



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

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December 7, 2006

JAMES E. RISCH
Governor

KARL J. DREHER
Director

VIA CERTIFIED MAIL

W BRUCE WILLIS
C/O EDWARD SIMON ESQ
PO BOX 540
KETCHUM ID 83340

DEBBIE JOHNSON
JOSEPH MC ALLISTER
PO BOX 3212
HAILEY ID 83333

NED WILLIAMSON
ATTORNEY AT LAW
115 SECOND AVE S
HAILEY ID 83333

Re: Applications for Transfer Nos. 66412, 66413 and 66414 (previously identified as 4988, 4989 and 4990), in the name of W. Bruce Willis

Dear Interested Parties:

The Department of Water Resources has issued the enclosed Preliminary Order Rejecting Applications for Transfer pursuant to Sections 42-248 and 42-222, Idaho Code. **It can and will become a final order without further action of the department unless you petition for reconsideration, file exceptions and/or briefs, or an aggrieved person requests a hearing as described in the enclosed information sheet.**

If you have any questions, I recommend that you contact Jeff Peppersack at (208) 287-4948 or Allen Merritt at (208) 736-3033.

Sincerely,

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Enclosures

Cc: Allen Merritt, Southern Regional Office

RECEIVED
DEC 08 2006
DEPT. OF WATER RESOURCES
SOUTHERN REGION

IN THE MATTER OF APPLICATION)
FOR TRANSFER NOS. 66412, 66413 AND)
66414 IN THE NAME OF W. BRUCE)
WILLIS)

This matter having come before the Department of Water Resources (Department) as a result of three applications to transfer water rights, the Department finds, concludes, and orders as follows:

1. On February 20, 1996, W. Bruce Willis (applicant) applied to the Department for authorization to change water rights associated with lands in Blaine County, Idaho. The applications listed a mailing address for the applicant in care of Edward Simon, Esq. Application no. 4988 (renumbered by the Department to no. 66412) proposed changes to water right no. 37-577BT (renumbered by the Department to 37-30013). Application no. 4989 (renumbered to 66413) proposed changes to water right no. 37-8461. Application no. 4990 (renumbered to 66414) proposed changes to water right no. 37-8647.

3. On April 4, 2001, the Department sent a letter to the applicant, in care of Edward Simon, Esq. and to Mr. McAllister regarding several applications, including nos. 4988, 4989 and 4990. The purpose of the letter was to inquire of the applicant's continued interest in the applications in light of a recent final order of the Department denying similar proposals. On November 9, 2001, the Department forwarded the letter of April 4, 2001 to Ned Williamson based on the understanding the Mr. Williamson represented the applicant. The Department did not receive any response from the applicant or representatives.

5. On January 2, 2002, Ned Williamson, attorney for the applicant, filed a Petition Challenging Proposed Default Order requesting that the default not be entered for application nos. 4988, 4989 and 4990.

6. On January 7, 2002, the Department issued a Default Order in Part and Withdrawal of Proposed Default in Part withdrawing the Notice of Proposed Default for application nos. 4988, 4989 and 4990.

7. On January 5, 2006, the Department sent a letter, certified mail, to Demi Gene Moore, care of Fred Nigro, Jannick Investment Trust and/or Walter Bruce Willis, care of F Altmen & Co.

The letter asked for clarification of ownership and other items regarding the water rights and the applications. The letter informed the parties that if the Department does not receive a response and the clarification necessary to proceed within 30 days, the applications will be rejected. The Department did not receive a response to the letter.

8. On November 6, 2006, the Department forwarded its January 5, 2006 letter to W. Bruce Willis, care of Edward Simons, Esq. and to Ned C. Williamson. The Department did not receive a response to the letter.

CONCLUSIONS OF LAW

1. Idaho Code §42-248 says, in pertinent part:

(1) All persons owning or claiming ownership of a right to use the water of this state, whether the right is represented by decree of the court, by claim to a water right filed with the department of water resources or by permit or license issued by the director of the department of water resources, shall provide notice to the department of water resources of any change in ownership of any part of the water right or of any change in the owner's mailing address, either of which occurs after June 30, 2000...

(3) The director of the department of water resources will be deemed to have provided notice concerning any action by the director affecting a water right or claim if a notice of the action is mailed to the address and owner of the water right shown in the records of the department of water resources at the time of mailing the notice.

2. Idaho Code §42-222 says, in pertinent part:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates...

3. Without the additional information requested from the applicant, the Department cannot ascertain their continued interest in the applications, and that the change in water use proposed in the applications will satisfy the requirements of Idaho Code §42-222.

4. The Department should reject transfer application nos. 66412, 66413 and 66414.

ORDER

IT IS HEREBY ORDERED that transfer application nos. 66412, 66413 and 66414 in the name of W. Bruce Willis are **REJECTED** without prejudice.

Dated this 6th day of December, 2006.


GARY SPACKMAN
Chief, Water Allocation Bureau

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of December, 2006, a true and correct copy of the document(s) described below were served by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

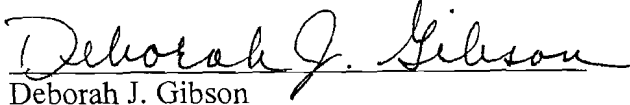
Document(s) Served: Preliminary Order Rejecting Applications for Transfer
Explanatory Information to Accompany a Preliminary Order without a hearing.

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Deborah J. Gibson
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.