

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

**IN THE MATTER OF)
APPLICATION FOR TRANSFER)
NO. 84698 IN THE NAME OF)
MARION OGLE)
_____)**

**HEARING NOTICE / SCHEDULING
ORDER**

On February 8, 2021, Marion Ogle filed Application for Transfer No 84698 ("Application") with the Idaho Department of Water Resources ("Department"). A protest was filed by Salubria Holdings LLC.

A prehearing conference was held in this matter pursuant to notice on September 9, 2021. Following the discussions during that conference, the parties asked to open discovery and schedule the matter for hearing. The following provisions and schedule shall control these proceedings.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that the Department will hold a hearing in this matter on **February 1, 2022, beginning at 9:30 a.m., and continuing through February 2, 2022, as necessary, at Idaho Department of Water Resources' State Office located at 322 East Front Street, Boise, Idaho, 83720-0098.** The presiding officer at the hearing will be Nick Miller, whose mailing address is 2735 Airport Way, Boise, ID 83705-5082 and whose email address is Nick.Miller@idwr.idaho.gov.

The hearing will be held in accordance with the provisions of Chapters 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 can be obtained from the department's website, www.idwr.idaho.gov, or upon request.

All parties appearing in the matter will have the opportunity to present information, examine witnesses, and provide argument on issues related to the contested application.

The hearing will be conducted in a facility that satisfies the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations to attend, participate in, or understand the conference, please notify the department at least (10) days prior to the hearing. Inquiries about scheduling, hearing facilities etc, should be directed to Denise Lauerman, at (208)334-2190.

ORDER AUTHORIZING DISCOVERY

IT IS ORDERED that the parties to this matter are authorized to engage in discovery as stated in Rules 521 – 526 of the Rules of Procedure of the Idaho Department of Water Resources (IDAPA 37.010.01.521 - .526). Discovery shall proceed and be completed in compliance with the schedule established below. Parties shall only

file notice of the service of discovery requests and responses with the Department. Discovery requests and responses shall not be filed with the Department.

SERVICE OF DOCUMENTS

Parties may serve all documents upon each other by email at the email addresses shown on the attached certificate of service. Parties shall promptly inform the Department and other parties in writing of any change in such email address.

EXHIBIT NUMBERS

The parties are assigned exhibit numbers for their use as follows:

Exhibits 1-99	Applicant
Exhibits 100-199	Protestant

SCHEDULING ORDER

1. **Expert Witness Disclosure and Expert Reports.** On or before **November 19, 2021**, each party shall serve upon the other parties any expert reports and the names of the experts the party may call to testify at the evidentiary hearing, with a brief summary of the topics each expert may testify about.
2. **Status Conference.** The Department will contact the parties to schedule a telephonic status conference in **January** to discuss, among other things, potential settlement of the matter, the adequacy of discovery, the hearing schedule, and any pandemic-related considerations for the hearing. A separate notice of status conference shall be served on the parties.
3. **Dispositive Motions.** Dispositive motions must be filed no later than **January 11, 2022**.
4. **Completion of Discovery.** Answers to discovery are due within 14 days of the service date of the request. Parties shall complete discovery by **January 7, 2022, 2021**. Requests for discovery shall be served sufficiently before the discovery deadline to give the responding party adequate time to respond before the deadline.
5. **Witness List Exchange.** On or before **January 18, 2022**, each party must disclose to all other parties and the Department, in writing, the identity of all witnesses that will or may testify for the party at hearing.
6. **Exhibit Exchange.** On or before **January 18, 2022**, each party seeking to offer exhibits at the hearing shall serve the pre-numbered exhibits upon all other parties, and file two physical copies of the exhibits with the Department. Service of the proposed exhibits will satisfy Rule 606 of the Rules of Procedure (IDAPA 37.01.01).

Dated this 20th day of October 2021.



Nick Miller
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of October 2021, I served a true and correct copy of the foregoing document (HEARING NOTICE/SCHEDULING ORDER) on the following by the method(s) indicated below:

Hawley Troxell Ennis & Hawley LLP
Attn Dana L Hofstetter
Attn Tyler J Anderson
Attn Amy M J Knight
877 Main St Ste 1000
PO Box 1617
Boise ID 83701-1617
208.344.6000
dhofstetter@hawleytroxell.com
tanderson@hawleytroxell.com
aknight@hawleytroxell.com
*Representative for Marion Ogle
Applicant*

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

Givens Pursley LLP
Attn Michael P Lawrence
Attn Charlie S Baser
601 W Bannock St
PO Box 2720
Boise ID 83701-2720
208.388.1200
mpl@givenspursley.com
csb@givenspursley.com
*Attorney for Salubria Holdings LLC
Protestant*

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



Nick Miller
Hearing Officer

PRE-HEARING 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 department can consider 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 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. If the proposed transfer is for a municipal use, is it necessary to provide reasonably anticipated future needs for a municipal service area and is the planning horizon consistent with Sections 42-222 and 42-202B, Idaho Code?
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, 7, 8, and 9 above and must provide evidence for the department to evaluate these criteria.

The initial burden of proof on issue 4, if applicable, 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 these issues.

PROCEDURE

The department generally conducts an informal 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 pre-hearing conference is to provide the opportunity for the parties and the department to familiarize themselves with a contested 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–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

A hearing may 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, and 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.

Miller, Nick

From: Miller, Nick
Sent: Wednesday, October 20, 2021 12:17 PM
To: dhofstetter@hawleytroxell.com; Michael Lawrence (MPL@givenspursley.com)
Cc: aknight@hawleytroxell.com; tanderson@hawleytroxell.com; csb@givenspursley.com; Lauerman, Denise
Subject: Transfer 84698 (Marion Ogle) Notice of Hearing and Scheduling Order
Attachments: X84698_10202021.pdf

The attached document is being placed in the mail today.

Please contact this office if you have any questions.

Nick Miller
Hearing Officer