

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

IN THE MATTER OF APPLICATIONS FOR)
PERMIT 65-24089, 77-14377, 77-14378,)
77-14379, AND 77-14381; APPLICATIONS)
FOR TRANSFER 85396, 85397, 85398, AND)
85399; AND APPLICATION FOR)
EXCHANGE 85538 IN THE NAME OF)
PERPETUA RESOURCES IDAHO INC.)

**ORDER CONSOLIDATING
PROCEEDINGS AND
NOTICE OF JOINT
PRE-HEARING CONFERENCE**

On October 8, 2021, Perpetua Resources Idaho, Inc. ("Perpetua") filed Applications for Permit 65-24089, 77-14377, 77-14378, 77-14379, and 77-14381 and Applications for Transfer 85396, 85397, 85398, and 85399 with the Idaho Department of Water Resources ("department"). On November 15, 2021, Perpetua filed Application for Exchange 85538. Protests were filed against all above-referenced applications by Nez Perce Tribe, Save the South Fork Salmon, Inc., and Idaho Conservation League. Protests were filed against Applications 77-14378, 85396, 85397, 85398 and 85538 by USDA Forest Service.

On April 26, 2022, the department conducted an Informal Settlement Conference. The parties discussed separating the applications into groups for further administrative proceedings. The parties also requested that the department schedule a pre-hearing conference to schedule the designated groups of contested cases for hearing.

Rule 555 of the department's Rules of Procedure (IDAPA 37.01.01) authorizes the department to consolidate two or more proceedings upon a finding that the proceedings "present issues that are related and that the rights of the parties will not be prejudiced." All the above-referenced applications are associated with the same proposed mining development. Although the parties are not identical across all applications (the USDA Forest Service only protested some of the applications), the applications can be consolidated in a way that maintains full uniformity of parties. The consolidation of proceedings described below is based on the beneficial use proposed in the applications, the issues raised by the protestants, and the sources of water described in the applications. If the applications are consolidated into groups as described in this order, the rights of the parties will not be prejudiced.

ORDER

IT IS HEREBY ORDERED that the above-referenced applications filed by Perpetua are separated and consolidated as follows:

(1) Application for Permit 77-14378 will be addressed in its own administrative hearing.

(2) Applications for Transfer 85396, 85397, 85398 and Application for Exchange 85538 will be consolidated for the purpose of conducting an administrative hearing.

(3) Applications for Permit 77-14377, 77-14379, 77-14381 and Application for Transfer 85399 will be consolidated for the purpose of conducting an administrative hearing.

(4) Application for Permit 65-24089 will be addressed in its own administrative hearing.

NOTICE OF JOINT PRE-HEARING CONFERENCE

The department has scheduled all four consolidated cases for a joint pre-hearing conference to be held via **WebEx** on **May 25, 2022, beginning at 9:00 AM**.

Please use the following information to participate:

Meeting number (access code): 2455 667 9638
Meeting password: IDWR2022

Please see included instructions on how to join the meeting using your computer, mobile app, or phone.

The presiding officer for all four of the consolidated cases will be **James Cefalo**.

Agenda items for the prehearing conference will include:

1. Identify spokesperson and/or counsel representing the various parties,
2. Review of the application,
3. Identify issues of protest,
4. Discovery needs,
5. Designate date for identifying witnesses and exhibits,
6. Designate target date for conducting administrative hearing if resolution is not possible during the prehearing conference and
7. Address other matters that may expedite orderly conduct and disposition of the proceeding.

It is important for all parties to give considerable thought to each of these matters before appearing at the prehearing.

The Department encourages the applicant and protestant(s) to discuss and resolve the protest(s) before the prehearing conference. If private discussions are not possible or do not resolve the protest(s), the Department's Rules of Procedure provide for a prehearing conference to be held before scheduling a formal hearing.

The prehearing conference will be conducted in a facility that satisfies the accessibility requirements of the Americans with Disabilities Act. If you require special

accommodations in order to attend, participate in, or understand the prehearing conference, please notify the Department at least ten (10) days prior to the hearing. Inquiries about scheduling, hearing facilities, etc., should be directed to Christina Henman, (208) 525-7161.

Dated this 11th day of May 2022

A handwritten signature in black ink, appearing to read 'J Cefalo', written over a horizontal line.

James Cefalo

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of May 2022, true and correct copies of the documents described below were served by placing a copy of the same with the United States Postal Service, postage prepaid and properly addressed to the following:

Document Served: Order Consolidating Proceedings
Notice of Joint Pre-Hearing Conference
PHC / Hearing Procedure for Application for Permit
PHC / Hearing Procedure for Application for Transfer

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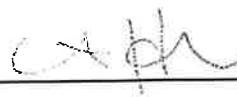
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Christina Henman
Administrative Assistant

PREHEARING CONFERENCE AND/OR HEARING PROCEDURE APPLICATION FOR PERMIT

ISSUES

Applications to appropriate the water of the state of Idaho are referred to as applications for permit and are for the development of new water rights. Section 42-203A, Idaho Code, requires the Idaho Department of Water Resources (Department) to consider the following issues in connection with an application for permit:

1. Will the proposed appropriation reduce the quantity of water under existing water rights?
2. Is the water supply sufficient for the purpose for which it is sought to be appropriated?
3. Was the application made in good faith or for delay or speculative purposes?
4. Does the applicant have sufficient financial resources with which to complete the proposed project?
5. Will the proposed use conflict with the local public interest, where local public interest is defined as interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource?
6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?
7. Will the proposed use adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates?

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, 3, 4, 6, and 7 above and must provide evidence for the Department to evaluate these criteria.

The initial burden of proof on issue 5 lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for all of these issues.

PROCEDURE

The Department conducts a formal prehearing conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the Department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a prehearing conference is to provide the opportunity for the parties and the Department to familiarize themselves with a protested matter and to attempt to resolve the matter. At the conference, the Department may also formulate and simplify the issues to avoid unnecessary proof, identify documents, schedule discovery, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement or make settlement offers, schedule hearings, establish procedure at hearing, and address other matters that may expedite orderly

conduct and disposition of the proceeding or its settlement. When attending the conference, please bring a calendar with your schedule for the next two to six month period from the date of the prehearing conference for the purpose of scheduling a hearing. Parties will be expected to discuss their availability at the prehearing conference for the purpose of scheduling the hearing.

HEARING

The scheduled hearing will be conducted according to Sections 42-1701A(1) and (2), Idaho Code and the Department's Rules of Procedure. Copies of Idaho Code and the Department's rules are available upon request or by accessing the Department's website at: www.idwr.idaho.gov. The Department records formal hearings. Copies of a hearing recording are available upon request. There may be a charge for reproducing the recording.

The hearing will likely be conducted by a hearing officer appointed by the Director rather than by the Director himself. If so, the hearing officer will prepare a recommended or preliminary order. Parties can petition for reconsideration of a decision or file exceptions. A brief to support exceptions may request oral argument. Parties may seek judicial review of any final order issued by the Director.

EXHIBITS

A party who plans to offer an exhibit as part of the hearing record must provide a copy of the proposed exhibit to the parties and to the hearing officer.

AMERICANS WITH DISABILITIES ACT

Any hearing scheduled 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 hearing, please notify the Department no later than ten (10) days prior to the hearing.

PREHEARING CONFERENCE AND/OR HEARING PROCEDURE APPLICATION FOR TRANSFER

ISSUES

Applications for transfer are filed for the purpose of changing a point of diversion, purpose of use, period of use or nature of use of all or part of a licensed, decreed or statutory water right. Section 42-222, Idaho Code, identifies the following potential issues that the Idaho Department of Water Resources (Department) considers in connection with an application for transfer:

1. Will the proposed transfer reduce the quantity of water under existing water rights?
2. Will the proposed transfer constitute an enlargement in use of the original water right?
3. Will the proposed transfer be contrary to the conservation of water resources within the State of Idaho?
4. Will the proposed transfer conflict with the local public interest, where local public interest is defined as interests that the people in the area directly affected by a proposed water use and its potential effects on the public water source?
5. Will the proposed transfer adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates?
6. Is the proposed transfer consistent with the requirements for municipal providers, if applicable?
7. Will the proposed transfer change the nature of use from an agricultural use, and would such a change significantly affect the agricultural base of the local area?

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, 3, 5, 6, and 7 above and must provide evidence for the Department to evaluate these criteria.

The initial burden of proof on issue 4 lies with both the applicant and protestant as to factors of which they are most knowledgeable and cognizant. The applicant has the ultimate burden of persuasion, however, for all of these issues.

PROCEDURE

The Department conducts a formal prehearing conference with the parties to determine the issues and to try to settle a protested matter before a hearing is scheduled. If a hearing is held, the Department will issue a written decision based on the hearing record.

CONFERENCE

The purpose of a prehearing conference is to provide the opportunity for the parties and the Department to familiarize themselves with a protested matter and to attempt to resolve the matter. At the conference, the Department may also formulate and simplify the issues to avoid unnecessary proof, identify documents, schedule discovery, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement or make settlement offers, schedule

hearings, establish procedure at hearing, and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. When attending the conference, please bring a calendar with your schedule for the next two to six month period from the date of the prehearing conference for the purpose of scheduling a hearing. Parties will be expected to discuss their availability at the prehearing conference for the purpose of scheduling the hearing.

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TO USE WEBEX

Meeting number (access code): 2455 667 9638

Meeting password: IDWR2022

Using Your Computer:

- Calendar invitations were sent to email addresses provided. Simply click the link included to join the meeting, and follow on-screen instructions.

Using the Mobile app:

- Download WebEx Meetings to your mobile device. (App is free.)
- Click Join Meeting.
- Enter Meeting Number, name, and email address.
- Click 'join'.
 - If you intend to share documents, maps, images, etc. please ensure that you have granted the WebEx app the appropriate permissions to access those documents before the meeting.

Using Your Telephone: (No video or internet required)

- Call 1-415-655-0001
- Follow Prompts

More options are included in the emailed link. If you have any questions, need a copy of the invitation sent to another email address, or otherwise need the link, feel free to contact Christina Henman at (208) 525-7161 or christina.henman@idwr.idaho.gov.