BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 65-22357 IN THE NAME OF WESTROCK ASSOCIATES, LLC	))))	**FINAL ORDER**

This matter is before the Director of the Idaho Department of Water Resources ("IDWR") following the issuance of a Recommended Decision and Order by the IDWR Hearing Officer. The Hearing Officer recommended approval of the Application for Water Right Permit No. 65-22357 ("Application") by WestRock Associates, LLC ("WestRock") to appropriate ground water in the Payette River drainage for a four-season resort in Valley County. A recommended order may become a final order only upon review of the Director in accordance with I.C. § 67-5244. The Director on review of a recommended decision exercises all the decision-making power that he would have had if the Director had presided over the hearing. I.C. § 67-5244.

STANDARD FOR DECISION

Water right applications are processed under Idaho Code § 42-203A, which provides, in part, that:

> (5) The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied. In all applications whether protested or not protested, where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the

> work involved therein, or (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the state of Idaho; the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller quantity of water than applied for, or may grant a permit upon conditions. …

A water right applicant bears the burden of proof for the factors IDWR must consider under Section 42-203A, Idaho Code. *Cantlin v. Carter*, 88 Idaho 179, 187 (1964); *Shokal v. Dunn*, 109 Idaho 330, 339 (1985). Both the applicant and any protestants have the burden of coming forward with information concerning factors affecting the local public interest of which they can be expected to be more cognizant than the other parties. Rule 40.03 Water Appropriation Rules, IDAPA 37.03.08.

POST-HEARING PROCEEDINGS

Protestant Citizens for Valley County ("CVC") filed *Protestant's Exceptions to Recommended Order* on September 30, 2002. CVC requests that WestRock's application be denied on the basis that WestRock has not demonstrated it has the financial resources to complete its project, nor that it is reasonably probable such resources will be available. CVC argues that, at a minimum, the Director should require WestRock to obtain an extension of its ten-year lease from the State as a condition of the issuance of any water permit. CVC also argues that the Director should require WestRock to obtain unqualified letters of financial commitment for Phase 1, as well as necessary bonding authority to raise government debt.

WestRock filed *WestRock's Response to Protestant CVC's Exceptions to Recommended Order* on October 24, 2002. WestRock responds that CVC's position regarding the financial

resources criterion of I.C. § 42-203A(5)(d) is not consistent with the Idaho case law construing that provision. WestRock argues that the financial resources criterion does not require an applicant to show, prior to the issuance of the permit, that it has guarantees of financing from identified sources. WestRock argues that ample evidence in the record supports the Hearing Officer's finding that WestRock has satisfied the sufficient financial resources criterion. WestRock asks that the Director adopt the Hearing Officer's Recommended Order in full.

The Director has reviewed the *Recommended Decision and Order* of the Hearing Officer in this matter, the *Protestant's Exceptions to Recommended Order*, and *WestRock's Response to Protestant CVC's Exceptions to Recommended Order*. The Director concurs with the factual and legal determinations made by the Hearing Officer and adopts the Hearing Officer's *Recommended Decision and Order* with minor modifications. The Director hereby enters a final order in this matter with the following findings of fact, conclusions of law, and conditions of approval.

FINDINGS OF FACT

I. Course of Proceedings.

1. On March 16, 2001, WestRock submitted an application for a water right permit for a four-season resort in Valley County. That application was assigned number 65-22357 (the "Application"). The Application described the proposed water use as follows:

Source of Water:	Ground water.
Point(s) of Diversion:	Eleven alternative well sites as follows: one in the NE ¼ SW ¼, Sec. 32, T. 16 N, R. 3 E, B.M., Valley County; two in Gov't Lot 1, one in the SE ¼ NW ¼, one in the NE ¼ SE ¼, one in the NE ¼ SW ¼, one in the SW ¼ SW ¼, and one in the SE ¼ SE ¼, Sec. 5, T. 15 N., R. 3 E., B.M., Valley County; one in the NE ¼ SW ¼,

	one in the SE ¼ NE ¼, and one in the SW ¼ SE ¼, Sec. 8, T. 15 N., R. 3 E., B.M., Valley County, Idaho.
Use(s):	Municipal use, including domestic uses, snowmaking, golf course irrigation, storage, recreation, aesthetic and commercial uses.
Total Quantity:	8.6 cfs and 1,248 acre feet per annum (afa).
Period of Use:	January 1 – December 31 (year-round).
Place of Use:	Sections 5, 7, 8, 17 & 18 T. 15 N. R 3 E; Section 36 T. 16 N. R. 2 E.; and Sections 19, 30, 31 & 32 T. 16 N, R. 3 E., B.M., Valley County, Idaho.

The Application was accompanied by an attachment A with ten exhibits: (1) a map showing the municipal service area boundary; (2) a map showing the land survey system grid; (3) a resort concept map; (4) a report on the proposed ground water development by Hydro Logic, Inc., dated March 15, 2001; (5) spreadsheets of the estimated water diversion requirements; (6) spreadsheets of the water demand by phase; (7) a snowmaking system summary; (8) a warranty deed for a portion of the service area; (9) a proposed lease agreement for the remainder of the service area; and (10) financial information.

2. Notice of the Application was published on or about April 19 and 26, 2001, in *The Star News* and on or about May 2 and May 9, 2001, in the *McCall-Cascade Times Advocate*, newspapers circulated weekly in Valley County. A timely protest was received by IDWR on May 8, 2001, from the Citizens for Valley County ("CVC"). An Amendment to Protest was filed by CVC on May 21, 2001. On May 24, 2002, CVC filed a Notice of Partial Withdrawal of Protest.

3. Following the partial withdrawal of protest, the remaining issues identified in the protest documents are summarized as follows:

a. The proposed water use conflicts with the local public interest for the following reasons:

1. Interference with local economic, recreational, environmental, aesthetic and scientific concerns, including degrading water quality to the detriment of fish, subsistence fishing by local residents, and other human pursuits, and by eliminating wildlife habitat.

2. Impairment of beneficial uses of Cascade Reservoir, which is water quality limited.

3. Replacement of the existing rural character of the local area with urban development.

4. Population growth which will overwhelm existing infrastructure for traffic, sewage, schools, fire and police services, to the economic and social detriment of local residents.

b. The Application was not made in good faith and WestRock lacks sufficient financial resources to complete the proposed project.

4. On June 4, 2001, WestRock filed a *Motion for Order Allowing Discovery and Request for Pre-hearing Conference*. IDWR issued an *Order Authorizing Discovery* on June 12, 2001.

5. IDWR conducted a prehearing conference on the Application and protest on June 25, 2001. After this conference IDWR issued a *Prehearing Order* on August 7, 2001, which indicated that a hearing would be held commencing December 3, 2001.

6. By Order dated September 4, 2001, the Director of IDWR appointed Peter Anderson as Hearing Officer in this matter.

7. On October 5, 2001, the Hearing Officer invited IDWR staff to file by November 2, 2001, a staff memorandum providing: (1) an analysis of any technical or scientific facts within IDWR's specialized knowledge regarding the Application, including whether the Application should be approved, and any conditions of approval; (2) a listing of applicable IDWR allocation memoranda; (3) a GIS map showing place of use and points of diversion.

8. On October 18, 2001, CVC moved for a continuance of the hearing. WestRock responded to the motion for continuance on October 29, 2001, and CVC replied on November 5, 2001. The Hearing Officer granted the motion for continuance in an Order dated November 9, 2001.

9. On May 14, 2002, WestRock filed its Motion to Schedule Hearing. A status conference with all parties was held on May 24, 2002. The Hearing Officer issued a *Prehearing Order and Notice of Hearing* on May 29, 2002, setting dates for information exchange, supplemental discovery and for the hearing.

10. On June 25, 26, and 27, 2002, pursuant to the *Prehearing Order and Notice of Hearing* issued on May 29, 2002, IDWR conducted a hearing on the Application. WestRock was present and represented by Jeffrey Fereday, Deborah Nelson and Steven Millemann. CVC was present and represented by William Eddie and Brad Purdy.

11. At the conclusion of the hearing, the parties were given until July 12, 2002, to file written closing statements. Both WestRock and CVC filed statements. This matter was fully submitted to IDWR on July 19, 2002, when the written transcript was delivered.

12. WestRock submitted supplemental authority on July 19, 2002. CVC submitted supplemental authority on September 9, 2002. Neither submission constituted supplemental legal authority, but rather, each attempted to submit further factual information after the factual

record had closed. As a result, neither submission has been considered as a basis for factual findings in this decision.

II. Evidence Considered.

13. Exhibits offered by Applicant and accepted as part of the record are as follows:

1	3/16/01 WestRock ("WR") Application w/ Attachment A and Exhibits 1-10: 1: Resort Vicinity Map showing parcel ownership 2: WR Approximate Grid Section 3: Resort and Mountain Concept map 4: 3/15/01 ltr: Squires to WR re Preliminary Report of Groundwater Development Fig. 1: Well locations map Fig. 2: Test well #1 data Fig. 3: Test well #2 data Fig. 4: Park Ranch well data Fig. 5: Density of area wells map Fig. 6: Deepest area wells map 5: WR Estimated Water Diversions at Build-out 6: WR Water Demand and Sewage Flow projections 7: WR Snowmaking System 8: Warranty Deed: Weilmunster to WR 9: 2/20/01 Proposed State Lease 10: Financial and Cost Data, including 8/7/00 ltr from Vazifdar (Banc of America Securities) to Boespflug (WR)
2	10/31/01 IDWR Staff Memorandum w/ Attachments: • 5/29/01 ltr: Spackman (IDWR) to Fereday re pump test application • 6/5/01 (IDWR) memo: Duncan to Spackman re aquifer pump test tour • 9/28/01 (IDWR) memo: Lester to Young re WR water rights status • 10/16/01 memo: Young/Dreher (IDWR) to Gov. Kempthorne re WR water rights application • 6/15/99 memo: Spackman (IDWR) to "list" re municipal water rights issues
3	2/28/02 "Results and Analysis of the 2001 Aquifer Testing for the Municipal Water Supply of the Proposed WestRock Resort, Donnelly, Valley County, Idaho" (Squires)
4	5/9/02 ltr: Squires to West (DEQ) re "Pre-Development Stream Water Quality Monitoring Plan"
5	5/8/02 (IDWR) memo: Bendixsen to Anderson re WR aquifer testing
6	8/7/00 ltr: Vazifdar (Banc of America Securities to Boespflug (WR) re line of credit
7	2/20/02 Consolidated Financial Statements for 2001 and 2000
8	7/17/01 ltr: Vazifdar to Boespflug (WR) re commitment to raise funds for project
11	Facilities Program
12	Construction Estimate
13	5/30/02 Economic Analysis (Newman)
14	6/14/02 Economic Analysis (Newman) replacement page 5

15	Idaho Department of Lands' Request For Proposal
16	2/20/01 (revised 4/2/01) Refined Response to Request for Proposal ("RRRFP") (2 vols.)
17	6/12/01 "Proposal Review Committee's Report on Refined Response to Request for Proposal Lake Cascade Site"
18	6/25/01 ltr: WR to Gov. Kempthorne w/ Attachments A-D: A: "Reasons for Management Confidence – WestRock Project" B: "Response to the Recommendation Committee Report of June 12, 2001 on WestRock RFP Response" C: "Concern over the Surprise Release of the Report – WestRock Project" D: "Report on Refined Response to Request for Proposal Lake Cascade Site June 12, 2001 – with WestRock Comments in Italics June 25, 2001"
19	7/16/01 ltr: WR to Gov. Kempthorne re Banc of America Securities
20	7/5/01 "WestRock at Lake Cascade Resort Proposal Evaluation" by Design Workshop Inc.
21	9/24/01 "WestRock at Lake Cascade Resort Proposal Evaluation July 5, 2001 – Comments by WestRock Team, September 24, 2001"
22	2/11/02 ltr: Herrick (County) to Gov. Kempthorne re County process, decisions, list of hearings
23	2/7/02 Transcript from Idaho Land Board meeting re lease
24	6/11/02 Lease of state endowment land, between IDL and WestRock, granted by State Board of Land Commissioners
25	3/12/01 WestRock Application for Planned Unit Development (3 vols; vols. 2 and 3 = both volumes of the RRRFP)
26	6/6/01 "Master List" of issues considered by County (Herrick)
27	7/01 "Independent Assessment of WestRock Lake Cascade Resort – prepared for Valley County Board of Commissioners" by CH2MHill
28	6/10/02 "Amended Capital Contribution Agreement" between WR and Valley County
29	5/24/01 Valley County Planned Unit Development approval – Findings of Fact and Conclusions of Law Before the Valley County Planning and Zoning Commission
30	9/4/01 Valley County Planned Unit Development approval – Findings of Fact and Conclusions of Law Before the Valley County Board of Commissioners
31	3/15/02 CUP application (2 vols.)
32	3/04/99 Concept Approval by Valley County Planning and Zoning Commission
33	4/26/99 Concept Approval by Valley County Board of Commissioners
34	5/28/02 CUP approval by Valley County Planning and Zoning Commission
35	CUP approval by Valley Board of Commissioners
36	6/11/02 Conditional Use Permit
37	3/28/02 ltr: Millemann to Herrick (County) re additions to CUP application
38	11/09/00 Valley County Planning and Zoning Commission Meeting Minutes
39	11/20/00 Valley County Planning and Zoning Commission Meeting Minutes
40	1/11/01 Valley County Planning and Zoning Commission Meeting Minutes
41	5/10/01 Valley County Planning and Zoning Commission Meeting Minutes
42	5/11/01 Valley County Planning and Zoning Commission Meeting Minutes
43	5/24/01 Valley County Planning and Zoning Commission Meeting Minutes

44	6/27/01 Valley County Board of Commissioners Meeting Minutes
45	8/27/01 Valley County Board of Commissioners Meeting Minutes
46	9/4/01 Valley County Board of Commissioners Meeting Minutes
47	9/24/01 Valley County Board of Commissioners Meeting Minutes
48	3/25/02 Valley County Board of Commissioners Meeting Minutes
49	4/25/02 Valley County Planning and Zoning Commission Meeting Minutes
50	5/07/02 Valley County Planning and Zoning Commission Meeting Minutes
51	5/7/02 Staff Report to Valley County Planning and Zoning Commission
52	5/10/01 Staff Report to Valley County Board of Commissioners
53	5/10/01 Addendum to Staff Report to Valley County Board of Commissioners
54	6/03/02 Staff Report to Valley County Board of Commissioners
55	6/27/01 Staff Report to Valley County Board of Commissioners
56	1999-2000 Valley County Meeting Agendas
57	2001-2002 Valley County Meeting Agendas
58	6/7/02 ltr: County Commissioners to Dreher (IDWR)
59	2/23/01 ltr: Zarbrinsky (North Lake Recreational Sewer and Water District) to Weilmunster (WR) re "Letter of Intent to Develop Joint Sewer Facilities to serve the West Mountain Area"
60	3/27/01 "Memorandum of Agreement Between the State of Idaho Department of Parks and Recreation and U. S. Bureau of Reclamation and WestRock, Incorporated, a Private, For Profit Corporation" re snowmobile access to public lands
61	5/18/01 Storm Water Pollution Prevention Plan (Orton)
62	6/27/01 ltr: West (DEQ) to Orton re approving Storm Water Pollution Prevention Plan
63	7/16/01 Wildlife Habitat Conservation Plan (by WR, with IDFG and USFWS)
64	1/02 "WestRock Resort, Valley County Idaho – Recreation"
65	5/7/02 Conservation Easement from WR to Idaho Foundation for Parks and Lands
66	2/6/02 Corps' "Memorandum for Record, Documentation of Decision"
67	2/8/02 ltr: Daly (Corps) to WR re Corps' recognition of WestRock's right to proceed under Nationwide Permit 26, w/ Attachments: A: 11/28/01 ltr: West (DEQ) to WR re Clean Water Act § 401 certification B: USFWS Biological Opinion re impact of project C: Final Mitigation Plan D: 10/15/01 ltr: Neitzel (ISHO) to Corps re Historical Society's PCN review
68	2/28/02 ltr: Spackman (IDWR) to WR re granting Stream Channel Alteration Permit
69	3/02 "[Draft] Garden Valley Recreation District – Long Range Plan"
70	Idaho Nonpoint Source Program Grant Proposal – Mud Creek Project
71	1/16/02 Cascade Reservoir Technical Advisory Committee meeting notes
72	6/10/02 "In-Migration, Employment, Population, and Demographic Impacts of WestRock Development" (Church)
73	6/11/02 Environmental Monitoring Agreement between WR and DEQ
74	6/14/02 ltr: Huffaker (IDFG) to Dreher (IDWR)
75	6/18/02 ltr from West (DEQ) to Dreher (IDWR)
76	11/01/01 Poison Creek Nest Site Development Plan
77	11/29/01 Eagle Research Agreement between WR and BSU

78	10/01 BSU monthly eagle report
79	2/02 BSU monthly eagle report
80	3/02-4/02 BSU monthly eagle report
81	12/10/01 Deposition transcript of Charles Ray
82	6/17/01 Deposition transcript of Arthur Berry w/ Exhibits: A: Offering Memorandum (cover page only, due to NDA) B: 5/30/02 Economic Analysis (Newman) (cover page only, due to NDA) C: 4/25/01 ltr: Mahn (Id. Dept. of Commerce) to Wiggins (IDL) D: 6/12/01 "Proposal Review Committee's Report on Refined Response to Request for Proposal Lake Cascade Site" E: NSAA Economic Analysis 2000/01 Season by RRC Associates F: 8/7/00 ltr: Vazifdar (Banc of America Securities) to WR G: 7/17/01 ltr: Vazifdar (Banc of America Securities) to WR H: IDAPA 37.03.08 *excerpt* I: 2/15/01 WR Financial Plan (Newman) J: "Refined Response to Request for Proposal Lake Cascade Site" *excerpt* K: 8/7/00 ltr: Reichman (Idaho Ski Area Assoc.) to Land Board L: Economic Analysis of US Ski Areas 2000/01 by RRC Associates M: 7/5/01 Design Workshop Report N: Internet research O: Internet research P: Internet research Q: Financial Analysis WestRock v. Rocky Mountain Resorts (spreadsheet) R: Financial Analysis WestRock v. Rocky Mountain Resorts (spreadsheet)
83	8/01-5/02 "Permitting Phase" articles
84	Curriculum Vitae for Edward Squires
85	Curriculum Vitae for Homi Vazifdar
86	Curriculum Vitae for Chris Cushing
87	Curriculum Vitae for Matthew C. Shannaberger
88	Curriculum Vitae for John S. Church
89	Curriculum Vitae for Douglas J. Kennedy
90	Curriculum Vitae for Gregory Hartman
91	Curriculum Vitae for Richard F. Orton
92	Curriculum Vitae for David A. Newman
93	WestRock Executive Summary
94	Update page for Exhibit H of RRRFP and Exhibit 10 to Attachment A of WR's water Rights Application
95	WestRock Project Overview (11x17)
96	6/19/02 ltr: Breene (Setai Group) to Boespflug (WR) re offer to form partnership
97	6/26/01 Agreement between Idaho State Snowmobile Association and WR
98	Graph: "Cascade Reservoir Volume Compared to Park Ranch Test Well Water level from 1991 to 1996" (Squires)
99	Graph: "Annual Water Level Recovery as Recorded in the WestRock #1 Well 2002" (Squires)

14. The Exhibits offered by Protestants and accepted as part of the record are as follows:

200	Letter of Gary Mahn, Idaho Department of Commerce, to Winston Wiggins (April 25, 2001)
201	WestRock, Consolidated Financial Statements, Years ended December 31, 2000, and December 31, 1999
202	National Ski Area Association, "Economic Analysis, 2000/01 Season," prepared by RRC Associates. (Exhibit L to Deposition of Arthur Berry)
203	Letters of Idaho Ski Area Association to Valley County Commissioners and State Board of Land Commissioners (dated June 26, 1998, and August 7, 2000, respectively). (Exhibit K to Deposition of Arthur Berry)
204	Yahoo/Market Guide – "Profile – Vail Resorts, Inc." (NYSE: MTN) (as of June 7, 2002)
205	Yahoo/Market Guide – "Profile – Intrawest Corporation" (NYSE: IDR) (as of June 7, 2002)
206	Yahoo/Finance – American Skiing Co. Annual Report (SEC Form 10-K) (November 14, 2001)
207	Yahoo/Market Guide – "Profile – American Skiing Company" (NYSE: SKI) (as of March 13, 2002)
208	Bloomberg Professional, Miscellaneous Reports on American Skiing Company
209	Berwyn B. "Ski Industry Takes a Closer Look at the Environment," (Environmental News Network, June 15, 2000)
210	Lazaroff, C. "Ski Resorts Carve Out Green Principles," (Environmental News Service, June 14, 2000)
211	Burns, S. "Junk Bond Funds Yield More, Much More," (scottburns.com, March 2, 1999)
212	Purdy, P. "The Slippery Slope of Ski Resort Survival," (Denver Post, April 8, 2001)
213	"The Effect of the Ski Industry on the Environment," (www.colby.edu)
214	The Harbaugh Report (updated 3/6/02)
215	SAM Magazine (miscellaneous ski industry news articles)
216	Yahoo/Finance – American Skiing Co. (10-K) (May 24, 2002)
217	"American Skiing Company Wins Major Development Approvals at the Canyons, Heavenly, and Killington," (www.thetimesharebeat.com, November 18, 1999)
218	Sectors and Trends, "3 ski resort companies get lift from new businesses," (moneycentral.msn.com, 1/18/99)
219	Arthur Berry, spreadsheet entitled "Financial Analysis WestRock v. Rocky Mountain Resorts and Public Companies"
220	Transcript, Deposition of Don K. Weilmunster (September 21, 2001)
221	Transcript, Deposition of Jean-Pierre Boespflug (September 20, 2001)
222	Amended Application to Appropriate Groundwater – Donald K. Weilmunster, Application No. 65-13925
223	Table, Idaho Dept. of Transportation ("Level of Service" with and without WestRock)
224	Nick Hershenow, "WestRock: Viability and Risk" (Jan. 21, 2002)
225	Memorandum of Agreement between Valley County Commission and WestRock

	(July 13, 1998)
226	Valley County, "Projected Costs for Access Road Improvements"
227	WestRock @ Lake Cascade "Fiscal Impact Analysis" (August 1998)
228	"WestRock's Suggested Allocation"
229	Curriculum Vitae for Arthur Berry
230	Faxed letter from Craig Johnson, Coldwell Banker (June 26, 2002)

15. No exhibits were admitted by IDWR on its own initiative.

16. At the hearing the following individuals testified on behalf of WestRock:

    a. Jean-Pierre Boespflug, Managing Director and CEO, WestRock

    b. Christopher Cushing, SE Group

    c. Cynda Herrick, Valley County Planning & Zoning Department

    d. Jay Biladeau, Idaho Department of Lands

    e. Scott Turlington, Idaho Governor's Office

    f. Douglas Kennedy, SE Group

    g. Matthew Shanaberger, Synthesis Realty Group

    h. Dan Newman, Strategic Market Mapping, Inc.

    i. Homi Vazifdar, Banc of America Securities

    j. Gregory Hartmann, HVS International

    k. Edward Squires, Hydro Logic, Inc.

    l. Tuck Miller, resident, Valley County

    m. Jamie Anderson, Garden Valley Recreation District

    n. Bill Wheeler, resident, Valley County

    o. Jim Slaton, resident, Valley County

    p. Bruce Miller, resident, Valley County

    q. Bonnie Bertram, resident, Valley County

    r. Gregg Lawley, resident, Valley County

17. In opposition to the Application, CVC called the following witnesses:

a. Arthur Berry, Arthur Berry & Co.

b. Cathy Them, resident, Valley County

c. Lincoln Hart, board member, Citizens for Valley County

d. Charles Ray, board member, Citizens for Valley County

e. Ray Nicholson, resident, Valley County

f. Mary Hart, board member, Citizens for Valley County

g. Judy Anderson, board member, Citizens for Valley County

h. Cutler Umbach, resident, Valley County

i. Susan Bechdel, resident, Valley County

j. Christine White, resident, Valley County

k. Viki Abram, resident, Valley County

l. Art Troutner, resident, Valley County

m. Frank Eld, resident, Valley County

18. All parties were afforded the opportunity to cross-examine the opposing side's witnesses.

III. Applicant.

19. WestRock is a Delaware Limited Liability Company founded on December 14, 1998, to develop a year-round village resort destination in Valley County, Idaho. WestRock is owned by a small group of investors, the two primary investors being Jean-Pierre Boespflug, through Cross Atlantic Ventures, and Alfred Miguel Afif. Other investors include Van Skilling, Scott Thom, Manuel Zubiria, Andres Conesa and Don Weilmunster. The total assets of the investors are around one billion dollars. WestRock has two subsidiaries: WestRock LP, which

is wholly owned by WestRock, and WestRock Inc., which is wholly owned by WestRock LP. WestRock and its subsidiaries will be collectively referred to as WestRock. As of December 31, 2001, WestRock's total assets were $35,204,822, comprised primarily of the private land it holds that will become a part of the resort, its resort master plan, and its development and permitting progress. WestRock's investors had contributed $33,301,244 as of December 31, 2001, to develop the project. Since December 31, 2001, approximately four-million more dollars was invested in WestRock and, among other things, WestRock received a ten-year lease on property from the State of Idaho and further development approvals.

IV. Intended Water Use under Application No. 65-22357.

20. WestRock is proposing to build a four-season resort southwest of Donnelly, Idaho (the WestRock resort). WestRock owns 1,484 acres of land located in Sections 5, 7, 8, 17, and 18, Township 15 North, Range 3 East, B.M., and Section 32 Township 16 North, Range 3 East, B.M., Valley County, Idaho. WestRock also owns a ten-year lease of 2,124 acres of State of Idaho endowment land located in Sections 5 and 8, Township 15 North, Range 3 East, B.M., Sections 19, 30 and 31, Township 16 North, Range 3 East, B.M., and Section 36, Township 16 North, Range 2 East, B.M., Valley County, Idaho. Together, these lands constitute the service area of the proposed municipal right and the generally described place of use as depicted on the GIS map produced by IDWR. Exhibit 2.

21. The proposed municipal water use at the WestRock resort would provide water for approximately 2,043 housing units, and for other retail, commercial, and service establishments. Water would be used to irrigate an 18-hole golf course, a golf practice range and 5 practice holes, and to irrigate 85 acres of common area turf and landscaping. Water would be used for aesthetic, wildlife, and recreational uses in approximately 10 acres of ponds, streams

and similar water amenities. Snowmaking on approximately 309 acres of land for alpine and nordic skiing, including approximately 20 million gallons of reservoir storage in 4 acres of ponds, would also use water. For all of these uses water would be diverted to approximately 14 surface acres of ponds and 2 million gallons of enclosed storage for peak potable water demands and fire protection. Water would be stored and diverted from storage multiple times to reach the entire 520 acre-feet of projected storage use, although the total storage facility volume capacity is limited to 135 acre-feet.

22. WestRock proposes to construct the project and the associated municipal water use in five phases of three years each. Ex. 31, App. G. The phases of water use development over the first six years are summarized as follows:

a. Phase One, 2003-2005:

- Ski Hill with 200 acres of snowmaking
- Hotel with condominiums
- Spa
- Retail facilities
- Administrative and common area facilities
- Golf course and clubhouse
- Miscellaneous buildings
- Condominiums
- Employee housing
- Restaurant and building at mountain top
- Operational buildings
- Single family lots

b. Phase Two, 2006 - 2008:

- Ski Hill and 81 additional acres of snowmaking

- Condominiums
- Employee housing
- Townhomes
- Villa homes
- Single family lots

The remaining three phases will be constructed from 2009 through 2017. The phases of the project are more fully described in Exhibit 31, Appendix G.

23 Total direct construction cost of Phase 1 of the WestRock resort is estimated to be $185,206,000. Of the total cost of phase 1, $2.5 million will be used to create a water tower, construct the wells, construct the treatment facility, construct the pipeline that will bring the water to the village and all of the subdivision of phase one, and bring the water to the distribution points for the golf course irrigation and snowmaking. The cost of the remaining water infrastructure for the final four phases is estimated to be $1.9 million.

24. WestRock proposes a modest water use; diverting less water to 3,608 acres of land than is generally approved for irrigation of a 450-acre farm. I.C. § 42-220. WestRock estimates its peak diversion rate to be 8.6 cfs. Based upon its water demand projections by phase, the WestRock resort will need 1,248 afa at the completion of phase 5. Exhibit 31, Appendix P — Water System Master Plan.

V. Project Financing.

25. WestRock employed a team of consultants with first-hand knowledge of year-round resort planning, marketing, and sales to develop its plan for the WestRock resort. The consultants determined what types and scale of facilities and real estate should be built at the resort and where, estimated the cost of construction, and predicted revenues from operations and

real estate sales. An economic modeler then compiled this information into a model that predicted positive financial returns on the project. WestRock has also been applying for the federal, state and local approvals needed to proceed with construction of the project. The following is a partial list of the studies and regulatory requirements obtained or performed by WestRock, or which are in progress:

a. Lease of state endowment land
b. Storm water pollution plan
c. Preliminary Engineering Report for water supply facilities
d. Preliminary Engineering Report for wastewater collection, treatment and disposal
e. Water system master plan with phasing
f. Sewer system master plan with phasing
g. U.S. Corps of Engineers discharge permit and related Section 401 water quality certification
h. Permit to land apply treated wastewater
i. Operation and maintenance plan for wastewater treatment and land application system
j. Operation and maintenance manuals for water supply, transmission, and storage facilities
k. Archeological survey
l. Phase 1 environmental site assessment
m. Plans and specification review for all water, sewer, and drainage design
n. Stream alteration permit
o. Grading and drainage design plans and specifications
p. Soils and geotechnical investigations
q. Road and utility design
r. Siting studies for visual impact and amenity protection
s. Offsite road corridor studies
t. Cultural resources studies
u. Habitat conservation plan
v. Valley County planned unit development approval

w. Valley County conditional use permit

26. WestRock projects that it will need a total of $294,574,000 to pay for phase 1. It is WestRock's intention to finance the first phase of the WestRock resort by selling the investment opportunity represented by the package of planning, government approvals, and financial projections, described in Finding No. 25 in the capital market to raise $89,377,000 in equity. The remaining $205,197,000 of financing would come from commercial lenders, the sale of municipal bonds, and from development partners. The financing of phase one is the key to the success of the entire WestRock resort. The successful sales and operations of the first phase would fund the second phase.

27. Mr. Boespflug, who has invested $5.7 million of his own money into the project, testified that he believed that, based on the quality of the WestRock resort package, the resort has a good chance for success. Douglas Kennedy, a financial analyst from the SE Group, a ski resort consulting company working for WestRock, also testified that the WestRock resort was a reasonable project to be financed. Matt Shanaberger, a real estate consultant from the Synthesis Realty Group, a luxury real estate consulting company working for WestRock, testified that based upon the real estate to be offered and the proposed market, the resort can be financed. The financial analyst who developed the financial model for the WestRock resort, David Newman, also testified that the project has a reasonable probability of raising the capital to be built.

28. Banc of America Securities has been mandated with the responsibility of providing advisory services and raising equity capital for the WestRock resort. In that capacity, Banc of America Securities was involved in critical review of the planning and evaluation of the financial forecasts for the WestRock resort project. The co-leader of the lodging and leisure

group of Banc of America Securities, Homi Vazifdar, after conducting Banc of America Securities's due diligence research, testified both before the State Land Board and IDWR that WestRock has a reasonable probability of raising the necessary capital. Mr. Vazifdar was concerned about the ten-year lease for the State land that comprises the ski hill portion of the resort. He stated to WestRock in a letter dated July 17, 2001, that a 50-year lease was needed for the project to be financeable. Exhibit 8. In his testimony, however, he was unconcerned about the 10-year lease that WestRock received from the State Land Board, so long as it had the provision for an extension to 50 years.[1]

29. Two reports prepared for the State Land Board were critical of the prospects for the financing the WestRock resort. Exhibits 17 and 20. These reports were the subject of strong criticism from WestRock. Exhibits 18 and 21. More tellingly, the State Land Board rejected the concerns voiced in these reports when it determined to lease the state endowment land to WestRock in order to achieve the maximum, long-term financial returns for the lands.

30. Mr. Arthur Berry, a well-respected business appraiser, testified that he did not believe that it was probable that WestRock would be able to finance the WestRock resort based upon his review of WestRock's financial modeling. Mr. Berry's testimony is not as convincing as the witnesses who testified on WestRock's behalf. For instance, Mr. Berry has no first hand knowledge of raising debt or equity financing in the leisure/ski resort field. He had to rely upon phone calls with knowledgeable individuals and Internet research to develop his expertise. Further, Mr. Berry had a short period of time to become familiar with the numerous documents

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[1] It is probable that the Idaho legislature will provide by statute for the 50-year extension to secure the returns to the school endowment described in the State lease approved by the State Land Board. Exhibit 24. The Idaho legislature is as much bound by the requirement that it "secure the maximum long term financial return" to the school endowment as the State Land Board. *Idaho Watersheds Project v. State Board of Land Commissioners*, 133

in WestRock's financial model, and by his own admission they became a "little muddled." Trans., June 26, 2002, p. 634. In another instance, Mr. Berry used the 2001 sales history of condominiums in Valley County as well as the associated price ranges, which were not nationally marketed as a part of a four-season resort with numerous well-planned and integrated amenities, to suggest that the projected prices for WestRock resort property were unrealistic. Mr. Vazifdar had noted that the WestRock project would create its own demographic market outside of the current Valley County economy. Finally, Mr. Berry questioned the financeability of the WestRock resort based upon a note in WestRock's consolidated financial statement concerning the viability of the company as a going concern if it failed to receive the permits and financing to proceed with its plans. This note is not surprising, however, because WestRock has no "going concern" other than the development of the WestRock resort. If the WestRock resort is not built, WestRock will not be a going concern. See Testimony of Homi Vazifdar, Exhibit 23, p. 231. These examples from Mr. Berry's testimony illustrate the basis for the finding that Mr. Berry's opinion is not entitled to the same weight as WestRock's witnesses, especially that of Homi Vazifdar.

Idaho 64 (1999) (declaring unconstitutional legislation that considered factors other than the maximum long term financial return to the school endowment in the leasing of school endowment public grazing lands).

VI. Water Supply and Impact On Water Quantity Under Existing Water Rights.

31. The ground water wells contemplated by the Application will withdraw water from the Payette River Drainage, which is designated as hydrologic basin 65 in IDWR records. WestRock submitted an analysis of the aquifer underlying the WestRock resort, prepared by Hydro Logic, as it is impacted by currently existing water rights. CVC did not dispute this information. Based upon their review of the information gathered by Hydro Logic, IDWR staff concluded: (1) abundant good quality water for the resort is available beneath the site; (2) construction of good producing wells is possible; (3) well interference with existing wells does not seem to be a problem; (4) the Payette Basin, on an independent basis, is not in an overdraft condition but contains unappropriated water. Exhibit 5. The proposed water use by the WestRock resort will not preclude other economic developments in need of ground water from locating in Valley County.

32. WestRock submitted sufficient details of the proposed design, construction and operation of the WestRock resort and directly associated operations to allow the water resource impact of the project to be evaluated.

VII. Local Public Interest.

33. Valley County is an economically-depressed region. Over the last five years, the number of jobs that have been available in the local economy have not been adequate to employ all of those who would like to work. Valley County's unemployment rate averaged 9.1 percent during the years 1996 - 2000. In the first five months of 2001, nearly 435 Valley County residents were unemployed, resulting in an unemployment rate of 10.7 percent. In contrast, unemployment in the State of Idaho peaked at 5.0 percent during the same 5 months. Exhibit 27,

at 2-2. Valley County's lack of job opportunities is the primary reason for the out-migration of its young adult population. Exhibit 72.

34. Valley County currently is a very difficult business environment. The resource based industries of mining and timber have collapsed. The economy of Valley County is moving towards one based on tourism and recreation. The WestRock resort would use water consistent with the developing and predominant use of water in the area for recreation and tourism. The potential negative impacts of the WestRock resort on snowmobiling and camping on Lake Cascade have been mitigated through an agreement between the Idaho State Snowmobile Association and WestRock, Exhibit 97, and an agreement between the Idaho Department of Parks and Recreation, the U. S. Bureau of Reclamation and WestRock.

35. During the 15-year construction period, WestRock resort construction is projected to employ 330 to 566 workers. Exhibit 27, pp. 2-5.

36. At full build-out, the WestRock resort will employ nearly 1,473 people. Sixteen percent of those employed, 238 individuals, would have full-time year-round jobs. The jobs at the WestRock resort would range from labor and domestic positions to mid- and upper-management positions. At full build-out, and including jobs inside and outside the resort, the impact of the resort is expected to create 2,700 jobs on a direct basis and 1,000 jobs on an indirect basis. These jobs would create $44 million in annual, direct income and $37 million in annual, indirect income.

37. WestRock estimates that the resort will cumulatively generate almost $2.3 million in building permit revenue and $73 million in property taxes during construction of the project. WestRock estimates that at current levels, the resort property will pay $10 million in annual

property taxes after construction is complete. These revenues would accrue to local governments.

38. WestRock signed an Amended Capital Contribution Agreement with Valley County on June 10, 2002. This Agreement resulted from studies, which identified the fiscal impacts of the WestRock resort on Valley County and its various taxing and service districts. In the Agreement WestRock agreed to contribute money for off-site road improvements, regional transportation, affordable housing for employees, school system impacts, Valley County general fund impacts, and fire and emergency services. This Agreement addressed the fiscal impacts on taxing districts in Valley County and the County government.

39. The Idaho Department of Fish and Game reviewed WestRock's Application for a water right permit and recommends granting the Application to protect the public interest. Exhibit 74. Fish and Game is concerned that if WestRock does not receive the ground water right for the WestRock resort, it will use surface water rights that it owns. Those surface water rights divert water from creeks flowing into Cascade Reservoir that provide important spawning and rearing habitat, as well as a cool water refuge for trout during the summer. WestRock has proposed to Fish and Game to forego use of those surface water rights and to leave the water in the creeks if the Application is granted. Thus, a primary impact of the proposed ground water use is a benefit for wildlife. Secondary impacts of the WestRock resort on wildlife and wetlands will be mitigated by implementation of the wildlife habitat conservation plan developed between WestRock, Idaho Department of Fish and Game, and the U. S. Fish and Wildlife Service; conditions and requirements for environmental protection imposed by the U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service; and by the granting of a conservation easement

from WestRock to the Idaho Foundation for Parks and Lands to protect riparian areas at the WestRock resort. Exhibits. 63, 65, 66, and 67.

40. The Idaho Department of Environmental Quality ("IDEQ") has reviewed the environmental programs for the WestRock resort and reported that pursuant to a number of agreements and through its existing regulatory authorities, "IDEQ has a sufficient basis to ensure that WestRock will adequately address water and air quality concerns before and during construction and throughout operation of its proposed project." WestRock would need to comply with:

- The water quality monitoring plan submitted to IDEQ. Ex. 4
- The storm water pollution prevention plan submitted to Valley County. Ex. 61
- The culvert sizing proposed by WestRock
- The conditions in the Clean Water Act §401 certification for wetlands. Ex. 67
- The Environmental Monitoring Agreement. Ex. 73

IDEQ identified no specific hazardous substance requirements applicable to WestRock. IDEQ Director Allred also testified to the State Land Board that if WestRock follows through with its plans, a secondary impact of this water use could be a net benefit to Cascade Reservoir. A portion of that benefit would come from WestRock's agreement with the North Lake Recreational Sewer & Water District to accept WestRock's wastewater by the extension of sewer lines to the WestRock resort. The availability of the sewer lines would reduce the use of septic tanks along a portion of the Reservoir. However, some questions were raised regarding the ability of North Lake Recreational Sewer & Water District to fulfill its agreement with WestRock. Testimony of Frank Eld, Trans., June 27, 2002, pp. 223-227.

41. The Valley County Board of County Commissioners submitted a letter to IDWR indicating that the proposed WestRock resort is in the local public interest of the citizens of

Valley County. Exhibit 58. On June 3, 2002, the Valley County Commissioners voted unanimously to approve WestRock's application for conditional use permits and modified planned unit development approval. This vote reflected a four-year review process of over 35 public meetings and hearings, at least 40 work sessions with WestRock, and over 200 staff meetings with WestRock and its representatives and other agencies. The Valley County Commission determined that: (1) WestRock will comply with the county's land use goals; (2) WestRock will provide needed employment and a more diversified economy; (3) WestRock will pay for its impacts on infrastructure and services; and (4) WestRock will provide better and more varied recreation opportunities.

42. Many individuals from Valley County testified in general support of the WestRock resort. Likewise, many individuals, including members of CVC, testified in general opposition to the WestRock resort. Only a small portion of the testimony from these individuals, either for or in opposition to the WestRock resort, addressed the resort's proposed water use.

43. CVC called witnesses who testified regarding water quality, economic, social, and public infrastructure impacts of the WestRock resort. CVC witnesses also testified that the process for public input and discussion of the impacts from the WestRock resort was not sufficiently comprehensive. The agency primarily responsible for reviewing and controlling water quality impacts is the Idaho Department of Environmental Quality. Social, economic, and County infrastructure impacts are in the primary jurisdiction of the Valley County Commission. State highway impacts are in the primary jurisdiction of the Idaho Department of Transportation. If WestRock resort complies with the conditions imposed by these agencies, then the local public

interest in water quality, economic development, social structure, and public infrastructure is satisfied.[2]

CONCLUSIONS OF LAW

Based upon the Findings of Fact, IDWR makes the following Conclusions of Law:

I. Quantity of Water Under Existing Rights.

1. WestRock has satisfied its burden to show that there would be no reduction in the quantity of water under existing water rights.

II. Adequacy of the Water Supply.

2. WestRock has satisfied its burden to show that the water supply itself is sufficient for the purposes for which it is sought to be appropriated.

III. Good Faith, Delay or Speculation.

3. IDWR's water appropriation rules provide the following regarding the determination of whether the Application is made in good faith, or for delay or speculative purposes:

> c. Criteria for determining whether the application is made in good faith. The criteria requiring that the director evaluate whether an application is made in good faith or whether it is made for delay or speculative purposes requires an analysis of the intentions of the applicant with respect to the filing and diligent pursuit of application requirements. The judgment of another person's intent can only be based upon the substantive actions that encompass the proposed project. Speculation for the purpose of this rule is an intention to obtain a permit to appropriate water without the intention of

[2] This finding is not meant to discount the heartfelt, and often moving, concerns expressed by CVC's witnesses. The Hearing Officer was struck especially by the testimony of Judy Anderson, ("Rural America has a colonial relationship with the rest of America. We are exploited unmercifully, whether it's dragging out raw materials, whether it's timber or mining, and now it's industrial tourism. I do not want to be the pastoral backdrop for the European village of Westrock." Trans. June 27, 2002, p. 170) and Ray Nicholson (And the mom-and-pop businessman out here is going to wonder what in the world has happened to me. They're going to be out of business so quick. You walk down the main streets of Ketchum, Idaho, and there is not one original businessman there. They're all gone." Trans. June 27, 200, p. 154).

> applying the water to beneficial use with reasonable diligence. Speculation does not prevent an applicant from subsequently selling the developed project for a profit or from making a profit from the use of the water. An application will be found to have been made in good faith if:
>
> i. The applicant shall have legal access to the property necessary to construct and operate the proposed project, has the authority to exercise eminent domain authority to obtain such access, or in the instance of a project diverting water from or conveying water across land in state or federal ownership, has filed all applications for a right-of-way. Approval of applications involving Desert Land Entry or Carey Act filings will not be issued until the United States Department of Interior, Bureau of Land Management has issued a notice classifying the lands suitable for entry; and
>
> ii. The applicant is in the process of obtaining other permits needed to construct and operate the project; and
>
> iii. There are no obvious impediments that prevent the successful completion of the project.

IDAPA 37.03.08.045.01.c.

4. WestRock has shown that it has legal access to the property necessary to construct and operate the proposed project.

5. WestRock has shown that it has obtained, or is in good faith, in the process of obtaining the permits needed to construct and operate the project. WestRock has shown that it is a municipal provider under I.C. § 42-202B(4)(c) and that it is applying for a water right for municipal purpose under I.C. § 42-202B(5). Further, WestRock, or its successor, will provide a "public water supply" under I.C. § 39-103(10). WestRock has not demonstrated that its plans and capabilities conform to the Idaho Rules for Public Drinking Water Systems. IDAPA 58.01.08. Westrock must conform to those requirements to complete this appropriation. However, WestRock's water system master plan indicates that its water system design documents will be submitted to the appropriate regulatory agencies for review and approval. Exhibit 31, p. 16. Thus, it is in the process of complying with this critical portion of the proposed water use.

6. WestRock has requested a water right with a 20-year planning horizon to meet its reasonably anticipated future needs as a municipal provider. I.C. § 42-202B(6) & (7). I.C. § 42-202B(7) provides in part:

> "Reasonably anticipated future needs" refers to future uses of water by a municipal provider for municipal purposes within a service area which, on the basis of population and other planning data, are reasonably expected to be required <u>within the planning horizon of each municipality</u> within the service area not inconsistent with comprehensive land use plans approved by each municipality. (Emphasis added)

I.C. § 42-202B(3) provides that "'Municipality' means a city incorporated under section 50-102, Idaho Code, a county, or the state of Idaho acting through a department or institution." In this case, the municipality whose planning horizon is applicable is that of Valley County. Valley County has approved in its conditional use permit and planned unit development approvals a phasing plan for the WestRock resort that projects all phases of the project to be completed by the end of 2017. This is the County's approved, 15-year planning horizon for the WestRock resort. Exhibit 25, p. 31; Exhibit 30; Exhibit 31, App. G; Exhibits 36, p. 2 ("The proposed building and occupancies described in the application and in this report shall be constructed, established, and in use according to the phasing plan or this permit shall be null and void"). The reasonably anticipated future needs for this planning horizon are those applied for by WestRock — 8.6 cfs and 1,248 afa. WestRock has shown that it will make a substantial investment to complete significant integral parts of its detailed plan to provide the full capacity of the system infrastructure within the first phase of the project, which is within the five years required by I.C. § 42-204. No other obvious impediments to the completion of the development of the water use proposed for the WestRock resort have been shown.

7. WestRock has sustained its burden to show that it intends to apply the water needed for the WestRock resort with reasonable diligence.

IV. Sufficiency of Financial Resources.

8. The decision regarding the sufficiency of WestRock's financial resources turns almost entirely upon whether WestRock will be able to sell its concept, plans, and approvals, on the capital market. WestRock, with the optimism and singleness of purpose necessary to develop a project such as the WestRock resort, is convinced that it will be able to raise the capital required. CVC, with the conservative and skeptical view that it has of this project and the changes it would bring to Valley County, is afraid that WestRock will not succeed and will leave the County holding the bag. The views of both parties are understandable. WestRock has put together as good a package as can reasonably be expected to attempt to develop a project of this magnitude. WestRock's investors have contributed $37 million to this project, much of which will not be recoverable if the project fails. WestRock's consultants, whose reputations as impartial experts depend upon the accuracy of their forecasts, reasonably believe that WestRock will receive financing. Homi Vazifdar, from Banc of America Securities, summed up the situation best:

> And so they [WestRock] have put an enormous amount of capital at risk and they continue to do that, you know, and they continue to do that.
>
> And we had — believe me, our criteria was very, very stringent before taking on this project, not just from a financial, but from the people that were involved. We ran checks. We were very thorough in our due diligence before taking this project on. And, you know, we are happy we did it. And wherever the chips may fall, we are still happy that we are doing this project.

Exhibit 23, p. 223-224. WestRock has satisfied its burden to show that it is reasonably probable that funding will be available to complete a major portion of the WestRock resort project and obtain the municipal water right sized for its reasonably anticipated future needs within five years.

V. Local Public Interest.

9. IDWR's water appropriation rules provide the following regarding the evaluation of whether the Application conflicts with the local public interest:

> e. Criteria for determining whether the project conflicts with the local public interest. The director will consider the following, along with any other factors he finds to be appropriate, in determining whether the project will conflict with the local public interest:
>
> i. The effect the project will have on the economy of the local area affected by the proposed use as determined by the employment opportunities, both short and long term, revenue changes to various sectors of the economy, short and long term, and the stability of revenue and employment gains;
>
> ii. The effect the project will have on recreation, fish and wildlife resources in the local area affected by the proposed use; and
>
> iii. Compliance with applicable air, water and hazardous substance standards, and compliance with planning and zoning ordinances of local or state government jurisdictions. IDAPA 37.03.08.045.

IDWR's local public interest review does not import the requirement that a water user must conduct the equivalent of an environmental impact statement, nor does it place IDWR in the position of chief land use planner for the State of Idaho.

10. The proposed use of water at WestRock is for a four-season resort that is consistent with the forecasted growth of a recreation and tourism economy in Valley County. WestRock will use a modest amount of water, and the domestic use of the municipal water right will consolidate what could be a proliferation of unexamined, private, domestic wells in the service area. I.C. § 42-111. WestRock's water use will not foreclose future projects in Valley County that will need water. The WestRock resort will provide both long- and short-term, full- and part-time jobs in Valley County, and inject money into the local economy and government. The WestRock resort will be a permanent, long-term feature of Valley County.

11. The WestRock resort's use of ground water, and the resort operation itself, will not conflict with recreation opportunities in Valley County. So long as WestRock complies with IDEQ's requirements discussed in Finding No. 40; the Wildlife Habitat Conservation Plan with

any changes approved by the Idaho Department of Fish and Game, Exhibit 63; the lease of state endowment land between the Idaho Department of Lands and WestRock, Exhibit 24; and honors the conservation easement from WestRock to the Idaho Foundation for Parks and Lands; and completes the plans in the letter of intent to develop joint sewer facilities to serve the West Mountain area, Exhibit 59; the WestRock resort will not conflict with the public interest as it relates to wildlife and fish in the local area.

12. So long as WestRock complies with IDEQ's requirements discussed in Finding No. 40; with the lease of state endowment land between the Idaho Department of Lands and WestRock, Exhibit 24; the Idaho Department of Environmental Quality's Idaho Rules for Public Drinking Water Systems, IDAPA 58.01.08; and completes the plans in the letter of intent to develop joint sewer facilities to serve the West Mountain area, Exhibit 59; the WestRock resort will comply with applicable air, water and hazardous substance standards.

13. So long as WestRock complies with the approval of PUD 98-1 and CUP's 02-04 and 02-05 issued by Valley County, Exhibits 33 and 36, and fulfills the Amended Capital Contribution Agreement, Exhibit 28, the WestRock resort will comply with the planning and zoning ordinance of the local jurisdiction.

14. With the conditions stated in Conclusions 11, 12 and 13, WestRock has satisfied its burden of showing that approving the Application does not conflict with the local public interest.

VI. Conservation of Water Resources.

15. WestRock has satisfied its burden to show that the WestRock facility water use is consistent with the conservation of water resources within the state of Idaho.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law the Application is approved. A permit will be issued with the following conditions:

1. This permit authorizes the diversion and use of 8.6 cfs to a maximum of 1,248 af per annum for reasonably anticipated future needs for municipal purposes within the service area for a 15-year planning horizon ending December 31, 2017, pursuant to Section 42-202(B), Idaho Code.
2. The right holder shall not assign or sell the permit without first securing the written approval of the Department of Water Resources.
3. The full system capacity necessary to provide water for the reasonably anticipated future needs authorized under this permit must be constructed by the time proof of beneficial use is filed.
4. The place of use of this permit is the generally described service area depicted as a GIS shape file in IDWR's electronic file for water right permit no. 65-22357.
5. The right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
6. After notification by IDWR, the right holder shall install suitable measuring devices, or use other means acceptable to the Director, to determine the amount of water diverted and report the information annually to IDWR.
7. The volume of the storage reservoirs shall not exceed 135.0 acre feet. Operation of the reservoirs shall be in accordance with the operation plan submitted with the application for permit restricting diversions to and from storage to not exceed 520.0 acre feet per year.
8. Compliance with the requirements of the IDEQ:

a. The surface water pollution prevention plan, with any amendments approved or required by the Idaho Department of Environmental Quality.

b. The environmental monitoring agreement with the Idaho Department of Environmental Quality.

c. The IDEQ's Idaho Rules for Public Drinking Water Systems, IDAPA 58.01.08.

d. The water quality monitoring plan submitted to IDEQ.

e. The conditions in the Clean Water Act §401 certification for wetlands.

f. The culvert sizing proposed by WestRock.

9. Compliance with the requirements of the Wildlife Habitat Conservation Plan, with any changes approved by the Idaho Department of Fish and Game, in particular as the Plan relates to the right holder's agreement to retain its appurtenant surface water rights.

10. Compliance with the terms of the lease of state endowment land between the Idaho Department of Lands and WestRock, including Article VII addressing water rights.

11. Compliance with the terms of the conservation easement from WestRock to the Idaho Foundation for Parks and Lands.

12. Completion of the plans in the letter of intent to develop joint sewer facilities to serve the West Mountain area. Until the sewer facilities under that plan are in place, no water use under the terms of this permit that will result in a sewage discharge may occur without the express, written consent of the Director of IDWR.

DATED this 20th day of December, 2002.

/s/ Karl J. Dreher
KARL J. DREHER
Director