

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 63-32061 IN THE)
NAME OF SUNCOR IDAHO, LLC) **RECOMMENDED ORDER**
_____)

This matter came before the Idaho Department of Water Resources ("Department" or "IDWR") in the form of a protested application for permit. The Department held conferences and scheduled a hearing in the matter to be held on October 31 and November 1, 2006 as described below in this Recommended Order.

On October 23, 2006, protestants Rod Davidson, Lyle Mullins and Garth Baldwin filed Protestants' Motion to Disqualify Hearing Officer for Cause stating that the hearing officer in the matter "may" have bias associated with prior involvement in SunCor's water rights and opinions associated with prior IDWR directives as a former employee of the IDWR. On October 24, 2006, the applicant responded with Applicant's Opposition to Protestants' Motion to Disqualify Hearing Officer For Cause and on October 25, 2006, the protestants filed Protestant's Response to Applicant's Opposition to Motion to Disqualify Hearing Officer For Cause. After reviewing the motions and responses, at the hearing held on October 31, 2006, the hearing officer denied the protestant's motion to disqualify the hearing officer. Reasons for denial include the late filing of the motion (8 days before the hearing that had been scheduled for approximately 2 and ½ months), an insufficient showing that the hearing officer was biased due to prior involvement in policies of IDWR and a lack of any showing that signing a prior permit of the applicant on behalf of the Director of IDWR constitutes bias of the hearing officer.

On November 13, 2006, the applicant filed Avimor LLC's Motion to Augment Record requesting that the hearing officer augment the record or take official notice of a Memorandum Decision in the case of City of Boise v. Ada County, CV-OC-06-0498, dismissing the City of Boise's petition for judicial review of Ada County's approval of Avimor's planned community. Since the protestants did not object or oppose the request of the applicant, the hearing officer takes official notice of the memorandum decision.

Based on his understanding of the facts in this matter, the hearing officer enters the following Findings of Fact, Conclusions of Law and Recommended Order:

FINDINGS OF FACT

1. On January 25, 2005, SunCor Idaho, LLC ("applicant") submitted Application for Permit No. 63-32061 ("application") to the Department proposing the diversion of 5.0

cubic feet per second ("cfs") of ground water to be used year-round for municipal purposes. The location of the proposed points of diversion are within SW1/4SW1/4 Section 8, SW1/4NW1/4 Section 9, SE1/4NW1/4 Section 18, T5N, R1E, B.M.; and SE1/4NW1/4 Section 13, SW1/4NE1/4, NE1/4SW1/4 Section 23, T5N, R1W, B.M. The proposed place of use is located within parts of Sections 1, 12, 13 and 24, T5N, R1E, B.M.; Sections 5, 6, 7, 17, 18 and 20, T5N, R2E, B.M.; Section 36, T6N, R1E, B.M, and Sections 31 and 32, T6N, R2E, B.M. (See Applicant's Exhibit 39). The place of use is also referred to by the applicant as the "Core Area" of the planned development and includes parts of Boise, Gem and Ada Counties. The application does not seek to obtain and hold a water right for reasonably anticipated future needs ("RAFN") for a planning horizon ("PH") associated with diversion and use of water under the application.

(Note: The "1/4" designations will be omitted from subsequent legal descriptions in this order).

2. The Department published notice of the application that was subsequently protested by North Ada County Foothills Association by David J. Head, Rod Davidson, Lyle K. Mullins, Hillsdale Homeowners Association, Inc. by Roy B. Johnson, Willowbrook Development, Inc. by Richard M. Phillips, Little Enterprises Limited Partnership by Brad Little, Baldwin Reality, Inc. by Garth Baldwin, and Philip Fry. All protests except those of Rod Davidson, Garth Baldwin, Philip Fry and Lyle K. Mullins have been withdrawn or dismissed.

3. On October 31, 2006, the Department conducted a hearing in the matter in Boise, Idaho. The applicant was represented by Albert P. Barker. Protestants Rod Davidson, Lyle Mullins and Garth Baldwin were represented by Judith M. Brawer. Philip Fry represented himself.

4. 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.
 - g. Whether the proposed use 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.

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

Applicant's Exhibits:

1. Certificate of Secretary, Company Structure Chart, Articles of Amendment
2. SunCor Development Company 2005 Annual Report
3. 2005 Pinnacle West Capital Corporation Annual Report
4. Special Warranty Deed (Spring Valley – Ada), Special Warranty Deed (Spring Valley – Boise) and Special Warranty Deed (Spring Valley – Gem)
5. Memorandum of Agreements – (Ada County), Memorandum of Agreements (Boise County) and Memorandum of Agreements (Gem County)
6. Memorandum of Declaration of covenants, restrictions and easements dated January 23, 2006
7. Development Agreement Between the County of Ada, Idaho, and SunCor Idaho, LLC, an Idaho Limited Liability Company
8. Letter dated June 27, 2006 to Michael D. Wardle from Ervin Ballou
9. Letter dated June 27, 2006 to Robert G. Taunton from the Department of the Army Corps of Engineers
10. Letter dated August 14, 2006 to Kevin Wentland from Gregory J. Martinez
11. Letter dated August 22, 2006 to Kevin Wentland from Michael Stambulis
12. Letter dated September 6, 2006 to Kevin A. Wentland from Peter S. Bair
13. Letter dated September 18, 2006 to Chas Ariss from Kevin A. Wentland
14. Letter dated September 26, 2006 to Kevin Sablan from Kevin A. Wentland
15. Letter dated October 3, 2006 to Darrin Carroll from Brian Wilkinson
16. Letter dated August 25, 2006 to Michael Lidgard from Kevin A. Wentland
17. Engineered Grading Permit #06-16 dated June 21, 2006 issued by Ada County Development Services together with an aerial photo
18. Letter dated February 9, 2006 to SunCor Idaho LLC from Mark A. Pecchenino and letter dated August 21, 2006 to Michael Wardle from Mark Pecchenino
19. Comprehensive Plan Amendment Application to the City of Eagle received on September 22, 2006
20. Articles of Incorporation for Highland Water Company and for Foothills Sewer Company
21. Land Use Summary (3 pages)
22. Application for Permit (63-32061) in the name of SunCor Idaho, LLC
23. Letter dated March 3, 2005 to Steve Lester from Terry M. Scanlan
24. Idaho Department of Water Resources Water Right Application Report 63-32061
25. Letter dated September 7, 2005 to North Ada County Foothills Association from Terry M. Scanlan
26. Report dated April 2003 titled Groundwater Exploration Drilling in the Spring Valley Ranch Vicinity of Gem, Ada, and Boise Counties, Idaho prepared for SunCor Development Company by Scanlan Engineering

27. Report dated October 2004 titled Aquifer Evaluation in the Big Gulch and Little Gulch Areas of Spring Valley Ranch prepared for SunCor Development Company by SPF Water Engineering, LLC
28. Report dated June 17, 2004 titled Well Construction and Aquifer Testing of Spring Valley Ranch Exploration Well No. 5 prepared for SunCor Development Company by SPF Water Engineering, LLC
29. Report dated June 18, 2004 titled Well Construction and Aquifer Testing in the Sandy Hill Area of Spring Valley prepared for SunCor Development Company by SPF Water Engineering, LLC
30. Water Rights Map for the Avimor and Spring Valley Ranch Resource Area dated October 19, 2006
31. Well Density Map for the Avimor and Spring Valley Ranch Resource Area dated January 20, 2006
32. Geologic Map for the Avimor and Spring Valley Ranch Resource Area dated January 20, 2006
33. Aquifer Boundaries Map for the Avimor and Spring Valley Ranch Resource Area dated January 20, 2006
34. Hydrologic Sub-Basin Map for the Avimor and Spring Valley Ranch Resource Area dated January 20, 2006
35. Public Water Systems Map for the Avimor and Spring Valley Ranch Resource Area dated January 20, 2006
36. Ground Water Contour Map for the Avimor and Spring Valley Ranch Resource Area dated January 20, 2006
37. Design Flows – Public Water Systems dated July 2, 1999 by Monty G. Marchus, IDEQ
38. Lynn Water Level Measurements
39. Avimor Proposed Place of Use and Points of Diversion dated October 19, 2006
40. Willow Creek Area Water Rights dated October 19, 2006
41. Avimor Proposed Place of Use and Points of Diversion and Protestants' Points of Diversion dated October 19, 2006
42. Memo dated October 16, 2006 with attachments to Bob Taunton from Terry Scanlan related to the status of the SunCor Water-Level Monitoring Program for the Avimor and Spring Valley Ranch Resource Area dated January 20, 2006
43. Letter dated March 1, 2006 to Bob Taunton from John Sharkey with attached injection Well Permits 63W208001, 63W208002 and 63W208003
44. Resume for Terry M. Scanlan
45. Resume for Christian R. Petrich
46. Testimony of Philip Fry, Ada County Planning & Zoning Commission RE: Avimor Planned Community, October 6, 2005
47. Testimony of Lyle Mullins, Ada County Planning & Zoning Commission RE: Avimor Planned Community, November 10, 2005
48. Testimony of Rod Davidson and Lyle Mullins, Ada County Board of Commissioners Meeting RE: Avimor Planned Community, December 14, 2005

49. IDWR Water Right and Adjudication Search – Rod Davidson
50. IDWR Water Right and Adjudication Search – Lyle Mullins
51. Idaho Department of Water Resources Water Application Report – Lida R and Philip N. Fry – Water Right No. 63-31147
52. Idaho Department of Water Resources Water Permit Report – Horseshu Vue Ranch Water & Road Assn Inc.
53. Idaho Department of Water Resources Water Right Report – Garth Baldwin – Water Right 63-7565
54. Preliminary Feasibility Assessment – Spring Valley Ranch – July 2001
55. Protestant Lyle Mullins issues and questions – SunCor/IDWR Prehearing Conference 09-08-05
56. Protestant Lyle Mullins issues and questions – SunCor/IDWR Prehearing Conference 07-26-06
57. Phillip Fry Protest to Application 63-32061 dated May 23, 2005
58. Letter dated March 3, 2005 to Steve Lester from Terry M. Scanlan together with 2 figures
59. Section B.13 – Specific Plan – Avimor Planned Community
60. Comprehensive Plan Amendment Map – Avimor
61. Net Density Summary – Avimor
62. Aerial View of Avimor Planned Community
63. Declaration of Restrictions and Easements
64. Letter dated November 1, 2006 to Bob Taunton from John K. Graham

Protestant's Exhibits:

- A. Permit to Appropriate Water No. 63-31966
- B. Application for Permit No. 63-31966
- C. Comment Report 63-31966
- D. Memorandum dated February 15, 2005 from Steve Lester to File
- E. SunCor Applications 63-31966 & 63-32061
- F. Memo dated February 14, 2005 from Jeff Peppersack to Steve Lester
- G. Memorandum dated August 15, 2003 from Shelley W. Keen to Jeff Peppersack and Glen Saxton
- H. Letter dated December 27, 2004 To State of Idaho, Western Region Office from Gemma Family Trust (Jim and Janice Barsby)
- I. Letter dated November 29, 2004 from Garth Baldwin
- J. Letter dated October 1, 2004 to Steve Lester from Terry M. Scanlan together with attachments
- K. Idaho Secretary of State, Viewing Business Entity – Highland Water Company
- L. Letter dated September 27, 2004 to Steve Lester from Michael D. Wardle
- M. Letter dated August 6, 2004 to Terry Scanlan from Steve Lester
- N. Email dated August 6, 2004 to Glen Saxton and Gary Spackman from Steve Lester
- O. Memorandum dated June 16, 2004 to John Westra and Rob Whitney from Steve Lester
- P. Letter dated January 23, 2003 to Tom Sellin from Terry M. Scanlan

- Q. Memorandum dated May 7, 1979 to Dave Tuthill from Phil Rassier
- R. Administrator's Memorandum dated November 5, 1979 to Regional Offices and Water Allocation Section from Norman Young
- S. Memorandum to Water Allocation Bureau, Adjudication Bureau and Regional offices from L. Glen Saxton
- T. Letter dated May 2, 2006 to David Head from Karl J. Dreher
- U. Presentation on the SunCor Well Protest (63-32061) by Philip Fry

6. On March 11, 2005, the Department issued Permit No. 63-31966 in the name of SunCor Idaho, LLC, authorizing the diversion of 5.0 cfs of ground water for municipal purposes to be diverted year-round from wells located in Spring Valley in Lot 6 (NWSW) and Lot 7 (SWSW) Section 6, NWSE and SESE Section 7, and SWNE Section 18, all in T5N, R2E, B.M. and two points within the SESE Section 1, T5N, R1E, B.M. in Ada County. The place of use is within Spring Valley Ranch generally located within Sections 1, 12, 13 and 24, T5N, R1E, B.M.; Sections 5, 6, 7, 17, 18 and 20, T5N, R2E, B.M.; Section 36, T6N, R1E, B.M.; and Sections 31 and 32, T6N, R2E, B.M. The permit authorizes a development period of 5 years with the proof of beneficial use of water being due on or before March 1, 2010. The permit does not authorize a RAFN or a PH associated with diversion and use of water under the permit.

7. SunCor Development Company is the parent company of SunCor Idaho, LLC that subsequently has been renamed Avimor, LLC. (See Applicant's Exhibit 1). SunCor Development Company has over \$200 million in equity and is one of several companies that make up the Pinnacle West Capital Corporation ("Pinnacle West"). Pinnacle West is a Phoenix-based company with consolidated assets of \$11.3 billion and consolidated revenues of \$3 billion. Pinnacle West and SunCor Development Company are involved in numerous residential, commercial and industrial real estate and electrical energy projects in the western United States. (See Applicant's Exhibits 2 and 3).

8. The Avimor planned community ("Avimor" or "project") is located northwest of Boise, Idaho in northern Ada County in Spring Valley. The proposed points of diversion in the application are located approximately 4 to 8 miles west of the place of use. A pipeline will be constructed to convey water to Avimor. Water will be used directly in the proposed public water system.

9. Application for Permit No. 63-32061 proposes diversion of ground water for reinjection into the subsurface for recharge of ground water through injection wells located several miles east and north of the points of diversion proposed by this application. IDWR approved three injection wells located and identified as follows (See Applicant's Exhibit 43):

PLS Description of Injection Well	Injection Well Permit No.
NWSESE, Section 1, T5N, R1E, B.M.	63W208001
NWSESE, Section 1, T5N, R1E, B.M.	63W208002
NWSWSE, Section 6, T5N, R2E, B.M.	63W208003

The two wells located in the NWSESE of Section 1, T5N, R1E, B.M. may be points of diversion described by Permit No. 63-31966.

10. The applicant has access to the proposed place of use for the planned development and to the proposed points of diversion (See Applicant's Exhibits 4 through 7 and Exhibits 63 and 64).

11. Application for Permit No. 63-32061 seeks recognition of "aquifer storage and recovery" as a sub-use of "municipal." No evidence was submitted to show how much water could be placed in ground water storage, how long it would be stored, and how much of the water injected into the subsurface would be available for recovery.

12. The initial phase of the project is located along State Highway 55 in Spring Valley and will consist of 684 dwelling units on about 840 acres of land. Ultimate build out of the Core Area will consist of about 3,500 dwelling units on about 4,500 acres of land. (See Figure 1 of Applicant's Exhibit 28).

13. At the hearing, the applicant deleted two proposed points of diversion located in Section 23, T5N, R1W, B.M. from its application leaving a total of four points of diversion. (See Applicant's Exhibit 39).

14. The applicant has access to the proposed place of use for the planned development and to the proposed points of diversion (See Applicant's Exhibits 4 through 7 and Exhibits 63 and 64).

15. The applicant has obtained or has applied for other permit approvals associated with its planned Avimor development and has started grading at the Avimor site. (See Exhibits 8 through 17).

16. The applicant plans to own and operate water and sewer companies to serve the Avimor development. (See Applicant's Exhibits 21).

17. The general location of the four points of diversion is within the Willow Creek drainage. Surface water in the Willow Creek drainage is tributary to the Boise River. Ground water contours developed from limited data indicate that the direction of ground water flow at the location of the proposed wells is toward the Payette River, and that the ground water is tributary to the Payette River drainage (Basin 65) rather than the Boise River drainage (Basin 63). (See Applicant's Exhibit 36 and Exhibit 27, Sheet 1). The Payette River drainage is not closed to new appropriations of either ground water or surface water.

18. Total diversion under this water right could result in diversion from the ground water of 3,620 acre-feet per year (See Applicant's Exhibit 23) Added to the previously approved Permit No. 63-31966 authorizing the appropriation of 5.0 cfs, the total volume that could be diverted under this proposed appropriation and Permit No. 63-31966 would be 7,240 acre-feet

19. Annual ground water recharge resulting from precipitation is estimated to be approximately 3,500 acre-feet (See Applicant's Exhibit 23). There is speculation about additional recharge to ground water in the Willow Creek Drainage from Farmer's Union Canal, located on the edge of the northwest Ada County foothills, and from Black Canyon Canal, located on the southern edge of the rim bounding the east and south edge of the Emmett Valley (See Applicant's Exhibit 23).

20. "The Western portion of the Spring Valley Ranch overlies a geologically complex, hydrologically unexplored area." Although the ground water resources are characterized as "a significant water resource," the aquifers underlying Spring Valley Ranch are not quantified.

21. Despite assumptions that canal systems in the Boise and Payette River Valleys may recharge ground water in the area of the proposed points of diversion, the canals do not overlie the recharge area and are both located several miles from the Willow Creek Drainage where the wells are proposed.

22. Full build out of the development proposed by SunCor may require additional appropriations of water. Furthermore, significant additional residential development is proposed in the Northwest Ada County Foothills in the vicinity of the proposed points of diversion.

23. There are existing rights for the use of ground water in the Willow Creek drainage. The applicant's estimates of water availability versus existing water use show there is water available for the applicant's use in excess of the amount of water presently used under the existing water rights in the Willow Creek drainage. (See Applicant's Exhibit 58). Water levels in the existing wells in the drainage are stable. (See Applicant's Exhibit 38).

24. The quantity of water available for appropriation in the Willow Creek drainage is not known.

25. The applicant proposes a number of water conservation measures including special landscaping, reuse of treated effluent from its sewage treatment plant, and limiting the amount of irrigated turf in common areas. (See Applicant's Exhibit 59).

26. Uses of water for municipal purposes and for irrigation are typical beneficial uses of water in Idaho.

27. The protestants generally are concerned that sufficient studies of water availability have not been made, a written mitigation plan is needed, a long term ground water monitoring plan is needed, potential over appropriation of ground water will occur, potential ground water contamination may occur, and that the amount of water to be appropriated is excessive. The protestants, however, have provided no technical data or other specific information for evaluation of the applicant's project with respect to their expressed concerns. Protestant Fry suggests a change in the "first in time, first in right"

principal to a concept of "equitable sharing" of water. Protestant Mullins seeks a moratorium on development and wants a comprehensive water availability study and monitoring program by IDWR.

28. Protestants Rod Davidson and Lyle Mullins do not own water rights or wells and receive water from the city of Eagle and United Water Idaho, respectively. (See Applicant's Exhibit 49 and 50). Neither the city of Eagle nor United Water Idaho has protested the captioned application. Protestant Baldwin lives on Eagle Island located about 20 miles southwest of the applicant's project and also receives water from a municipal provider. Protestant Fry lives approximately 15 miles southwest of the applicant's project and obtains water from a domestic well in Basin 63. He has filed a pending water right application to use ground water for irrigation in Basin 63.

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 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 local public interest is defined in Idaho Code, Section 42-202B 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."

3. The protestants do not own any water rights that could be affected by the applicant's proposal.

4. Use of water as proposed in the application will not reduce the quantity of water under existing water rights.

5. The water supply itself is sufficient for the purposes intended if it is carefully used as described in the subsequent discussion in these conclusions about local public interest and conservation of water resources.

6. The application is made in good faith and not for delay or speculative purposes.

7. The applicant has sufficient financial resources with which to complete the project.

8. Significant additional residential development is proposed in the vicinity of the development proposed by SunCor. Presently, the amount of recharge is unknown because the area where water is proposed to be appropriated is "hydrologically unexplored." Potential sources of significant recharge are remote from the area where ground water is sought to be appropriated.

9. It would not be in the local public interest to allow a single large development entity to hold water rights to a significant portion of a limited public resource that may be needed to supply the culinary and potable water needs to future anticipated development. As a result, irrigation of common areas, large parks, golf courses, school grounds and other large irrigation uses should not be allowed under the proposed appropriation unless the land is irrigated with water already used for culinary/potable use that is recaptured and treated.

10. With the above limitations, the application does not conflict with the local public interest.

11. The application is not contrary to the conservation of water resources within Idaho if water is carefully used for culinary and potable use.

12. Idaho Code, Section 42-202B(6) defines "Municipal purposes" as "water for residential, commercial, industrial, irrigation of parks and open space, and related purposes, excluding use of water from geothermal sources for heating, which a municipal provider is entitled or obligated to supply" The definition does not expressly recognize aquifer storage and recovery as a use of water, and also does not expressly recognize ground water recharge as a use of water.

13. Aquifer storage and recovery is not assumed to be a sub-use within the definition of "municipal purposes." Aquifer storage and recovery can be expressly recognized, however, if sufficient evidence is presented to insure that a municipal provider's diversion is limited to the amount of water placed and retained in aquifer storage. Evidence of placement and retention was not presented at the hearing.

14. Ground water recharge is not assumed to be a sub-use within the definition of "municipal purposes." Ground water recharge can be expressly recognized as a municipal sub-use, however.

15. If this application approves recharge without restrictions, the water diverted for recharge could be used for irrigation of large parcels under previously approved Permit No. 63-31966 when it cannot be used for large parcel irrigation under this permit. As a result, water delivered for recharge should not exceed the base wintertime water flows and volumes diverted from the points of diversion authorized by Permit No. 63-31966 during the non-irrigation season

16. Although the points of diversion and place of use are located in different administrative water basins (63 and 65), the diversion and place of use are within the same general area where the ground water originates and do not adversely impact the local economy of the area.

17. The Department should approve the application with certain conditions.

ANALYSIS

The protestants state that municipal provider status of the applicant and whether SunCor's application as a municipal provider is complete are central to their protest in the matter. The protestants incorrectly associate municipal provider status with reasonably anticipated future needs and a planning horizon for a municipal provider.

An applicant can apply for a municipal use of water if it qualifies as a municipal provider as provided in Section 42-202B, Idaho Code. A municipal provider is not required to make a RAFN or PH a part of an application to appropriate water. In this case, the applicant clearly has chosen not to include RAFN or PH as a part of its application, thus foregoing the opportunity to "reserve" a block of water for future use. It seems that exclusion of this opportunity by the applicant should meet more with the protestant's approval than opposition. With respect to the timing of meeting qualifications to qualify as a municipal provider, IDWR has the discretion to make this determination and may grant a permit with conditions to meet municipal provider status.

Protestant Fry's concept of "equitable sharing" of water resources in the state has a certain appeal when thinking about general fairness of the use of the state's natural resources. In Idaho, however, the law does not provide for "equitable sharing" of water. IDWR has the authority, however, in considering the local public interest and conservation of water of the state of Idaho, to limit the use of water if the supply of water is finite, and there are significant anticipated uses of the finite resources in the near future.

The protestants also state that they want comprehensive studies made by IDWR before approving the pending application or other applications that may be submitted for similar developments in the future. Extensive knowledge of an aquifer and its characteristics and limitations, if any, is certainly desirable, would make IDWR's allocation of the state's resources much easier and would eliminate many potential conflicts. In order to engage in such studies for basins in Idaho, however, resources that are not presently available in terms of funding and personnel would need to be made available to IDWR.

ORDER

IT IS THEREFORE hereby ORDERED that Application for Permit No. 63-32061 in the name of SunCor, Idaho, LLC is **APPROVED** subject to the following conditions:

1. Proof of application of water to beneficial use shall be submitted on or before **May 1, 2012**.
2. Subject to all prior water rights.
3. 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.
4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
5. Ground water discharged to a subsurface system must be authorized by a separate injection well permit. At the time of permit approval, reinjection of water diverted under this permit into the ground water is authorized at the following well locations and by the associated injection well permits : NWSESE, Section 1, T5N, R1E (Injection well permit no. 63W208001); NWSESE, Section 1, T5N, R1E (Injection well permit no. 63W208002); and NWSWSE, Section 6, T5N, R2E (Injection well permit no. 63W208003).
6. Water bearing zone to be appropriated is from 200 feet to 1,000 feet.
7. Place of use is within the area served by the public water supply system of SunCor Idaho, LLC for use within the Spring Valley Ranch. The place of use is generally located within Sections 1, 12, 13 and 24, T5N, R1E; Sections 5, 6, 7, 17, 18 and 20, T5N, R2E; Section 36, T6N, R1E, B.M, and Sections 31 and 32, T6N, R2E.
8. 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.
9. Use of water under this permit may be affected by a private agreement between the applicant and the North Ada County Foothills Association in connection with an agreed upon water level monitoring program.
10. The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.

11. Common areas, parks, school grounds, golf courses, and any other large parcels may only be irrigated under this water right with wastewater that has been previously beneficially used for potable or culinary purposes, has been treated in a wastewater treatment plant, and is delivered from the wastewater treatment plant to the parcel to be irrigated.

12. Water diverted under this right may be used for direct irrigation of up to 1/2 acre per residential lot upon which a home has been constructed.

13. Water delivered for recharge under this right cannot exceed the base wintertime water flows and volumes diverted from the points of diversion authorized by permit no. 63-31966 during the non irrigation season.

14. Prior to diversion of water under this right, the permit holder shall prepare and submit an ongoing monitoring and data submittal plan, acceptable to IDWR, to demonstrate that the ground water diverted from the authorized points of diversion is tributary to the Payette River drainage.

15. Prior to diversion of water under this right, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion and volume of water diverted.

16. 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.

17. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.

Signed this 13th day of March, 2007.


L. GLEN SAXTON, P.E.
Hearing Officer