

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

**IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 85632 IN THE)
NAME OF JOHN LEZAMIZ FAMILY)
LTD PARTNERSHIP)**

**PREHEARING ORDER AND
NOTICE OF HEARING**

On December 17, 2021, John Lezamiz Family Ltd. Partnership (“Applicant”) filed Application for Transfer 85632 (“Application 85632”) with the Idaho Department of Water Resources (“Department”). Application 85632 proposed to change the point of diversion and place of use for water right no. 34-633 and was not protested.

On March 23, 2022, the Department approved Application 85632. On April 6, 2022, Applicant filed a *Petition for Reconsideration*, rejecting one of the conditions in the transfer approval. The Department granted Applicant’s *Petition for Reconsideration* and withdrew the order approving Application 85632. On April 15, 2022, the Department issued a *Preliminary Order Denying Transfer* (“Preliminary Order”).

On April 29, 2022, Applicant filed its *Petition Contesting Preliminary Order and Request for Hearing* (“Petition”). In its Petition, Applicant asked the Department to conduct a hearing on Application 85632 pursuant to Idaho Code § 42-1701A, asserting numerous factual and legal errors in the Preliminary Order. *Petition* at 2 – 5.

Simultaneously, on April 29, 2022, Applicant filed its *Exceptions to Preliminary Order* (“Exceptions”). In its Exceptions, Applicant asserted the same factual and legal errors in the Preliminary Order as it did in the Petition. *Compare Exceptions* at 1 – 5 and *Petition* at 2 – 5. The Exceptions reiterated the request for hearing. *Exceptions* at 5.

On May 9, 2022, the Department issued an *Order Granting Request for Hearing*.

A prehearing conference was held in this matter pursuant to notice on June 21, 2022.¹ John Lezamiz, Greg Sullivan, and Fritz Haemmerle attended for the Applicant. Following the discussions during that conference, the following provisions and schedule shall control these proceedings.

¹ A prehearing conference scheduled for June 1, 2022, was vacated due to a medical emergency in the Hearing Officer’s family. The Department did not provide fourteen-days-notice of the June 21 prehearing conference as required by IDAPA 37.01.01.512 (Rule 512). However, the June 21 prehearing conference date was mutually agreed upon by the Hearing Officer and Applicant. At the conference Applicant waived any objection to the short notice. The Hearing Officer finds it appropriate for the notice period to be shortened.

WATERMASTER RECOMMENDATION

The Department requested written comments or recommendations from the Water District 34 watermaster regarding Application 85632 on January 13, 2022. The Water District 34 watermaster sent no responsive written comments or recommendations to the Department. The Department will make a second request to the Water District 34 watermaster for written comments or recommendations regarding Application 85632, which will be due to the Department no later than **July 12, 2022**.

HEARING BRIEF

Applicant is encouraged to file a hearing brief with the Department in this matter. The applicability of the Idaho Supreme Court's decision in *3G AG LLC v. Idaho Dep't of Water Res.*, No. 48769 (Idaho May 18, 2022) to Application 85632 is of particular importance. Any hearing brief from Applicant shall be filed with the Department no later than **July 29, 2022**.

EXHIBIT AND EXHIBIT NUMBERS

The Applicant shall provide the Department at hearing two, pre-marked, physical copies of the exhibits it offers. One copy will be for the Hearing Officer and one copy will be the formal record exhibit. Exhibit numbers are assigned as follows:

Exhibits 1-199	Applicant
Exhibits 200-299	Idaho Department of Water Resources

OFFICIAL NOTICE

The Department will take official notice of the facts in the following documents pursuant to IDAPA 37.01.01.602 (Rule 602):

Ex. 200	Application 85632
Ex. 201	Letter from Greg Sullivan dated December 14, 2021, regarding Water Right 34-633
Ex. 202	34-230 water right record ²
Ex. 203	34-231 water right record
Ex. 204	34-232 water right record
Ex. 205	34-2275 water right record
Ex. 206	34-2350 water right record
Ex. 207	34-2418 water right record
Ex. 208	34-14312 water right record
Ex. 209	34-232 water right record
Ex. 210	34-633 water right record

² Unless otherwise specified the term "water right record" in this Order refers to a document including the Department's publicly available water right report, the decree, and map for the numbered water right.

Ex. 211	34-610A water right record
Ex. 212	34-610D water right record
Ex. 213	34-13882 water right record
Ex. 214	34-13883 water right record
Ex. 215	34-14341 water right record
Ex. 216	34-14382 water right record
Ex. 217	34-14383 water right record
Ex. 218	34-14730 water right record
Ex. 219	34-14755 water right record
Ex. 220	34-2275 water right record
Ex. 221	34-2276B water right record
Ex. 222	34-13942 water right record
Ex. 223	34-13943 water right record
Ex. 224	34-13892 water right record
Ex. 225	34-13893 water right record
Ex. 226	Email from Greg Sullivan to James Cefalo sent March 15, 2022, with attachment from Holly Seefried
Ex. 227	Memorandum to Transfer 85632 from James Cefalo dated March 17, 2022, regarding Review & Evaluation of Sufficiency of Information

SCHEDULING ORDER

The following schedule, including the previously discussed items, shall apply in this proceeding:

1. **Request for Official Notice.** On or before **July 8, 2022**, Applicant shall file with the Department a list of any additional facts it requests the Department to take official notice of pursuant to Rule 602.
2. **Watermaster Recommendations or Comments.** The Water District 34 watermaster's written comments or recommendations regarding Application 85632 shall be submitted to the Department no later than **July 12, 2022**.
3. **Witness and Exhibit Lists.** On or before **July 15, 2022**, Applicant must file with the Department, in writing, a list of all witnesses that will or may testify for it at hearing and a pre-numbered list of the exhibits it intends to offer at the hearing.
4. **Hearing.** The evidentiary hearing in this matter will be held **July 21 - 22, 2022**, in Twin Falls, Idaho.
5. **Site Visit.** At the conclusion of the hearing the Hearing Officer and Applicant will consider conducting a site visit.
6. **Hearing Brief.** Any hearing brief from Applicant shall be filed with the Department no later than **July 29, 2022**.

NOTICE OF HEARING

The Department has scheduled the matter for a hearing beginning at 9:00 p.m. on Thursday, July 21, 2022, and continuing through Friday, July 22, 2022, as necessary, at the County West Facility, 3rd Floor Conference Room B; located at 650 Addison Ave W, Twin Falls, ID 83301.

The presiding officer at the hearing will be Hearing Officer Peter Anderson, whose mailing address is 322 E. Front St., Boise, ID 83720 and whose email address is Peter.Anderson@IDWR.Idaho.gov.

The hearing will be held in accordance with provisions of Chapter 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the Department, IDAPA 37.01.01. Copies of the code/rules may be obtained from the Department's website, www.idwr.idaho.gov.

Applicant will have the opportunity to present information, examine witnesses, and provide argument on all issues related to the Application.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the status conference, please notify the Department at least (10) days prior to the hearing. Inquiries about scheduling, hearing facilities, etc., should be directed to Christina Henman, at (208) 497-3793.

Dated this 23rd day of June, 2022.

A handwritten signature in blue ink, appearing to read "Peter R. Anderson", is written over a horizontal line.

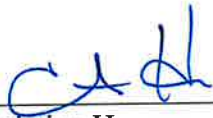
Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I certify that on the 23rd day of June, 2022, I served or caused to be served the Prehearing Order and Notice of Hearing to the party by the following method(s):

FRITZ X HAEMMERLE
HAEMMERLE LAW PLLC
PO BOX 1800
HAILEY, ID 83333
haemmerlefilings@gmail.com

- ☐ U.S. Mail, Certified, postage prepaid
- ☐ U.S. Mail, postage prepaid
- ☐ Overnight Mail
- ☒ Email



Christina Henman
Administrative Assistant