

BEFORE THE DEPARTMENT OF WATER RESOURCES
FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION TO)
APPROPRIATE WATER NO. 67-14975 IN)
THE NAME OF TIM AND CAROLYN)
FOLKE)
_____)

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. Kevin Madsen and Lloyd Brown ("protestants") filed protests in response to an application to appropriate water numbered 67-14975 filed by Tim and Carolyn Folke ("applicants").
2. On November 24, 2009, the Department served a *Notice of Hearing* on all parties in the matter. The hearing was set for April 21, 2010 in Boise Idaho.
3. On April 8, 2010, the Hearing Officer received a letter from Lloyd Brown indicating that he will not attend the hearing.
4. On April 13, 2010, the Hearing Officer received a letter from Kevin Madsen indicating that he must attend mandatory job training on the date scheduled for hearing, and would not be able to attend the hearing.
5. On April 13, 2010, Debbie Gibson of the Department called the protestants to confirm if they would attend the hearing or if they would be seeking to reschedule the hearing. Lloyd Brown responded that he would not seek to reschedule the hearing. Kevin Madsen returned the call on April 16, 2010. Mr. Madsen was not responsive regarding his desire to request to reschedule the hearing.
6. On April 21, 2010, the applicants were present at the time and place scheduled for the hearing. The protestants failed to appear.
7. On April 23, 2010, the Department served a Notice of Proposed Default Order upon the protestants.

8. On April 29, 2010, Kevin Madsen responded to the Notice of Proposed Default Order and explained that he could not attend the hearing due to mandatory training for the Census Bureau. Mr. Madsen asked to be retained as an interested party/protester in the matter.
9. Lloyd Brown did not respond to the Notice of Proposed Default Order.

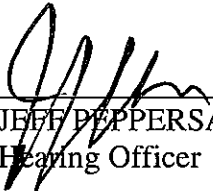
CONCLUSIONS OF LAW

10. IDAPA Rule 37.01.01702 provides that "...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..."
11. The Department should issue a default order on Lloyd Brown for failure to respond to the Notice of Proposed Default Order.
12. The Hearing Officer assumes that Kevin Madsen attended job training on the date set for hearing. Nonetheless, Mr. Madsen did not seek to reschedule the hearing or provide for a representative to attend the hearing on his behalf. The Hearing Officer determines that Mr. Madsen has not shown good cause for his failure to attend the hearing, and that a default order should dismiss Mr. Madsen as a party.

ORDER

IT IS HEREBY ORDERED that based upon protestants' failure to appear at the time and place set for hearing, Kevin Madsen and Lloyd Brown are dismissed as parties to the contested case.

Dated this 6th day of May, 2010.



JEFF PEPPERSACK
Hearing Officer

CERTIFICATE OF SERVICE

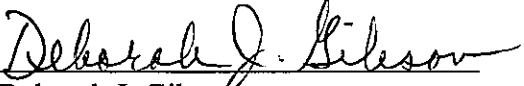
I HEREBY CERTIFY that on this 7th day of May, 2010, a true and correct copy of the above and foregoing document described below was served by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Default Order

TIM FOLKE
CAROLYN FOLKE
PO BOX 100
PAYETTE ID 83661

LLOYD J BROWN
PO BOX 535
COUNCIL ID 83612

KEVIN MADSEN
2073 N GALENA RD
COUNCIL ID 83612


Deborah J. Gibson
Administrative Assistant
Water Management Division