

MEMORANDUM

Date: November 23, 2010
To: Water Right File 98-7877
From: kfranklin
Re: Protest

This application was protested by Monty McCay of Naples, Idaho. A protest conference was held on September 29, 2010 which Monty McCay or his representative failed to appear. A proposed default order was issued to Mr. McCay on September 30, 2010 for failure to attend the conference. On October 12, 2010 a default order was issued to Mr. McCay, since no response was made to the proposed default order denying the protest.

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

OFFICIAL USE

Sent To: Monty McCay
 Street, Apt. No., or PO Box No. PO Box 287
 City, State, ZIP+4 Naples ID 83847

Postage	\$ 61
Certified Fee	2.80
Return Receipt Fee (Endorsement Required)	2.30
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 5.71

Postmark Here

SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.

- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Monty McCay
PO Box 287
Naples ID 83847

2. Article Number (Transfer from service label) 7007 1490 0001 6752 3310

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-11

COMPLETE THIS SECTION ON DELIVERY

A. Signature X Wayne Leen ☒ Agent ☐ Address

B. Received by (Printed Name) L. Wayne Leen C. Date of Delivery Oct 18, 2010

D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☒ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.

- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
Monty McCay
PO Box 287
Naples ID 83847

2. Article Number (Transfer from service label) 7007 1490 0001 6752 3303

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-11

COMPLETE THIS SECTION ON DELIVERY

A. Signature X Wayne Leen ☒ Agent ☐ Address

B. Received by (Printed Name) Wayne Leen C. Date of Delivery Oct 1

D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☒ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

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OFFICIAL USE

Postage \$ 61
 Certified Fee 2.80
 Return Receipt Fee (Endorsement Required) 2.30
 Restricted Delivery Fee (Endorsement Required)

Total Postage & Fees \$ 5.71

Sent To: Monty McCay
 Street, Apt. No., or PO Box No. PO Box 287
 City, State, ZIP+4 Naples ID 83847

PS Form 3800, August 2006 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage \$ 44
 Certified Fee 2.80
 Return Receipt Fee (Endorsement Required) 2.30
 Restricted Delivery Fee (Endorsement Required)

Total Postage & Fees \$ 5.54

Sent To: Beverly Tansone
 Street, Apt. No., or PO Box No. 545 All Seasons Rd
 City, State, ZIP+4 Naples ID 83847

PS Form 3800, August 2006 See Reverse for Instructions



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

GARY SPACKMAN
Interim Director

CERTIFIED MAIL

October 12, 2010

Monty McCay
PO Box 287
Naples, ID 83847

Re: Protests On Applications For Permit to Appropriate the Public Waters of the State of
Idaho, No. 98-7877, 98-7878, 98-7880 Beverly and Annette Torrence.

Dear Mr. McCay:

Enclosed you will find three **DEFAULT ORDERS** in the above referenced matter.

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

Sincerely,

Keith E. Franklin
Senior Water Resources Agent

Enclosure

COPY

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

IN THE MATTER OF THE PROTEST OF AN)
APPLICATION FOR PERMIT, IN THE NAME)
OF BEVERLY TORRENCE, No. 98-7877 BY)
MONTY McCAY)

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 September 30, 2008, Beverly Torrence submitted an Application for Permit No. 98-7877 to the department, seeking to file for water rights for domestic and stockwater purposes from a spring.
2. On October 24, 2008, the application was protested by Monty McCay.
3. A protest conference was held on September 29, 2010, at the Northern Regional Office in Coeur d'Alene, Idaho, which Monty McCay or his authorized representative failed to attend.
4. On September 30, 2010 a Notice of Proposed Default Order was sent to Monty McCay, since he or his authorized representative failed to attend the protest conference.

CONCLUSIONS OF LAW

1. IDAPA Rule 37.01.01.702 (Rule of Procedure 702) authorizes the Department to issue a Default Order denying the protest.
2. The Department should issue a Default Order denying the protest.

ORDER

IT IS THEREFORE, HEREBY ORDERED that the protest of Water Right Application 98-7877, in the name of Beverly Torrence, filed by Monty McCay is in default.

IT IS FURTHER ORDERED that the protest is denied and will not be further considered by the Department.

Dated this 12th day of October, 2010.



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



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

GARY SPACKMAN
Interim Director

CERTIFIED MAIL

September 30, 2010

Monty McCay
PO Box 287
Naples, ID 83847

Re: Protests On Applications For Permit to appropriate the Public Waters of the State
Idaho, No. 98-7877, 98-7878, 98-7880 Beverly and Annette Torrence.

Dear Mr. McCay:

Enclosed you will find three **NOTICE OF PROPOSED DEFAULT ORDERS** in the
above referenced matter.

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

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

Sincerely,

Keith E. Franklin
Senior Water Resources Agent

Enclosure

COPY

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

IN THE MATTER OF THE PROTEST OF AN)
APPLICATION FOR PERMIT, IN THE NAME)
OF BEVERLY TORRENCE, No. 98-7877 BY)
MONTY McCAY)

**NOTICE OF
PROPOSED 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 September 30, 2008, Beverly Torrence submitted an Application for Permit No. 98-7877 to the department, seeking to file for water rights for domestic and stockwater purposes from a spring.
2. On October 24, 2008, the application was protested by Monty McCay.
3. A protest conference was held on September 29, 2010, at the Northern Regional Office in Coeur d'Alene, Idaho, which Monty McCay or his authorized representative failed to attend.

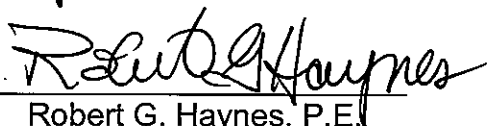
CONCLUSIONS OF LAW

1. IDAPA Rule 37.01.01700 (Rule of Procedure 700) authorizes the Department to issue a Notice of Proposed Default Order for failure to appear at the time and place set for a protest conference.
2. The Department should enter a Notice of Proposed Default Order for failure of the applicant to appear for a protest conference for the above captioned matter.

ORDER

IT IS THEREFORE, HEREBY ORDERED that the Department plans to enter a Default Order **DENYING** the application, as provided in IDAPA Rule 37.01.01702 (Rule of Procedure 702).

Dated this 30th day of September, 2010.



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

SEPTEMBER 29, 2010

MEMO: TO THE FILE
SUBJECT: PROTEST CONFERENCE, 98-7877, 98-7878, 98-7880
FROM: KEITH FRANKLIN

A CONFERENCE WAS SCHEDULED FOR 10:00 AM ON SEPTEMBER 29, 2010 AT THE NORTHERN REGIONAL OFFICE, FOR THE PROTESTS OF WATER RIGHT APPLICATIONS 98-7877, 98-7878 AND 98-7880. APPLICANT BEVERLY TORRENCE, REPRESENTING HERSELF AND GEORGE TORRENCE WHO WAS AUTHORIZED IN WRITING TO REPRESENT APPLICANT ANNETTE TORRENCE WERE IN ATTENDANCE ALONG WITH SENIOR WATER RESOURCES AGENT KEITH FRANKLIN AND LEGAL SPECIALIST SUSAN DENNY, FROM THE STATES ATTORNY GENERALS, WHO WAS SITTING IN TO GAIN KNOWLEDGE ABOUT THE PROCESS.

AT 10:35 AM THE MEETING CONCLUDED SINCE THE PROTESTANT OR THEIR REPRESENTATIVE FAILED TO APPEAR WITHIN A REASONABLE AMOUNT OF TIME. A PROPOSED DEFAULT NOTICE WILL BE SENT OUT TO THE PROTESTANT AND THEY WILL HAVE 7 DAYS BY WHICH TO RESPOND BY A WRITTEN PETITION OR THE DEFAULT WILL BE COME FINAL.

CONFERENCE

File: #98-7877, 98-7878
#98-7880

Date: Sept. 29, 2010

Time: 10:00 A.M.

Place: Department of Water Resources
7600 N Mineral Drive Suite 100
Coeur d Alene, ID 83815
(208) 762-2800

ROSTER OF ATTENDANCE

NAME

ADDRESS

George Torrence
Becky Torrence

468800 Hwy 95 #26 Sagle ID 83860
545 All Seasons Rd Napa ID 83847

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

IN THE MATTER OF PERMITS TO)
APPROPRIATE WATER NO.)
98-7877 and 98-7878)
IN THE NAME OF:)
BEVERLY TORRENCE)

NOTICE OF PRE-HEARING CONFERENCE

On 9/30/2008, BEVERLY TORRENCE, filed an Appropriation of a Water Right Permit Nos. 98-7877 and 98-7878 with the Idaho Department of Water Resources (department). Protest(s) were filed by MONTY MC CAY

The department has scheduled the matter for pre-hearing conference on Wednesday, September 29, 2010, beginning at 10:00 AM, at STATE OF IDAHO, DEPT OF WATER RESOURCES 7600 N MINERAL DR STE 100, COEUR D ALENE, ID, 83815.

Agenda items for the pre-hearing conference will include:

1. Identify spokesman and/or counsel representing the protestant
2. Review of the application
3. Identify issues of protest
4. Designate date for identifying witnesses
5. Designate target date for conducting administrative hearing if resolution is not possible during the pre-hearing conference.

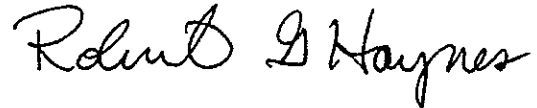
The department encourages the applicant and protestant(s) to discuss and resolve the protests before the pre-hearing conference. If private discussions are not possible or do not resolve the protests, the department's Rules of Procedure provide for a pre-hearing conference to be held before scheduling a formal hearing.

The pre-hearing conference provides another informal opportunity for the applicant and protestants to meet. The parties often settle their differences at the pre-hearing conference. If a formal hearing is needed to resolve the protests, the pre-hearing conference serves as an opportunity to formulate or simplify the issues, obtain concessions of fact or identification of documents to avoid unnecessary proof, schedule discovery (when discovery is allowed), arrange for the exchange of proposed exhibits or prepared testimony, limit witnesses, schedule hearings, establish procedure at hearings, and address other matters that may expedite orderly conduct and disposition of the proceeding.

It is important for all parties to give considerable thought to each of these matters before appearing at the pre-hearing conference and to make the most of the opportunity to resolve the dispute informally.

The pre-hearing conference will be conducted in a facility that satisfies the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in, or understand the pre-hearing conference, please notify the department at least (10) days prior to the hearing. Inquiries about scheduling, hearing facilities, etc., should be directed to Keith Franklin or Eric Davis at (208)762-2800.

Dated this 3rd day of September, 2010.



Robert G. Haynes, PE
Regional Manager

CERTIFICATE OF SERVICE

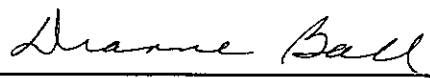
I HEREBY CERTIFY that on this 3rd day of September, 2010, true and correct copies of the documents described below were served by placing a copy of the same with the United States Postal Service, postage prepaid and properly addressed to the following:

Document Served: Notice Of Pre-Hearing Conference
Hearing Procedure for Application for Permit

CERTIFIED MAIL:

BEVERLY TORRENCE
545 ALL SEASONS RD
NAPLES, ID 83847

MONTY MC CAY
PO BOX 287
NAPLES, ID 83847



Dianne Ball
Administrative Assistant

PRE-HEARING CONFERENCE AND/OR HEARING PROCEDURE APPLICATION FOR PERMIT

ISSUES

Applications to appropriate the water of the State of Idaho are referred to as applications for permit, and are for the development of new water rights. Section 42-203A, Idaho Code, requires the department to consider the following issues in connection with an application for permit:

1. Will the proposed appropriation reduce the quantity of water under existing water rights?
2. Is the water supply sufficient for the purpose for which it is sought to be appropriated?
3. Was the application made in good faith or for delay or speculative purposes?
4. Does the applicant have sufficient financial resources with which to complete the proposed project?
5. Will the proposed use conflict with the local public interest, where local public interest is defined as 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. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?
7. Will the proposed use 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?

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, 3, 4, 6, and 7 above and must provide evidence for the department to evaluate these criteria.

The initial burden of proof on issue 5, if applicable, lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a pre-hearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues to avoid unnecessary proof, identify documents, schedule discovery, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement or make settlement offers, schedule hearings, establish procedure at hearing, and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. When attending the conference, please bring a calendar with your schedule for the next two–six month period from the date of the pre-hearing conference for the purpose of scheduling a hearing. Parties will be expected to discuss their availability at the prehearing conference for the purpose of scheduling the hearing.

HEARING

A hearing may be conducted according to Sections 42-1701A(1) and (2), Idaho Code and the department's Rules of Procedure. Copies of Idaho Code and the department's rules are available upon request or by accessing the department's website at: www.idwr.idaho.gov. The department records formal hearings, and copies of a hearing recording are available upon request. There may be a charge for reproducing the recording.

The hearing will likely be conducted by a hearing officer appointed by the Director rather than by the Director himself. If so, the hearing officer will prepare a recommended or preliminary order. Parties can petition for reconsideration of a decision or file exceptions. A brief to support exceptions may request oral argument. Parties may seek judicial review of any final order issued by the Director.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please notify the department no later than ten (10) days prior to the hearing.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATIONS
FOR PERMITS NO. 98-7877 AND 98-7878
IN THE NAME OF BEVERLY TORRENCE

)
)
)
)

NOTICE OF CONFERENCE

On SEPTEMBER 30, 2008, BEVERLY TORRENCE filed with the Department of Water Resources (department) Applications for Permits No. 98-7877 and 98-7878. The applications were protested by Monty McCoy .

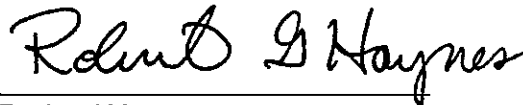
The department has scheduled the matters for conference on October 7th 2009 at 9:30 AM at the Department of Water Resources, 7600 N Mineral Drive, Suite 100, Coeur d'Alene, ID 83815. The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, the adopted Rules of Procedure of the department and Water Appropriation Rules 40 and 45. A copy of the rules may be obtained from the department upon request. The presiding officers at the conference will be Keith Franklin and Eric Davis, Senior Water Resource Agents. They are located in the Coeur d'Alene Office, phone (208) 762-2800.

If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01606 requires that you provide a copy of exhibits to each party and to the presiding officer.

The conference will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference &/or hearing, please advise the department within ten (10) days prior to the conference &/or hearing.

All parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

Dated this 20th day of August, 2009.



Regional Manager

I hereby certify that on the 20th day of August, 2009, I mailed a true and correct copy, postage prepaid, of this document to the applicants(s) and protestant(s) listed below:



Administrative Assistant

Certified Mail

BEVERLY TORRENCE
545 ALL SEASONS RD
NAPLES ID 83847

MONTY MCCOY
PO BOX 287
NAPLES ID 83847

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR PERMIT

ISSUES

Section 42-203A, Idaho Code, requires the department to consider the following issues in connection with an application for permit:

1. Will the proposed appropriation injure other water rights?
2. Is the water supply sufficient for the purpose for which it is sought to be appropriated?
3. Was the application made in good faith or for delay or speculative purposes?
4. Does the applicant have sufficient financial resources with which to complete the proposed project?
5. Will the proposed use conflict with the local public interest, where local public interest is defined as 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. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?
7. Will the proposed use 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?

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, 3, 4, 6 and 7 above and must provide evidence for the department to evaluate these criteria.

The initial burden of proof on issue 5 above lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for this issue.

PROCEDURE

The department generally conducts an informal conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a prehearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested matter and to attempt to resolve the matter. At the conference, the department may also formulate and simplify the issues, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement or make settlement offers, schedule hearings, establish procedure at hearing and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

HEARING

The department will tape record the hearing. Copies of a hearing are available upon request and the payment of the cost of reproducing the tape.

The hearing likely will be conducted by a hearing officer appointed by the Director rather than by the Director himself. If so, the hearing officer will prepare a recommended order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the director.

Parties may by written stipulation waive the right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order and judicial review of the order.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department within ten (120) days prior to the hearing.