BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 94-7441 IN THE NAME OF KIP McGILLIVRAY	))))	**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 January 11, 2008, Kip McGillivray (applicant) filed Application for Permit No. 94-7441 (application) with the department proposing to appropriate 0.12 cubic feet per second of water from North Fork of the Coeur D'Alene River, tributary to Coeur d'Alene River, to be used March 15 through October 31 dates inclusive for irrigation purposes.

2. The application was subsequently protested by the Idaho Department of Fish and Game.

3. On August 8, 2008 the department scheduled a conference in the matter in Coeur d'Alene, Idaho at which hearing the applicant failed to appear.

CONCLUSIONS OF LAW

1. IDAPA Rule 37.01.01700 (Rule of Procedure 700) authorizes the department to issue a Notice of Proposed Default for Failure to Appear at the conference scheduled and held on August 8, 2008.

2. The department should enter a Notice of Proposed Default for Failure to Appear at the August 8, 2008 conference scheduled in Coeur d'Alene, Idaho.

ORDER

IT IS THEREFORE, HEREBY ORDERED that the department plans to enter a Default Order Setting Aside Application for Permit No. 94-7441 which will no longer be considered by the department.

Dated this 2nd day of February, 2009

Robert G. Haynes, P.E., Regional Manager
Presiding Officer

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2nd of February, 2009, I mailed a true and correct copy, postage prepaid, of the foregoing **NOTICE OF PROPOSED DEFAULT ORDER** to the following:

Certified Mail:

IDAHO DEPARTMENT OF FISH & GAME
PANHANDLE REGION
ATTN: MARY TERRA-BERNS
2885 W KATHLEEN AVE
COEUR D ALENE ID 83815

DAVID I STANISH
DEPUTY ATTORNEY GENERAL
NATURAL RESOURCES DIVISION
PO BOX 83720
BOISE ID 83720

KIP MCGILLIVRAY
PO BOX 1041
OSBURN ID 83849

Dianne Ball
Dianne Ball, Administrative Assistant

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION	)	
FOR PERMIT NO. 94-7441	)	NOTICE OF CONFERENCE
IN THE NAME OF KIP MCGILLIVRAY	)	

On January 11, 2008, Kip McGillivray filed with the Department of Water Resources (department) Application for Permit No. 94-7441. The application was protested by State of Idaho, Department of Fish and Game..

The department has scheduled the matter for conference at 9:00 A.M. on September 10, 2008 at the Department of Water Resources, 7600 N Mineral Drive, Coeur d'Alene, ID. 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 officer at the conference will be Robert G. Haynes, P.E., Regional Manager.

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 &/or hearing 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 8th day of August, 2008.

Robert G Haynes
Regional Manager

I hereby certify that on the 8th day of August, 2008, I mailed a true and correct copy, postage prepaid, of this document to the applicants(s) and protestant(s) listed below:

Dianne Ball
Administrative Assistant

Certified Mail:

✓ IDAHO DEPARTMENT OF FISH & GAME
PANHANDLE REGION
ATTN: MARY TERRA-BERNS
2885 W KATHLEEN AVE
COEUR D ALENE ID 83815

✓ DAVID I STANISH
DEPUTY ATTORNEY GENERAL
NATURAL RESOURCES DIVISION
PO BOX 83720
BOISE ID 83720

✓ KIP MCGILLIVRAY
PO BOX 1041
OSBURN ID 83849

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.

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:

Kip McGillivray
PO Bx 1041
Osburn ID 83849

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (*Printed Name*) DMcGillivray | C. Date of Delivery 2/3/09

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

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3. Service Type
☒ Certified Mail ☐ Express Mail
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