name) *ROSIE ENNIS* C. Date of Delivery *2/6/06*  
D. Is delivery address different from item 1? ☐ Yes ☐ No  
If YES, enter delivery address below:

RECEIVED  
FEB 08 2006

3. Service Type *IDWR/North*  
☒ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

#### 2. Article Number

(Transfer from service label)

7001 2510 0003 4440 1918

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

### NOTICE OF HEARING

TRICT, (applicant) filed with the No. 95-09244. The application was ER COLUMBIA RIVER GROUP ON mber 8, 2005, did not resolve the

21, 22 and 23, 2006 at 9:00 a.m. Blvd., Suite 210, Coeur d'Alene, 2 and 17, Title 42 and Chapter 52, and Water Appropriation Rules 40 n request. The presiding officer at

of Procedure 37.01.01606 requires cer.

accessibility requirements of the in order to attend, participate in or ys prior to the hearing.

present information and argument

*J. Haynes*  
Regional Manager

and correct copy of this document,

*L. Ball*  
Administrative Assistant

Ste 300, Spokane WA 99201  
Ave, Spokane WA 99201

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

IN THE MATTER OF APPLICATION )  
FOR PERMIT NO. 95-09244 IN THE NAME OF )  
NORTH KOOTENAI WATER DISTRICT )

NOTICE OF HEARING

On August 24, 2004, NORTH KOOTENAI WATER DISTRICT, (applicant) filed with the Department of Water Resources, (department), application for permit No. 95-09244. The application was protested by FRIENDS OF THE AQUIFER AND SIERRA CLUBS UPPER COLUMBIA RIVER GROUP ON October 25, 2004. The conference held by the department on December 8, 2005, did not resolve the matter of protest.

The department has scheduled the matter for hearing on **March 21, 22 and 23, 2006 at 9:00 a.m. each day, at the Department of Water Resources, 1910 Northwest Blvd., Suite 210, Coeur d'Alene, ID.** The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, the adopted Rules of Procedure of the department and Water Appropriation Rules 40 and 45. A copy of the rules may be obtained from the department upon request. The presiding officer at the hearing will be Gary Spackman.

If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01606 requires that you provide a copy of exhibits to each party and to the presiding officer.

The hearing will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within ten (10) days prior to the hearing.

All parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

Dated this 3rd day of February, 2006.



Robert G. Haynes, Regional Manager

I hereby certify that on the 3rd day of February, 2006, I mailed a true and correct copy of this document, postage prepaid, to the applicant(s) and protestant(s) listed below:



Dianne L. Ball, Administrative Assistant

**Certified Mail**

North Kootenai Water District, PO Box 2290, Hayden ID 83835  
Friends of the Aquifer & Sierra Club c/o Richard K Eichstaedt, 35 W Main, Ste 300, Spokane WA 99201  
Friends of the Aquifer & Sierra Club c/o Rachael Osborn, 2421 W Mission Ave, Spokane WA 99201

First-Class Mail  
Postage & Fee  
USPS  
Permit NO. 31

DEPARTMENT OF WATER RESOURCES  
1910 NORTHWEST BLVD SUITE 210  
COEUR D'ALENE ID 83814

000000

DEPARTMENT OF WATER RESOURCES  
1910 NORTHWEST BLVD SUITE 210  
COEUR D'ALENE ID 83814

003

DEPARTMENT OF WATER RESOURCES  
1910 NORTHWEST BLVD SUITE 210  
COEUR D'ALENE ID 83814

2008

IN THE MATTER OF APPLICATION  
FOR PERMIT NO. 95-09244 IN THE NAME OF  
NORTH KOOTENAI WATER DISTRICT

## NOTICE OF HEARING

On August 24, 2004, NORTH KOOTENAI WATER DISTRICT, (applicant) filed an application with the Department of Water Resources, (department), application for permit No. 95-09244. The application was protested by FRIENDS OF THE AQUIFER AND SIERRA CLUBS UPPER COLUMBIA RIVER on October 25, 2004. The conference held by the department on December 8, 2005, did not resolve the matter of protest.

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If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.0 that you provide a copy of exhibits to each party and to the presiding officer.

The hearing will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, please understand the hearing, please advise the department within ten (10) days prior to the hearing.

All parties to the matter will have the opportunity to respond and present information on all issues involved.

Dated this 3rd day of February, 2006.

Robert G. Haynes  
Robert G. Haynes, Regional Manager

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Dianne L. Ball  
Dianne L. Ball, Administrative Assistant

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North Kootenai Water District, PO Box 2290, Hayden ID 83835  
Friends of the Aquifer & Sierra Club c/o Richard K Eichstaedt, 35 W Main, Ste 300, Spokane WA  
Friends of the Aquifer & Sierra Club c/o Rachael Osborn, 2421 W Mission Ave, Spokane WA 992

## **CONFERENCE AND HEARING PROCEDURE**

### **APPLICATION FOR PERMIT**

#### **ISSUES**

Section 42-203A, Idaho Code, requires the department to consider the following issues in connection with an application for permit:

1. Will the proposed appropriation injure other water rights?
2. Is the water supply sufficient for the purpose for which it is sought to be appropriated?
3. Was the application made in good faith or for delay or speculative purposes?
4. Does the applicant have sufficient financial resources with which to complete the proposed project?
5. Will the proposed use conflict with the local public interest, where local public interest is defined as interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource?
6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?
7. Will the proposed use 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?

#### **BURDEN OF PROOF**

The applicant has the initial burden of proof for issues 1, 2, 3, 4, 6 and 7 above and must provide evidence for the department to evaluate these criteria.

The initial burden of proof on issue 5 above lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

#### **PROCEDURE**

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

**CONFERENCE**

The purpose of a prehearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement or make settlement offers, schedule hearings, establish procedure at hearing and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

**HEARING**

The department will tape record the hearing. Copies of a hearing are available upon request and the payment of the cost of reproducing the tape.

The hearing likely will be conducted by a hearing officer appointed by the Director rather than by the Director himself. If so, the hearing officer will prepare a recommended order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the director.

Parties may by written stipulation waive the right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order and judicial review of the order.

**EXHIBITS**

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer.

**AMERICANS WITH DISABILITIES ACT**

Any hearing scheduled will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within ten (120) days prior to the hearing.

[illegible]

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

**IN THE MATTER OF APPLICATION  
FOR PERMIT NO. 95-9244  
IN THE NAME OF NORTH KOOTENAI WATER**

) **NOTICE OF CONFERENCE**  
)  
)

On 8/24/2004, Application for Permit No. 95-9244 in the name of NORTH KOOTENAI WATER DISTRICT was filed with the Idaho Department of Water Resources (Department). The application was protested by FRIENDS OF THE AQUIFER and SIERRA CLUBS UPPER COLUMBIA RIVER GROUP on 10/25/2004.

The Department has scheduled

| SENDER: COMPLETE THIS SECTION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                           | COMPLETE THIS SECTION ON DELIVERY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                       |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"><li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li><li>■ Print your name and address on the reverse so that we can return the card to you.</li><li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li></ul> <p>1. Article Addressed to:<br/><b>NORTH KOOTENAI WATER DIST<br/>PO BOX 2290<br/>HAYDEN ID 83835</b></p> <div style="text-align: center; border: 1px solid black; padding: 5px; margin-top: 10px;"><b>RECEIVED</b><br/><b>NOV 16 2005</b><br/><b>IDWR/North</b></div>                                                                                    | <p>2. Article Number: <b>7001 2510 0003 4440 1949</b></p> | <p>A. Signature: <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name): <b>Rachael P Osborn</b></p> <p>C. Date of Delivery: <b>11-17-05</b></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br/>If YES, enter delivery address below: <input type="checkbox"/> No</p> <div style="text-align: center; border: 1px solid black; padding: 5px; margin-top: 10px;"><b>RECEIVED</b><br/><b>NOV 18 2005</b><br/><b>IDWR/North</b></div> | <p>3. Service Type<br/><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br/><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise<br/><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p> |
| SENDER: COMPLETE THIS SECTION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                           | COMPLETE THIS SECTION ON DELIVERY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                       |
| <ul style="list-style-type: none"><li>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li><li>■ Print your name and address on the reverse so that we can return the card to you.</li><li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li></ul> <p>1. Article Addressed to:<br/><b>FRIENDS OF THE AQUIFER &amp;<br/>SIERRA CLUB - UPPER<br/>COLUMBIA RIVER GROUP<br/>C/O RACHAEL OSBORN<br/>2421 W MISSION AVE<br/>SPOKANE WA 99201</b></p> <div style="text-align: center; border: 1px solid black; padding: 5px; margin-top: 10px;"><b>RECEIVED</b><br/><b>NOV 16 2005</b><br/><b>IDWR/North</b></div> | <p>2. Article Number: <b>7001 2510 0003 4440 1963</b></p> | <p>A. Signature: <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name): <b>Robert Regi</b></p> <p>C. Date of Delivery: <b>12/8</b></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes<br/>If YES, enter delivery address below: <input type="checkbox"/> No</p> <div style="text-align: center; border: 1px solid black; padding: 5px; margin-top: 10px;"><b>RECEIVED</b><br/><b>NOV 15 2005</b><br/><b>IDWR/North</b></div>          | <p>3. Service Type<br/><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail<br/><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise<br/><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p> |

**12/8**  
**9:00 am**  
**here**  
**Rich Eichstaedt**  
**replacing**  
**Id Counsel**  
**(Shirley/Conroy)**  
**on about**

PS Form 3811, August 2001Domestic Return Receipt102595-02-M-1540

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

**IN THE MATTER OF APPLICATION** ) **NOTICE OF CONFERENCE**  
**FOR PERMIT NO. 95-9244** )  
**IN THE NAME OF NORTH KOOTENAI WATER** )

On 8/24/2004, Application for Permit No. 95-9244 in the name of NORTH KOOTENAI WATER DISTRICT was filed with the Idaho Department of Water Resources (Department). The application was protested by FRIENDS OF THE AQUIFER and SIERRA CLUBS UPPER COLUMBIA RIVER GROUP on 10/25/2004.

The Department has scheduled the matter for conference at 9:00 am on 12/08/2005 at IDAHO DEPARTMENT OF WATER RESOURCES, 1910 Northwest Blvd., Suite 210, Coeur d'Alene, Idaho.

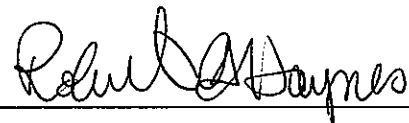
The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the Department. A copy of the rules may be obtained from the Department upon request. The presiding officer at the conference will be Robert G. Haynes, Regional Manager.

If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01606 requires that you provide a copy of exhibits to each party and to the presiding officer.

The conference will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the Department within ten (10) days prior to the conference.

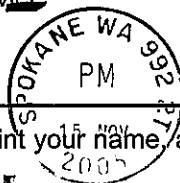
All parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

Dated this 14th day of ~~October~~ <sup>NOVEMBER</sup>, 2005.



Robert G. Haynes, P.E.  
Regional Manager

UNITED STATES POSTAL SERVICE



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

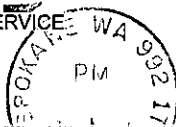
• Sender: Please print your name, address, and ZIP+4 in this box. •

DEPARTMENT OF WATER RESOURCES

1910 NORTHWEST BLVD SUITE 210

COEUR D ALENE ID 83814

UNITED STATES POSTAL SERVICE



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box. •

DEPARTMENT OF WATER RESOURCES

1910 NORTHWEST BLVD SUITE 210

COEUR D ALENE ID 83814

UNITED STATES POSTAL SERVICE



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box. •

DEPARTMENT OF WATER RESOURCES

1910 NORTHWEST BLVD SUITE 210

COEUR D ALENE ID 83814

## SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

## 1. Article Addressed to:

FRIENDS OF THE AQUIFER &  
SIERRA CLUB  
C70 RICHARD K EICHSTAEDT  
CENTER FOR JUSTICE  
35 W MAIN SUITE 300  
SPOKANE WA 99201

RECEIVED

NOV 16 2005

IDWR/North

## COMPLETE THIS SECTION ON DELIVERY

## A. Signature

X

- ☐ Agent  
☐ Addressee

## B. Received by (Printed Name)

## C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

## 3. Service Type

- ☒ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

## 4. Restricted Delivery? (Extra Fee)

- ☐ Yes

## 2. Article Number

(Transfer from service label)

7001 2510 0003 4440 1963

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

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- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
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- Attach this card to the back of the mailpiece, or on the front if space permits.

## 1. Article Addressed to:

FRIENDS OF THE AQUIFER &  
SIERRA CLUB - UPPER  
COLUMBIA RIVER GROUP  
C/O RACHAEL OSBORN  
2421 W MISSION AVE  
SPOKANE WA 99201

## COMPLETE THIS SECTION ON DELIVERY

## A. Signature

X

- ☐ Agent  
☐ Addressee

## B. Received by (Printed Name)

## C. Date of Delivery

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If YES, enter delivery address below: ☐ No

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- ☒ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ C.O.D.

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## 2. Article Number

(Transfer from service label)

7001 2510 0003 4440 1949

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

## 1. Article Addressed to:

NORTH KOOTENAI WATER DIST  
PO BOX 2290  
HAYDEN ID 83835

RECEIVED

NOV 16 2005

## COMPLETE THIS SECTION ON DELIVERY

## A. Received by (Please Print Clearly)

## B. Date of Delivery

X

- ☐ Agent  
☐ Addressee

- D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

## 3. Service Type

- ☒ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise

**APPLICATION FOR PERMIT**

**ISSUES**

Section 42-203A, Idaho Code, requires the department to consider the following issues in connection with an application for permit:

1. Will the proposed appropriation injure other water rights?
2. Is the water supply sufficient for the purpose for which it is sought to be appropriated?
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6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?
7. Will the proposed use 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?

**BURDEN OF PROOF**

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CERTIFICATE OF MAILING

I hereby certify that on the 14<sup>th</sup> day of November, 2005, I mailed a true and correct copy, postage prepaid, of this Notice of Conference together with Conference And Hearing Procedure for Application for Permit to the party(ies) listed below:



Dianne Ball  
Administrative Assistant

Certified Mail

NORTH KOOTENAI WATER DISTRICT  
PO BOX 2290  
HAYDEN ID 83835

FRIENDS OF THE AQUIFER  
C/O RACHAEL OSBORN  
2421 W MISSION AVE  
SPOKANE WA 99201

And

C/O RICHARD K EICHSTAEDT  
35 W MAIN SUITE 300  
SPOKANE WA 99201-

UPPER COLUMBIA RIVER GROUP  
Of the SIERRA CLUB  
C/O RICHARD K EICHSTAEDT  
35 W MAIN SUITE 300  
SPOKANE WA 99201-

And

C/O RACHAEL OSBORN  
2421 W MISSION AVE  
SPOKANE WA 99201

IDAHO DEPT OF WATER RESOURCES

Application 95-9244

11/14/2005

| Type          | Name                 | Date Rcvd  | Address                                               | City    | State | Postal Code | Phone         | FAX | Email |
|---------------|----------------------|------------|-------------------------------------------------------|---------|-------|-------------|---------------|-----|-------|
| Protestant    | FRIENDS OF THE AQUIL | 10/25/2004 | C/O RACHAEL<br>OSBORN<br>2421 W MISSION<br>AVE        | SPOKANE | WA    | 99201       | (509)328-1087 |     |       |
| Protestant    | SIERRA CLUBS UPPER   | 10/25/2004 | C/O RICHARD K<br>EICHSTAEDT<br>35 W MAIN SUITE<br>300 | SPOKANE | WA    | 99201-      | (509)835-5211 |     |       |
| Current Owner | NORTH KOOTENAI WA    | 8/27/2004  | PO BOX 2290                                           | HAYDEN  | ID    | 83835       | (208)772-3619 |     |       |

Hearing Notice Sent:

Hearing Date:

Hearing Location

*Called + left message  
on Eichstaedt's voice mail  
that we need notice of him  
as substitution of counsel  
for "Idaho" counsel  
re NKWDist.*

*11/14/05*

*Raul Berfo*  
*11/14/05*

**CENTER FOR JUSTICE****COMMUNITY BUILDING****35 WEST MAIN, SUITE 300****Spokane, Washington 99201**

Telephone: 509.835.5211

Fax: 509.835.3867

DATE: 11/14/05  
TO: Bob Haynes  
FROM: Rick Frickstadt  
FAX NO: 208-769-1454  
RE: N Keelene: Water District

NUMBER OF PAGES INCLUDING COVER SHEET: 5

**NOTES:**

Here are the requested documents.

UNLESS OTHERWISE INDICATED, THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS INFORMATION PROTECTED BY THE ATTORNEY-CLIENT AND/OR ATTORNEY-WORK PRODUCT PRIVILEGES. IT IS INTENDED ONLY FOR THE INDIVIDUAL NAMED ABOVE, AND THE PRIVILEGES ARE NOT WAIVED BY VIRTUE OF THIS HAVING BEEN SENT BY FACSIMILE. IF THE READER OF THIS FACSIMILE, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE NAMED RECIPIENT IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THE COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. WE WILL PROMPTLY REIMBURSE YOU FOR THE TELEPHONE AND POSTAGE EXPENSE. THANK YOU.

1 Richard K. Eichstaedt  
2 Idaho Bar #5801  
3 Center for Justice  
4 35 W. Main, Suite 300  
5 Spokane, WA 99201  
6 Telephone: (509) 835.5211  
7 Fax: (509) 835.3867

8 Rachael Paschal Osborn  
9 Washington State Bar#21618  
10 2421 W. Mission Ave.  
11 Spokane, WA 99201  
12 Telephone: (509) 328.1087  
13 Fax: (509) 328.8144  
14 Attorneys for Protestants

15 BEFORE THE DEPARTMENT OF WATER RESOURCES  
16 OF THE STATE OF IDAHO

17 IN THE MATTER OF APPLICATION FOR  
18 PERMIT NO. 95-9244 IN THE NAME OF  
19 NORTH KOOTENAI WATER DISTRICT

20 REQUEST FOR PREHEARING  
21 CONFERENCE

22 Pursuant to Rule of Procedure 510 of the Idaho Department of Water Resources,  
23 protestants, North Kootenai Water District and Sierra Club, Upper Columbia River Group,  
24 respectfully request the scheduling of a prehearing conference in the above entitled matter. The  
25 protest in this matter was filed on October 25, 2004, and no prehearing conference has yet  
occurred in this matter.

Accordingly, protestants request a prehearing conference for the purpose of establishing a  
schedule for the expeditious resolution of this matter.

DATED this 21st day of July, 2005.

  
RICHARD K. EICHSTAEDT  
IDAHO BAR.#5801

REQUEST FOR PREHEARING CONFERENCE- 1

CENTER FOR JUSTICE  
35 W. MAIN, SUITE 300  
SPOKANE, WA 99201  
509-835-5211

THIS IS A COPY

## CERTIFICATE OF MAILING

FILE COPY

I HEREBY CERTIFY that I have this 21<sup>st</sup> day of July, 2005, served the foregoing **Request for PreHearing Conference** document upon all parties of record in this proceeding, by mailing a copy thereof, properly addressed with postage prepaid, to:

Robert Haynes  
Idaho Department of Water Resources  
Northern Region Office  
1910 Northwest Blvd., Suite 210  
Coeur d'Alene, ID 83814-2615

Teresa A. Hampton, Esq.  
Hampton & Elliott  
Attorneys at Law  
P.O. Box 1352  
Boise, ID 83701-1352

Rachael Paschal Osborn  
Attorney at Law  
2421 W. Mission Ave.  
Spokane, WA 99201

North Kootenai Water District  
P.O. Box 2290  
Hayden, ID 83835

Robert Elijah Covington III  
Lockhaven Square  
8884 N. Government Way, Suite A  
Hayden, Idaho 83835



Debi Bacot, Paralegal

1 Richard K. Eichstaedt  
2 Idaho Bar #5801  
3 Center for Justice  
4 35 W. Main, Suite 300  
5 Spokane, WA 99201  
6 Telephone: (509) 835.5211  
7 Fax: (509) 835.3867

8 Rachael Paschal Osborn  
9 Washington State Bar#21618  
10 2421 W. Mission Ave.  
11 Spokane, WA 99201  
12 Telephone: (509) 328.1087  
13 Fax: (509) 328.8144  
14 Attorneys for Protestants

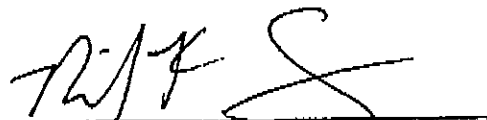
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BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR  
PERMIT NO. 95-9244, IN THE NAME OF  
NORTH KOOTENAI WATER DISTRICT

NOTICE OF WITHDRAWAL AND  
SUBSTITUTION OF COUNSEL

PLEASE TAKE NOTICE that Richard K. Eichstaedt substitutes Teresa A. Hampton as  
counsel of record for protestants, Friends of the Aquifer and the Upper Columbia River Group of  
the Sierra Club. All pleadings and correspondence should be served on counsel at the addresses  
shown above.

DATED this 18<sup>th</sup> day of May, 2005.

  
RICHARD K. EICHSTAEDT  
IDAHO BAR #5801

NOTICE OF SUBSTITUTION OF COUNSEL- 1

CENTER FOR JUSTICE  
35 W. MAIN, SUITE 300  
SPOKANE, WA 99201  
509-835-5211

FILE COPY

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that I have this 18<sup>th</sup> day of May, 2005, served the foregoing **Notice of Withdrawal and Substitution of Counsel** document upon all parties of record in this proceeding, by mailing a copy thereof, properly addressed with postage prepaid, to:

Robert Haynes  
Idaho Department of Water Resources  
Northern Region Office  
1910 Northwest Blvd., Suite 210  
Coeur d'Alene, ID 83814-2615

**COPY**

Teresa A. Hampton, Esq.  
Hampton & Elliott  
Attorneys at Law  
P.O. Box 1352  
Boise, ID 83701-1352

Rachael Paschal Osborn  
Attorney at Law  
2421 W. Mission Ave.  
Spokane, WA 99201

North Kootenai Water District  
P.O. Box 2290  
Hayden, ID 83835

  
Debi Bacot, Paralegal

Teresa A. Hampton, Esq.  
Idaho Bar No. 4364  
HAMPTON & ELLIOTT  
Attorneys at Law  
912 North 8<sup>th</sup> Street  
Mailing Address:  
Post Office Box 1352  
Boise, Idaho 83701-1352  
Voice: 208/384-5456  
Facsimile: 208/384-5476

Rachael Paschal Osborn, Esq.  
Attorney at Law  
Washington State Bar No. 21618  
2421 West Mission Avenue  
Spokane, WA 99201  
Telephone: 509/328-1087  
Facsimile: 509/328-8144

Attorneys for Protestants

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR )  
PERMIT NO. 95-9244, in the name of ) **PROTEST**  
NORTH KOOTENAI WATER DISTRICT )  
\_\_\_\_\_ )

This protest is submitted on behalf of Friends of the Aquifer and the Upper  
Columbia River Group of the Sierra Club.

**A. Interests of Protestants**

Friends of the Aquifer (FOA) is a non-profit corporation incorporated in the state  
of Idaho, with a mission to protect the Rathdrum Prairie-Spokane Valley Aquifer. Upper  
Columbia River Group of the Sierra Club (Sierra Club) is a non-profit corporation, with a  
mission to practice and promote the responsible use of the earth's ecosystems and  
resources, particularly in the Inland Northwest.

FOA and Sierra Club each have members and supporters who live, work and  
recreate in north Idaho and eastern Washington, including use and enjoyment of the  
Spokane River. FOA and Sierra Club members rely upon the Rathdrum Prairie-Spokane

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IDWR/North

Valley Aquifer as a source of water for drinking water supply and to serve the businesses where they work. FOA and Sierra Club members participate actively in the current efforts to develop a federally-funded, comprehensive bi-state study of the Aquifer.

The Protestants and their members are and will continue to be adversely affected by water allocation and management decisions, including the instant application, that diminish, over-allocate, or otherwise harm the Rathdrum-Spokane Aquifer and hydraulically connected water resources, including the Spokane and Little Spokane Rivers.

### **B. Basis of Protest**

The Protestants protest Application No. 95-9244, filed by North Kootenai Water District, which seeks 2 cfs or 1.3 million gallons per day, year-round, for municipal purposes. This protest is based on the criteria set forth in Sec. 42-203A, Idaho Code, and the Idaho municipal provider and groundwater statutes, as more specifically set forth below.

#### **(1) The project is contrary to the conservation of resources.**

The application is contrary to the conservation of water resources in Idaho, in contravention of IC §42-203A(5)(f), insofar as it proposes to withdraw 1.3 million gallons of water per day from the Rathdrum-Spokane Aquifer. North Kootenai Water District has neither promulgated nor implemented a water conservation plan to limit per capita consumption at reasonable levels or otherwise reasonably control municipal water usage. Water conservation alternatives are available to reduce the amount of water use contemplated by the protested application. These alternatives should be considered by IDWR in its determination of beneficial use.

#### **(2) The proposed permits should not be granted until a study of the Rathdrum-Spokane Aquifer is complete.**

A Congressionally funded study of the Rathdrum Prairie-Spokane Valley Aquifer has been proposed and endorsed by agencies, municipalities and businesses throughout the bi-state region. The purpose of the study is to determine how much water is available from the Aquifer and the impacts of pumping on existing water users and local surface water resources such as the Spokane and Little Spokane Rivers. It is premature to grant

water permits until a comprehensive scientific study has established water availability for the region.

**(3) Water supply is insufficient.**

Water supply is insufficient pursuant to IC § 42-203A(5)(b). Recent hydrogeologic studies indicate that the Rathdrum-Spokane Aquifer is a finite resource that is fully allocated. Groundwater withdrawals from the bi-state area already exceed natural recharge within the basin. As a sole source aquifer, the Rathdrum-Spokane Aquifer is an invaluable resource to the 400,000-plus citizens of the region who depend upon it for drinking water supply. In recognition of these facts, Washington State has imposed an unofficial moratorium on the issuance of new water permits from the Rathdrum-Spokane Aquifer.

Pursuant to IC § 42-226, IDWR must determine whether allocated water rights exceed future average annual recharge to the Aquifer. Idaho has not yet assessed how much water has been allocated under existing water rights nor how much water is available for future allocation and use. Until such an analysis is accomplished, it is appropriate to assume that water supply is not sufficient to fulfill the withdrawals proposed under the permit application protested herein, and that the proposed permit will lead to mining of the Rathdrum-Spokane Aquifer in violation of Idaho law.

**(4) The project will harm the local public interest.**

Because of the hydraulic connections between the Rathdrum-Spokane Aquifer and the Spokane River, the applicant's proposed use will deplete flows in the Spokane River, harming fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, transportation and navigation values, and water quality.

Water quality is degraded in the Spokane River with respect to dissolved oxygen, temperature, and other flow-related parameters. Municipal sewage discharge, including from the wastewater utility that serves North Kootenai Water District's service area, contributes to water quality problems, including violation of water quality standards in Washington State. Withdrawal of water from the Rathdrum-Spokane Aquifer in the quantities requested in the permit application will deplete flow in the Spokane River, further exacerbating water quality degradation.

The properties to be supplied by the proposed water withdrawals potentially include critical recharge areas for the Rathdrum-Spokane Aquifer. The development of these properties may reduce recharge to the Aquifer and contribute to groundwater quality degradation.

The cumulative impacts of the proposed withdrawal, combined with other pending applications and existing water rights will lead to over-allocation of the aquifer, interference with other wells, impacts to the Spokane River and a variety of other potential ills, in violation of the local public interest.

Numerous water right holders in Washington State withdraw water from the Rathdrum-Spokane Aquifer, including municipal water purveyors that supply virtually the entire population of the Spokane Valley and City of Spokane. The proposed withdrawals may interfere with the ability of Washington water right holders to access their water rights.

Ultimately, unlimited appropriations will lead to a “race to the bottom” of this finite, sole source aquifer, which will adversely affect citizens and businesses in both states. It is inappropriate for IDWR to grant this and other pending water right applications without full consideration of the impacts of such decisions on bi-state management of the Aquifer. Idaho must engage in water resource management planning that addresses these issues before approving new and sizable water rights, including the instant application.

**(5) The project is speculative.**

Pursuant to IC § 42-203A(5)(c), the applicant’s proposed water use is for speculative purposes. With reasonable conservation measures, North Kootenai Water District presently possesses water rights adequate to serve present and reasonably anticipated future needs. Moreover, existing water rights are available for transfer to purchasers. Pursuant to IC § 42-219, municipal water purveyors must provide justification for the quantity of their requests. North Kootenai Water District has not provided justification for this application.

**(6) The requested permit would reduce the quantity of water under existing water rights.**

The Rathdrum Prairie-Spokane Valley Aquifer is hydraulically connected to the Spokane River. Pumping from the Aquifer influences the quantity and quality of water flowing in the Spokane River. Flows in the Spokane River between Post Falls and the state line are protected under Water Right No. 95-8780. The pumping of approximately 13 million gallons per day may affect Spokane River flows in Idaho and reduce them below the levels set forth in the minimum flow water right. This would lead to a reduction in water available to prior water right users, in violation of Section 42.203A(5)(a).

IDWR has issued hundreds of water rights authorizing withdrawals from the Aquifer in the Rathdrum Prairie region. In addition, there are significant numbers of domestic wells, many drilled prior to March 1978. A water permit issued to North Kootenai Water District in the quantity requested will draw down the Aquifer, potentially causing adverse impacts to other water users, including lowering pumping levels to unreasonable depths.

These issues are of particular concern when the effects of this water permit are analyzed cumulatively with other pending applications and active permits and licenses, including the 11.34 cfs in water rights issued to North Kootenai Water District in the last two years.

Finally, and as discussed in the “local public interest” section above, down-gradient water right holders in Washington state will be adversely affected by the pumping of water proposed in this application.

The applicant has offered no proposal to mitigate the impacts of its proposed water withdrawals.

**(7) The application is not complete.**

Pursuant to IC § 42-202(2), an application for a municipal purpose water permit must contain sufficient information and documentation to establish reasonably anticipated future needs, service area and planning horizons, as defined by statute. The

North Kootenai Water District application does not contain sufficient information and documentation to fulfill this requirement.

**(8) Further information and issues.**

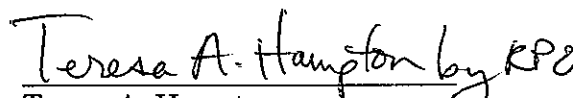
For a project of this size and complexity, more information will be required pursuant to IDAPA § 37.03.08.040.05. As the applicant provides that information to IDWR, and as more information becomes available through approved discovery processes, Protestants reserve the right to raise additional issues. The application as submitted is inadequate to meet the standards set forth in controlling regulations and statutes and the applicant will not be able to meet its burden of proof under the law.

**C. Relief Sought**

For the foregoing reasons, Protestants request that a protest hearing be scheduled and that North Kootenai Water District's Water Permit Application No. 95-9244 be denied or conditioned to mitigate the harms and impacts identified above.

DATED this 25th day of October, 2004.

Hampton & Elliott

  
Teresa A. Hampton

  
Rachael Paschal Osborn

## CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of October, 2004, I served a true and correct copy of the within and foregoing document upon the party named below by depositing a copy of the same in the United States Mail, postage pre-paid, at the post office at Spokane, Washington.

North Kootenai Water District  
P.O. Box 2290  
Hayden, ID 83835

A handwritten signature in black ink, reading "Rachael P. Osborn". The signature is written in a cursive style with a horizontal line underneath the name.

Rachael Paschal Osborn



**State of Idaho**  
**DEPARTMENT OF WATER RESOURCES**

**NORTHERN REGION, Suite No. 210 • 1910 Northwest Blvd. • Coeur d'Alene, Idaho 83814-2615**  
**(208) 769-1450**

**Fax (208) 769-1454**

October 25, 2004

**DIRK KEMPTHORNE**  
GOVERNOR

**KARL J. DREHER**  
DIRECTOR

FRIENDS OF THE AQUIFER  
C/O RACHAEL OSBORN  
2421 W MISSION AVE  
SPOKANE, WA 99201

Application to Permit No. 95-9244

Dear Protestant(s):

The Department of Water Resources acknowledges receipt of your protest against the approval of the above referenced application. A copy of your protest has been sent to the applicant. The Department suggests that you contact the applicant directly for details regarding the application and, if possible, to resolve the matter without action by the Department. In our experience, informal discussion between the parties prior to initiation of formal proceedings often leads to resolution of the protest.

If the protest cannot be resolved informally, the matter will be scheduled for conference and/or hearing. The following are criteria the Department must consider in either approving or denying the application (Section 42-203A, Idaho Code).

1. Will the proposed use reduce the quantity of water under existing water rights?
2. Is the proposed water supply insufficient for the purpose intended?
3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use conflict with the local public interest?
6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?

You will be notified at a later date of the time and place of the conference and/or hearing. Please contact this office if you have any questions regarding this procedure.

Sincerely,

Robert G. Haynes, P.E.  
Regional Manager

CC:



**State of Idaho**  
**DEPARTMENT OF WATER RESOURCES**

**NORTHERN REGION, Suite No. 210 • 1910 Northwest Blvd. • Coeur d'Alene, Idaho 83814-2615**  
**(208) 769-1450** **Fax (208) 769-1454**

October 25, 2004

**DIRK KEMPTHORNE**  
GOVERNOR

**KARL J. DREHER**  
DIRECTOR

SIERRA CLUBS UPPER COLUMBIA RIVER GROUP  
C/O RACHAEL OSBORN  
2421 W MISSION AVE  
SPOKANE, WA 99201

Application to Permit No. 95-9244

Dear Protestant(s):

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4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use conflict with the local public interest?
6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?

You will be notified at a later date of the time and place of the conference and/or hearing. Please contact this office if you have any questions regarding this procedure.

Sincerely,

Robert G. Haynes, P.E.  
Regional Manager

CC:



**State of Idaho**  
**DEPARTMENT OF WATER RESOURCES**

**NORTHERN REGION, Suite No. 210 • 1910 Northwest Blvd. • Coeur d'Alene, Idaho 83814-2615**  
**(208) 769-1450**

**Fax (208) 769-1454**

October 25, 2004

**DIRK KEMPTHORNE**  
GOVERNOR

**KARL J. DREHER**  
DIRECTOR

NORTH KOOTENAI WATER DISTRICT  
PO BOX 2290  
HAYDEN ID 83835

Application to Permit No. 95-9244

Dear Applicant(s):

Enclosed is a copy of a protest filed against approval of the above referenced application. The Department suggests that you contact the protestant(s) directly to determine the nature of the protest and, if possible, to resolve the matter without action by the Department. In our experience, informal discussion between the parties prior to initiation of formal proceedings often leads to resolution of the protest.

If the protest cannot be resolved informally, the matter will be scheduled for conference and/or hearing. The following are criteria the Department must consider in either approving or denying the application (Section 42-203A, Idaho Code).

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3. Is the application made in good faith or for delay or speculative purposes?
4. Has the applicant sufficient financial resources with which to complete the project?
5. Will the proposed use conflict with the local public interest?
6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?

You will be notified at a later date of the time and place of the conference and/or hearing. Please contact this office if you have any questions regarding this procedure.

Sincerely,

Robert G. Haynes, P.E.  
Regional Manager

CC:

# Idaho Department of Water Resources Receipt

Receipt ID N016603

Payment Amount  Date Received  Region  Status

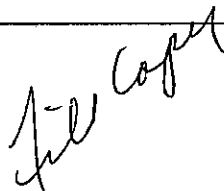
Payment Type  Check Number

Payer

Comment

## Fee Detail

| Amount  | Description | Fund | FD | PCA   | SO   |
|---------|-------------|------|----|-------|------|
| \$50.00 | PROTESTS    | 0229 | 21 | 65103 | 1155 |

  
\_\_\_\_\_  
Signature Line (Dept. Representative)

RECEIVED

OCT 15 2004

IDWR/North

## AFFIDAVIT OF PUBLICATION

STATE OF IDAHO,  
County of Kootenai, } ss.

*Kattie Hery*

being first duly sworn  
upon oath deposes and says:

1. I am now and at all times hereinafter mentioned was a citizen of the United States, resident of the State of Idaho, over the age of twenty-one years and not a party of the above entitled action.

2. I am now and at all times hereinafter mentioned was the printer (principal clerk) of the "Coeur d'Alene Press," a newspaper printed and published daily except Sunday in Coeur d'Alene, Kootenai County, Idaho, and having a general circulation in said county.

3. The

*Legal Notice*

of which the annexed is a printed copy, was published in the regular *Thursday* issue of said newspaper for *2* consecutive *weeks* commencing on the *7* day of *October* 20*04*, and ending on the *14* day of *October* 20*04*, and such publication was made as often during said period as said *Daily* newspaper was regularly issued.

4. That said newspaper has been continuously and uninterruptedly published in said Kootenai County, during a period of more than seventy-eight consecutive weeks

The following application(s) have been filed  
the State of Idaho:

95-9244

NORTH KOOTENAI WATER DISTRICT  
PO BOX 2290

HAYDEN ID 83835

|                       |               |   |
|-----------------------|---------------|---|
| Point(s) of Diversion | NWSE S18      | T |
| Point(s) of Diversion | NWNE S11      | T |
| Point(s) of Diversion | NWSWS24       | T |
| Point(s) of Diversion | NESE S23      | T |
| Point(s) of Diversion | SESW S23      | T |
| Point(s) of Diversion | SWSE S23      | T |
| Point(s) of Diversion | L1 (SENE) S6  | T |
| Point(s) of Diversion | NWNWNE S11    | T |
| Point(s) of Diversion | SESWSW S2     | T |
| Point(s) of Diversion | NWNE S14      | T |
| Point(s) of Diversion | SENE S7       | T |
| Point(s) of Diversion | SWNWS8        | T |
| Point(s) of Diversion | NESE S28      | T |
| Point(s) of Diversion | NESW S32      | T |
| Point(s) of Diversion | SESW S32      | T |
| Point(s) of Diversion | SESE S23      | T |
| Point(s) of Diversion | L7 (SWSE) S15 | T |
| Point(s) of Diversion | NESE S23      | T |
| Point(s) of Diversion | SESE S17      | T |
| Point(s) of Diversion | SESE S17      | T |

Source for all Points of Diversion is GROUND  
Use: MUNICIPAL 01

Total Diversion: 2 CFS

Date Filed: 08/27/2004

Remark: Municipal use is for service area of  
Honeysuckle Hills.

Permits will be subject to all prior water ri

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

**95-9244**

NORTH KOOTENAI WATER DISTRICT  
PO BOX 2290  
HAYDEN ID 83835

|                       |           |     |      |      |                 |
|-----------------------|-----------|-----|------|------|-----------------|
| Point(s) of Diversion | NWSE      | S18 | T52N | R03W | KOOTENAI County |
| Point(s) of Diversion | NWNE      | S11 | T51N | R04W | KOOTENAI County |
| Point(s) of Diversion | NWSW      | S24 | T51N | R04W | KOOTENAI County |
| Point(s) of Diversion | NESE      | S23 | T51N | R04W | KOOTENAI County |
| Point(s) of Diversion | SESW      | S23 | T51N | R04W | KOOTENAI County |
| Point(s) of Diversion | SWSE      | S23 | T51N | R04W | KOOTENAI County |
| Point(s) of Diversion | L1 (SENE) | S6  | T52N | R04W | KOOTENAI County |
| Point(s) of Diversion | NWNWNE    | S11 | T51N | R04W | KOOTENAI County |
| Point(s) of Diversion | SESWSW    | S2  | T51N | R04W | KOOTENAI County |
| Point(s) of Diversion | NWNE      | S14 | T51N | R04W | KOOTENAI County |
| Point(s) of Diversion | SENE      | S7  | T52N | R03W | KOOTENAI County |
| Point(s) of Diversion | SWNW      | S8  | T52N | R03W | KOOTENAI County |
| Point(s) of Diversion | NESE      | S28 | T52N | R04W | KOOTENAI County |
| Point(s) of Diversion | NESW      | S32 | T51N | R05W | KOOTENAI County |
| Point(s) of Diversion | SESW      | S32 | T51N | R05W | KOOTENAI County |
| Point(s) of Diversion | SESE      | S23 | T51N | R05W | KOOTENAI County |
| Point(s) of Diversion | L7 (SWSE) | S15 | T51N | R04W | KOOTENAI County |
| Point(s) of Diversion | NESE      | S23 | T51N | R04W | KOOTENAI County |
| Point(s) of Diversion | SESE      | S17 | T52N | R04W | KOOTENAI County |
| Point(s) of Diversion | SESE      | S17 | T52N | R04W | KOOTENAI County |

Source for all Points of Diversion is GROUND WATER

Use: MUNICIPAL            01/01 To 12/31            2 CFS

Total Diversion:            2 CFS

Date Filed:            08/27/2004

Remark:            Municipal use is for service area of North Kootenai Water District and Honeysuckle Hills.

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code.

Any protest against the approval of this application must be filed with the Director, Dept. of Water Resource, Northern Region, 1910 Northwest Blvd, Suite 210, Coeur D' Alene ID 83814 together with a protest fee of \$25.00 for each application on or before 10/25/2004. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director

Published on October 7 and 14, 2004



State of Idaho

## DEPARTMENT OF WATER RESOURCES

NORTHERN REGION, Suite No. 210 • 1910 Northwest Blvd. • Coeur d'Alene, Idaho 83814-2615  
(208) 769-1450

DIRK KEMPTHORNE  
GOVERNOR

KARL J. DREHER  
DIRECTOR

September 29, 2004

**KATTIE HOY & KRISTY PEAK  
LEGAL NOTICE DEPARTMENT  
COEUR D ALENE PRESS  
201 N 2ND  
COEUR D ALENE ID 83814**

**PLEASE FAX A PROOF AS IT WILL APPEAR IN PAPER, PRIOR TO PUBLICATION**

RE: Application for Permit No. 95-9244

**Dear Kattie and Kristy:**

Good afternoon, ladies.

Enclosed you will find a legal notice which we wish to have published in your newspaper on the dates indicated, October 7 and 14, 2004, (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

**This is one legal notice for which you will be very thankful that you can cut and paste or copy and paste. It would not be much fun to have to type it all out from scratch!**

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before 10/25/2004. Your cooperation is, as always, GREATLY appreciated.

Sincerely

*Dianne*

Dianne Ball  
Administrative Assistant

**Ball, Dianne**

---

**From:** Ball, Dianne  
**Sent:** Wednesday, September 29, 2004 2:43 PM  
**To:** Legal Notices-CdA Press (E-mail); Kristy Peak (E-mail)  
**Subject:** Legal notice for publication on October 7 and 14, 2004

Good afternoon, ladies,

Attached is a copy of our cover letter requesting publication on October 7 and 14, 2004 of a legal notice, also attached.

This is one legal that I know you will be thankful you do not have to type - but can just copy and paste or cut and paste into your set-up.

**IT WILL BE VERY IMPORTANT THAT I RECEIVE A FAXED COPY OF THE PROOF PRIOR TO PUBLICATION, SHOWING HOW THIS WILL APPEAR IN THE PAPER. I know that with copy and paste or cut and paste, often tabs do crazy things. Because this legal is so long and complicated, it will be critical that I can review it prior to publication.**

If you have ANY questions, please call me at 769-1450.

Thanks and have a wonderful day.



*May your day be filled with wonder and beauty.*

*Dianne*

Dianne Ball, Administrative Assistant  
Idaho Department of Water Resources  
1910 Northwest Blvd., Suite 210  
Coeur d'Alene, ID 83814  
Phone 208-769-1450 FAX 208-769-1454

9/29/2004



**State of Idaho**  
**DEPARTMENT OF WATER RESOURCES**

**NORTHERN REGION, Suite No. 210 • 1910 Northwest Blvd. • Coeur d'Alene, Idaho 83814-2615**  
**(208) 769-1450**

**Fax (208) 769-1454**

September 29, 2004

**DIRK KEMPTHORNE**  
GOVERNOR

**KARL J. DREHER**  
DIRECTOR

NORTH KOOTENAI WATER DISTRICT  
PO BOX 2290  
HAYDEN ID 83835

RE: Application for Permit No 95-9244

Dear Applicant(s):

The Department of Water Resources acknowledges receipt of your water right application. Please refer to the above referenced number in all future correspondence regarding this application.

A legal notice of the application has been prepared and is scheduled for publication in the Coeur d'Alene Press on October 7 and 14, 2004. Submittal of protests to this application will be allowed for a period ending ten days after the second publication.

If the application is protested you will be sent a copy of the protest(s). All protests must be resolved before the application can be considered for approval. If the protest(s) cannot be resolved voluntarily, the Department will conduct a conference and/or hearing on the matter.

If the application is not protested, it will be forwarded to our State Office in Boise for final processing. The State Office will notify you of any action taken on the application and will send you a copy of the permit if approved. A typical processing time for an unprotested application is about eight to twelve weeks.

Please feel free to contact this office if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Robert G. Haynes".

Robert G. Haynes, P.E.  
Regional Manager

Enclosure(s) - Receipt No. N016518