



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER - Governor
Gary Spackman - IDWR Director

March 7, 2017

Russell Babcock
3428 W 3120 N
Moore, ID 83255

RE: Babcock Response to Proposed Default Order (Transfer 79938)

Dear Mr. Babcock:

On February 24, 2017, the Department issued a *Notice of Proposed Default Order*, proposing to dismiss your protest against Application for Transfer 79938 because of your failure to appear at the administrative hearing on February 22, 2017. Rule 701 of the Department's Rules of Procedure (IDAPA 37.01.01) allows a party who is the subject of a proposed default order to file a written response, stating why the default order should not be issued. The written response must be filed within seven days after service of the proposed default order. See IDAPA 37.01.01.701.

In this case, the *Notice of Proposed Default Order* was served on February 24, 2017. Therefore, any written response to the proposed default order should have been filed by March 3, 2017. Nothing was filed with the Department by the close of business on March 3, 2017.

On the morning of March 6, 2017, because you had not filed a timely response to the proposed default order, the Department issued a *Default Order*, dismissing you as a party to the contested case. Later in the day, your written petition arrived in the mail, asking that a default order not be issued and providing an explanation for your absence at the February 22, 2017 hearing.

Unfortunately, your petition to avoid a default order was not timely filed and cannot be considered. This letter is intended to return your written petition and to provide an explanation why the petition was not timely filed. It is also intended to explain why the Default Order was appropriate.

Even if your written petition was timely filed, it is unlikely it would have been sufficient to overcome the Default Order. In your letter, you argue that you could not meet the disclosure deadlines set forth in the Notice of Hearing. The Notice of Hearing was issued on January 19, 2017. It required all exhibits, including expert reports, to be provided to the opposing party and the hearing officer on or before February 3, 2017. Yesterday afternoon, the Department contacted your consultant, Tom Wood. He mentioned that he provided you a copy of his expert report on January 18, 2017, before the Notice of Hearing was even mailed. There is no reason why the expert report could not have been provided by the February 3, 2017 disclosure deadline. Even if the

February 3, 2017 deadline was an issue, you could have easily provided a copy of your expert report at any time in the two weeks prior to the hearing date. You have made no attempt to provide the applicant or the hearing officer a copy of your expert report.

Your petition also states that there was not enough time to organize your case prior to the hearing. At a status conference held in October 2016, you agreed that a hearing could be held as early as January. I understand that unforeseen work and family responsibilities can arise and make it difficult to prepare for a hearing. However, you had ample opportunity to file a motion to extend the hearing date if the February 22 date did not work for you. You never filed any document asking to move the hearing date. It is my understanding that you never even contacted the applicant, Boyd Burnett, to discuss changing the hearing date.

Self-representation is not an excuse to ignore the rules of procedure or to allow unreasonable delay. You should have made an attempt to participate in the disclosure process, even if your disclosures were a few days late. If the hearing date needed to be changed, you should have notified the opposing party, either informally or through a written motion, at some point prior to the hearing.

Please feel free to contact me if you have any other questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Cefalo', written in a cursive style.

James Cefalo

Encl: Letter opposing Proposed Default Order

Cc: Boyd Burnett

RECEIVED

MAR 06 2017

Department of Water Resources
Eastern Region

Dear hearing officer Cindy Yeater,

This petition is concerning the transfer application no. 79938 for when I missed the hearing date of February 22.

I am requesting a default order not be entered.

This whole transfer application for Boyd Burnett has been ongoing for several years and has been the cause of much headache and stress in my life throughout the duration. Imagine anybody can show up one day, at anytime, and interrupt my well water supply.

I called James Cefalo sometime during the first week of January 2017 and asked him about a specific hearing date for when the hearing would be and he said one had not been set.

I am not a professional when it comes to court cases, and without a due date I didn't know when I would need to be completely ready. So when I recieved the announcement on the 26th of January it was a complete shock that documents would need to be disclosed on the 3rd of February. The remaining days to the 22nd of February flew by like a paralyzing whirlwind along with all of its cold and unusual snowy weather. I talked to Sharla Cox a couple of times and it wasn't until the Tuesday before the hearing date that I found out that it was up to me to change the hearing date. I know a month is a long time but when I have to juggle my cattle operation, the short days, the bad weather, plus prepare for a well water hearing then the days go by fast.

Drilling an irrigation well and switching well locations is no small thing and if I have to go to a hearing it should be done right and not just have my defense thrown together in a hurried unthorough rush.

I am asking for a hearing date set at a specific time at least three months in advance, sending an availability calendar would be good.

Thank you,
Russell Bebeck
March 3, 2017