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WATER RESOURCES  
WESTERN REGION

*Attorney for Elk Creek Canyon LLC*

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

IN THE MATTER OF APPLICATION  
FOR PERMIT NO. 61-12096 IN THE  
NAME OF ELK CREEK CANYON LLC

**APPLICANT'S PETITION FOR  
RECONSIDERATION OF PRELIMINARY  
ORDER VOIDING APPLICATION**

COMES NOW the above-named Applicant, by and through its counsel of record Norman M. Semanko, of counsel to the firm of Barker Rosholt & Simpson, LLP, pursuant to Idaho Code § 67-5243(3) and Procedure Rules 230, 730 and 770 of the Department's Rules of Procedure, and hereby petitions the Western Regional Manager to reconsider the "Preliminary Order Voiding Application" issued in this matter on January 25, 2010, as follows.

**I. INTRODUCTION**

The Applicant requests that the Preliminary Order be set aside and that the Application not be voided. The Applicant has proceeded diligently with the application and related applications, including the previous submission of information to the Department, and believes that all of the information necessary to process the

application has been submitted. If additional information is needed to process the Application, the Applicant desires to provide that information in whatever reasonable timeframe the Department establishes.

## **II. MATTER FOR RECONSIDERATION**

Specifically, the Applicant asks that the Western Regional Manager set aside the Preliminary Order and not void Application for Permit No. 61-12096 or advance the priority date.

## **III. BASIS FOR RECONSIDERATION**

The factual and legal basis for reconsideration is discussed below, along with the Applicant's requested relief.

An application for permit may be voided if information required to process the application is not submitted to the Department on a timely basis, without good cause. I.C. Sec. 42-204; IDAPA 37.03.08 (Water Appropriation Rules), Rules 35.01.f. and 40.05.a.

The information required to be submitted to the Department as part of, or in support of, an application for permit is set forth in Idaho Code Secs. 42-202 and 42-203A, as well as Rules 35.03 and 40.05 of the Water Appropriation Rules.

In the instant case, it is the Applicant's understanding and belief that the applicable information necessary to process the application has been submitted to the Department. As a result, with no additional information being required to process the application, there is no valid basis to void the application (or to advance the priority date) for failure to submit additional information. This is explained in further detail below.

With regard to the Department's letter request dated April 29, 2009, the Applicant has previously provided a report through SPF Water Engineering dated January 17, 2008 entitled "Groundwater Supply Evaluation for the Elk Creek Canyon Planned Community". This information was submitted to allow for processing of Application for Permit No. 61-12090, which is part of the same Elk Creek Village development and has since been approved by the Department. This information, and the additional information that was submitted as part of the record for the proceedings on Application for Permit No. 61-12090, is equally applicable to Application for Permit No. 61-12096, as well as Application for Permit No. 61-12095, which is currently pending before the Department and was the subject of a pre-hearing conference held on January 25, 2010. In as much as this information was sufficient to allow for processing of Application for Permit Nos. 61-12090 and 61-12095, it is equally sufficient for Application for Permit No. 61-12096.

In addition, an amended application for 61-12096 was filed on June 18, 2009 which corrected the application map and provided clarification of the possessory interest and application signature details as requested by the Department.

As part of its past request, the Department asked the Applicant to provide information, planning data and a specified planning horizon, all necessary to justify an application for reasonably anticipated future needs, and a clarification on how the Applicant intends to become a municipal provider.

However, the Applicant is not pursuing a reasonably anticipated future needs application and is not seeking to become a municipal provider. As with Application for Permit Nos. 61-12090 (approved) and 61-12095 (pre-hearing conference held),

Application for Permit No. 61-12096 is a regular/standard application, not an application for reasonably anticipated future needs or for a municipal provider. Therefore, there is no additional information to be provided on these points.

As a result, the applicant believes that all of the information required to process Application for Permit No. 61-12096 has been submitted -- as was the case for Application for Permit Nos. 61-12090 and 61-12095. If the Department believes that any additional information is needed, the Applicant desires to provide that information in whatever reasonable timeframe the Department establishes, upon clarification of what additional information is needed, if any.

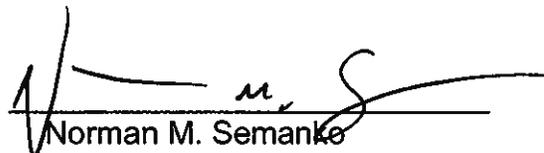
#### **IV. CONCLUSION**

For the foregoing reasons, the Applicant requests that the Western Regional Manager set aside the Preliminary Order and reinstate Application for Permit No. 61-12096, with no change in priority date, and allow for processing of the Application, subject to providing any additional information that the Department may reasonably deem necessary for such processing to proceed, if any.

DATED this 8<sup>th</sup> day of February, 2010.

BARKER ROSHOLT & SIMPSON

By

  
Norman M. Semanke