BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 95-09086 IN THE NAME OF KOOTENAI GENERATION 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 May 8, 2001, Kootenai Generation, LLC ("applicant" or "Kootenai Generation") submitted Application for Permit No. 95-09086 ("application") to the Department proposing the diversion of 15.6 cubic feet per second ("cfs") of ground water to be used year-round for industrial purposes. The applicant plans to drill four 20-inch diameter wells to a depth of up to 400 feet. The proposed wells are to be located in SW1/4NW1/4 and NW1/4NW1/4 Section 11, T51N, R5W, B.M. and the proposed place of use is within the SW1/4NE1/4 and SE1/4NW1/4 Section 11, T51N, R5W, B.M.*

2. The applicant proposes to develop a natural gas-fired combined-cycle combustion turbine electric generating facility (referred to as "generating facility," "project" or "plant") capable of producing approximately 1,240 megawatts of electrical power near the town of Rathdrum in Kootenai County, Idaho. The proposed project will consist of two power islands, each consisting of two gas-fired combustion turbines, two heat recovery steam generators with supplemental duct firing capabilities and a re-heat steam turbine. The base generating capability of each power island will be about 480 MW, with an additional firing capability of 140 MW for a total power island capability of about 620 MW. The project is designed to use water-cooled condensers and mechanical draft wet cooling towers. Ground water diverted for use in the plant will be totally consumed with zero liquid discharge from the generating facility.

3. The Department published notice of the application. The application was

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

protested by Kootenai Environmental Alliance, Friends of the Aquifer, Idaho Conservation League, Upper Columbia River Chapter of the Sierra Club, REBOUND, the International Brotherhood of Electrical Workers Local #73 ("IBEW Local 73"), Douglas Barnard, Ric Puterbaugh, Ken D. Brown, Michael S. Lines, Kent Buck, John Bartlett, John L. Frank and Ward Merkeley. North Idaho Power, LLC was granted intervenor status in the matter. Ward Merkeley subsequently withdrew his protest.

4. On March 12 through 15, 2002, the Department conducted a hearing in the matter. The applicant was represented by attorney Robert A. Maynard. Protestants REBOUND, the IBEW Local 73, Douglas Barnard, Ric Puterbaugh, Ken D. Brown, Michael S. Lines, Kent Buck, John Bartlett, John L. Frank, Sierra Club, Idaho Conservation League, Kootenai Environmental Alliance and Friends of the Aquifer were represented by attorneys Teresa Hampton and Rachael Osborne. Intervenor North Idaho Power, LLC was represented by attorney Kevin J. Beaton.

5. 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.

6. 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 - NOT OFFERED
c. Applicant's Exhibit 3 - NOT OFFERED
d. Applicant's Exhibit 4 - Statement of Scott A. Noll with attachments
e. Applicant's Exhibit 5 - NOT OFFERED
f. Applicant's Exhibit 6 - Letter dated December 17, 2001 to Perkins Coie from Charles Ellingson together with Cumulative Drawdown Estimates for the Rathdrum Prairie Project by John P. Buchanan

g. Applicant's Exhibit 7 - Five (5) graphs prepared by John Buchanan and Charles Ellingson, December 2001
h. Applicant's Exhibit 8 - Curriculum Vitae, Dr. John P. Buchanan, Ph.D.
i. Applicant's Exhibit 9 - Curriculum Vitae, Charles T. Ellingson, M.S.
j. Applicant's Exhibit 10 - NOT OFFERED
k. Applicant's Exhibit 11 - Additional Information Requirements Water Resource Analysis of the Rathdrum Prairie Aquifer Relating to Application to Appropriate Water No. 95-09069 by Sherl L. Chapman, Steven R. Hannula and Dale Ralston, November 19, 2001
l. Applicant's Exhibit 12 - An Estimate of Recharge to the Rathdrum Prairie Aquifer in Idaho From All Sources, B. D. Painter, 1991
m. Applicant's Exhibit 13 - Hydrograph - Washington Monitoring Well 25N/45E - 16CO1
n. Applicant's Exhibit 14 - Graphic of Coeur d' Alene Lake stage
o. Applicant's Exhibit 15 - Graphics (5) - Water Levels and graphic titled Comparison of Long-Term Hydrographs for USGS Observation Wells in Rathdrum Prairie-Spokane Valley Aquifer
p. Applicant's Exhibit 16 - Pacific Groundwater Group Calculation Worksheet
q. Applicant's Exhibit 17 - Step drawdown data for wells of East Greenacres Irrigation District
r. Protestant's Exhibit A-1 - NOT OFFERED
s. 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)
t. Protestant's Exhibit A-3 - Miscellaneous charts and graphs (amended)
u. Protestant's Exhibit A-4 - NOT OFFERED
v. Protestant's Exhibit A-5 - Digital-Model Simulation of the Hydrologic Flow System, With Emphasis on Ground Water In the Spokane Valley, Washington and Idaho, USGS Open-File Report 80-1300, 1981
w. Protestant's Exhibit A-6 - The Spokane Valley - Rathdrum Prairie Aquifer Atlas, August 2000
x. Protestant's Exhibit A-7 - Jacklin Seed Co. Well Water Level
y. Protestant's Exhibit A-8 - Three (3) USGS topographic maps
z. Protestant's Exhibit B-1 - NOT OFFERED
aa. Protestant's Exhibit B-2 - NOT OFFERED
ab. Protestant's Exhibit B-3 - Background and Status Report: Watershed Planning in Spokane under 90.82 RCW, Stan Miller, December 6, 2001
ac. Protestant's Exhibit B-4 - NOT OFFERED
ad. Protestant's Exhibit B-5 - NOT OFFERED
ae. Protestant's Exhibit B-6 - NOT OFFERED
af. Protestant's Exhibit C-1 - NOT OFFERED
ag. Protestant's Exhibit C-2 - NOT OFFERED
ah. Protestant's Exhibit C-3 - NOT OFFERED
ai. Protestant's Exhibit C-4 - NOT OFFERED
aj. Protestant's Exhibit D-1 - NOT OFFERED
ak. Protestant's Exhibit D-2 - NOT OFFERED
al. Protestant's Exhibit D-3 - NOT OFFERED

am. Protestant's Exhibit D-4 - NOT OFFERED
an. Protestant's Exhibit D-5 - Climate Change in the Northwest, Dr. Philip Mote, January 2002
ao. Protestant's Exhibit D-6 - Doctor Phillip Mote Testimony
ap. Protestant's Exhibit E-1 - NOT OFFERED
aq. Protestant's Exhibit E-2 - Letter dated October 18, 1999 to Washington State Department of Ecology from Hal A. Beecher
ar. Protestant's Exhibit F-1 - Upper Spokane River Rainbow Trout Spawning and Emergence Study for 1995 and 1996, Eric Johnson, November 17, 1997
as. Protestant's Exhibit F-2 - Population Dynamics and Factors Affecting Rainbow Trout by David H. Bennett and Tevis J. Underwood, February 1988
at. Protestant's Exhibit F-3 - Fishery Assessment of the Upper Spokane River by Gary C. Bailey and Jack Saltes, June 1982
au. 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
av. Protestant's Exhibit F-5 - NOT OFFERED
aw. Protestant's Exhibit F-6 - Final 1998 Section 303(d) List, excerpts, Washington Department of Ecology
ax. Protestant's Exhibit F-7 - Spokane Valley Aquifer Calcium Concentrations
ay. Protestant's Exhibit G-1 - Generating Project Development Activity in the Northwest - Graphs and tables
az. Protestant's Exhibit G-2 - Analysis of Winter 2001-2002 Power Supply Adequacy, Northwest Power Planning Council, November 2001
ba. Protestant's Exhibit G-3 - NOT OFFERED
bb. Protestant's Exhibit G-4 - NOT OFFERED
bc. Protestant's Exhibit G-5 - Application of the "Speculative Purpose" standard by Lon L. Peters, March 2002
bd. Protestant's Exhibit H-1 - NOT OFFERED
be. Protestant's Exhibit H-2 - Database of Proposed Generation Within the Western Systems Coordinating Council, California Energy Commission, October 2001
bf. Protestant's Exhibit H-3 - NOT OFFERED
bg. Protestant's Exhibit H-4 - NOT OFFERED
bh. Protestant's Exhibit I-1 - Application for Site Certification, Wallula Power Project, Volume 1 by Wallula Generation, LLC
bi. 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
bj. Protestant's Exhibit I-3 - NOT OFFERED
bk. Protestant's Exhibit I-4 - Sumas Energy 2 Generation Facility, Final EIS by Jones & Stokes, February 2001

bl. Protestant's Exhibit I-5 - Longview Energy Development, LLC Power Plant Project, Environmental Report
bm. Protestant's Exhibit I-6 - Starbuck Power Project, Application for Site Certification, Part 1 Environmental Report, by CH2M Hill, August 2001
bn. 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
bo. Protestant's Exhibit I-8 - NOT OFFERED
bp. Protestant's Exhibit J-1 - Curriculum Vitae for Philip W. Mote, PhD
bq. Protestant's Exhibit J-2 - Curriculum Vitae - John A. Riley
br. Protestant's Exhibit J-3 - Curriculum Vitae - Gary Andres
bs. Protestant's Exhibit J-4 - Biographical Sketch - Stanley A. Miller
bt. Protestant's Exhibit J-5 - Curriculum Vitae - John Whalen
bu. Protestant's Exhibit J-6 - Curriculum Vitae - Scott Bozman, Ph. D.
bv. Protestant's Exhibit J-7 - Lon L. Peters, Ph. D.
bw. Protestant's Exhibit J-8 - Vitae - Ned J. Horner
bx. 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, the advertisement, the protests, correspondence related to the application, and other information typically included in a water right file of the Department.

7. Kootenai Generation, LLC was formed as an indirect subsidiary of Newport Generation Ventures, LLC for the purpose of developing and operating the generating facility proposed in the application. Newport Generation, Inc. and its parent holding company, Newport Generation Ventures, LLC plan to obtain capital to finance the project through a combination of equity and debt.

8. The operation of the proposed generating facility is generally described below. Energy released by the combustion of fuel in the gas turbines or by duct-firing is exhausted from the turbines and duct-burners to the heat recovery steam generators that remove energy from the flue gas by boiling to produce steam for the turbines. The steam turbines take steam at high pressure and temperature from the heat recovery steam generators and extract energy to turn a second electrical generator. As the high pressure steam flows through the steam turbine, its temperature and pressure are reduced significantly as it gives up energy to the steam turbine. The steam turbines exhaust to a condenser where the remaining heat in the exhaust steam is removed in an exchange with circulating water, a combination of circulating water and cooling air or cooling air. Potential options for such heat removal systems include a) wet mechanical-draft cooling towers, b) a combination wet mechanical-draft cooling tower/dry air cooled condenser cooling system or c) an air cooled condenser.

9. The applicant selected a wet mechanical-draft cooling tower, since its use reduces capital costs and operation costs of the project and maximizes system output in

terms of kilowatt output per amount of system input but is totally water consumptive. Dry cooling can be in the form of a wet/dry mechanical-draft cooling tower or a wet mechanical-draft cooling tower/dry air-cooled condenser hybrid cooling system. In either system, the ratio of dry to wet cooling can be adjusted to reduce water usage from a small amount to almost complete elimination of water consumption but is more expensive and less efficient, in terms of energy input versus energy output, than the applicant's design. An air-cooled system rejects the heat absorbed from condensing steam to the atmosphere and is not as efficient as a mechanical-draft cooling tower.

10. The applicant estimates the maximum expected water use at the proposed plant to be 7,000 acre feet per year based on an average rate of diversion of 4,337 gpm (9.7 cfs). The average annual water use at the plant is estimated to be 5,006 acre feet per year based on an average annual diversion rate of 3,102 gpm (6.9 cfs). The generating facility is designed proposing zero liquid discharge from the facility with evaporation from the cooling towers accounting for 90% of water lost from the project.

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

12. 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).

13. The applicant estimates that the plant would not become operable for 3 to 4 years and that the capital investment in the project will be approximately $750 million dollars. The applicant has not developed numbers for anticipated benefits of tax revenues of the project. The applicant estimated the number of construction related jobs for the project at 600 to 650 and full time employees of the plant at 32. The protestant estimates the amount of increased economic impact of the plant to the north Idaho economy (5 northern counties) to be about 0.04 of 1 per cent.

14. The applicant has an option to purchase the proposed 310 acre project site and has discussed its plans with the city of Rathdrum but has not submitted a Site Plan Review and Approval application to the city. The applicant intends to complete this process in the next 2 years. The applicant plans to submit an application to the Idaho Department of Environmental Quality for a Prevention of Significant Deterioration of Air Quality ("PSD") Permit in April 2002. The applicant has filed a request for interconnection and a request for firm transmission service with Bonneville Power Administration. No permits for the project, however, are currently in place.

15. 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 is tributary to the Spokane River in Washington about five to seven miles from the Idaho-Washington border.

16. Using a regional MODFLOW model of the Rathdrum Prairie aquifer under steady state simulations and an average annual diversion rate of 9.66 cfs, the applicant estimated the drawdown in the aquifer to be approximately 1 foot at a distance of about 1 mile from the applicant's proposed wells. (See Applicant's Exhibit 6).

17. The applicant estimates the recharge to the Rathdrum Prairie Aquifer at approximately 752.8 cfs. (See Applicant's Exhibit 12). 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.

18. 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 11).

19. 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 is 2.7 acre feet per acre, not excluding the volume of water contributed by precipitation, and is based on raising alfalfa hay. (See Applicant's Exhibit 11, table 3). A year-round diversion of about 249 cfs will produce a volume of 182,000 acre feet of water.

20. 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.

21. 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.

22. 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 has 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-1 and G-5).

23. At the average annual daily diversion rate of about 4,335 gallons per minute (9.66 cfs) estimated by the applicant for its plant utilizing a wet cooled system, the volume of water to be diverted from the Rathdrum Prairie Aquifer would be 7,000 acre feet per year. This volume is the equivalent of 2.3 billion gallons of water that would be totally consumed (evaporated) from the plant each year at the zero discharge facility.

24. The Department received testimony from 9 public witnesses at the hearing. Some public witnesses opposed the project 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 and have been removed from the record.

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 Findings of Fact 10, 11 and 12 to compare the relative amounts of water for each cooling method. 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 the "project design incorporates intensive recycling and other measures to efficiently use Aquifer water to generate electricity." The applicant also states "the zero wastewater discharge maximizes the use of each gallon of water drawn from the Aquifer." 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 2.3 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) a maximum volume of about 7,000 acre feet of ground water per year from the Rathdrum Prairie Aquifer which is the equivalent of 2.3 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. 95-09086, filed in the name of Kootenai Generation, LLC, is hereby **DENIED** as submitted.

Signed this 18th day of July 2002.

L. GLEN SAXTON, P.E.
Hearing Officer