

January 17, 2012

Memo: To The File
From: Keith Franklin 96-9499
Subject: Water Permit 95-9508, Philip Barnhart

This memo is being submitted to the file for clarification as to the events that led up to the issuance of the permit.

1. On August 19, 2008, Philip Barnhart filed an application for permit 95-9508
2. During the advertising phase the application was protested by Susan Bourguignon, Linda Williams, Judith Adams and Joan Tope.
3. A Notice of Conference was served to all parties on May 8, 2009.
4. The conference was scheduled for June 9, 2009.
5. The conference was held at 9:00 am on June 9, 2009 and conducted by Keith Franklin and Eric Davis. Protestants Susan Bourguignon, Linda Williams and Judith Adams failed to appear.
6. On July 2, 2009, protestant Joan Tope withdrew her protest after hearing the facts presented at the conference.
7. On July 15, 2009 protestants Susan Bourguignon, Linda Williams and Judith Adams were notified by Notice of Proposed Default Order that a default order will be issued dismissing them as parties to the contested case for failure to appear at the time and place set for the conference pursuant to IDAPA 37.01.01.700.
8. On July 23, 2009, protestants Susan Bourguignon, Linda Williams and Judith Adams submitted petitions stating grounds why they should not be dismissed from the case.
9. On July 27, 2009 the presiding officer reviewed the petitions and issued a written order disposing of the petitions to protestants Susan Bourguignon, Linda Williams and Judith Adams, as per Idaho Code § 67-5243(3), since the petitions did not contain adequate grounds for not appearing at the conference.
10. On July 27, 2009, the Department issued a Default Order dismissing Susan Bourguignon, Linda Williams and Judith Adams as Protestants to application 95-9508.
11. On August 11, 2009, the Department issued a Preliminary Order approving the application for a permit, which will become final without further action unless a party petitions for reconsideration or files an exception and/or brief.
12. On August 25, 2009, protestants Susan Bourguignon and Linda Williams submitted two requests asking the department to delay approving the permit.

13. Since Susan Bourguignon and Linda Williams were afforded the opportunity to a hearing, as per Idaho Code § 42-1701A(3) as protestants in this case and were subsequently dismissed as protestants by order issued on July 27, 2009, the department did not consider their August 25, 2009 requests.
14. This permit also needs to have the basin number changed. The point of diversion is in Basin 96 while the place of use is in Basins 95 and 96. During the data entry of the application, the computer program automatically designated basin 95. In cases like this, the location of the point of diversion designates which basin the water right will be in.
15. As of this day the permit will be designated as active with no further action being needed.



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

June 9, 2009

Philip and Patsy Barnhart
486 Kripple Creek
Athol, ID 83801

Re: Protest Conference For Water Right Application 95-9508

Dear Mr. and Mrs. Barnhart:

As per the conference for the above said water right application, held on June 9, 2009 at the Northern Regional Office, it was agreed by all parties that you and Joan Tope were to meet at the site of the pond to first hand observe the source for the pond and to where the pond discharges. The meeting between parties is to be held within the next 30 days. Before the end of the 30 day period the protestant, Joan Tope is to notify the department as to her withdrawal of the protest or to proceed with a hearing.

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

Thank you.

Sincerely,

Keith E. Franklin
Senior Water Resources Agent

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C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

June 9, 2009

Joan Tope
132 Sunset Rd
Athol, ID 83801

Re: Protest Conference For Water Right Application 95-9508

Dear Mrs. Tope:

As per the conference for the above said water right application, held on June 9, 2009 at the Northern Regional Office, it was agreed by all parties that you and the Barnharts are to meet at the site of the pond to first hand observe the source for the pond and to where the pond discharges. The meeting between parties is to be held within the next 30 days. Before the end of the 30 day period the protestant, Joan Tope is to notify the department as to her withdrawal of the protest or to proceed with a hearing. If you decide to withdraw your protest, for your convenience I have enclosed a withdrawal form.

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

Thank you.

Sincerely,

Keith E. Franklin
Senior Water Resources Agent

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