BEFORE THE DEPARTMENT OF WATER RESOURCES

FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 78356[1] (SHEKINAH INDUSTRIES); APPLICATION FOR TRANSFER NO. 78355[2] (ORCHARD RANCH); APPLICATION FOR PERMIT NO. 63-32499 (MAYFIELD TOWNSITE); APPLICATION FOR PERMIT NO. 61-12095 (NEVID-CORDER); APPLICATION FOR PERMIT NO. 61-12096 (NEVID); APPLICATION FOR PERMIT NO. 63-32703 (ORCHARD RANCH); APPLICATION FOR PERMIT NO. 61-12256 (INTERMOUNTAIN SEWER AND WATER); APPLICATION FOR PERMIT NO. 63-33344 (ARK PROPERTIES-MAYFIELD TOWNSITE)	)	**DEFAULT ORDER**

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

FINDINGS OF FACT

1. On January 24, 2012, the Director issued an *Order Creating Contested Case and Consolidating Protested and Unprotested Applications.*

2. On February 15, 2012, the Director conducted a scheduling conference with the parties to the contested case. Protestant Griffin Herren ("Herren") was not present at the scheduling conference.

3. On April 13, 2012, the Department served all parties in this matter, including Herren, a *Prehearing Scheduling Order* ("scheduling order"). The scheduling order set this matter for hearing to begin on April 15, 2013.

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[1] Transfer no. 78356 was renumbered from Transfer no. 73811.
[2] Transfer no. 78355 was renumbered from Transfer no. 73834.

4. On March 29, 2013, Nevid, LLC and Orchard Ranch, LLC ("Nevid and Orchard Ranches") filed a *Motion to Amend Prehearing Scheduling Order*. The motion asked the Director to move the start date of the hearing two days, from April 15 to April 17, 2013.

5. On March 29, 2013, the Director issued an *Order Shortening Time to File an Answer to Motion to Amend Prehearing Scheduling Order*. The order shortened the time for parties to respond to Nevid and Orchard Ranches' motion to seven (7) days from the date of the order.

6. Also on March 29, 2013, Idaho Power Company ("Idaho Power") filed its *Response to Motion to Amend Prehearing Scheduling Order*. Idaho Power did not oppose the request to move the hearing date. No other responses to the motion were received by the Department.

7. On April 8, 2013, the Department served all parties to this matter, including Herren, an *Order Modifying the April 13, 2012 Prehearing Scheduling Order and Notice of Hearing* ("April 8, 2013 notice"). The notice moved the start of the hearing to April 17, 2013.

8. The hearing began on April 17, 2013 and concluded on April 18, 2013 in Boise, Idaho.

9. Herrin failed to appear at the hearing.

10. On May 29, 2013, the Department served a *Notice of Proposed Default Order* upon Herren for failure to appear at the hearing.

11. On June 4, 2013, the Department received a *Motion in Objection to Proposed Default Order* ("objection") from Herrin. Herrin states that he was out of the state and unable to receive mail from the time the April 8, 2013 notice was issued through the dates the hearing was held, April 17-18, 2013. He states he did not receive the April 8, 2013 notice until April 19, 2013, after the hearing was concluded. The implication of his argument being that the lack of receipt of the April 8, 2013 notice is why he failed to appear at the hearing.

CONCLUSIONS OF LAW

1. IDAPA Rules 37.01.01700 (Rule of Procedure 700) authorize the Department to issue a Notice of Proposed Default Order for failure to appear at the time and place set for the hearing.

2. The Director concludes that Herrin lacks a reasonable basis for failing to appear at the hearing. While Herrin claims the lack of the receipt of the April 8, 2013 notice is why he failed to appear, the Director does not find this to be a credible excuse. All parties were notified that the hearing was scheduled to begin on April 15, 2013 through the *Prehearing Scheduling Order*, issued April 13, 2012. This hearing was scheduled a full year in advance. Yes, the subsequent April 8, 2013 notice did move the hearing date, but it moved it two days later. If Herrin had actually intended on appearing at the hearing, he would not have been out of town for

work on April 15, 2013, the day the hearing was originally set to begin. But by his own admission, he was out of town from April 8 through April 19 for work, demonstrating an intent not to appear at the hearing regardless of whether the start date was April 15 or April 17.

3. The Director concludes that inattention to this matter by Herrin is the cause of his failure to attend the hearing. He received notice of the original hearing date but did not attempt to designate a representative or resolve the scheduling conflict with the hearing officer. As a result, the Director concludes that a Default Order should be issued.

ORDER

IT IS THEREFORE, HEREBY ORDERED that protestant Griffin Herren is in default, and that the protestant is **dismissed** as a party in the contested case.

Dated this 31st day of July, 2013.

GARY SPACKMAN
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of July, 2013, a true and correct copy of the document described below was served by placing the same in the United States mail, certified with return receipt, postage prepaid and properly addressed to the following:

Document(s) Served: NOTICE OF PROPOSED DEFAULT ORDER

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BOISE ID 83709

MICHAEL CREAMER
GIVENS PURSLEY LLP
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ERICK POWELL
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CLEVELAND CORDER LLC
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GARDEN CITY ID 83714

CRAIG HAYNES
G3 LLC
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WENDY TIPPETTS
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MAYFIELD ID 83716

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Deborah J. Gibson

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