



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

February 1, 2008

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Re: Kootenai Land & Trust Protested Application No. 96-9253

Gentlemen:

On January 18, 2008, I received a document titled *Notice of Settlement and Conditional Motion to Withdraw Protest* for application to appropriate water no. 96-9253. Attached to the notice and motion was an executed agreement titled *Settlement Agreement Between Kootenai Land and Trust LLC and the Kootenai Environmental Alliance, Inc. in regards to KDWR Application for Permit no. 96-9253*. The withdrawal of Kootenai Environmental Alliance's protest is dependent upon "express" placement of conditions on the permit issued for application no. 96-9253.

After reviewing the agreement, I determined the Department could accept the actions proposed by the agreement, but verbatim adoption of some of the language would misstate Department processes, impose vague or undefined responsibilities, or would be redundant. The following are examples:

1. The agreement requires Kootenai Land & Trust to annually report "distribution information" but does not define what information should be reported.
2. The agreement requires the filing of amendments for components of the permit that can be adjusted at the time of permit approval without a formal amendment.
3. The agreement requires a condition limiting the permit to 0.30 cfs and also contains language limiting the approval period to five years. These conditions are not necessary because the permit will expressly state these limitations in the approval document.

February 1, 2008

Page 2 of 2

4. The agreement requires the review of data submitted annually but doesn't describe who must review the data and what the results of the review might be.

As a result, I attempted to rewrite the provisions of the agreement into an order that would be acceptable to the Department. I've attached the draft order. Please review the language carefully and suggest changes if I didn't capture the intent of the settlement agreement. If you send me suggestions, please serve the document on the other party, or better yet, perhaps the parties could jointly review the draft order, discuss any differences, and then contact me if you want to have a dialogue about possible changes. If I have not heard from you by **February 19, 2008**, I will sign the order and send it out assuming the language satisfies the intent of the agreement.

Sincerely,



Gary Spackman

Enclosure

Cc: IDWR's Northern regional office

DRAFT

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 96-9253 IN THE NAME OF)
KOOTENAI LAND AND TRUST, LLC)
)
_____)

ORDER GRANTING
CONDITIONAL MOTION
TO WITHDRAW
PROTEST AND
CANCELLING HEARING

A hearing is scheduled for a contested case regarding the application for permit no. 96-9253 on March 5 and 6, 2008.

On January 18, 2008, the Department received a *Notice of Settlement and Conditional Motion to Withdraw Protest* regarding the contested case. The hearing officer reviewed the agreement, and orders as follows:

ORDER

IT IS HEREBY ORDERED that the Department accepts the settlement agreement, in particular, the documented labeled Exhibit "A," and titled *Settlement Agreement Between Kootenai Land and Trust LLC and the Kootenai Environmental Alliance, Inc. in regards to KDWR Application for Permit no. 96-9253.*

IT IS FURTHER ORDERED that a permit for application no. 96-9253 shall be issued with a flow rate of 0.30 cubic feet per second ("cfs") for domestic and fire protection.

IT IS FURTHER ORDERED that the permit holder is granted five (5) years to develop the permitted beneficial use. The five year time period will expire on the proof due date of April 1, 2013.

IT IS FURTHER ORDERED that the following conditions shall be included in the permit approval:

1. The total annual volume for this permit and any subsequent license shall not exceed 40.3 acre feet per annum, except for use in documented fire protection incidents.
2. The right holder shall annually report to IDWR and Kootenai Environmental Alliance the total annual water volume withdrawn and the annual volume of water delivered to each connection by January 31 for the previous calendar year.

3. Five years from the date of issuance of the original permit, the right holder shall report to the Department and Kootenai Environmental Alliance the average per annum water consumption, within the limits granted in the permit, subject to review by Kootenai Environmental Alliance. The right holder agrees to restrict the annual volume of the water right based on actual average per annum water consumption. Actual average per annum water consumption (actual use) will be calculated as follows:

The total volume of water diverted and measured at the well head and reported for the previous calendar year divided by the actual number of occupied homes. This amount is to be pro-rated for any homes that were not occupied for the entire year. The annual volume shall be limited to the per annum allocation based on actual use plus ten percent multiplied by the 24 connections anticipated at build-out. The total annual volume cannot exceed 40.3 acre feet per annum.

4. Use under this right shall be limited to 24 connections.

5. The diversion and use of water described in this order is subject to additional conditions and limitations agreed to by both Kootenai Environmental Alliance and the water right holder under a separate agreement to which the Department is not a party and which may be independently enforceable by a court of law. A copy of the agreement is contained in the water right file.

IT IS FUTHER ORDERED that the hearing scheduled for March 5 and 6, 2008, is **Cancelled** and the protest of Kootenai Environmental Alliance is **Dismissed**.

DATED _____ day of February, 2008.

DRAFT

Gary Spackman
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of February, 2008, a true and correct copy of the document(s) described below were served by placing the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Order Granting Conditional Motion to Withdraw Protest and Cancelling Hearing, and an Explanatory Statement to accompany a preliminary order when a hearing was not held.

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