

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR	)	
AMENDMENT FOR WATER RIGHT NO.	)	
75-7052 and 75-7589 IN THE NAME OF	)	ORDER DENYING REQUEST
WILLIAMS LAKE RECREATIONAL	)	FOR DISMISSAL
WATER & SEWER DISTRICT	)	ORDER DENYING MOTION
	)	IN LIMINE

On May 14, 2007, the hearing officer received a letter dated May 9, 2007, authored by Kathleen Gliksman and acknowledged by Leslie Shumate, Gary Hawkins, Gary Mulkey and Thomas Thompson. The letter indicates that the Williams Lake Recreational Water and Sewer District (Applicant) has failed to respond to requests for discovery and has failed to respond to interrogatories as required by the *Second Amended Notice of Hearing, Order Authorizing Discovery, and Prehearing Order* dated January 18, 2007, and the hearing officer's letter of clarification dated February 13, 2007. The May 9, 2007 letter requests that the Department find the applicant in contempt and seeks dismissal of the applications for amendments. The hearing officer is treating the May 9, 2007 letter request as a prehearing motion to compel discovery and request for dismissal of the applications.

On May 29, 2007, the hearing officer received Applicant's *Response to Request for Discovery* dated May 25, 2007, which was served on the protestants.

A review of the record reveals that the hearing officer failed to establish a firm deadline for responses to discovery, which may have already been served prior to the January 18, 2007 order. The error was not corrected in the January 18, 2007 letter. The hearing officer is not aware of the dates when discovery requests were made to many of the parties. The recent
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response to discovery dated May 25, 2007, makes the motion to compel moot. The request for dismissal should be denied.

On May 29, 2007, the hearing officer received Applicant's *Motion In Limine* dated May 25, 2007, from the applicant's attorney, which was served on the protestants. The motion requests that the protestants be limited to persons who hold an interest in individual water rights separate from the applicant's water rights and who may be adversely affected by the requested change if granted by the Department.

IDAPA 37.01.01.155 (Rule 155 of the Rules of Procedure) states:
Persons who oppose an application or claim or appeal and who have a statutory right to contest the right, license, award or authority sought by an applicant or claimant or appellant are called "protestants." (7-1-93)

Historically, the Department has allowed persons or organizations that may have an interest in matters to participate in contested cases regardless of their ownership in a water right. "Local public interest" is one of the criteria that must be considered in approving or denying these applications. "Local public interest" is defined as "the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource." Section 42-202B (3) Idaho Code. The protestants in this matter should be allowed to participate because they may have an interest in the "local public interest" as it relates to this application for amendment. The *Motion In Limine* should be denied.

IT IS HEREBY ORDERED that the protestants' prehearing motion requesting dismissal of the applications is **DENIED**.

IT IS FURTHERED ORDERED that the Applicant's Motion In Limine is **DENIED**.

Dated this 31st day of May, 2007.



Allen Merritt
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of May, 2007, a true and correct copy of the above and foregoing document described below was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Motion Denial

WILLIAMS LAKE REC. W&S DIST
C/O MILTON SLAVIN
116 N CENTER ST
SALMON ID 83467

GARY C HAWKINS
9 COPPER MTN RD
SALMON ID 83467

KATHLEEN GLIKSMAN
87 DAPPELGRAY LANE
ROLLING HILLS ESTATES CA 90274

LESLIE MAY SHUMATE
139 LAKE CREEK RD
SALMON ID 83467

WILLIAM STEINBRUEGGE
VALEEA STEINBRUEGGE
PO BOX 106
SPRINGFIELD ID 83277-0106

JAMES EDWARD KINGSTON
1108 MC RAE RD
ARLINGTON WA 98223

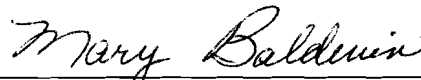
THOMAS JAMES THOMPSON
12623 QUERCUS
WELLINGTON FL 33414

GARY M MULKEY
999 E HIGHLAND AVE
HERMISTON OR 97838

US DEPT OF INTERIOR
BLM – ALAN BITTNER
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900 N SKYLINE DR STE A
IDAHO FALLS ID 83402-6105

BOB FOSTER
IDWR – SALMON OFFICE
206 VAN DREFF STE B
SALMON ID 83467



Mary Baldwin
Administrative Assistant
Southern Region