BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 95-09069 IN THE NAME OF NORTH IDAHO POWER LLC	)	**PRELIMINARY ORDER**

This matter having come before the Idaho Department of Water Resources ("Department") in the form of a protested application for permit and the Department having held a conference and a hearing in the matter, the hearing officer enters the following Findings of Fact, Conclusions of Law and Preliminary Order:

FINDINGS OF FACT

1. On March 29, 2001, Cogentrix Energy, Inc. ("Cogentrix") submitted Application for Permit No. 95-09069 to the Department proposing the diversion of 10.87 cubic feet per second ("cfs") of ground water to be used for industrial, irrigation and domestic purposes in parts of section 1, T51N, R5W, B.M., Kootenai County, Idaho.

2. On May 25, 2001, North Idaho Power LLC ("applicant" or "NIP") filed an amended application for permit and on August 14, 2001, submitted a second amended Application for Permit No. 95-09069 ("application") proposing a diversion rate of 10.71 cfs of ground water for year-round industrial use, 0.12 cfs for irrigation use from April 15 through November 15 and 0.04 cfs for year-round domestic use. The applicant proposes to drill four 16-inch diameter wells to a depth of 300 feet. The proposed wells are to be located in the SW1/4SW1/4NW1/4, SE1/4SW1/4NW1/4, NE1/4NW1/4SW1/4 and NW1/4NW1/4SW1/4 Section 12, T51N, R5W, B.M, Kootenai County, Idaho. Three of the wells are proposed as production wells and the well in the SW1/4SW1/4NW1/4 will be a backup well. The proposed place of use is within the SW1/4NW1/4 and NW1/4SW1/4 Section 12, T51N, R5W, B.M.*

3. NIP is a separate project company set up to hold the assets of the project and is wholly owned by Cogentrix of Charlotte, North Carolina, (testimony of Gerald Mack). Cogentrix has an ownership interest in 28 power plants, 24 of which are operating plants with a combined total capacity of 2,700 MW. The four plants under construction will add about 2,200 MW of additional installed capacity and will come on line in the next year or two.

** The "1/4" designations will be omitted from subsequent legal descriptions in this order.*

4. NIP proposes to develop a combined cycle natural gas electric generating facility (referred to as "generating facility," "project" or "plant") capable of producing approximately 810 megawatts of electrical power. The project is located near the town of Rathdrum in Kootenai County, Idaho. To increase the efficiency of a gas-fired combustion turbine, hot exhaust gas from the combustion turbine is passed through a heat recovery steam generator to make steam. The steam is used to drive a steam turbine generator to produce additional electricity making the cycle more efficient (combined cycle). Exhaust steam from the steam turbine is condensed and recycled to the heat recovery steam generator and reused for steam production. The cooling tower is a system in which the heat from the condenser is exhausted through direct heat exchange with the air and evaporation of water. Ground water diverted for use in the plant will be totally evaporated with a zero liquid discharge from the generating facility.

5. The Department published notice of the application. The application was protested by Kootenai Environmental Alliance, Sierra Club and Idaho Conservation League, Friends of the Aquifer, REBOUND, International Brotherhood of Electrical Workers, Douglas Barnard, Ric Puterbaugh, Ken Brown, Kenneth Lennas, Robert Atwell, Merton Oles, and Craig Markham. Kootenai Generation LLC was granted intervenor status in the matter.

6. On February 11 through 15, 2002, the Department conducted a hearing in the matter. The applicant was represented by attorney Kevin J. Beaton. Protestants REBOUND, Douglas Barnard, Ric Puterbaugh, Ken Brown, Kenneth Lennas, Robert Atwell, Merton Oles, Craig Markham, IBEW Local #73, Sierra Club and Idaho Conservation League were represented by attorneys Teresa A. Hampton and Rachael Paschal Osborne. Protestants Kootenai Environmental Alliance and Friends of the Aquifer were represented by attorneys C. Matthew Anderson and Mark E. Wilson. Intervenor Kootenai Generation LLC was represented by attorney Robert A. Maynard. The Department received public witness testimony at the hearing from Terry Nichols, John E. Bentley, Cherie Rogers, Lloyd Brewer for the city of Spokane, Michael Treleaven, Glenn Grafe, Steven Anderson, George Rekow, Doug Miller, Michael Wells, Julie Grunsville, John Roskelley, Julie Smith and Clay Larkin for the city of Post Falls.

7. Issues the Department can consider in this matter are as follows:

a. Whether the appropriation will reduce the quantity of water under existing water rights;
b. Whether the water supply itself is insufficient for the purpose for which it is sought to be appropriated;
c. Whether the application is made in good faith, or is made for delay or speculative purposes;
d. Whether the applicant has sufficient financial resources with which to complete the work involved therein;
e. Whether the proposed appropriation will conflict with the local public

interest; and

f. Whether the proposed appropriation is contrary to conservation of water resources within the state of Idaho.

8. Exhibits premarked, offered or accepted as a part of the record are as follows:

a. Applicant's Exhibit 1 - NOT OFFERED
b. Applicant's Exhibit 2 - Option to Purchase Real Property
c. Applicant's Exhibit 3 - Cogentrix Energy, Inc. Annual Report - 2000
d. Applicant's Exhibit 4 - North Idaho Power LLC Project Design and Water Requirements
e. Applicant's Exhibit 5 - North Idaho Power, LLC Permit to Construct Application
f. Applicant's Exhibit 6 - Additional Information Requirements Water Resource Analysis of the Rathdrum Prairie Aquifer Relating to Application to Appropriate Water No. 95-09069, Sherl L. Chapman, Steven R. Hannula and Dale Ralston, November 15, 2001
g. Applicant's Exhibit 7 - Listing of non-domestic water rights in Basin 95 in Idaho
h. Applicant's Exhibit 8 - Option to Purchase Real Property
i. Applicant's Exhibit 9 - Water level plots (6 graphs)
j. Protestant's Exhibit A-1 - NOT OFFERED
k. Protestant's Exhibit A-2 - Sole Source federal register listing, 42 Fed. Reg. 5749 (1/31/77) and 43 Fed. Reg. 5566 (2/9/78)
l. Protestant's Exhibit A-3 - Miscellaneous charts and graphs. Pages 3, 4, 5, 8, 12, 13, 14, 15 and 16 admitted.
m. Protestant's Exhibit A-4 - NOT OFFERED
n. Protestant's Exhibit A-5 - NOT OFFERED
o. Protestant's Exhibit A-6 - The Spokane Valley - Rathdrum Prairie Aquifer Atlas, August 2000
p. Protestant's Exhibit A-7 - Jacklin Seed Co. Well Water Level
q. Protestant's Exhibit A-8 - Three (3) USGS topographic maps
r. Protestant's Exhibit B-1 - NOT OFFERED
s. Protestant's Exhibit B-2 - Little Spokane and Middle Spokane Watershed Planning Phase II - Level 1 Assessment, Executive Summary and Chapter 7 excerpts, Golder Associates, Inc., Draft, November 2001
t. Protestant's Exhibit B-3 - NOT OFFERED
u. Protestant's Exhibit B-4 - United States Census data, Washington and Idaho, 2000
v. Protestant's Exhibit B-5 - Environmental Protection Agency, Population Projections for Kootenai County, Idaho, December 2001
w. Protestant's Exhibit B-6 - Total Population Projections for Washington Counties, 1990 - 2020
x. Protestant's Exhibit C-1 - NOT OFFERED

y. Protestant's Exhibit C-2 - NOT OFFERED
z. Protestant's Exhibit C-3 - NOT OFFERED
aa. Protestant's Exhibit C-4 - NOT OFFERED
ab. Protestant's Exhibit D-1 - NOT OFFERED
ac. Protestant's Exhibit D-2 - NOT OFFERED
ad. Protestant's Exhibit D-3 - NOT OFFERED
ae. Protestant's Exhibit D-4 - NOT OFFERED
af. Protestant's Exhibit D-5 - Climate Change in the Northwest by Dr. Philip Mote
ag. Protestant's Exhibit E-1 - NOT OFFERED
ah. Protestant's Exhibit E-2 - NOT OFFERED
ai. Protestant's Exhibit F-1 - Upper Spokane River Rainbow Trout Spawning and Emergence Study for 1995 and 1996, Eric Johnson, November 17, 1997
aj. Protestant's Exhibit F-2 - Population Dynamics and Factors Affecting Rainbow Trout by David H. Bennett and Tevis J. Underwood, February 1988
ak. Protestant's Exhibit F-3 - Fishery Assessment of the Upper Spokane River by Gary C. Bailey and Jack Saltes, June 1982
al. Protestant's Exhibit F-4 - Federal Aid in Fish Restoration, Job Performance Report, Program F-71-R-15, Idaho Department of Fish and Game, February 1997
am. Protestant's Exhibit F-5 - NOT OFFERED
an. Protestant's Exhibit F-6 - NOT OFFERED
ao. Protestant's Exhibit F-7 - Spokane Valley Aquifer Calcium Concentrations
ap. Protestant's Exhibit G-1 - Generating Project Development Activity in the Northwest - Graphs and tables
aq. Protestant's Exhibit G-2 - Analysis of Winter 2001-2002 Power Supply Adequacy, Northwest Power Planning Council, November 2001
ar. Protestant's Exhibit G-3 - Generating Project Activity in the Pacific Northwest, Northwest Power Planning Council, December 3, 2001
as. Protestant's Exhibit G-4 - Power Plants in the Pacific Northwest, Northwest Power Planning Council, December 12, 2001
at. Protestant's Exhibit G-5 - Application of the "Speculation Purpose" Standard by Lon L. Peters, January 2002
au. Protestant's Exhibit H-1 - NOT OFFERED
av. Protestant's Exhibit H-2 - Database of Proposed Generation Within the Western Systems Coordinating Council, California Energy Commission, October 2001
aw. Protestant's Exhibit H-3 - NOT OFFERED
ax. Protestant's Exhibit H-4 - NOT OFFERED
ay. Protestant's Exhibit I-1 - Application for Site Certification, Wallula Power Project, Volume 1 by Wallula Generation, LLC
az. Protestant's Exhibit I-2 - Council Order No. 753 - Findings of Fact, Conclusions of Law, and Order Recommending Approval of Amendments,

on Condition, In the Matter of Amendment Request No. 1 to the Chehalis Generation Facility Site Certification Agreement, Washington Energy Facility Site Evaluation Council

ba. Protestant's Exhibit I-3 - NOT OFFERED

bb. Protestant's Exhibit I-4 - Sumas Energy 2 Generation Facility, Final EIS by Jones & Stokes, February 2001

bc. Protestant's Exhibit I-5 - Longview Energy Development, LLC Power Plant Project, Environmental Report

bd. Protestant's Exhibit I-6 - Starbuck Power Project, Application for Site Certification, Part 1 Environmental Report, by CH2M Hill, August 2001

be. Protestant's Exhibit I-7 - Letter dated June 29, 2001 to Charles J. Carelli from Charles E. Martin, Vice President Sumas Energy 2, Inc. together with excerpts from Second Revised Application No. 99-1, Volume 1, Parts 1 through 9, June 2001

bf. Protestant's Exhibit I-8 - NOT OFFERED

bg. Protestant's Exhibit J-1 - Curriculum Vitae for Philip W. Mote, PhD

bh. Protestant's Exhibit J-2 - Resume - John A. Riley, PhD

bi. Protestant's Exhibit J-3 - Vitae - Gary Andres

bj. Protestant's Exhibit J-4 - Vitae - Stanley A. Miller

bk. Protestant's Exhibit J-5 - Vitae - John T. Whalen, Jr.

bl. Protestant's Exhibit J-6 - Vitae - Scott Bozman, PhD

bm. Protestant's Exhibit J-7 - Curriculum Vitae - Lon L. Peters, PhD

bn. Protestant's Exhibit J-8 - Vitae - Ned J. Horner

bo. Protestant's Exhibit J-9 - Vitae - Kenneth William Lustig

In addition to the specific exhibits identified above, the hearing officer also officially noticed the application for permit file including the application, amended applications, the advertisement, the protests, correspondence related to the application, and other information typically included in a water right file of the Department.

9. The applicant estimates that it will take 2 to 3 years to construct the project and that the estimated capital investment in the project will be between 400 million and 500 million dollars. The applicant also estimates the completed project will employ about 28 full time employees with an annual payroll of about 1.5 million dollars. Financing for the proposed plant will be obtained through a combination of equity and debt. The protestant estimates the amount of increased economic impact of the plant to the north Idaho economy (5 northern counties) to be about 0.03 of 1 per cent.

10. The applicant has an option to purchase the site for the proposed plant (See Applicant's Exhibit 2) and has made application to the Bonneville Power Administration ("BPA") for an interconnection study of the project to BPA's high voltage electrical transmission line. Results of BPA's review of the application will probably be available in June 2002. The applicant has made preliminary contact with Kootenai County in connection with a conditional use permit that will be required for the project. The applicant has performed an interconnection checklist exercise with Pacific Gas and

Electric, Northwest, the owner of the natural gas pipeline that crosses the project site. The applicant has submitted an application for a Permit to Construct to the Idaho Department of Environmental Quality ("IDEQ") related to air quality and expects an answer from IDEQ during the Fall of 2002. (See Applicant's Exhibit 5).

11. Witnesses for the applicant testified that the maximum instantaneous water demand for the generating facility is 8.9 cfs rather than 10.71 cfs applied for on the application for permit for industrial use. (See Applicant's Exhibit 4, sub-exhibit B).

12. The applicant proposes to use wet cooling technology for the NIP generating facility, since wet cooling provides the most efficient operation of a combined cycle power plant, in terms of energy input versus energy output, and is less costly than a dry cooled system to construct and operate.

13. At the sustained average daily diversion rate of 2,869 gallons per minute (6.4 cfs) estimated by the applicant in Applicant's Exhibit 4, sub-exhibit E, for a wet cooled system, the volume of water to be diverted from the Rathdrum Prairie Aquifer would be 4,628 acre feet per year. This volume is the equivalent of 1.5 billion gallons of water per year that would be totally consumed (evaporated) from the plant at the zero discharge facility.

14. A proposed power generating facility to be located in Columbia County, Washington (Starbuck project) is designed as a 1,200 MW, natural gas fired, combined cycle combustion turbine power plant. This generating facility, although designed to produce about 1.5 times as much electrical energy as the applicant's proposed plant, will use air-cooled condensers with total water usage expected to be about 300 gallons per minute with an annual water use of about 484 acre feet. (See Protestant's Exhibit I-6, page 2-33).

15. The instantaneous maximum flow required for an <u>air cooled</u> plant at the applicant's proposed facility would be about 168 gallons per minute of water compared to a flow requirement of about 3,500 gallons per minute for a <u>water cooled</u> plant. (Testimony of Rick Neff, Manager of Environmental Affairs, Cogentrix Energy, Charlotte, North Carolina).

16. A wet/dry hybrid cooling tower is less efficient and is physically bigger than a wet cooling tower system, but uses approximately 30% of the water supply needed for a wet cooling system. (See Protestant's Exhibit I-7, page 2.6-6).

17. NIP has voluntarily offered mitigation for its proposed use. The mitigation consists of acquiring three existing water rights (95-2182, 95-7949 and part of 95-7847) and retiring those rights in a manner that the state of Idaho may choose. (See Applicant's Exhibit 8). The consumptive use associated with these water rights is 1,232 acre feet per year calculated at 2.0 acre feet per acre times the number of acres authorized for irrigation under the rights. The factor of 2.0 acre feet per acre is the

consumptive irrigation requirement used by the Department for growing alfalfa hay. In addition, the applicant generally offered to mitigate the effect of pumping the applicant's proposed wells on existing wells but did not provide details of how the need for mitigation would be determined or the location of wells to be mitigated.

18. The Rathdrum Prairie Aquifer ("aquifer") extends southwest from the southern end of Lake Pend Oreille in northern Kootenai County, Idaho past the Washington-Idaho border and then west toward Spokane, Washington. In Idaho the Rathdrum Prairie varies from 5 to 17 miles in width, covers about 283 square miles and is bounded by mountainous terrain and numerous lakes. The aquifer is very prolific with ground water occurring under unconfined conditions within the aquifer. Ground water levels are below all of the lakes and the portion of the Spokane River within Idaho. Hence, ground water is not tributary to surface water within Idaho, but becomes tributary to the Spokane River in Washington about five to seven miles from the Idaho-Washington border.

19. Using an aquifer thickness of 250 feet, a diversion rate of 10.71 cfs from the applicant's proposed wells, and a pumping period of 365 days, the calculated drawdown in wells within 14 feet to 380 feet from the applicant's proposed wells is about 1 to 1.5 feet. At a distance of 1,100 feet, the drawdown in adjacent wells is estimated to be about 0.8 feet. (See Applicant's Exhibit 6, Attachment 1, Table 1).

20. Estimates of annual recharge to the aquifer in Idaho range from 726 cfs (B. P. Painter, 1991) to about 1,060 cfs (B. W. Droust and H. R. Seitz, 1978). The aquifer has high hydraulic conductivity with ground water generally flowing westward from Idaho into Washington. The majority of the ground water crossing the state line ends up in the Spokane River or Little Spokane River causing the rivers in Washington to gain water. Estimates of ground water flow from Idaho into Washington vary from 320 cfs (J. P. Buchannon, 1994) to 1,012 cfs (B. W. Droust and H. R. Seitz, 1978). (See Applicant's Exhibit 6). The recharge from the aquifer to the Spokane River occurs in Washington near Barker Road and Sullivan Road located in Washington a distance of 5 and 7 miles respectively from the state line.

21. Two USGS observation wells, one located near Post Falls in Idaho and one located near Liberty Lake in Washington show that water levels fluctuate but do not clearly show a long term pattern of ground water level decline. The period of record for water level measurements in the wells is approximately from 1928 to the present. (See Applicant's Exhibit 6).

22. The summation of rates of diversion for authorized water rights diverting ground water from the Rathdrum Prairie Aquifer in Idaho is estimated to be about 645 cfs. The estimated annual consumptive use of ground water from the aquifer in Idaho is estimated to be about 182,000 acre feet per year. The consumptive use value for irrigation in this volume estimate of 2.7 acre feet per acre does not exclude the volume of water contributed by precipitation. (See Applicant's Exhibit 6, table 3). A year-round

diversion of about 249 cfs will produce a volume of 182,000 acre feet of water.

23. The concerns of the protestants generally include the following:

a. The amount of water the applicant has applied for is not reasonable because of uncertainties in the amount of water available and because the Rathdrum Prairie Aquifer is the sole or principal source of drinking water for the area in both Idaho and Washington.

b. The proposed appropriation will injure water rights in Idaho and the aquifer is being mined.

c. Use of water for cooling is not the best use of the water considering the opportunities foregone and future population needs in the Rathdrum Prairie Aquifer near Coeur d' Alene and Spokane.

d. The project is speculative, since the applicant will not build the plant due to the depressed demand for power and will sell the water right permit if it is issued. The protestants also contend that the project is speculative because the applicant does not have in hand needed approvals from local and state permitting agencies, BPA, the natural gas supplier, North Idaho Pan Handle Health District, or contracts for the construction of the plant, purchase of equipment, and sale of the power.

e. The appropriation will reduce the flow of water in the Spokane River with resulting injury to trout populations and to recreational opportunities on the river such as kayaking and fishing.

24. In February 1978, the Environmental Protection Agency ("EPA") designated the Spokane Valley - Rathdrum Prairie Aquifer as a sole source aquifer pursuant to provisions of section 1424(e) of the Safe Water Drinking Act (Pub. L. 93-523). In the designation, the EPA determined that the aquifer provides water to public water supplies and individual wells in Kootenai County, Idaho and Spokane County, Washington and that there is no alternate source of drinking water supply that could economically replace the Spokane Valley - Rathdrum Prairie Aquifer.

25. The electricity market in the Northwest presently is relatively weak and consumption levels of power are lower than in the recent past with Northwest Regional loads in November 2001, being about 14% below the level in November 2000. Some proposed projects in the Northwest have been delayed due to lower market prices for electricity. The Northwest Power Planning Council reports that since January 2000, about 1,300 MWs of new generation have been placed into service, over 3,800 MWs of new generation are under construction, almost 2,900 MWs have been permitted, about 10,700 MWs more have permits pending, another 2,000 MWs are planned and over 5,700 MWs have been identified as potential new sources. The applicant's project falls

in the planned category. Projections by the Northwest Power Planning Council indicate that consumption likely will not reach 1999 levels until 2004 and that loads in 2005 will be about 6.5% higher than in 1999. (See Protestant's Exhibit G-5).

26. The Department received testimony from 14 public witnesses at the hearing. Some public witnesses opposed the project, others supported it and others were not for or against the project, but stated that more information was needed about the aquifer before appropriations of the size sought by the applicant should be approved. A number of people submitted untimely letters and faxes in connection with the proposed project, which letters and faxes were not considered in the matter and have been removed from the Department's water right file.

ANALYSIS

The protestants allege that the applicant would not perfect an appropriation of water authorized by the permit, if issued, and instead may sell the permit to another party, which practice is sometimes termed "permit banking." To prevent this type of "speculation" in the development and sale of undeveloped permits, the Department routinely issues permits conditioned so that the permit holder is not authorized to convey ownership of the permit to another party without prior approval of the Department. When considering requests to assign ownership of undeveloped permits that are so conditioned the Department evaluates, among other criteria, the due diligence of the original permit holder in development of the project.

The witnesses in this proceeding sharply disagree on how much water is available in the Rathdrum Prairie Aquifer. Estimates of annual recharge to the aquifer in Idaho vary from 750 cfs (B. P. Painter, 1991) to about 1,060 cfs (B. W. Droust and H. R. Seitz, 1978). Estimates of ground water flow from Idaho into Washington also vary considerably from a low of about 320 cfs (J. P. Buchannon, 1994) up to 1,012 cfs (B. W. Droust and H. R. Seitz, 1978). The amount of water authorized for use in Idaho has been estimated from recorded rights but has not been confirmed with actual measurements of water diverted. The parties also disagree on whether the ground water supply is already over appropriated and/or is being mined.

An issue not disputed by any of the parties, witnesses or public witnesses, however, is that the supply of water in the Rathdrum Prairie Aquifer is finite and that the area utilizing water from the aquifer both in Idaho and in Washington has experienced rapid population growth and most likely will continue to experience such growth. This area of increasing population will require both water and power in order to meet future demands.

The cooling tower is the major water consumer in any power plant. By relying on evaporation to cool the steam cycle, water is lost to the atmosphere. The design of the applicant's proposed generating project uses "wet cooling technology" that requires the largest consumptive water demand even though alternative technology is available that

could be utilized to substantially reduce the amount of water needed for the proposed plant. An alternate design that could be employed by the applicant in the proposed plant is "dry cooling technology" or a "wet/dry hybrid cooling system." Although the use of dry cooling technology is less efficient in terms of energy output, the plant would use substantially less water. See Finding of Fact 15 to compare the relative amounts of water for each cooling method, i.e., a diversion rate comparison of 168 gpm for a dry cooled system versus 3,500 gpm for a wet cooled system. The benefit to the applicant of selecting a wet cooled system design is purely financial without regard to conservation of the water resource.

The applicant states that its project is not contrary to "conservation of water resources within the state of Idaho" because its "proposed project design insures maximum efficiency of the water used for the project and maximum efficiency in the production of electricity" through recycling and reuse of water within the plant. The applicant also states "the zero wastewater design puts essentially every gallon of water drawn from the aquifer to beneficial use by continuously recycling and reusing the water." This argument, however, also cuts the other way in that every gallon of water pumped from the aquifer would be totally removed from the system under the applicant's design through evaporation and would be unavailable for any other use. The applicant's argument does not contrast the amount of water diverted and consumed with the amount of energy produced using different cooling designs.

When evaluating "conservation of water resources," the amount of water withdrawn from the aquifer must be evaluated in terms of consumption. The applicant has not adequately addressed this aspect of the conservation criterion. The applicant has not provided justification for why a water cooled system that will totally consume, through evaporation, all of the water diverted should be considered to meet the conservation of water resources criterion when a dry cooled system could be utilized in the design of the plant and would use substantially less water. Although there are trade-offs between the designs, total evaporation of the amount of water sought by the applicant is not reasonable.

With the limited options available to provide water to meet the needs of people utilizing the Rathdrum Prairie Aquifer, the loss of 1.5 billion gallons of water each year for the next 30 years is short-sighted and is not consistent with the conservation of water resources in the state of Idaho, especially when there are other options that the applicant could pursue to develop a power generating facility. While the result may be different under an amended or resubmitted application for a modified project, the Department should not approve the application as presently submitted.

CONCLUSIONS OF LAW

1. Section 42-203A, Idaho Code, provides in pertinent part as follows:

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.

2. The Idaho Legislature has enacted policy statements emphasizing the importance of water conservation in achieving optimum development, use and management of the state's limited water resources. See e.g., I.C. § 42-226 (traditional policy requiring the water resources of the state to be devoted to beneficial use in reasonable amounts through appropriation); I.C. § 42-401(1) (state of Idaho is dedicated to the conservation of its public waters and the necessity to maintain adequate water supplies for the state's water requirements); I.C. 42-1730(2) (welfare of the people of Idaho is dependent upon conservation, development and optimum use of our water resources and waterways).

3. The Idaho State Water Plan, adopted by the Idaho Water Resource Board pursuant to Idaho Const., Art. XV, § 7, authorizes the Board to formulate and implement a state water plan for optimum development of water resources in the public interest. Policy 1G of the State Water Plan (December 1996) provides: "It is the policy of Idaho to promote the reasonable use of water in accordance with state law."

4. The Idaho Supreme Court has held that the policy of the law of this state is to secure the maximum use and benefit, and least wasteful use, of its water resources. See State v. Hagerman Water Right Owners, Inc., 130 Idaho 727, 735, 974 P.2d 400, 408 (1997); Poole v. Olaveson, 82 Idaho 496, 502, 356 P.2d 61, 65 (1960).

5. The applicant's proposal would divert and totally consume (evaporate) 4,628 acre feet of ground water from the Rathdrum Prairie Aquifer per year which is the equivalent of 1.5 billion gallons of water per year.

6. There will be a need for additional water and power on the Rathdrum Prairie as the population of the northwest increases. A commitment of water for the sole purpose of power generation for a period of 30 years at the expense of other future worthwhile uses is short sighted and is contrary to conservation of water resources in Idaho, particularly when technology is available to reduce the amount of water required

for power production.

7. The Department should not approve the application, as submitted.

8. This Preliminary Order does not include conclusions of law relative to the other decision criteria contained in section 42-203A, Idaho Code, because the failure of the proposed project to comply with the criterion requiring "conservation of water resources within the state of Idaho" is by itself sufficient reason not to approve the application.

ORDER

IT IS THEREFORE ORDERED that Application for Permit No. 95-09069, filed in the name of North Idaho Power, LLC, is hereby **DENIED** as submitted.

Signed this 18th day of July, 2002.

L. GLEN SAXTON, P.E.
Hearing Officer