



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

December 24, 2001

Gentlemen:

The enclosed "Notice of Proposed Default Order" has been prepared pursuant to Rules of Procedure 700 through 702 listed below. Pursuant to Rule of Procedure 701 the applicant must petition within seven (7) days from the date of service to prevent the issuance of the default order. Rules of Procedure 053 through 057 may have bearing on responding to this notice.

700. NOTICE OF PROPOSED DEFAULT AFTER FAILURE TO APPEAR OR RESPOND (Rule 700). If an applicant or claimant or appellant, petitioner, protestant, complainant, or moving party fails to appear at the time and place set for hearing, or prehearing conference, on an application or claim or appeal, petition, complaint, or motion, or fails to respond to a written information inquiry, the presiding officer may serve upon all parties a notice of a proposed default order denying the application or claim or appeal, petition, complaint, or motion. The notice of a proposed default order shall include a statement that the default order is proposed to be issued because of a failure of the applicant or claimant or appellant, petitioner, complainant or moving party to appear at the time and place set for hearing or prehearing conference, or to respond to the information inquiry. The notice of proposed default order may be mailed to the last known mailing address of the party proposed to be defaulted. (4-5-00)

701. SEVEN DAYS TO CHALLENGE PROPOSED DEFAULT ORDER (Rule 701). Within seven (7) days after the service of the notice of proposed default order, the party against whom it was filed may file a written petition requesting that a default order not be entered. The petition must state the grounds why the petitioning party believes that default should not be entered. (7-1-93)

702. ISSUANCE OF DEFAULT ORDER (Rule 702). The agency shall promptly issue a default order or withdraw the notice of proposed default order after expiration of the seven (7) days for the party to file a petition contesting the default order or receipt of a petition. If a default order is issued, all further proceedings necessary to complete the contested case shall be conducted without participation of the party in default (if the defaulting party is not a movant) or upon the results of the denial of the motion (if the defaulting party is a movant). All issues in the contested case shall be determined, including those affecting the defaulting party. Costs may be assessed against a defaulting party. (7-1-93)

053. COMMUNICATIONS WITH AGENCY (Rule 53). All written communications and documents that are intended to be part of an official record for a decision in a contested case must be filed with the officer designated by the agency. Unless otherwise provided by statute, rule, order or notice, documents are considered filed when received by the officer designated to receive them, not when mailed, or otherwise transmitted. (7-1-93)

054. IDENTIFICATION OF COMMUNICATIONS (Rule 54). Parties' communications addressing or pertaining to a given proceeding should be written under that proceeding's case

caption and case number, if applicable. General communications by other persons should refer to case captions, case numbers, permit or license numbers, or the like, if this information is known. (7-1-93)

055. SERVICE BY AGENCY (Rule 55). Unless otherwise provided by statute or these rules, the officer designated by the agency to serve rules, notices, complaints, and orders issued by the agency may serve these documents by regular mail or by certified mail, return receipt requested, to a party's last known mailing address or by personal service. Unless otherwise provided by statute, these rules, order or notice, service of orders and notices is complete when a copy, properly addressed and stamped, is deposited in the United States mail, or the Statehouse mail if the party is a State employee or State agency. The officer designated by the agency to serve documents in a proceeding must serve all orders and notices in a proceeding on the representatives of each party designated pursuant to these rules for that proceeding and upon other persons designated by these rules or by the agency. (4-5-00)

056. COMPUTATION OF TIME (Rule 56). Whenever statute, these or other rules, order, or notice requires an act to be done within a certain number of days of a given day, the given day is not included in the count, but the last day of the period so computed is included in the count. If the day the act must be done is Saturday, Sunday or a legal holiday, the act may be done on the first day following that is not Saturday, Sunday or a legal holiday. (7-1-93)

057. ADDITIONAL TIME AFTER SERVICE BY MAIL (RULE 57). Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three (3) days shall be added to the prescribed period. This rule, however, shall not extend the time for filing a protest, a petition for reconsideration of a preliminary, recommended or final order before the agency, the time for filing exceptions with the agency head to a preliminary or recommended order, or the time for filing an appeal with the district court from a final decision of the agency. (4-5-00)

All "Administrative Rules" of the Department may be found at the following internet address:

<http://www2.state.id.us/adm/adminrules/rules/idapa37/37index.htm>

If you have any questions regarding this matter please feel free to contact me at this office.

Sincerely,



Allen Merritt, PE

Southern Region Manager

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATIONS)
FOR TRANSFER NOS. 4983, 4984,)
4988, 4989 AND 4990 IN THE NAME)
OF W. BRUCE WILLIS)

**NOTICE OF
PROPOSED DEFAULT ORDER**

This matter having come before the Idaho Department of Water Resources ("Department") as applications for transfer, the Department makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On February 20, 1996, W. Bruce Willis ("applicant") through Joseph McAllister, having power of attorney from the applicant, filed Applications for Transfer Nos. 4983, 4984, 4988, 4989 and 4990 ("applications") with the Department proposing to modify water rights associated with lands in Blaine County, Idaho. Brockway Engineering prepared the applications for the applicant.
2. On October 16, 1996, the applicant modified applications 4983, 4984, 4989 and 4990.
3. The Department advertised the applications on January 22 and 29, 1997. Applications 4983 and 4984 were subsequently protested by Blaine County and Flying Heart Ranch Owners Association. Wood River Valley Irrigation District #45 protested application 4983. The Department has held all the applications pending resolution of the contested cases.
4. During 1998, the Department held hearings for protested applications for transfer filed in the names of Dennis M. Baker and Huf-N-Puf Trust. The applications proposed modifications to water rights similar to those proposed by the applicant. The Department denied both the Baker and Huf-N-Puf applications.
5. On April 4, 2001, the Department corresponded with the applicant and Joseph McAllister inquiring of their continuing interest in the applications in light of the 1998 decisions for the Baker and Huf-N-Puf applications and sent a copy of the letter to Brockway Engineering. The contact was made in an effort to schedule a formal hearing for the protested applications. Neither the applicant nor his representative responded to the inquiry.
6. Based on information provided by Brockway Engineering that legal representation for the applicant may have changed, on November 9, 2001, the

Department corresponded with Ned Williamson seeking information of continued interest in the applications. The Department sent a copy of the correspondence to Debbie Johnson and Brockway Engineering. Neither Mr. Williamson nor Ms. Johnson responded.

CONCLUSIONS OF LAW

1. IDAPA Rule 37.01.01700 (Rule of Procedure 700) authorizes the Department to issue a Notice of Proposed Default for Failure to Respond to a written inquiry.

2. The Department should enter a Notice of Proposed Default for Failure to Respond to a written request for information about the applications and for failure to show a continuing interest in the applications.

ORDER

IT IS THEREFORE, HEREBY ORDERED that the Department plans to enter a Default Order **SETTING ASIDE** Applications for Transfer Nos. 4983, 4984, 4988, 4989 and 4990 as provided in IDAPA Rule 37.01.01702 (Rule of Procedure 702).

Dated this 24th day of December, 2001.



ALLEN MERRITT, PE
Southern Region Manager (Presiding Officer)

CERTIFICATE OF MAILING

I hereby certify that on the 24th day of December, 2001 a true and correct copy of the above and foregoing Notice of Proposed Default Order was forwarded with all required charges prepared, by Regular U.S. Mail to the parties listed:

Mary Baldwin

Secretary

EDWARD SIMON ESQ
131 WEST 4TH STREET
PO BOX 540
KETCHUM ID 83340

JAMES P. SPECK ESQ
HOGUE SPECK & AANESTAD P A
PO BOX 987
KETCHUM ID 83340

JOSEPH MCALLISTER
PO BOX 3212
HAILEY ID 83333

WOOD RIVER VALLEY IRR DIST #45
C/O JAMES EAKIN DIRECTOR
PO BOX 296
BELLEVUE ID 83313

CHARLES G. BROCKWAY
BROCKWAY ENGINEERING
705 SUNRISE BLVD NORTH
TWIN FALLS ID 83301

NED WILLIAMSON
115 SECOND AVE SOUTH
HAILEY ID 83323

DOUGLAS WERTH
BLAINE COUNTY PROSECUTING ATTORNEY
PO BOX 2360
KETCHUM ID 83340

DEBBIE JOHNSON
PO BOX 3212
HAILEY ID 83323