



State of Idaho

DEPARTMENT OF WATER RESOURCES

WESTERN REGION • 2735 W AIRPORT WAY • BOISE ID 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: idwr.idaho.gov

Brad Little
Governor

GARY SPACKMAN
Director

March 30, 2021

BOISE STATE UNIVERSITY
C/O OFFICE OF THE PRESIDENT
1910 UNIVERSITY DR
BOISE, ID 83725

RE: Contested Application for Permit No. 63-35002

Dear Applicant:

Enclosed is a copy of the protest filed against the issuance of the above-referenced application. As part of the application process, the following are options available for resolution of contested (protested) applications:

-Direct contact with the protestant to determine what is being disputed in the application and parties attempting to resolve the protest. Sincere conversation between the parties prior to initiation of formal proceedings can often resolve protest.

-Formal Proceedings consist of a pre-hearing conference & hearing through the water appropriation statute/rule process. A pre-hearing conference identifies the protest issues and reviews the resolution possibilities with the parties. If the issues cannot be resolved, a formal hearing will be scheduled.

-Mediation through a certified professional mediator. The advantages can include: reduced costs and time that are associated with formal proceedings, the ability to address non-water concerns, more influence over a final settlement, and fast track processing by the Department for parties reaching a mediated agreement. If you are interested in this option, please contact our office for details.

Please consider with the protestant the best option for resolution of the contested application. The Department of Water Resources may prepare to schedule a prehearing conference in the matter of the above referenced application for permit, which has been protested.

Please use the enclosed calendars to identify all days you would be available for a potential prehearing conference by phone or in office for this protested application. Please provide your calendar response by **April 9, 2021**. The calendars can be emailed to denise.lauerman@idwr.idaho.gov.

If you would like additional information, or need to further discuss the process, feel free to contact the Western Regional Office, phone 334-2190.

Sincerely,

Denise Lauerman
Administrative Assistant

Enclosures: (1) Protest
(1) Calendar

CC: SPF WATER ENGINEERING C/O LORI GRAVES
CITY OF BOISE C/O MARY GRANT
SUEZ WATER IDAHO INC C/O ROBERT NEWBRY
GIVENS PURSLEY LLP C/O MICHAEL P LAWRENCE, CHARLIE S BASER
BALLENTYNE DITCH CO ET AL C/O DANIEL STENSON, ANDREW WALDERA, S BRYCE FARRIS

PRE-HEARING 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 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, 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 pre-hearing 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.

1 2 3 4 5 6 7

NAME: IDWR						
RE: Conference for Contested Application 63-35002 (Boise State University)						
Please Note: Only mark the dates that you are <u>available</u> for a conference.						
April 2021						
SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY

	26	27	28	29	30	
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May 2021

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2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

June 2021

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of March 2021, I served a true and correct copy of the foregoing document on the following by the method(s) indicated below:

Boise State University
C/O Office of the President
1910 University Dr
Boise ID 83725
208.426.1203
mattwilde@boisestate.edu
Applicant

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

SPF Water Engineering
C/O Lori Graves
300 E Mallard Dr Ste 350
Boise ID 83706-6660
208.383.4140
lgraves@spfwater.com
Representative for Boise State University
Applicant

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

Mary Grant
City of Boise
150 N Capitol Blvd
Boise ID 83701
208.608.7950
mgrant@cityofboise.org
Protestant

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

Suez Water Idaho Inc
C/O Robert Newbry
8248 W Victory Rd
Boise ID 83709
208.388.1200
robert.newbry@suez.com
Protestant

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

Givens Pursley LLP
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C/O Charlie S Baser
601 W Bannock St
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Attorney for Suez Water Idaho Inc
Protestant

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

Sawtooth Law Offices PLLC

C/O Daniel Steenson

C/O S Bryce Farris

C/O Andrew Waldera

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Boise ID 83707

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Attorney for Ballentyne Ditch Co Et Al

Protestant

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Denise Lauerman
Administrative Assistant