

**STARTING
LEFT
SIDE OF
FILE**

State of Idaho
Department of Water Resources**Permit to Appropriate Water**

NO. 95-09323

Priority: December 27, 2005

Maximum Diversion Rate: 0.19 CFS
Maximum Diversion Volume: 44.8 AFThis is to certify, that FERNAN ESTATES CORPORATION
PO BOX 2581
COEUR D ALENE ID 83816

has applied for a permit to appropriate water from:

Source: GROUND WATER

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
MUNICIPAL	01/01 to 12/31	0.19 CFS	44.8 AF

LOCATION OF POINT OF DIVERSION:

GROUND WATER	SW¼ NW¼ Sec. 16, Twp 50N, Rge 03W, B.M.	KOOTENAI County
GROUND WATER	L1 (SE¼ NW¼) Sec. 16, Twp 50N, Rge 03W, B.M.	KOOTENAI County
GROUND WATER	SW¼ NW¼ Sec. 16, Twp 50N, Rge 03W, B.M.	KOOTENAI County

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **May 01, 2008**.
2. Subject to all prior water rights.
3. Municipal use is for 40 homes and a 4-acre common area.
4. The daily diversion volume for this municipal right shall not exceed 100 gallons for the common area and 900 gallons per home that has been constructed.
5. Place of use is within the area served by the public water supply system of Fernan Estates Corporation. The place of use is generally located within Section 16, Township 50N, Range 3W. B.M.
6. Prior to or in connection with the proof of beneficial use statement to be submitted for municipal water use under this right, the right holder shall provide the department with documentation showing that the water supply system is being regulated by the Idaho Department of Environmental Quality as a public water supply and that it has been issued a public water supply number.
7. A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.
8. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
9. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
10. The right holder shall maintain a totalizing measuring device of a type approved by the Department as a part of the diverting works.

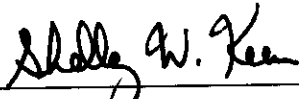
State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 95-09323

11. The right holder shall record the quantity of water diverted and annually report before October 15 of each year, diversions of water and/or other pertinent hydrologic and system information.
12. The diversion and use of water described in this right may be subject to additional conditions and limitations agreed to by the protestant(s) and the right holder under separate agreement to which the Department is not a party and which may be enforceable by a court of law.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 18th day of May, 2006.


FOR KARL J DREHER, Director

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 95-09323

Fernan Estates Corporation

May 18, 2006



-  **Permit POU**
-  **Township/Range**
-  **Sections**
-  **QQ**

Ident. No. 95-9323

RECEIVED
MAY 16 2006

72512
STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT
To appropriate the public waters of the State of Idaho

RECEIVED
DEC 27 2005
IDWR/North

DEPARTMENT OF WATER RESOURCES

1. Name of Applicant Fernan Estates Corporation Phone 208-661-9356
Mailing address PO Box 2581 Coeur d'Alene ID 83816

2. Source of water supply groundwater which is a tributary of n/a Rm

3. Location of point of diversion is Township 50N Range 3W Sec. 16, in the SW ¼, Rm
(x2) SW ¼, NW ¼, Govt. Lot n/a, B.M., Kootenai County;
additional points of diversion if any: SE NW 5.16 Rm

4. Water will be used for the following purposes:
Amount 1.9 cfs for municipal purposes from Jan 1 to Dec 31 (both dates inclusive) Rm
(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) 1.9 cfs and/or (b) _____
cubic feet per second acre feet per annum

6. Proposed diverting works: Wells

a. Describe type and size of devices used to divert water from the source Wells to be developed

b. Height of storage dam n/a feet; active reservoir capacity to be designed acre-feet; total
reservoir capacity _____ acre-feet

c. Proposed well diameter is 6-8 inches; proposed depth of well is 500-600 feet

d. Is ground water with a temperature of greater than 85°F being sought? No

e. If well is already drilled, when? to be determined, Drilling firm n/a

Well was drilled for (well owner) n/a; Drilling Permit No. n/a

7. Time required for completion of works and application of water to proposed beneficial use is 2 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. n/a

b. Stockwatering; list number and kind of livestock. n/a

c. Municipal; show name of municipality. Fernan Estates Corporation

d. Domestic; show number of households. 40 homes Rm

e. Other; describe fully. _____

9. 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.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
50N	3W	16							M	L1 M	L5 M	L4 M							

Total number of acres to be irrigated n/a

10. Describe any other water rights used for the same purposes as described above. n/a

11. a. Who owns the property at the point of diversion? McKahan + Sons Limited Partnership

b. Who owns the land to be irrigated or place of use? future lot owners

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: n/a

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.)

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.

RDM Pres.
Signature of Applicant (and title, if applicable)

Received by JS Date 12-27-05 Time 10:26 A Preliminary check by _____
 Fee \$ 250.00 Receipted by JS # N017307 Date 12-27-05
 Publication prepared by CD Date 12/28/05 Published in CDAPress 1/5+12/06
 Publication approved CD Date 1/17/06

95-9323

T50N R3W Section 16



Place of Use



Point of Diversion



**NOW
STARTING
RIGHT
SIDE OF
FILE**



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 19, 2006

FERNAN ESTATES CORPORATION
PO BOX 2581
COEUR D ALENE ID 83816

RE: Permit No. 95-9323

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review the conditions of approval and remarks listed on your permit.

The permit is a PRELIMINARY ORDER issued by the Department pursuant to Section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

As a permit owner you must commence the excavation or construction of the diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed. The date shown under condition no. 1 is the date when the project must be completed.

The Department will send you a 'Proof Due Notice' approximately 60 days prior to the above referenced date requesting you to file either a Proof of Beneficial Use form or a Request for Extension of Time form.

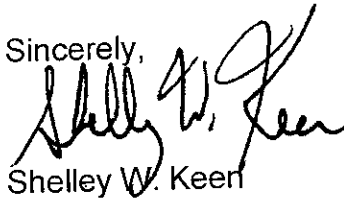
The right to drill a well is not a part of this permit to appropriate water. Beginning in July of 1987, a statute was enacted which requires a drilling permit for new well construction and deepening of existing wells. If the well(s) proposed for use under this water right permit were drilled or deepened after July 1, 1987, a separate drilling permit must be obtained from this Department. Please contact the Ground Water Protection Section located here at this office or our regional office nearest you.

Please note that one of the conditions of approval on your permit requires that you measure your diversion and record other important hydrologic and physical features and report them annually to the Department. The Department will shortly send you further information about measuring devices, flow estimation using power records, and annual reporting forms. If you have questions about the measuring and reporting requirements, please call the Department at (208) 327-7900 and ask for someone in the Water Distribution Section.

Also, please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at 208-287-4947.

Sincerely,

A handwritten signature in black ink, appearing to read "Shelley W. Keen". The signature is fluid and cursive, with the first name being the most prominent.

Shelley W. Keen

Water Rights Supervisor

SWK:klt

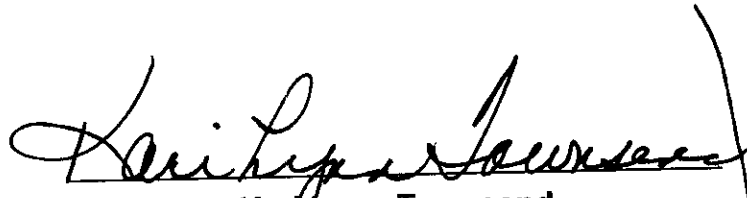
Enclosure(s)

CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2006 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO. 95-9323

**FERNAN ESTATES CORPORATION
PO BOX 2581
COEUR D ALENE ID 83816**



**Karl Lynn Townsend
Secretary**

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

(To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of, or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

MEMORANDUM

Date: May 18, 2006
To: Water Right File 95-9323
From: eretelle
Re: permit review

No WD or moratorium.

No overlap.

Protest withdrawn - conditions included.

Recommend approval as suggested by IDWR Northern.

PROTEST INFORMATION SHEET

Application No. 95-9323

SPECIAL NOTE: _____

Protestant(s) NAME(S)	ADDRESS	PHONE
1 <u>Kootenai Environmental Alliance</u>	<u>PO Box 1598 E. Checker</u> <u>PO Box 1598 CDA 83816-598</u>	<u>667-9093</u>
2 _____	_____	_____
3 _____	_____	_____
4 _____	_____	_____
5 _____	_____	_____
6 _____	_____	_____
7 _____	_____	_____
8 _____	_____	_____
9 _____	_____	_____
10 _____	_____	_____

ATTORNEY

ADDRESS

PHONE

DATE FILED: 12/27/05

PROTEST DUE DATE: 1/23/06

ISSUES: Project is contrary to the conservation of resources;
Water supply insufficient etc, etc, etc. Do not permit
until a quifer study is complete

Applicant(s)

ATTORNEY

ADDRESS

Protest Date Entered on Computer

DATE

1/19/06

Acknowledgment Letters Sent

Hearing Date

(Other Dates)

Other Information

Resolved by Settlement Agreement to

Protest information submitted to computer following hearing: _____



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region, 1910 Northwest Blvd. Suite 210, Coeur d'Alene, Idaho 83814-2615

Phone: (208) 769-1450

Fax: (208) 769-1454

Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 10, 2006

FERNAN ESTATES CORPORATION
PO BOX 2581
COEUR D ALENE ID 83816

Application to Permit No.
Withdrawal of Protest As A Result Of Protest Settlement Agreement

Dear Applicant(s):

The Department of Water Resources has received withdrawal of protest against the above referenced application from Kootenai Environmental Alliance. The original Settlement Agreement between you and the protestant is in file.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely,

Robert G. Haynes, P.E.
Regional Manager

CC: Kootenai Environmental Alliance



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region, 1910 Northwest Blvd. Suite 210, Coeur d'Alene, Idaho 83814-2615

Phone: (208) 769-1450

Fax: (208) 769-1454

Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 10, 2006

KOOTENAI ENVIRONMENTAL ALLIANCE
C/O BARRY ROSENBERG EXEC DIRECTOR
PO BOX 1598
COEUR D ALENE, ID 83816-1598

Application to Permit No. 95-9323 – Fernan Estates Corporation
Withdrawal of Protest As A Result Of Protest Settlement Agreement

Dear Protestant(s):

The Department of Water Resources acknowledges receipt of your withdrawal of protest against the above referenced application.

Please feel free to contact this office if you have any questions regarding this procedure.

Sincerely,

A handwritten signature in black ink that reads "Robert G. Haynes". The signature is written in a cursive, flowing style.

Robert G. Haynes, P.E.
Regional Manager

CC: Fernan Estates Corporation

SETTLEMENT AGREEMENT BETWEEN FERNAN ESTATES CORPORATION AND THE KOOTENAI ENVIRONMENTAL ALLIANCE IN REGARDS TO IDWR APPLICATION FOR PERMIT NO. 95-9323

This Settlement Agreement (Agreement) is entered into by and between the Kootenai Environmental Alliance (KEA) and Fernan Estates Corporation (Fernan Estates) to resolve disputes regarding IDWR Application for Permit No. 95-9323. In consideration of the mutual promises specified herein and by conditioning their performance under this Agreement upon satisfaction of the identified conditions precedent, and for other good and valuable consideration, the Parties agree as follows:

A. Scope of Agreement

This Agreement is intended to settlement all matters related solely to the protest filed by KEA of Fernan Estates' water right application filed with IDWR (Permit No. 95-9323).

B. Actions of Fernan Estates

Under the terms of this Agreement, Fernan Estates agrees to undertake the following actions:

1. Submit an amended IDWR Application for Permit 95-9323 for 0.19 cfs, not to exceed 44.804 acre-feet per annum to provide water for 40 residences sited on 2.5-acre lots and a 4-acre common area. The water would be distributed to allow 900 gallons per day per residence and 100 gallons per day for the common area.
2. Enact covenants, conditions, and restrictions (CCRS) that require the water utility and/or individual property owners in the proposed subdivision to conserve water, such as:
 - a. A rate schedule that encourages water conservation.
 - b. Restricting the size of their lawn area and encouraging xeriscape-landscaping principles.
 - c. Not irrigating during the high evaporation times between 10:00 a.m. and 8:00 p.m. and utilize an every other day watering schedule.
 - d. Encouraging property owners to utilize water saving devices that will result in more efficient lawn irrigation such as a rain sensor, moisture sensor or hose bib timers.
3. Agree to meet with KEA within one-year and/or as necessary to ensure compliance with the terms of the agreement.
4. Report on a yearly basis the annual water withdrawal information by October 15 to Idaho Department of Water Resources (IDWR) and KEA for fiscal year ending on October 1.

C. Mutual Actions

The Parties agree to jointly file a notice of settlement, a copy of this Agreement, and a conditional motion to withdraw protest requesting that IDWR issue a water right that:

1. Incorporates the terms of the amended water right application described in section B (1)(2); and
2. References this Agreement and includes a copy of this Agreement in the permit file.

The conditional motion to withdraw protest shall be conditioned upon the acceptance and inclusion of the terms set forth in that section by IDWR. The Parties further agree not to protest or otherwise challenge the terms of IDWR's water right permit should the terms of that permit be issued in a manner consistent with this Agreement.

D. Actions of KEA

In consideration for the actions identified above and upon the issuance of a final water rights permit to Fernan Estates that incorporates the terms set forth in section C, KEA agrees to a full and final dismissal of its protest.

F. Non-Severability

The paragraphs of this Agreement are not severable. This Agreement is executed on the understanding that each paragraph is in consideration of the others.

G. Good Faith

The Parties to this Agreement agree to act in good faith and make all reasonable efforts to satisfy the conditions of the Agreement.

H. Successors and Assigns

This Agreement will be binding and will inure to the benefit of the Parties and their respective heirs, legal representatives, successors and permitted assigns, except as restricted by this Agreement.

I. Authorizations

All individuals executing this Agreement and other documents on behalf of the respective Parties certify and warrant that they have the capacity and have been duly authorized to so execute the documents on behalf of the Party so indicated.

J. Advice of Attorneys

Each Party represents and warrants that in executing this Agreement, each has been advised by or has had an opportunity to be advised by independent legal counsel. Each party has read the terms of this Agreement and understands their consequences. Each Party further acknowledges and represents that, in executing this Agreement, it has not relied on any inducements, promises or representations made by any other Party or its representatives, except as otherwise stated in this Agreement.

K. Entire Agreement and Amendment

With respect to the issues considered herein, this Agreement contains the entire understanding and agreement of the Parties. There have been no promises, representations, agreements, warranties or undertakings by any of the Parties, either oral or written, of any character or nature binding except as stated in this Agreement. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the Parties to this Agreement and by no other means. An amendment to the Agreement is binding only on the Parties that execute the Amendment. Each Party waives its right to claim, contest or assert that this Agreement was modified, cancelled, superseded or changed by any oral agreement, course of conduct, waiver, or estoppel.

For the Kootenai Environmental Alliance

Barry Rosenberg

Barry Rosenberg

4/28/06

Date

For Fernan Estates Water and Sewer District

RDM

Randy McKahan

4-28-06

Date



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region, 1910 Northwest Blvd. Suite 210, Coeur d'Alene, Idaho 83814-2615

Phone: (208) 769-1450

Fax: (208) 769-1454

Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

January 19, 2006

FERNAN ESTATES CORPORATION
PO BOX 2581
COEUR D ALENE ID 83816

Application to Permit No. 95-9323

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).

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: - Kootenai Environmental Alliance
C/o Barry Rosenberg, Exec Director
PO Box 1598
Coeur d'Alene ID 83816-1598



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region, 1910 Northwest Blvd. Suite 210, Coeur d'Alene, Idaho 83814-2615

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DIRK KEMPTHORNE
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KARL J. DREHER
Director

January 19, 2006

KOOTENAI ENVIRONMENTAL ALLIANCE
C/O BARRY ROSENBERG EXEC DIRECTOR
PO BOX 1598
COEUR D ALENE, ID 83816-1598

Application to Permit No. 95-9323

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).

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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: Fernan Estates Corporation
PO Box 2581
Coeur d'Alene, ID 83816

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
PERMIT NO. **95-9323**
In the name of Fernan Estates Corporation

)
) **PROTEST**
)
—

Kootenai Environmental Alliance
P.O. Box 1598
Coeur d'Alene, ID 83816-1598

This protest is submitted on behalf of the Kootenai Environmental Alliance.

A. Interests of Protestant

Kootenai Environmental Alliance (KEA) is a 501(c)(3) non-profit corporation incorporated in the state of Idaho, with a mission to protect and restore the environment with an emphasis on the Idaho Panhandle and the Coeur d'Alene basin. KEA has members and supporters who live, work and recreate in north Idaho and eastern Washington, including recreating on the Spokane River. KEA members rely upon the Rathdrum Prairie-Spokane Valley Aquifer as a source of water for drinking water supply and to serve the businesses where they work. KEA members actively participate in the current comprehensive bi-state study of the Rathdrum Prairie-Spokane Valley Aquifer.

The Protestant and its 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 Prairie-Spokane Valley Aquifer and hydraulically connected water resources, including the Spokane and Little Spokane Rivers.

B. Basis of Protest

The Protestant protests a water permit application filed by Fernan Estates Corporation Application No. 95-9323 seeks 0.3 CFS or 193,894.5 gallons per day, year-round, for municipal use. This protest is based on the criteria set forth in Sec. 42-203A, Idaho Code, and groundwater statutes, as more specifically set forth below.

The applicant has provided a water supply plan with the application. 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.

(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 193,894.5 gallons of water per day from the Rathdrum Prairie-Spokane Valley Aquifer to service 18 units, which amounts to 10,772 gallons per unit per day. The proposed development is located adjacent to Fernan Lake that is designated as a Critical Aquifer Recharge Area (CARA). Fernan Estates Corporation has neither promulgated nor implemented a water conservation plan to limit consumption at reasonable levels as required by the Rathdrum Prairie Aquifer Ground Water Management Plan.

The 0.3 CFS (continuous, year-round) requested under the application is not justified by a reasonable water balance. These quantities are excessive and wasteful and do not represent an appropriate water duty for the purposes set forth in the permit application. Water conservation alternatives are available to reduce the amount of water use contemplated by Fernan Estates Corporation. 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 Prairie-Spokane Valley Aquifer is complete.

A bi-state study of the Rathdrum Prairie-Spokane Valley Aquifer is currently ongoing. 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 in the amount contemplated by the Fernan Estates Corporation application 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 Prairie-Spokane Valley Aquifer is a finite resource that may be fully allocated. Groundwater withdrawals from the bi-state area may already exceed natural recharge within the basin. As a sole source aquifer, the Rathdrum Prairie-Spokane Valley Aquifer is an invaluable resource to the 500,000-plus citizens of the region who depend upon it for drinking water supply.

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 or 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 Prairie-Spokane Valley Aquifer in violation of Idaho law.

(4) The project will harm the local public interest.

Because of the hydraulic connections between the Rathdrum Prairie-Spokane Valley 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 contributes to water quality problems, including violation of water quality standards in Washington State. Withdrawal of water from the Rathdrum Prairie-Spokane Valley Aquifer in the quantity requested in the permit application will deplete flow in the Spokane River, further exacerbating water quality degradation.

The cumulative impacts of the proposed Fernan Estates Corporation 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 Prairie-Spokane Valley Aquifer, including municipal water purveyors that supply virtually the entire population of the City of Spokane Valley and City of Spokane. The proposed Fernan Estates Corporation 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 applications.

(5) 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. The pumping of approximately 193,894.5 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. Water permits issued to Fernan Estates Corporation in the quantities 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.

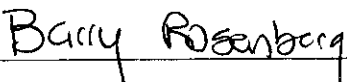
Finally, and as discussed in the "local public interest" section above, down-gradient water right holders in Washington state will be adversely affected by the pumping of water proposed in this application.

The applicant has offered no proposal to mitigate the impacts of its proposed water withdrawals.

C. Relief Sought

For the foregoing reasons, Protestants request that a protest hearing be scheduled and that Fernan Estates Corporation Water Permit Application No. 95-9323 be denied or conditioned to mitigate the harms and impacts identified above.

DATED this 13th day of January 2006.

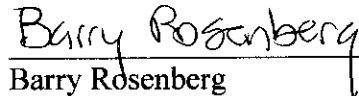


Barry Rosenberg
Executive Director

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of January 2006, 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 in Coeur d'Alene, Idaho.

Fernan Estates Corporation
P.O. Box 2581
Coeur d'Alene, ID 83816-2581



Barry Rosenberg
Executive Director

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO,
County of Kootenai.

} ss.

Kattie Hay

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 *5* day of *January*, 2006, and ending on the *12* day of *January*, 2006, and such publication was made as often during said period as said newspaper was regularly issued.

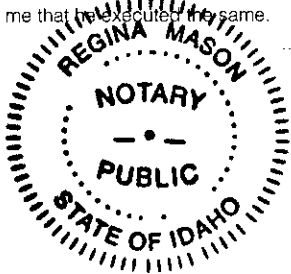
4. That said newspaper has been continuously and uninterruptedly published in said Kootenai County, during a period of more than seventy-eight consecutive weeks immediately prior to the first publication of said notice.

On this *12* day of *January*, in the year of *2006*, before me, a Notary Public, personally appeared *Kattie Hay*, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Regina Mason

Notary Public for the State of Idaho,
residing at Coeur d'Alene, Idaho.

MY COMMISSION EXPIRES 6/18/09



RECEIVED
JAN 13 2006
IDWR/North

NOTICE OF APPLICATION

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

94-7410

ROSCOE A EALEY

PO BOX 18302

TUCSON AZ 85731

Point(s) of Diversion NWSE S12 T47N R03W KOOTENAI County

Source GROUND WATER

Use: IRRIGATION 03/15 To 11/15 0.04 CFS

Use: DOMESTIC 01/01 To 12/31 0.04 CFS

Total Diversion: 0.04 CFS

Date Filed: 12/12/2005

Place Of Use: IRRIGATION

T47N R03W S12 NWSE

Number of Acres 2

Place Of Use: DOMESTIC same as IRRIGATION

Remark: Domestic use is for 8 homes.

95-9320

HARBOR VIEW ESTATES WATER AND SEWER DISTRICT

C/O HOA ADMINISTRATION

269 W. SUNSET BLVD., STE 11

COEUR D ALENE ID 83815

Points of Diversion (3) L5 (NWNW) S6 T49N R03W KOOTENAI County

Source COEUR D ALENE LAKE - Tributary To SPOKANE RIVER

Use: MUNICIPAL 01/01 To 12/31 0.42 CFS

Total Diversion: 0.42 CFS

Date Filed: 12/01/2005

Place Of Use: MUNICIPAL

Remark: Municipal use is for applicants service area

95-9322

SHELTER PECK LLC

104 POPLAR AVE

COEUR D ALENE ID 83814

Point(s) of Diversion NESW S12 T51N R06W KOOTENAI County

Source GROUND WATER

Use: MUNICIPAL 01/01 To 12/31 0.09 CFS

Total Diversion: 0.09 CFS

Date Filed: 12/19/2005

Place Of Use: MUNICIPAL

Remark: Municipal use is within service area of applicant.

95-9323

FERNAN ESTATES CORPORATION

PO BOX 2581

COEUR D ALENE ID 83816

Point(s) of Diversion - L1 (SENW), SWNW (2), S16 T50N R03W KOOTENAI County

Source GROUNDWATER

Use: MUNICIPAL 01/01 To 12/31 0.3 CFS

Total Diversion: 0.3 CFS

Date Filed: 12/27/2005

Place Of Use: MUNICIPAL

Remark: Municipal use is within service area of applicant.

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 01/23/2006. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director

Legal 8497

January 5, 12, 2006

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

94-7410

ROSCOE A EALEY
PO BOX 18302
TUCSON AZ 85731
Point(s) of Diversion NWSE S12 T47N R03W KOOTENAI County
Source GROUND WATER
Use: IRRIGATION 03/15 To 11/15 0.04 CFS
Use: DOMESTIC 01/01 To 12/31 0.04 CFS
Total Diversion: 0.04 CFS
Date Filed: 12/12/2005
Place Of Use: IRRIGATION
T47N R03W S12 NWSE
Number of Acres 2
Place Of Use: DOMESTIC same as IRRIGATION
Remark: Domestic use is for 8 homes.

95-9320

HARBOR VIEW ESTATES WATER AND SEWER DISTRICT
C/O HOA ADMINISTRATION
296 W SUNSET BLVD., STE 11
COEUR D ALENE ID 83815
Points of Diversion (3) L5 (NWNW) S6 T49N R03W KOOTENAI County
Source COEUR D ALENE LAKE - Tributary To SPOKANE RIVER
Use: MUNICIPAL 01/01 To 12/31 0.42 CFS
Total Diversion: 0.42 CFS
Date Filed: 12/01/2005
Place Of Use: MUNICIPAL
Remark: Municipal use is for applicants service area

95-9322

SHELTER PECK LLC
104 POPLAR AVE
COEUR D ALENE ID 83814
Point(s) of Diversion NESW S12 T51N R06W KOOTENAI County
Source GROUND WATER
Use: MUNICIPAL 01/01 To 12/31 0.09 CFS
Total Diversion: 0.09 CFS
Date Filed: 12/19/2005
Place Of Use: MUNICIPAL
Remark: Municipal use is within service area of applicant.

95-9323

FERNAN ESTATES CORPORATION
PO BOX 2581
COEUR D ALENE ID 83816
Point(s) of Diversion - L1 (SENW), SWNW (2), S16 T50N R03W
KOOTENAI County
Source GROUNDWATER
Use: MUNICIPAL 01/01 To 12/31 0.3 CFS
Total Diversion: 0.3 CFS
Date Filed: 12/27/2005
Place Of Use: MUNICIPAL
Remark: Municipal use is within service area of applicant.
Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code.
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KARL J DREHER, Director Published 01/05 & 01/12/2006

DEPARTMENT OF WATER RESOURCES
1910 NORTHWEST BLVD., SUITE 210
COEUR D'ALENE ID 83814
Phone 208-769-1450 - FAX - 208-769-1454

December 28, 2005

KATTIE HOY &/OR GLENDA JEFFERSON
LEGAL NOTICE DEPARTMENT
COEUR D ALENE PRESS
201 N 2ND
COEUR D ALENE ID 83814

Please FAX proof copy before publication, to 208-769-1454
Thanks, Dianne

RE: Application for Permit No. 94-7410, 95-9320, 95-9322 and 95-9323

Dear Kattie and Glenda:

THIS LETTER IS BEING SENT BY E-MAIL AS WELL AS FAX, ~ FYI.

Enclosed you will find a legal notice which we wish to have published in your newspaper on the dates Indicated, January 5 and 12, 2006, (once a week for two consecutive weekly issues). **If you cannot publish the notice on the proposed dates, please contact us immediately.**

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 01/23/2006. Your cooperation is GREATLY appreciated.

Thank you,
Sincerely



Dianne Ball
Administrative Assistant

Ball, Dianne

From: Ball, Dianne
Sent: Wednesday, December 28, 2005 3:23 PM
To: Legal Notices-CdA Press (E-mail); Legal Notices-CdA Press2 Glenda Jefferson (E-mail)
Subject: Legal notice for publication on January 5 and 12, 2006 - Water Rights 94-7410, 95-9320, 95-9322 & 95-9323

Good afternoon, Kattie & Glenda,

Attached is our cover letter requesting publication on January 5 and 12, 2006 of a legal notice, also attached.

I AM FAXING THIS AS WELL AS E-MAILING IT TO COVER ALL BASES!

If you have ANY questions, please call me at 769-1450.

ALSO - PLEASE FAX PROOF COPY PRIOR TO PUBLICATION so I can check layout, etc.,

Thank you very much for you help.

Dianne

Dianne Ball
Administrative Assistant
Idaho Dept of Water Resources
1910 Northwest Blvd., Suite 210
Coeur d'Alene, ID 83814
Phone (208)769-1450 FAX (208)769-1454



CoverLetter
2-28-05 CdA e-mai.



LegalNotice
2-28-05 CdA e-mai.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region, 1910 Northwest Blvd. Suite 210, Coeur d'Alene, Idaho 83814-2615

Phone: (208) 769-1450

Fax: (208) 769-1454

Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

December 28, 2005

FERNAN ESTATES CORPORATION
PO BOX 2581
COEUR D ALENE ID 83816

RE: Application for Permit No 95-9323

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 January 5 and 12, 2006. 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,

Gregory J. Taylor
Senior Water Resource Agent

FERNAN ESTATES CORPORATION
PO BOX 2581
COEUR D'ALENE, ID 83816

EIN #20-3968684

OFFICERS:

Randy McKahan President
Scott McKahan Vice President