

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

IN THE MATTER OF PERMIT	)	
NO. 37-7842 IN THE NAME OF THE	)	STATEMENT OF LEGAL ISSUES
<u>IDAHO WATER RESOURCE BOARD</u>	)	

On June 10, 2011, a telephone status conference was held in this case. Joseph James appeared on behalf of the petitioners. Shasta Kilminster-Hadley and David Stanish appeared on behalf of the Department. The parties and the hearing officer decided to temporarily postpone any hearing in this matter until after the legal issues have been identified and briefed. The parties agreed to file motions for summary judgment on the legal issues presented in this case. The hearing officer will then make a ruling on any issues qualifying for summary judgment. The hearing officer will also determine whether there are outstanding questions of fact that prevent a summary judgment ruling on some of the issues and would require a hearing.

On June 24, 2011, the parties filed a joint Statement of Legal Issues. The hearing officer consolidated and revised the statement of issues. The legal issues to be addressed by the parties in their summary judgment motions are listed below. The parties shall file their initial summary judgment motions on or before **August 26, 2011**. The parties are encouraged to identify any outstanding questions of fact that may need to be addressed in a hearing, if one is held. Response briefs shall be filed on or before **September 30, 2011**. There is a fair amount of overlap between the issues listed below. Therefore, the parties may want to address multiple issues in a single section, and should feel free to organize their motions as they see fit.

**STATEMENT OF LEGAL ISSUES TO BE ADDRESSED
IN SUMMARY JUDGMENT BRIEFING**

- 1. Was the September 2, 2010 Action of the Department, approving an extension of time to submit proof of beneficial use for Permit No 37-7842, proper given the relevant legal provisions, specifically Idaho Code §§ 42-204, 42-217, 42-218, 42-218a, and 42-219?**
- 2. If the Department erred in approving the extension of time, what should have been the proper action by the Department, given the legal provisions referenced above?**
- 3. Was the *Petition for Hearing and Petition for Declaratory Ruling* (received Sept 22, 2010) filed in a timely manner and in accordance with Idaho law and the Department's Rules of Procedure (IDAPA 37.01.01)?**

4. Was the subject matter of the petition beyond the scope of review authorized under Idaho law and the Department's Rules of Procedure?
5. Are the remedies being sought by the petitioners available under Idaho law and the Department's Rules of Procedure?

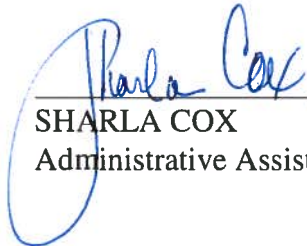
Dated this 28th day of June 2011.



JAMES CEFALO
Water Resources Program Manager

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of June 2011, I mailed a true and correct copy, postage prepaid, of this document to the parties listed below:



SHARLA COX
Administrative Assistant

MAILED

Shasta Kilminister-Hadley
Natural Resources Division
PO Box 83720
Boise, ID 83720-001

David I Stanish
Natural Resources Division
PO Box 83720
Boise, ID 83720-001

Joseph F. James
Brown & James
Attorneys at Law
130 4th Avenue West
Gooding ID 83330