

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER)
APPROVAL NO. 81333 IN THE)
NAME OF MPH FARMS)

ORDER GRANTING
PETITION FOR HEARING

On August 3, 2021, the Idaho Department of Water Resources (“Department”) issued a *Preliminary Order Rescinding Transfer* (81333) (“Preliminary Order”). The *Preliminary Order* affects water right 35-8932, which is currently held by American Falls Farm LLC (“AFF”) and which was previously held by MPH Farms LLC (“MPH”). On August 13, 2021, AFF and MPH, through their attorney Robert Harris, filed a *Protest and Petition for Hearing* pursuant to Idaho Code § 42-1701A(3). On August 17, 2021, AFF and MPH, filed a *Petition for Reconsideration*, asking the Department to reconsider the *Preliminary Order*.

Idaho Code § 42-1701A(3) states, in pertinent part:

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person aggrieved by any action of the director, including any decision, determination, order or other action, including action upon any application for a permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the director, who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. The director shall give such notice of the petition as is necessary to provide other affected persons an opportunity to participate in the proceeding.

AFF and MPH have not been previously afforded an opportunity for a hearing on the *Preliminary Order*. The *Protest and Petition for Hearing* from AFF and MPH was filed within fifteen days of the *Preliminary Order*. Consistent with Section 42-1701A(3), AFF and MPH should be given an opportunity to present evidence and arguments about the *Preliminary Order* at a hearing before the Department.

The Department sent a copy of the *Preliminary Order* to representatives for the protestants to Application for Transfer 81333. These same representatives were included on the certificate of service for the *Protest and Petition for Hearing*. Consistent with Section 42-1701A(3), the protestants to Application for Transfer 81333, who resolved their protests through stipulation, will be provided an opportunity to participate in this proceeding.

ORDER

IT IS HEREBY ORDERED that the *Petition for Hearing* filed by AFF and MPH is GRANTED. Because the *Petition for Hearing* has been granted, the administrative record for the contested case will be further developed during the hearing. Therefore, the *Petition for Reconsideration* filed by AFF and MPH is moot. AFF and MPH are free to pursue the arguments raised in the *Petition for Reconsideration* within the context of the hearing proceeding.

Dated this 23rd day of August 2021.



James Cefalo
Regional Manager

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of August 2021, 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 Granting Petition for Hearing

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