State of Idaho
DEPARTMENT OF WATER RESOURCES
Western Region, 2735 Airport Way • Boise, Idaho 83705-5082
Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

February 19, 2010

Ron Mayhew
KCM Enterprises LP
2098 W Champagne CT
Eagle ID 83616

CERTIFIED MAIL

RE: Notice of Intent to Void Application
#65-23097-KCM Enterprises LP

Dear Mr. Mayhew:

This letter is a response to your letter of February 3, 2010 regarding the prehearing conference for the above contested application for permit. Please read this letter carefully.

Good Faith
Under the water appropriation statutes and rules, our agency must evaluate each application for established criteria see criteria attachment. One of the criteria is to determine if the application is made in good faith, ref. Idaho Code (IC) 42-203A(5) and Appropriation Rule 45- IDAPA37.03.08.45.01c. Rule 45 in part states:

> *The criteria requiring that the Director evaluate whether an application is made in good faith or whether it is made for delay or speculative purposes requires an analysis of the intention of the applicant with respect to the filing and diligent pursuit of application requirements. The judgment of another person's intent can only be based upon the substantive actions that encompass the proposed project.....*

Your application was received 09/18/06 and protested shortly after by Little Enterprises on 12/28/06. Since that time, our office has received letter correspondence from you dated 10/18/07, 05/12/08, 09/03/09, and 02/03/10 all stating that you are negotiating with Mr. Little, but haven't been able to align schedules due to Mr. Little's state government duties and your work. We certainly encourage parties to negotiate contested application settlements privately. However, our office has held this application 3+ years by your request with no result. Our agency is obligated to process applications in a timely manner. An applicant may request a delay up to 1 year for the commencement of processing and up to a 6 month interruption for application processing, ref. IDAPA37.03.08.40.01c.

Prehearing Conference Actions
The Department will no longer delay the scheduling of a prehearing conference. Please complete one of the following by **April 1, 2010**:

> *Enclosed are Mr. Little's dates (marked with Xs) that he is available in April and May for a pre hearing conference.* ***Please notify me of dates that will work for you,*** *and I will send out conference notices.*
>
> ***OR***

If Mr. Little's dates don't work for you, please mark an "X" on dates you are available on the June thru October calendars enclosed and return them to this office. I will coordinate with Mr. Little and send out conference notices.

OR

You may withdraw the application, a withdrawal form is enclosed.

Notice of Intent

If one of the above actions is not completed by the **April 1, 2010** deadline, the application will be ordered void without prior notice. Failure of an applicant or a designated representative to appear at the prehearing conference will also result in the application ordered void.

Should you have questions, please contact me at the Western Regional Office, phone 208-334-2190.

Sincerely,

John Westra

John Westra, Manager

Enclosure: evaluation criteria, calendars, Little calendars, withdrawal form
Cc: D. Shaw, ERO

Westra, John

From: David Shaw [dshaw@eroresources.com]
Sent: Thursday, February 18, 2010 9:30 AM
To: Westra, John
Cc: David Little
Subject: Available Dates for Mayhew Application
Attachments: Available Dates 2010.pdf

John,

Attached are available dates based upon Brad's schedule. Please let me know if you need additional dates or any other additional information.

Thanks,
Dave

David Shaw
ERO Resources Corp
3314 Grace St
Boise, ID 83703-5836
(208) 373-7983
(208) 373-7985 FAX

April

Name: Little

Mark X = Available

Sun	Mon	Tue	Wed	Thu	Fri	Sat
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23 X	24
25	26 X	27 X	28 X	29 X	30 X	

2010

May

Name: Little

Mark X = Available

Sun	Mon	Tue	Wed	Thu	Fri	Sat
						1
2	3	4	5	6 X	7	8
9	10 X	11 X	12	13	14	15
16	17	18	19	20	21 X	22
23	24	25	26	27 X	28 X	29
30	31					

2010

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X = Available Dates For Conference

June 2010

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

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X = Available

July 2010

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

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X = Available

August 2010

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

#65-23097

X = Available

September 2010

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

#65-23097

X= Available

October 2010

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						