

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

|                               |   |                                |
|-------------------------------|---|--------------------------------|
| IN THE MATTER OF APPLICATION  | ) |                                |
| FOR TRANSFER NO 72003 IN THE  | ) | <b>PRELIMINARY ORDER</b>       |
| <u>NAME OF L. J. MORRISON</u> | ) | <b>VOIDING THE APPLICATION</b> |

This matter having come before the Department of Water Resources (Department) as a result of an application for permit to appropriate water, the Department makes the following Findings of Fact, Conclusion of Law, and Order:

FINDING OF FACT

1. In September 22, 2003, Application for Transfer #72003 was filed by L. J. Morrison.
2. On May 1, 2007, a 30 day letter was sent to L.J. Morrison, with cc to Craig Morrison and Angela Schaef Kaufmann of Moffatt Thomas requesting comments and / or evidence to support use of the rights prior to CRP.
3. On May 10, 2007, Angela Schaef Kaufmann of Moffatt Thomas responded to the Department letter informing the Department that she was assisting the applicant and the applicant's daughter in providing the information the Department requested.
4. On June 2, 2008, a another 30 letter was sent to L.J. Morrison, with cc to Craig Morrison and Angela Schaef Kaufmann of Moffat Thomas requesting the comments and / or evident to support use of the rights prior to CRP. Again, the Department has never received any comments from the applicant or the applicant's attorney.

5. Idaho Code § 42-204 says, in pertinent part:

If upon such examination the application is found defective, it shall be the duty of the department of water resources to return the same for correction or to correspond with the applicant to obtain the needed information or amendments. If the application is returned to the applicant or the department shall request additional information and the applicant fails to return the corrected application or to supply the needed information within thirty (30) days, the department may void the record of said application and notify the applicant of such action.

### CONCLUSION OF LAW

1. Idaho Code § 42-204 authorizes the Department to void an application if the applicant fails to supply requested information within 30 days.
2. More than 30 days have passed since the Department requested additional information from the applicant to support the application.
3. The Department should void the application as provided in Idaho Code § 42-204.

### ORDER

IT IS, THEREFORE, HEREBY ORDERED that Application for Transfer No. 72003 in the name of L.J. Morrison, is **VOIDED** as provided in Section 42-204, Idaho Code.

Dated this 2 day of September, 2008.

  
Ernest Carlsen  
Water Resource Program Manager

### **CERTIFICATE OF SERVICE**

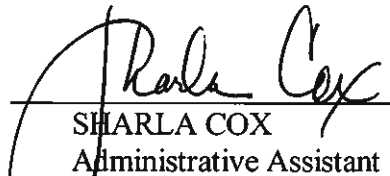
I hereby certify that on the 3<sup>rd</sup> day of September 2008, I mailed a true and correct copy, postage prepaid, of foregoing **VOIDING APPLICATION** to the following:

#### CERTIFIED MAIL

LJ Morrison  
14902 Devenshire Woods Place  
Tampa FL 33624

Craig Morrison  
PO Box 1579  
Snohomish WA 98290

Moffatt Thomas  
Angela Schaer Kaufmann  
PO Box 829  
Boise ID 83701-0829

  
SHARLA COX  
Administrative Assistant

## Statement of Available Procedures and Applicable Time Limits

### **RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES** (To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

#### **PETITION FOR RECONSIDERATION**

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

#### **EXCEPTIONS AND BRIEFS**

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

#### **REQUEST FOR HEARING**

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

#### **ORAL ARGUMENT**

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

### **CERTIFICATE OF SERVICE**

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

### **FINAL ORDER**

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

### **APPEAL OF FINAL ORDER TO DISTRICT COURT**

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.