

MAY 13 2022

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

Department of Water Resources
Eastern Region

IN THE MATTER OF APPLICATION)	
FOR TRANSFER NO. 85632)	
IN THE NAME OF JOHN LEZAMIZ)	ORDER GRANTING REQUEST
<u>FAMILY LTD PARTNERSHIP)</u>	FOR HEARING

On December 17, 2021, John Lezamiz Family Ltd. Partnership (“Lezamiz”) 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’s Eastern Regional Manager approved Application 85632. On April 6, 2022, Lezamiz filed *Petition for Reconsideration*, rejecting one of the conditions in the transfer approval. The Eastern Regional Manager granted Lezamiz’s *Petition for Reconsideration* and withdrew the order approving Application 85632. On April 15, 2022, the Eastern Regional Manager issued a *Preliminary Order Denying Transfer* (“Preliminary Order”). The Department has not held a hearing on Application 85632.

On April 29, 2022, Lezamiz filed *Petition Contesting Preliminary Order and Request for Hearing* (“Petition”). In its Petition, Lezamiz asks 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, Lezamiz filed *Exceptions to Preliminary Order* (“Exceptions”). In its Exceptions, Lezamiz 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 reiterate the request for hearing. *Exceptions* at 5.

The authority and procedures for hearings on exceptions are different than the authority and procedures for original hearings before the Department when a party has not previously been afforded a hearing. Pursuant to Idaho Code §§ 67-5245(3), -5245(6)(b) and IDAPA 37.01.01.730.c and .730.e., petitions stating exceptions to a preliminary order must be filed within fourteen (14) days of preliminary order issuance, and the Director may remand the order for additional hearings. Pursuant to Idaho Code § 42-1701(A)(3) and IDAPA 37.01.01.730.f., a person aggrieved by an action of the director of the Department, who has not previously been afforded an opportunity for a hearing on the matter, may file a petition requesting a hearing within fifteen (15) days after receipt of notice of action by the Director.

In the present case, both the Petition and Exceptions were timely filed, raised identical issues, and requested identical process—that the Department hold a hearing on Application 85632. Nothing in the statutes or rules precludes the Director from granting the requested hearing to consider the issues raised.

ORDER

IT IS HEREBY ORDERED that, the request for hearing in the Petition and Exception filed by Lezamiz, is **Granted**. The Preliminary Order for Application for Transfer 85632 in the name of John Lezamiz Family Ltd. Partnership is remanded to a formal proceeding pursuant to IDAPA 37.01.01.102 with Peter Anderson as Presiding Officer. Following the hearing, the Presiding Officer shall issue a preliminary order to which Idaho Code § 67-5245 and IDAPA 37.01.01.730 will apply.

Dated this 9th day of May 2022.

A handwritten signature in blue ink, reading "Gary Spackman", written over a horizontal line.

Gary Spackman
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of May 2022, a true and correct copy of the above and foregoing, was served by U.S. Mail, postage prepaid, and addressed to the following:

Fritz X. Haemmerle
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Courtesy copy to:

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Megan Jenkins
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Administrative Assistant