

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

**IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 47-17719 IN THE)
NAME OF 4799A RIVER ROAD LLC)
_____)**

**SCHEDULING ORDER;
NOTICE OF STATUS CONFERENCE; AND
NOTICE OF HEARING**

On June 2, 2020, 4799A RIVER ROAD LLC, filed Application for Permit No. 47-17719 with the Idaho Department of Water Resources (Department). Protest(s) were filed by Hattie Zobott.

On Wednesday, September 23, 2020, a pre-hearing conference was held, however no resolution was reached. Status Conferences were held on November 17, 2020; January 5, 2021; and January 22, 2021 for the protested matter, however no resolutions have been reached. The parties request that a formal hearing be held to resolve the protested matter.

SCHEDULING ORDER

The following schedule shall control further proceedings in this matter:

1. Any party wanting to conduct formal discovery shall move for an order authorizing discovery by **February 26, 2021**.
2. All pre-hearing motions shall be filed on or before **March 26, 2021**.
3. On or before **April 23, 2021**, any party wishing to offer an expert report at the hearing must provide a copy of the expert report to the hearing officer and the other parties and must disclose to the other party, in writing, the identity of all expert witnesses that will or may testify at the hearing.
4. On or before **April 23, 2021**, each party seeking to offer exhibits at the hearing must physically serve (in the actual physical possession of the person being served) on all other parties and the hearing officer copies of exhibits that may be offered at the hearing. Service of the proposed exhibits will be the method of providing copies of exhibits to the parties as required by Rule 606 of the Rules of Procedure. All parties shall review the proposed exhibits prior to the hearing, and come to the hearing prepared to discuss whether each of the proposed exhibits should be admitted into evidence.

NOTICE OF STATUS CONFERENCE

The Department has scheduled a status conference on **Thursday, April 29, 2021 at 10:00 a.m.** to be held via telephone. The purpose of the prehearing conference will be to discuss the hearing, whether or not it will be held in person or by electronic means, or by a hybrid method, and other hearing related matters. Parties may participate by calling the following conference number:

Phone Number: **1-877-820-7831**
Participant Code # **153229**.

NOTICE OF HEARING

The Department has scheduled the matter for hearing on **Thursday, May 27, 2021 beginning at 10:00 a.m., TWIN FALLS COUNTY WEST, CONFERENCE ROOM 'A' LOCATED ON THE FIRST FLOOR, 630 ADDISON AVE W, TWIN FALLS, ID 83301.**

If you plan to offer exhibits for the record at the hearing, note that rule 606 of the Department's Rules of Procedure requires that a copy be provided to the presiding officer.

The presiding officer at the hearing will be Phillip Hummer, whose service mailing address for this matter is 650 Addison Ave W, Suite 500, Twin Falls ID 83301-5858, and whose e-mail address is phill.hummer@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, the adopted Rules of Procedure of the department, IDAPA 37.01.01, and Water Appropriation Rules 40 and 45. A copy of the code/rules may 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 in order 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 Maline, (208) 736-3033.

Dated this 10th day of February, 2021.

A handwritten signature in blue ink, appearing to read 'PH' followed by a stylized surname, positioned above a horizontal line.

Phillip Hummer
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of February, 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, *certified mail with return receipt requested*, postage prepaid and properly addressed to the following:

Document Served:

- Scheduling Order, Notice of Status Conference, and Notice of Hearing
- Hearing Procedures for Application for Permit

4799A RIVER ROAD LLC
JAY C HORMEL
357 MC CASLIN BLVD STE 200
LOUISVILLE CO 80027-2932

CATHY R BROWN
4799A RIVER RD
BUHL ID 83316-5104

J DEE MAY OR NATHAN FOWLER
ANGSTMAN JOHNSON
516 HANSEN ST E
TWIN FALLS ID 83301-6254

HATTIE ZOBOTT
1345 9TH AVE E
TWIN FALLS ID 83301-6607

EVAN ROBERTSON
ROBERTSON & SLETTE
PO BOX 1906
TWIN FALLS ID 83303-1906



Denise Maline
Administrative Assistant

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 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 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.