

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 75-7353)
IN THE NAME OF MORGAN DE BOARD)
_____)

**PRELIMINARY ORDER
VOIDING PERMIT**

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

FINDINGS OF FACT

1. On April 20, 1983, Morgan DeBoard applied to the Department, for a permit to appropriate 0.14 cubic feet per second of water from Freeman Creek, a tributary of Carmen Creek, within the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 36, Township 23 North, Range 22 East, B. M., Lemhi County, to irrigate 7 acres of land in Section 2, Township 22 North, Range 22 East, B. M.

2. On June 13, 1983, the Department approved the application as Permit 75-7353 (permit).

3. On May 23, 1988, the Department received the permit holder's proof of beneficial statement for the permit.

4. In September of 1995 and August of 1996 a Department field examiner conducted inspections to verify the beneficial use of water established in connection with the permit. The examiner reported that 0.14 cfs of water was being diverted from Freeman Creek within the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 35, Township 23 North, Range 22 East, B. M., for the irrigation of 7 acres of land at the permitted place of use. The examiner also reported that Bill and Donna Inman are the current owners of the land where the permitted water use was established.

5. Tax parcel information made available to the Department by Lemhi County shows that William D. Inman of Sitka, Alaska, owns the parcel of land where the permitted water use was established.

6. On December 21, 2005, the Department sent notice to the permit holder that the point of diversion in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 35, Township 23 North, Range 22 East, B. M., was not authorized by the permit and that the permit has to be amended to accurately describe the point of diversion before a water right license can be issued. An Application for Amendment of Permit form was enclosed with the notice. The Department mailed a copy of the notice to William D. Inman in Sitka, Alaska.

7. On January 11, 2006, the Department sent the permit holder a notice reminding him that the permit would have to be amended before a license could be issued. The Department sent copies of the notice to William D. Inman in Sitka, Alaska, and Carmen, Idaho.

8. The permit holder has not filed an application to amend the permit to conform to the findings of the field examiner.

9. Idaho Code § 42-219(8) 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.

CONCLUSIONS OF LAW

1. When a permit holder has not fully complied with the law and the conditions of the permit, the provisions of Idaho Code § 42-219(8) grant the Department of Water Resources discretion to issue a license for the portion of the development which complies with the permit or to void the permit altogether.

2. The development of the water described by the field examiner did not comply with the permit because the point of diversion established by the permit holder was not in the location authorized by the permit.

3. The permit holder could have applied to amend the permit to cover the point of diversion as it was established, but the permit holder has not filed the appropriate Application for Amendment of Permit.

4. The Department made reasonable efforts to notify the permit holder and his possible successor in interest of the obligation to apply to amend the permit.

5. A license should not be issued on this permit and the permit should be voided pursuant to Idaho Code § 42-219(8).

ORDER

IT IS HEREBY ORDERED that issuance of a license is **REFUSED** and Permit No. 75-7353 is **VOIDED**.

Dated this 7th day of February, 2006.



GARY SPACKMAN

Chief, Water Allocation Bureau