



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

March 2, 2006

Archie Sherwood
PO Box 163
Clayton, ID 83227

RE: Preliminary Order in the Matter of Application for Permit 72-16602

Dear Applicant:

The accompanying order 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 unless a party petitions for reconsideration within fourteen (14) days after issuance as described in the enclosed information sheet.

If you have any questions regarding this matter, please call me at 208-736-3033.

Sincerely,

A handwritten signature in black ink, appearing to read 'Allen Merritt'.

Allen Merritt, PE
Southern Region Manager

Enclosures

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 72-16602 IN THE)
NAME OF ARCHIE SHERWOOD)
_____)

**PRELIMINARY ORDER VOIDING
APPLICATION FOR PERMIT**

This matter having come before the Department of Water Resources (Department) as a result of an application to appropriate water, the Department finds, concludes, and orders:

FINDINGS OF FACT

1. On May 15, 1992, the Director of the Department of Water Resources issued a *Moratorium Order* enjoining the processing of most applications to appropriate surface water sources within the Salmon and Clearwater River Basins. On April 30, 1993, the Director issued an *Amended Moratorium Order* (Salmon – Clearwater Moratorium), again enjoining the processing of most applications to appropriate water in the Salmon and Clearwater River Basins.

2. On April 4, 2001, Archie Sherwood (applicant) applied to the Department for a permit (application) to appropriate 0.04 cubic feet per second of water from a spring within the SWNW of Section 13, Township 10 North, Range 18 East, B. M., for Domestic purposes.

3. On May 11, 2001, the Department notified the applicant that the application would not be processed due to the Salmon – Clearwater Moratorium.

4. On November 9, 2005, the Department rescinded the Salmon – Clearwater Moratorium order.

5. On November 21, 2005, the Department sent the applicant a letter notifying him that the Salmon – Clearwater Moratorium had been rescinded. The letter also granted the applicant thirty days to notify the Department in writing that he has a continuing interest in the application. Otherwise, the letter stated, the Department would void the application pursuant to Idaho Code § 42-204.

6. The Department has not received a response to the letter mailed on November 21, 2005.

7. 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.

CONCLUSIONS 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 Permit No. 72-16602 in the name of Archie Sherwood is **VOIDED** and the issuance of a permit is **REFUSED**.

Dated this 2nd day of March, 2006.



Allen Merritt, PE
Southern Region Manager

CERTIFICATE OF SERVICE

I hereby certify that on 3/3/06 I mailed a true and correct copy, certified, postage prepaid, of the foregoing **PRELIMINARY ORDER** to the person(s) listed below:

Mary A. Baldwin

RE: Application for Permit 72-7568

Archie Sherwood
PO Box 163
Clayton, ID 83227

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

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. 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 Idaho Water Resource Board (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.