

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

IN THE MATTER OF TRANSFER NO.)

84698

**) NOTICE OF PRE-HEARING
CONFERENCE**

IN THE NAME OF:)

MARION OGLE)

On 2/9/2021, MARION OGLE, filed an Application for Transfer No. 84698 with the Idaho Department of Water Resources (department). Protest(s) were filed by **SALUBRIA HOLDINGS LLC**

The department has scheduled the matter for pre-hearing conference on Thursday, September 9, 2021, beginning at 10:00 AM, at IDAHO DEPT OF WATER RESOURCES, Western Conference Room, WESTERN REGION, 2735 AIRPORT WAY, BOISE, ID, 83705.

For parties participating via telephone, please dial **1-720-279-0026** at the appropriate time on **September 9, 2021** as listed above. When prompted, enter guest code: **126664#** Please note you must press “#” after entering the code or you will not be properly connected with the conference.

Agenda items for the pre-hearing conference will include:

1. Identify spokesman and/or counsel representing the protestant
2. Review of the application
3. Identify issues of protest
4. Designate date for identifying witnesses
5. Designate target date for conducting administrative hearing if resolution is not possible during the pre-hearing conference.

The department encourages the applicant and protestants to discuss and resolve the protests before the pre-hearing conference. If private discussions are not possible or do not resolve the protests, the department’s Rules of Procedure provide for a pre-hearing conference to be held before scheduling a formal hearing.

The pre-hearing conference provides another informal opportunity for the applicant and protestants to meet. The parties often settle their differences at the pre-hearing conference. If a formal hearing is needed to resolve the protests, the pre-hearing conference serves as an opportunity to formulate or simplify the issues, obtain concessions of fact or identification of documents to avoid unnecessary proof, schedule discovery (when discovery is allowed), arrange for the exchange of proposed exhibits or prepared testimony, limit witnesses, schedule hearings, establish procedure at hearings, and 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 pre-hearing conference and to make the most of the opportunity to resolve the dispute informally.

The pre-hearing 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 pre-hearing 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, (208) 334-2190.

Dated this 4th day of August, 2021.

 Denise Lauerman (DENISE LAUERMAN)
for Nick Miller
Regional Manager

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of August 2021, I served a true and correct copy of the foregoing document 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


Denise Lauerman
Administrative Assistant



IDAHO DEPARTMENT OF
WATER RESOURCES

Western Region • 2735 W Airport Way • Boise, ID 83705-5082

Phone: 208-334-2190 • Fax: 208-334-2348 • Email: westerninfo@idwr.idaho.gov • Web: idwr.idaho.gov

Governor Brad Little

Director Gary Spackman

August 4, 2021

MARION OGLE
C/O HAWLEY TROXELL ENNIS & HAWLEY LLP
ATTN DANA L HOFSTETTER, TYLER J ANDERSON AND AMY M J KNIGHT
877 MAIN ST STE 1000
PO BOX 1617
BOISE, ID 83701-1617

SALUBRIA HOLDINGS LLC
C/O GIVENS PURSLEY LLP
ATTN MICHAEL P LAWRENCE AND CHARLIE S BASER
601 W BANNOCK ST.
BOISE, ID 83702

RE: Pre-Hearing Conference for Application for Transfer No. 84698

Dear Parties:

The Department of Water Resources has scheduled a Pre-Hearing Conference in the matter of the above referenced applications for permit, which have been protested.

The department has scheduled the matter for prehearing conference on Thursday, September 9, 2021 beginning at 10:00 am at IDAHO DEPARTMENT OF WATER RESOURCES, Western Conference Room, WESTERN REGION, 2735 AIRPORT WAY, BOISE, ID 83705.

For parties participating via telephone, please dial **1-720-279-0026** at the appropriate time on **September 9, 2021**, as listed above. When prompted, enter guest code: **126664#** Please note you must press “#” after entering the code or you will not be properly connected with the conference.

If you have any questions, please contact this office at 208-334-2190.

Sincerely,

Denise Lauerman
Administrative Assistant
Western Regional Office

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 for the department to 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, and 7 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 this issue.

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.