

BEFORE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PERMIT)
NO. 96-09112 IN THE NAME OF)
MCLEOD AND ABBY MORGAN)
_____)

**PRELIMINARY ORDER
VOIDING PERMIT**

This matter having come before the Department of Water Resources (Department) as a result of an examination by Department staff to determine the extent of beneficial use of water, the Department finds, concludes, and orders:

FINDINGS OF FACT

1. On August 26, 2002, McLeod and Abby Morgan (permit holders) applied to the Department to appropriate 0.04 cubic feet per second from Lake Pend Oreille, tributary to the Pend Oreille River, within the SE¼SE¼ of Section 33, Township 57 North, Range 1 East, B.M., Bonner County, to be used for domestic purposes.

2. On November 21, 2002, the Department approved the application as permit no. 96-09112 (permit).

3. On November 3, 2003, the Department received Proof of Beneficial Use for the permit.

4. In August 2004, Department staff attempted to contact the permit holders to arrange for a field examination to verify the water use developed under the permit. The Department found that the permit holder no longer owns the proposed place of use and the new property owner did not respond to repeated attempts by Department staff to make an appointment for the field exam.

5. The permit holders have not relinquished the permit.

6. On September 19, 2007, the Department sent a Notice of Intent to Void Permit (notice) to the new property owner and sent a copy of the letter to the permit holders. The Department gave the new property owner or the permit holders thirty days to arrange for an examination to verify the beneficial use of water developed in accordance with the permit. The Department received no response to the notice.

7. Examination by the Department is necessary to verify the beneficial use of water developed in accordance with the permit. When a permit holder does not make the site of a proposed appropriation of water available for examination, the Department must conclude that the permit holder does not intend to establish a water right as authorized by the permit.

8. The provisions of Section 42-219, *Idaho Code*, authorize the Director of the Department to void permits for which the permit holder has not fully complied with the law and the conditions of the permit.

CONCLUSIONS OF LAW

1. Section 42-219, *Idaho Code*, provides in pertinent part as follows:

In the event that the Department shall find that the applicant has not fully complied with the law and the conditions of the permit, it may issue a license for that portion of use which is in accordance with the permit, or may refuse issuance of a license and void the permit.

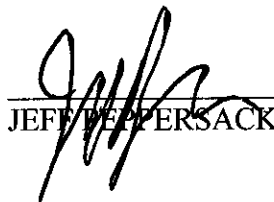
2. Investigation by the Department revealed that the permit holder has not complied with the conditions of the permit by not establishing the proposed beneficial of water as required by the permit and Section 42-219, *Idaho Code*.

3. The Department should void the permit pursuant to Section 42-219, *Idaho Code*.

ORDER

IT IS HEREBY ORDERED that issuance of a license is **REFUSED** and Permit No. 96-09112 is **VOIDED** under Section 42-219, *Idaho Code*.

Dated this 24th day of October, 2007.



JEFF PEPPERSACK