

BEFORE THE DEPARTMENT OF WATER RESOURCES

IN AND FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT TO APPROPRIATE WATER)
NO. 95-9385 IN THE NAME OF NORTHERN)
WATER, LLC)
_____)

PRELIMINARY ORDER

On March 27, 2007, Northern Water LLC (“Northern Water”) filed an application to appropriate water with the Idaho Department of Water Resources (“IDWR” or “Department”). The application was assigned water right no. 95-9385.

Application to appropriate water no. 95-9385 seeks the appropriation from ground water of 0.25 cubic feet per second (“cfs”) for municipal purposes and 0.50 cfs for fire protection for a total of 0.75 cfs.

Notice of application no. 95-9385 was published on May 3 and May 10, 2007 in the Coeur d’Alene Press. Shanna Bublitz protested the application.

On August 30, 2007, Wild Ridge, LLC (“Wild Ridge”) filed a petition to intervene. On September 14, 2007, the hearing officer granted the petition to intervene.

On September 18, 2007, IDWR conducted a hearing for the protest. Malcolm Dymkoski, attorney at law, appeared on behalf of Northern Water. Erika B. Grubbs, attorney at law, appeared on behalf of Wild Ridge.

After presentation of testimony and other evidence, the hearing officer finds, concludes and orders as follows:

FINDINGS OF FACT

1. Application no. 95-9385 proposes the following:

Nature of Use:	Municipal and Fire Protection
Source	Ground water
Flow Rate	0.25 cubic feet per second (“cfs”) (Municipal) 0.50 cfs (Fire Protection)
Points of Diversion	SESE ¹ , Section 3, Township 51 N, Range 5 W (Two wells at this location)
Place of Use	SE of Section 4, T 51 N, R 5 W

¹ In this decision, the public land survey numeric descriptor “1/4” is assumed to follow each two alpha character public land survey locator when the numeric descriptor is missing. For instance, in this example, the full description would be the SE1/4SE1/4, Section 3, Township 51 North, Range 5 West, Boise Meridian.

2. Wild Ridge owns 108 acres that include the entire place of use proposed by application no. 95-9385. Wild Ridge proposes a 54-lot subdivision on the 108 acres. The development will be referred to hereafter as “the Wild Ridge development.”

3. Northern Water constructed and owns a water system to supply municipal water to a development named “Lost Creek Estates.” The Lost Creek Estates development is adjacent to the 108 acres owned by Wild Ridge. Northern Water holds permit to appropriate water no. 95-9277. Permit no. 95-9277 authorizes the following use of water for Lost Creek Estates:

Nature of Use:	Municipal and Fire Protection
Source:	Ground water
Flow Rate:	0.25 cfs (Municipal) 0.50 cfs (Fire Protection)
Total flow rate:	0.50 cfs
Points of Diversion	SESE, Section 3, Township 51 N, Range 5 W (Two wells at this location)
Place of Use	SW & SE of Section 3, T 51 N, R 5 W

4. The homeowners of Lost Creek Estates are members/shareholders in a nonprofit corporation named the Lost Creek Estates Water Association, Inc. (“Lost Creek Association”). Lost Creek Association leases the water system providing water to Lost Creek Estates from Northern Water.

5. On March 13, 2007, Wild Ridge executed a contract with Northern Water and Lost Creek Association. The contract provides that the homeowners within the Wild Ridge development will become members in the Lost Creek Association, and that the Wild Ridge development may connect its municipal water service lines to the municipal water supply system owned by Northern Water and leased by the Lost Creek Association. Upon connection of the Wild Ridge development water lines to the water lines in Lost Creek Estates currently owned by Northern Water, the water system within the Wild Ridge development will become the property of Northern Water (see “Water Service Agreement,” Exhibit 103).

6. Lots within the Wild Ridge development will be 2/3 to 2 3/4 acres in size. Covenants and restrictions for the subdivision will mandate that each home use shall not exceed 700 gallons per household per day. The covenants and restrictions will also require planting of native vegetation that is drought resistant and does not require as much water for survival. The covenants and restrictions will also encourage other water conservation measures set forth in an agreement between Kootenai Environmental Alliance and Wild Ridge.

7. Wild Ridge will construct and install a central septic system for the subdivision. Panhandle Health District reviewed the plans and specifications for the central septic system and has approved the conceptual proposal. Wild Ridge will comply with all health regulations.

8. Northern Water owns two existing wells currently providing municipal water to Lost Creek Estates. Application no. 95-9385 identifies the two Lost Creek Estates wells as proposed points of diversion.

9. Each Lost Creek Estates well has been pump tested and will produce 195 gallons per minute, or a total of 390 gallons per minute. This is equivalent to 0.87 cfs. The pumping system in each well is capable of pumping 142 gallons per minute, or a total of 284 gallons per minute. This is equal to 0.63 cfs. Both the well capacity and the system capacity exceed the combination of municipal flows authorized by the existing permit no. 95-9277 (0.25 cfs) and application to appropriate water no. 95-9385 (0.25 cfs), absent the additional flow needed for fire protection.

10. Northern Water constructed and owns a water storage reservoir located in Lost Creek Estates that provides fire protection for the subdivision. Wild Ridge proposes construction of a water storage reservoir in the Wild Ridge development to provide fire protection. Consequently, the capacity needed is the 0.50 cfs (the combined municipal flow rate of permit no. 95-9277 and application no. 95-9385), plus some additional flow to refill the water storage tanks if depleted by delivering water for fighting a fire. The existing piping system is designed to provide fire flows of 1,000 gpm, or 2.23 cfs.

11. There is mechanical and delivery capacity in the existing system to provide municipal water flows for Lost Creek Estates and the Wild Ridge development. In addition, the mechanical pumping works can be improved to provide additional water, if necessary.

12. Wild Ridge has secured financing for the subdivision development from Coastal Community Bank for six million dollars.

13. The points of diversion are located on the fringes of the Rathdrum Prairie Aquifer in what was characterized as an "abayment" of the aquifer. "Abayment" was defined as a bay or inlet with characteristics of the larger Rathdrum Prairie Aquifer.

14. Ground water in the Rathdrum Prairie Aquifer resides in formations of sands and gravels. The sands and gravels transmit water rapidly. In addition, the sands and gravels store a significant quantity of water within a unit volume of the Rathdrum Prairie Aquifer.

15. Ground water levels in the Rathdrum Prairie Aquifer are not declining. Withdrawals of water are not exceeding the average annual rate of natural recharge to the aquifer. The Rathdrum Prairie Aquifer contains sufficient water to sustain the proposed diversion of water without causing an overdraft of the ground water in the aquifer.

16. One of the Lost Creek Estates wells was pumped to determine well capacity. The rate and duration of the pump test was specifically identified in the evidence. The hearing officer assumes that the pumping flow rate for the test was the 195 gallons per minute previously discussed in this decision. Pumping caused a ground water draw down in the pumped well of not more than two feet. Draw downs in the pumped well did not cause any ground water declines in the second unpumped Lost Creek Estates well.

17. The nearest private well is approximately 500-1,000 feet from the Lost Creek Estates wells proposed by application no. 95-9385 as points of diversion. Because of the highly transmissive properties of the Rathdrum Prairie Aquifer resulting in insignificant or nonexistent draw downs during pumping at a rate of the magnitude sought by application no. 95-9385, the proposed appropriation will not cause a significant decline in the wells owned by other water right holders.

CONCLUSIONS OF LAW

1. Idaho Code § 42-203A states in pertinent part:

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 as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho, or (g) that it will adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates; 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 applicant bears the ultimate burden of proof regarding all the factors set forth in Idaho Code § 42-203A.

3. Northern Water and Wild Ridge have sufficient financial resources to complete the project.

4. The applications were not filed for speculation, delay, or in bad faith.

5. Idaho Code § 42-202B defines the local public interest as “the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource.”

6. Careful development and use of the ground water in the Rathdrum Prairie Aquifer for domestic and municipal uses is in the local public interest. The municipal use of water proposed by application no. 95-9385 is in the local public interest.

7. Restrictive limits on water use and encouraged low water consumptive landscaping within the Wild Ridge development will result in conservation of the water of the state of Idaho.

8. Pumping the flow rates proposed by the application will not reduce the quantity of water under existing water rights.

9. The water supply in the Rathdrum Prairie Aquifer is sufficient for the purpose sought by the application.

ORDER

IT IS HEREBY ORDERED that application for permit to appropriate water no. 95-9385 is **Approved** subject to the following conditions:

Proof of beneficial use shall be submitted on or before January 1, 2013.

Subject to all prior water rights.

A map depicting the place of use boundary for this water right at the time of this approval is attached to this document for illustration purposes.

Place of use is within the area served by the public water supply system of Northern Water LLC. The place of use is generally located within Section 3, Township 51N, Range 05W.

Prior to or in connection with the proof of beneficial use statement to be submitted for municipal water use under this right, the right holder shall provide the department with documentation showing that the water supply system is being regulated by the Idaho Department of Environmental Quality as a public water supply and that it has been issued a public water supply number.

Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.

Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.

Water shall not be diverted for fire protection use under this right except to fight or repel an existing fire.

This right does not grant any right-of-way or easement across the land of another.

This right authorizes the diversion of ground water within the Rathdrum Prairie Ground Water Management Area (RPGWMA). Use of water under this right shall be subject to the provisions of the management plan approved by the director for the RPGWMA.

When notified by the Department, the right holder shall install and maintain a measuring device of a type acceptable to the Department as part of the diverting works.

When notified by the Department, the right holder shall record the quantity of water diverted and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code, and/or the management plan for the Rathdrum Prairie Ground Water Management Area.

Water may only be diverted and used for irrigation from March 15 through November 15.

The right holder shall comply with all water quality statutes and rules administered by the Idaho Department of Environmental Quality.

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

Failure of the right holder to comply with any condition of approval is cause for the Director to void this permit.

Dated this 6th day of December, 2007.

A handwritten signature in cursive script, reading "Gary Spackman", written over a horizontal line.

Gary Spackman
Hearing Officer