



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region, 7600 Mineral Drive, Suite 100, Coeur d'Alene, Idaho 83815

Phone: (208) 762-2800 FAX: (208) 762-2819 www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

July 27, 2009

Judith Adams
PO Box 352
Careywood, ID 83809

CERTIFIED MAIL

Re: Petition Requesting a Default Order Not Be Issued Involving Protested Application
For Permit #95-9508 Phillip and Patsy Barnhart.

Dear Ms. Adams:

The Idaho Department of Water Resources has reviewed your petition or request not to be dismissed from the above protested case for failure to appear at the designated conference.

The Idaho Administrative Procedures Act (IDAPA 37.01.01.701) states "the petition must state the grounds why the petitioning party believes that a default should not be issued". In your petition you state the reasons for not being able to appear at the conference is that your representative, Eugene Murr, forgot about the conference and you could not get time off from work, since you teach at the North Idaho College.

Conferences are part of a legal process and are taken very seriously by the department, 'involving every ones' time including staff, applicant and protestants. Conferences are similar to a court proceeding by which the applicant has a chance to discuss and hopefully work out a solution with the protestant, in law this is called due process. If a party cannot attend a scheduled conference, there is plenty of time by which a conference can be rescheduled to accommodate the party or the party can designate a representative to take their place. Not appearing without some kind of advanced notice is not adequate grounds for the department to overrule the proposed default order. Therefore, an order will be issued denying your petition and an order dismissing you as a party to the above referenced case, copies of the orders are attached.

Sincerely,

Keith E. Franklin, Presiding Officer
Senior Water Resources Agent
Enclosure

COPY

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 95-9508 IN THE NAME OF)
PHILLIP AND PATSY BARNHART)
_____)

**ORDER DENYING PETITION
FOR RECONSIDERATION**

This matter having come before the Department of Water Resources (Department) as a petition to reconsider the dismissal of Judith Adams as a protestant to the above mentioned application, the Department finds, concludes, and orders:

FINDINGS OF FACT

1. On July 15, 2009 the Department issued a proposed default order dismissing Judith Adams as a protestant to application #95-9508 for failure to appear at a scheduled conference.
2. On July 23, 2009 the Department received a petition for reconsideration of the order (petition) from Judith Adams (petitioner).
3. On July 27, 2009 the Department reviewed the petition and determined the grounds stated in the petition as reason for not appearing at the conference were inadequate.

CONCLUSIONS OF LAW

1. The petitioner has not provided sufficient reason or grounds for the Department to grant the petition.
2. The Department should deny the petition pursuant to Idaho Code § 67-5243(3).

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration of the proposed order dismissing Judith Adams as a protestant to application 95-9508 is **DENIED** pursuant to Idaho Code § 67-5243(3).

Dated this 27th day of July, 2009.


Robert G. Haynes, P.E., Northern Region Manager

COPY

BEFORE THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT #95-9508 IN THE NAME OF)
PHILLIP AND PATSY BARNHART)

DEFAULT ORDER

This matter having come before the Idaho Department of Water Resources ("Department"), the Department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On July 15, 2009, the Department issued Judith Adams a proposed default order dismissing her as a protestant for failure to appear to a scheduled conference for protested application #95-9508.
2. On July 24, 2009, the Department received a petition from Judith Adams requesting not to be dismissed from the proceeding.
3. On July 27, 2009, the Department issued Judith Adams an Order denying her petition.
4. Judith Adam's petition did not supply the Department with adequate grounds or reasons for not appearing at the scheduled conference.

CONCLUSIONS OF LAW

1. IDAPA Rule 37.01.01702 (Rule of Procedure 702) authorizes the Department to issue a Default Order dismissing Judith Adams as a protestant.
2. The Department should issue a Default Order dismissing Judith Adams as a protestant to application #95-9508.

ORDER

IT IS THEREFORE, HEREBY ORDERED that Judith Adams is dismissed as a protestant to application #95-9508.

Dated this 27th day of July, 2009.



Robert G. Haynes, P.E.
Northern Regional Manager

COPY



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region, 7600 N. Mineral Drive, Suite 100 • Coeur d'Alene, Idaho 83815
Phone: (208) 762-2800 • Fax: (208) 762-2819 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

CERTIFIED MAIL

July 13, 2009

Judith Adams
C/O Eugene Murr
1201 Sunset Ave.
Athol, ID 83801

Re: Applications For Permit to Appropriate the Public Waters of the State of Idaho

Dear Ms. Adams:

Enclosed you will find a **NOTICE OF PROPOSED DEFAULT ORDER** in the above referenced matter.

You have seven (7) days from the date of receipt hereof to challenge this Notice of Proposed Default Order.

Should you have any questions, feel free to contact me at this office.

Sincerely

Keith E. Franklin
Senior Water Resources Agent

Enclosure

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 95-9508 IN THE) **NOTICE OF PROPOSED**
NAME OF PHILIP AND PATSY BARNHART) **DEFAULT ORDER**

Notice of Proposed Default Order – Page 1

Dated this 15th day of July 2009.


ROBERT G. HAYNES, P.E.
Northern Regional Manager

CERTIFICATE OF SERVICE

I FURTHER CERTIFY that on this 16th day of July, 2009 a true and correct copy of the document described below was served on the following by placing a copy of the same in the United States mail, as certified mail with return receipt requested, postage prepaid and properly addressed to the following:

Document(s) Served: Notice of Proposed Default Order

SUSAN BOURGUIGNON
1201 SUNSET RD
ATHOL, ID 83801

LINDA WILLIAMS
PO BOX 403
BAYVIEW, ID 83803

JUDITH ADAMS ✓
C/O EUGENE MURR
1201 SUNSET RD
ATHOL, ID 83801


Carolyn Monitz
Administrative Assistant

- e. All offers of proof, however made; (7-1-93)
- f. All briefs, memoranda, proposed orders of the parties or of the presiding officers, statements of position, statements of support, and exceptions filed by parties or persons not parties; (7-1-93)
- g. All evidentiary rulings on testimony, exhibits, or offers of proof; (7-1-93)
- h. All staff memoranda or data submitted in connection with the consideration of the proceeding; (7-1-93)
- i. A statement of matters officially noticed; and (7-1-93)
- j. All recommended orders, preliminary orders, final orders, and orders on reconsideration. (7-1-93)

651. RECORDING OF HEARINGS (RULE 651).

All hearings shall be recorded on audiotape or videotape at the agency's expense. The agency may provide for a transcript of the proceeding at its own expense. Any party may have a transcript prepared at its own expense. If the transcript prepared at the expense of a party is deemed by the presiding officer to be the official transcript of the hearing, the party shall furnish the agency a transcript without charge. (7-1-93)

652. -- 699. (RESERVED).

700. NOTICE OF PROPOSED DEFAULT AFTER FAILURE TO APPEAR OR RESPOND (RULE 700).

If an applicant or claimant or appellant, petitioner, protestant, complainant, or moving party fails to appear at the time and place set for hearing, or prehearing conference, on an application or claim or appeal, petition, complaint, or motion, or fails to respond to a written information inquiry, the presiding officer may serve upon all parties a notice of a proposed default order denying the application or claim or appeal, petition, complaint, or motion. The notice of a proposed default order shall include a statement that the default order is proposed to be issued because of a failure of the applicant or claimant or appellant, petitioner, complainant or moving party to appear at the time and place set for hearing or prehearing conference, or to respond to the information inquiry. The notice of proposed default order may be mailed to the last known mailing address of the party proposed to be defaulted. (4-5-00)

701. SEVEN DAYS TO CHALLENGE PROPOSED DEFAULT ORDER (RULE 701).

Within seven (7) days after the service of the notice of proposed default order, the party against whom it was filed may file a written petition requesting that a default order not be entered. The petition must state the grounds why the petitioning party believes that default should not be entered. (7-1-93)

702. ISSUANCE OF DEFAULT ORDER (RULE 702).

The agency shall promptly issue a default order or withdraw the notice of proposed default order after expiration of the seven (7) days for the party to file a petition contesting the default order or receipt of a petition. If a default order is issued, all further proceedings necessary to complete the contested case shall be conducted without participation of the party in default (if the defaulting party is not a movant) or upon the results of the denial of the motion (if the defaulting party is a movant). All issues in the contested case shall be determined, including those affecting the defaulting party. Costs may be assessed against a defaulting party. (7-1-93)

703. -- 709. (RESERVED).

710. INTERLOCUTORY ORDERS (RULE 710).

Interlocutory orders are orders that do not decide all previously undecided issues presented in a proceeding, except the agency may by order decide some of the issues presented in a proceeding and provide in that order that its decision on those issues is final and subject to review by reconsideration or appeal, but is not final on other issues. Unless an order contains or is accompanied by a document containing one (1) of the paragraphs set forth in Rules 720, 730 or 740 or a paragraph substantially similar, the order is interlocutory. The following orders are always interlocutory: orders initiating complaints or investigations; orders joining, consolidating or separating issues, proceedings or parties; orders granting or denying intervention; orders scheduling prehearing conferences, discovery, hearing, oral arguments or deadlines for written submissions; and orders compelling or refusing to compel discovery. Interlocutory orders may be reviewed by the officer issuing the order pursuant to Rules 711, 760, and 770. (7-1-93)

To: Idaho Department of Water Resources

July 23, 2009

RECEIVED

Re: Notice of Proposed Default Order

JUL 24 2009

Re: Application for Permit no. 95-9508
In the name of Philip and Patsy Barnhart

From: Judith L. Adams
P.O. Box 352
Careywood, Id 83809
Cell 208-699-1578

IDWR/North

This is a petition requesting that a default order not be issued and therefore do not dismiss me from this case. The reasons are as follows:

1. My assigned representative, Eugene Murr apologetically admits he was forgetful and did not appear on June 9 as agreed by his signature on the proper paperwork.
2. As a college professor at North Idaho College and working this summer from 9am to 1pm I am not allowed to simply dismiss classes.
3. Please give some consideration to those of us who contribute to the community in this way.

My concern is that much less water is flowing along Three Sisters Creek than when I first moved here. That is, the creek that begins on State land on the SE corner of section 9, feeds the 100 grandfathered old pond constructed by Clausers and now the new pond constructed by Barnharts. That new pond water eventually trickles down as part of Three Sisters Creek as shown me last month by Steve and Phillip Barnhart. I have lived on Little Blacktail Mountain Road close to Crosswhite Road for 26 years. Starting in 1983 I was very aware of a large pond across the road from where I live and used it to ice skate on in the winters. No more. There just is a whole lot less water and the pond no longer exists.

In checking the beginning of that source of water it is not more than a trickle and the water coming down from up above is subsurface water. The wetland is still downhill in the SW corner of section 10 and a nearby pond still exists before the creek follows along Crosswhite Road.

The reason for the diminished creek water, are the Barnhart ponds. These ponds are large and were constructed prior to any proper approval. Their size evaporates large amounts of water. Sprinkling the wheat fields loses 50% and 50% of what lands on the ground also evaporates. Therefore, the drainage system is depleted and down stream has a lot less water.

This is a Class I creek. Idaho Dept of Lands has reported to me that the entire creek is Class I, starting at the top of the mountain at its beginning on the State piece on SE corner of section 9 and to, down the mountain to the wet land area, in the SW corner of section 10 including the adjacent pond, and the creek flow thereafter along Crosswhite Road and then crossing Little Blacktail Mountain Rd until meeting with Kreiger Creek soon after. Therefore eventually joining Cocalalla Creek.

I recommend that in the future all people with water rights on creek land should be notified of these meetings. Newspapers are no longer frequently read and the Sandpoint

paper is not available to those of us at any nearby newsstand this far south in Bonner County.

I also recommend anyone diverting creek or spring or other surface water be required to obtain proper advice from appropriate government and state agencies, such as Fish and Game, IDWR, and IDL, before building ponds, etc. If these permits are not acquired in advance, that they be required to empty the ponds and fill back in with dirt and a penalty be levied or a lien attached to their property. In other words Barnharts need to be required to eliminate their ponds.

Furthermore I recommend the following:

1. IDWR acquire the local services of a Professional Hydrologist to check out these water systems and assist all sides of these issues.
2. Also, use a professional Mediator to work through these problems first, with all parties. This will save you a lot of work and stress. You might note that legal court action claims now require Mediation before going to court.

Thank you for your attention and concern and for reading my comments!
Sincerely,

 7/23/09
Judith L. Adams, M.S.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region, 7600 N. Mineral Drive, Suite 100 • Coeur d'Alene, Idaho 83815

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C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

CERTIFIED MAIL

¹⁵
July 13, 2009

Linda Williams
P.O. Box 403
Bayview, ID 83803

Re: Applications For Permit to Appropriate the Public Waters of the State of Idaho

Dear Ms. Adams:

Enclosed you will find a **NOTICE OF PROPOSED DEFAULT ORDER** in the above referenced matter.

You have seven (7) days from the date of receipt hereof to challenge this Notice of Proposed Default Order.

Should you have any questions, feel free to contact me at this office.

Sincerely

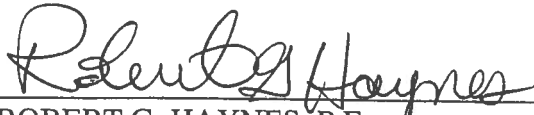
Keith E. Franklin
Senior Water Resources Agent

Enclosure

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 95-9508 IN THE) **NOTICE OF PROPOSED**
NAME OF PHILIP AND PATSY BARNHART) **DEFAULT ORDER**

Notice of Proposed Default Order – Page 1

Dated this 15th day of July 2009.


ROBERT G. HAYNES, P.E.
Northern Regional Manager

CERTIFICATE OF SERVICE

I FURTHER CERTIFY that on this 16th day of July, 2009 a true and correct copy of the document described below was served on the following by placing a copy of the same in the United States mail, as certified mail with return receipt requested, postage prepaid and properly addressed to the following:

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SUSAN BOURGUIGNON
1201 SUNSET RD
ATHOL, ID 83801

LINDA WILLIAMS ✓
PO BOX 403
BAYVIEW, ID 83803

JUDITH ADAMS
C/O EUGENE MURR
1201 SUNSET RD
ATHOL, ID 83801


Carolyn Monitz
Administrative Assistant

- e. All offers of proof, however made; (7-1-93)
- f. All briefs, memoranda, proposed orders of the parties or of the presiding officers, statements of position, statements of support, and exceptions filed by parties or persons not parties; (7-1-93)
- g. All evidentiary rulings on testimony, exhibits, or offers of proof; (7-1-93)
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The agency shall promptly issue a default order or withdraw the notice of proposed default order after expiration of the seven (7) days for the party to file a petition contesting the default order or receipt of a petition. If a default order is issued, all further proceedings necessary to complete the contested case shall be conducted without participation of the party in default (if the defaulting party is not a movant) or upon the results of the denial of the motion (if the defaulting party is a movant). All issues in the contested case shall be determined, including those affecting the defaulting party. Costs may be assessed against a defaulting party. (7-1-93)

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State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region, 7600 Mineral Drive, Suite 100, Coeur d'Alene, Idaho 83815

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

July 27, 2009

Linda Williams
PO Box 403
Bayview, ID 83803

CERTIFIED MAIL

Re: Petition Requesting a Default Order Not Be Issued Involving Protested Application
For Permit #95-9508 Phillip and Patsy Barnhart.

Dear Ms. Williams:

The Idaho Department of Water Resources has reviewed your petition or request not to be dismissed from the above protested case for failure to appear at the designated conference.

The Idaho Administrative Procedures Act (IDAPA 37.01.01.701) states "the petition must state the grounds why the petitioning party believes that a default should not be issued". In your petition you state the reason for not being able to appear at the conference is that you work and there isn't anyone to take your place, therefore you could not leave to do something else.

Conferences are part of a legal process and are taken very seriously by the department, 'involving every ones' time including staff, applicant and protestants. Conferences are similar to a court proceeding by which the applicant has a chance to discuss and hopefully work out a solution with the protestant, in law this is called due process. If a party cannot attend a scheduled conference, there is plenty of time by which a conference can be rescheduled to accommodate the party or the party can designate a representative to take their place. Not appearing without some kind of advanced notice is not adequate grounds for the department to overrule the proposed default order. Therefore, an order will be issued denying your petition and an order dismissing you as a party to the above referenced case, copies of the orders are attached.

Sincerely,

Keith E. Franklin, Presiding Officer
Senior Water Resources Agent
Enclosure

COPY

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

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 95-9508 IN THE NAME OF)
PHILLIP AND PATSY BARNHART)
_____)

**ORDER DENYING PETITION
FOR RECONSIDERATION**

This matter having come before the Department of Water Resources (Department) as a petition to reconsider the dismissal of Linda Williams as a protestant to the above mentioned application, the Department finds, concludes, and orders:

FINDINGS OF FACT

1. On July 15, 2009 the Department issued a proposed default order dismissing Linda Williams as a protestant to application #95-9508 for failure to appear at a scheduled conference.
2. On July 23, 2009 the Department received a petition for reconsideration of the order (petition) from Linda Williams (petitioner).
3. On July 27, 2009 the Department reviewed the petition and determined the grounds stated in the petition as reason for not appearing at the conference were inadequate.

CONCLUSIONS OF LAW

1. The petitioner has not provided sufficient reason or grounds for the Department to grant the petition.
2. The Department should deny the petition pursuant to Idaho Code § 67-5243(3).

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration of the proposed order dismissing Linda Williams as a protestant to application 95-9508 is **DENIED** pursuant to Idaho Code § 67-5243(3).

Dated this 27th day of July, 2009.


Robert G. Haynes, P.E., Northern Region Manager

COPY

BEFORE THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT #95-9508 IN THE NAME OF)
PHILLIP AND PATSY BARNHART)

DEFAULT ORDER

This matter having come before the Idaho Department of Water Resources ("Department"), the Department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On July 15, 2009, the Department issued Linda Williams a proposed default order dismissing her as a protestant for failure to appear to a scheduled conference for protested application #95-9508.
2. On July 23, 2009, the Department received a petition from Linda Williams requesting not to be dismissed from the proceeding.
3. On July 27, 2009, the Department issued Linda Williams an Order denying her petition.
4. Linda Williams petition did not supply the Department with adequate grounds or reasons for not appearing at the scheduled conference.

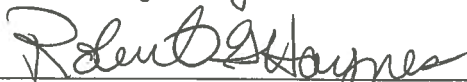
CONCLUSIONS OF LAW

1. IDAPA Rule 37.01.01702 (Rule of Procedure 702) authorizes the Department to issue a Default Order dismissing Linda Williams as a protestant.
2. The Department should issue a Default Order dismissing Linda Williams as a protestant to application #95-9508.

ORDER

IT IS THEREFORE, HEREBY ORDERED that Linda Williams is dismissed as a protestant to application #95-9508.

Dated this 27th day of July, 2009.



Robert G. Haynes, P.E.
Northern Regional Manager

COPY

Linda Williams
P.O. Box 403
Bayview, Id 83803

July 23, 2009

Department of Water Resources
7600 Mineral Drive Suite 100
Coeur d Alene, ID 83815
Attn; Keith Franklin

RECEIVED
JUL 23 2009
IDWR / NORTH

RE: In the matter of application for permit #95-9508

Dear Sir,

I first want to apologize for not attending the meeting on June 9, 2009 but I work where there is no one to take my place so I cannot just leave to go do something.

I do not like to protest something through correspondence but it seems I have no choice. Through the lack of questions and answers it is sometimes most difficult to get one's point across.

In this case our complaint is twofold in that it is not only what they are doing but also how they are going about doing it. They lie, which we have documented on tape, and they cheat, as in the way they are going about the water rights issue with the ponds. I would imagine, as in most instances, you are to ask permission before doing something. They do it and then ask if they can. And from what I've been told, since it's already built it is unlikely that they are going to be asked to tear it down.

I was told that one pond is to be used for swimming at his retreat, regardless of what he has told you. Now is that a reason to stop up the creek? That does nothing for his farm, while everyone down stream has less water to the point where it will have more dry areas and less and less pools for the fish.

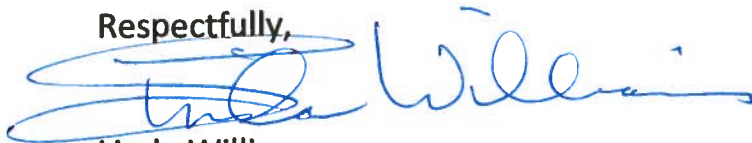
Mr. Barnhart was irrigating long before he had any water rights and there were complaints made but nothing was done. There were several times that Mr. Barnhart was asked to stop irrigating because the creek was to low. He replied that he was not irrigating and you could see the sprinklers were going in the pasture.

Now with so many ponds going in it's getting harder to keep track of who is doing what. He needs ponds, his son needs ponds, his wife needs ponds and whom ever else's name they see fit to put one in.

He thinks nothing of his barnyard located above the creek where when it rains all those contaminates go into the creek for us to deal with down below.

It seems that everyone else on the creek has the ability to share, except the Barnhart's. There is no reason why he needs the pond for more water other than the fact that he just wants the water. I believe that one of the reasons he's doing this is so he can take the water from the rest of us, who have complained for so long, just because he can.

Respectfully,



Linda Williams



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region, 7600 Mineral Drive, Suite 100, Coeur d'Alene, Idaho 83815

Phone: (208) 762-2800 FAX: (208) 762-2819 www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

July 27, 2009

Susan Bourguignon
1201 Sunset Rd
Athol, ID 83801

CERTIFIED MAIL

Re: Petition Requesting a Default Order Not Be Issued Involving Protested Application
For Permit #95-9508 Phillip and Patsy Barnhart.

Dear Mrs. Bourguignon:

The Idaho Department of Water Resources has reviewed your petition or request not to be dismissed from the above protested case for failure to appear at the designated conference.

The Idaho Administrative Procedures Act (IDAPA 37.01.01.701) states "the petition must state the grounds why the petitioning party believes that a default should not be issued". In your petition you state the reason for not being able to appear at the conference is that you got the dates mixed up on when the conference was to be held.

Conferences are part of a legal process and are taken very seriously by the department, 'involving every ones' time including staff, applicant and protestants. Conferences are similar to a court proceeding by which the applicant has a chance to discuss and hopefully work out a solution with the protestant, in law this is called due process. If a party cannot attend a scheduled conference, there is plenty of time by which a conference can be rescheduled to accommodate the party or the party can designate a representative to take their place. Protestants were issued a notice of conference on May 8, 2009 by certified mail. The post office confirmed delivery to your address on May 11, 2009. Not appearing without some kind of advanced notice is not adequate grounds for the department to overrule the proposed default order. Therefore, an order will be issued denying your petition and an order dismissing you as a party to the above referenced case, copies of the orders are attached.

Sincerely,

Keith E. Franklin, Presiding Officer
Senior Water Resources Agent
Enclosure

COPY

BEFORE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 95-9508 IN THE NAME OF)
PHILLIP AND PATSY BARNHART)
_____)

**ORDER DENYING PETITION
FOR RECONSIDERATION**

This matter having come before the Department of Water Resources (Department) as a petition to reconsider the dismissal of Susan Bourguignon as a protestant to the above mentioned application, the Department finds, concludes, and orders:

FINDINGS OF FACT

1. On July 15, 2009 the Department issued a proposed default order dismissing Susan Bourguignon as a protestant to application #95-9508 for failure to appear at a scheduled conference.
2. On July 23, 2009 the Department received a petition for reconsideration of the order (petition) from Susan Bourguignon (petitioner).
3. On July 27, 2009 the Department reviewed the petition and determined the grounds stated in the petition as reason for not appearing at the conference were inadequate.

CONCLUSIONS OF LAW

1. The petitioner has not provided sufficient reason or grounds for the Department to grant the petition.
2. The Department should deny the petition pursuant to Idaho Code § 67-5243(3).

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration of the proposed order dismissing Susan Bourguignon as a protestant to application 95-9508 is **DENIED** pursuant to Idaho Code § 67-5243(3).

Dated this 27th day of July, 2009.

Robert G. Haynes
Robert G. Haynes, P.E., Northern Region Manager

COPY

BEFORE THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT #95-9508 IN THE NAME OF)
PHILLIP AND PATSY BARNHART)

DEFAULT ORDER

This matter having come before the Idaho Department of Water Resources ("Department"), the Department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On July 15, 2009, the Department issued Susan Bourguignon a proposed default order dismissing her as a protestant for failure to appear to a scheduled conference for protested application #95-9508.
2. On July 23, 2009, the Department received a petition from Susan Bourguignon requesting not to be dismissed from the proceeding.
3. On July 27, 2009, the Department issued Susan Bourguignon an Order denying her petition.
4. Susan Bourguignon's petition did not supply the Department with adequate grounds or reasons for not appearing at the scheduled conference.

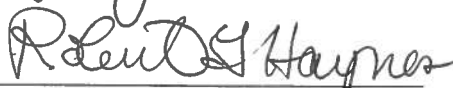
CONCLUSIONS OF LAW

1. IDAPA Rule 37.01.01702 (Rule of Procedure 702) authorizes the Department to issue a Default Order dismissing Susan Bourguignon as a protestant.
2. The Department should issue a Default Order dismissing Susan Bourguignon as a protestant to application #95-9508.

ORDER

IT IS THEREFORE, HEREBY ORDERED that Susan Bourguignon is dismissed as a protestant to application #95-9508.

Dated this 27th day of July, 2009.



Robert G. Haynes, P.E.
Northern Regional Manager

COPY



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region, 7600 N. Mineral Drive, Suite 100 • Coeur d'Alene, Idaho 83815

Phone: (208) 762-2800 • Fax: (208) 762-2819 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

CERTIFIED MAIL

15
July 13, 2009

Susan Bourguignon
1201 Sunset Rd
Athol, ID 83801

Re: Applications For Permit to Appropriate the Public Waters of the State of Idaho

Dear Ms. Bourguignon:

Enclosed you will find a **NOTICE OF PROPOSED DEFAULT ORDER** in the above referenced matter.

You have seven (7) days from the date of receipt hereof to challenge this Notice of Proposed Default Order.

Should you have any questions, feel free to contact me at this office.

Sincerely,

Keith E. Franklin
Senior Water Resources Agent

Enclosure

- e. All offers of proof, however made; (7-1-93)
- f. All briefs, memoranda, proposed orders of the parties or of the presiding officers, statements of position, statements of support, and exceptions filed by parties or persons not parties; (7-1-93)
- g. All evidentiary rulings on testimony, exhibits, or offers of proof; (7-1-93)
- h. All staff memoranda or data submitted in connection with the consideration of the proceeding; (7-1-93)
- i. A statement of matters officially noticed; and (7-1-93)
- j. All recommended orders, preliminary orders, final orders, and orders on reconsideration. (7-1-93)

651. RECORDING OF HEARINGS (RULE 651).

All hearings shall be recorded on audiotape or videotape at the agency's expense. The agency may provide for a transcript of the proceeding at its own expense. Any party may have a transcript prepared at its own expense. If the transcript prepared at the expense of a party is deemed by the presiding officer to be the official transcript of the hearing, the party shall furnish the agency a transcript without charge. (7-1-93)

652. -- 699. (RESERVED).

700. NOTICE OF PROPOSED DEFAULT AFTER FAILURE TO APPEAR OR RESPOND (RULE 700).

If an applicant or claimant or appellant, petitioner, protestant, complainant, or moving party fails to appear at the time and place set for hearing, or prehearing conference, on an application or claim or appeal, petition, complaint, or motion, or fails to respond to a written information inquiry, the presiding officer may serve upon all parties a notice of a proposed default order denying the application or claim or appeal, petition, complaint, or motion. The notice of a proposed default order shall include a statement that the default order is proposed to be issued because of a failure of the applicant or claimant or appellant, petitioner, complainant or moving party to appear at the time and place set for hearing or prehearing conference, or to respond to the information inquiry. The notice of proposed default order may be mailed to the last known mailing address of the party proposed to be defaulted. (4-5-00)

701. SEVEN DAYS TO CHALLENGE PROPOSED DEFAULT ORDER (RULE 701).

Within seven (7) days after the service of the notice of proposed default order, the party against whom it was filed may file a written petition requesting that a default order not be entered. The petition must state the grounds why the petitioning party believes that default should not be entered. (7-1-93)

702. ISSUANCE OF DEFAULT ORDER (RULE 702).

The agency shall promptly issue a default order or withdraw the notice of proposed default order after expiration of the seven (7) days for the party to file a petition contesting the default order or receipt of a petition. If a default order is issued, all further proceedings necessary to complete the contested case shall be conducted without participation of the party in default (if the defaulting party is not a movant) or upon the results of the denial of the motion (if the defaulting party is a movant). All issues in the contested case shall be determined, including those affecting the defaulting party. Costs may be assessed against a defaulting party. (7-1-93)

703. -- 709. (RESERVED).

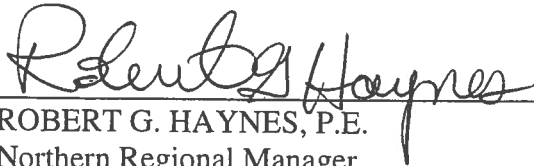
710. INTERLOCUTORY ORDERS (RULE 710).

Interlocutory orders are orders that do not decide all previously undecided issues presented in a proceeding, except the agency may by order decide some of the issues presented in a proceeding and provide in that order that its decision on those issues is final and subject to review by reconsideration or appeal, but is not final on other issues. Unless an order contains or is accompanied by a document containing one (1) of the paragraphs set forth in Rules 720, 730 or 740 or a paragraph substantially similar, the order is interlocutory. The following orders are always interlocutory: orders initiating complaints or investigations; orders joining, consolidating or separating issues, proceedings or parties; orders granting or denying intervention; orders scheduling prehearing conferences, discovery, hearing, oral arguments or deadlines for written submissions; and orders compelling or refusing to compel discovery. Interlocutory orders may be reviewed by the officer issuing the order pursuant to Rules 711, 760, and 770. (7-1-93)

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 95-9508 IN THE) **NOTICE OF PROPOSED**
NAME OF PHILIP AND PATSY BARNHART) **DEFAULT ORDER**

Notice of Proposed Default Order – Page 1

Dated this 15th day of July 2009.


ROBERT G. HAYNES, P.E.
Northern Regional Manager

CERTIFICATE OF SERVICE

I FURTHER CERTIFY that on this 16th day of July, 2009 a true and correct copy of the document described below was served on the following by placing a copy of the same in the United States mail, as certified mail with return receipt requested, postage prepaid and properly addressed to the following:

Document(s) Served: Notice of Proposed Default Order

SUSAN BOURGUIGNON
1201 SUNSET RD
ATHOL, ID 83801

LINDA WILLIAMS
PO BOX 403
BAYVIEW, ID 83803

JUDITH ADAMS
C/O EUGENE MURR
1201 SUNSET RD
ATHOL, ID 83801


Carolyn Monitz
Administrative Assistant

Statement of Available Procedures and Applicable Time Limits

RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES (To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.