

**BEFORE THE DEPARTMENT OF LANDS
OF THE STATE OF IDAHO**

In the Matter of:

Encroachment Permit Application
No. L-95-S-3436B

Frey Dock and Barge Inc.,
Applicant.

Case No. PH-2020-PUB-22-004

**ORDER GRANTING MOTION
TO DISMISS**

On September 28, 2020, the Idaho Department of Lands (“Department” or “IDL”) received a *Joint Application for Permits, a Commercial/Community/Non-Navigational Encroachment Permit Application*, and associated documents (“Application”) from Frey Dock and Barge Inc. (“Frey”) for dock storage on Lake Coeur d’Alene. The Application was noticed by the Department with comments received from various interested persons. A hearing on the Application was scheduled to take place on December 9, 2020.

On December 7, 2020, Frey sent a letter to the Department stating as follows:

Frey Dock and Barge Inc. would officially request an extension on the existing hearing scheduled for 12/09/20 as a direct result of the ruling made by the IDL on the North Idaho Maritime storage permit application. I am waiving the 90 day requirement for hearing in hopes of getting clarity on the IDLs position on permits verse leases and what in fact the requirements will be necessary for future storage.

On December 8, 2020, counsel for the Department filed a *Motion to Stay* in the above-captioned matter:

On December 3, 2020, IDL Director Dustin T. Miller issued a Final Order in *In re: Encroachment Permit Application No. L-95-S-5884, North Idaho Maritime – John Condon*, Case No. PH-2020-PUB-22-003. In the Final Order, Director Miller adopted the Preliminary Order issued by the Hearing Coordinator IDL has

reviewed the NIM Orders, and determined that they have applicability to this proceeding, the Frey Application.

. . . . Based on its review of the NIM Orders and Mr. Frey's request, IDL respectfully requests that the Hearing Officer stay further proceedings regarding the Frey Application, pending the outcome of any motions to reconsider, appeals, and implementation of the NIM Orders. This request for stay includes a request to vacate the hearing set for December 9, 2020.

Motion to Stay at 1-2.

As explained by Frey and IDL the NIM Orders have application in this proceeding. Given that the NIM final order was issued on December 3, 2020, the associated deadlines to exhaust administrative remedies and ask for judicial review have yet to expire. *See* I.C. §§ 67-5271, 67-5273; IDAPA 20.01.01.740. In light of the foregoing, the hearing was vacated.

On February 8, 2021, the hearing coordinator received a *Stipulated Motion to Dismiss* ("Motion to Dismiss") from IDL and Frey. According to the Motion to Dismiss, "Idaho Department of Lands . . . and Frey Dock and Barge Inc. . . . hereby stipulate and request that the above-referenced Application for Encroachment Permit proceeding be dismissed. The Motion is predicated upon the ILD Director's Final Order in *In re: Encroachment Permit Application No. L-95-S-5884, North Idaho Maritime – John Condon*, Case No. PH-2020-PUB-22-003, and its applicability to the above-captioned proceeding." *Motion to Dismiss* at 1.

Based on the foregoing, the hearing coordinator GRANTS the relief requested by IDL and Frey in the Motion to Dismiss; the matter is hereby DISMISSED.

Dated this 10th day of February, 2021.


CHRIS M. BROMLEY
Hearing Coordinator

CERTIFICATE OF SERVICE

I certify that on this 10th day of February, 2021, I caused to be served a true and correct copy of the foregoing was served upon the following persons by the method(s) indicated for further service upon the parties to this contested case:

Kourtney Romine Administrative Assistant Idaho Dept. of Lands P.O. Box 83720 Boise, ID 83720-0050	☒ Email: kromine@idl.idaho.gov
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CHRIS M. BROMLEY

CERTIFICATE OF MAILING

I hereby certify that on this 11th day of February 2021. I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Frey Dock and Barge Inc
PO Box 942
Hayden Lake, ID 83835

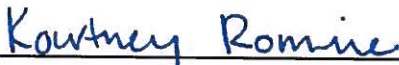
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Kourtney Romine *on behalf of*
Chris Bromley, Hearing Coordinator

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Kourtney Romine, Workflow Coordinator

Copy sent via email and/or regular U.S. Mail, postage prepaid to Those Who Have Provided Comments.

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Order Granting Motion to Dismiss

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