

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

IN THE MATTER OF APPLICATION	)	
FOR PERMIT NO. 47-17664 IN THE	)	AMENDED NOTICE OF HEARING AND
NAME OF ROBERT K AND JANA L	)	AMENDED SCHEDULING ORDER
LINDERMAN	)	
	)	

On August 13, 2020, the Idaho Department of Water Resources (Department) issued a *Notice of Hearing, Order Authorizing Discovery, Scheduling Order* (Notice) in the matter of Application for Permit no. 47-17664. The Notice established a hearing date of December 10, 2020 and a corresponding schedule of discovery and pre-hearing disclosure.

Applicants Robert and Jana Linderman (Applicants) are represented in this matter by attorney Nathan Fowler; protestants James Michael and Sally Hamilton (Protestants) are represented by attorney Patrick Brown.

On November 17, 2020, the Hearing Officer held a status conference in this matter. In the four months which had elapsed since the Notice was issued, the Department had received no correspondence or submittals from either Applicants or Protestants. During that four month time frame, discovery, pre-hearing motion and expert report deadlines as set forth in the Notice had all expired.

It was clear at the status conference that parties to this case were not prepared for hearing. Protestants indicated that Applicants had not fully responded to discovery requests, including a request for a site visit. Consequently, Protestant has no expert report prepared, and parties were not prepared to disclose witnesses and exhibits as scheduled on November 20, 2020. Protestants did not timely seek an order compelling discovery pursuant to Rule 522 of the Department's Rules of Procedure. *IDAPA 37.01.01.522*. Parties asked the Hearing Officer to reschedule the hearing to allow opportunity for a site visit and to prepare hearing documents. Alternate hearing dates in January were discussed. The Hearing Officer asked that a stipulation for rescheduling be submitted no later than November 20, 2020.

On December 3, 2020 the Hearing Officer received a *Stipulation to Reset Hearing and Deadlines and for Inspection of Property* (Stipulation). The Stipulation arrived seven days before the December 10th hearing date, and thirteen days later than requested. Because of the delay, the Department had presumed that parties had reconsidered and were planning to proceed with the hearing as scheduled.

The Department strives to provide an equal opportunity for a fair hearing to all parties in contested cases. The Department cannot achieve this goal when the parties and their counsel ignore the established scheduling order and direct requests from the hearing officer. Orderly and timely exchange of information facilitates an organized and efficient hearing. The tardy response by counsel in submittal of the requested Stipulation is both unprofessional and inconsiderate. There are grounds to reject the Stipulation and proceed with the current hearing date. Doing so, however, would not advance the goal of the Department, to dispose of cases in a fair and efficient manner. Therefore, the Hearing Officer will re-schedule the hearing and the associated deadlines.

The January 2021 date discussed for the re-scheduled hearing is no longer feasible due to the Hearing Officer's schedule and the Department's current contested case load. Accordingly, this hearing will be advanced by three months. Discovery will be re-opened and the scheduling order revised in order that parties may get back on a realistic hearing track. Parties to this case are expected to comply with all deadlines contained in the Scheduling Order, or to follow acceptable protocol if those dates must be modified.

AMENDED NOTICE OF HEARING

The hearing for this matter is rescheduled, to be held on **Wednesday, March 10, 2021, beginning at 10:00 AM, at Twin Falls County West Building, Conference Room B, 630 Addison Ave West, Twin Falls, Idaho, 83301.**

The hearing officer at the hearing will be **Cindy Yenter**, whose mailing address is 650 Addison Avenue West, Suite 500, Twin Falls, ID 83301-5858.

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 Department's Rules of Procedure (IDAPA 37.01.01), and the Department's Water Appropriation Rules (IDAPA 37.03.08). A copy of the code and 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 hearing, please notify the Department at least (10) days prior to the hearing. Inquiries about scheduling or hearing facilities should be directed to Denise Maline at (208) 736-3033.

AMENDED SCHEDULING ORDER

1. Discovery will be re-opened effective immediately.
2. Supplemental written discovery requests, if not already served, shall be served on or before **December 16, 2020**.
3. Answers to written discovery must be served on the requesting party within twenty-one (21) days of service of the request. All responses to discovery shall be served on or before **January 6, 2021**.
4. All pre-hearing motions, including dispositive motions, shall be filed on or before **January 15, 2021**.
5. On or before **February 10, 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.
6. Rebuttal deadline for expert reports shall be on or before **February 24, 2021**.
7. On or before **February 24, 2021**, each party must disclose to all other parties and the hearing officer in writing the identity of all witnesses that may testify for the party at the hearing.
8. On or before **February 24, 2021**, each party seeking to offer exhibits at the hearing shall serve on all parties and the hearing officer copies of the exhibits to be offered at the hearing, including any rebuttal expert reports. Service of the exhibits will be the method of providing copies of exhibits to other parties as required by Rule 606 of the Department's Rules of Procedure.

Dated this 9th day of December, 2020



Cindy Yenter
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of December, 2020, 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:

- Notice of Hearing and Scheduling Order
- Hearing Procedures for Application for Permit

ROBERT K LINDERMAN
JANA L LINDERMAN
4377 N 1400 E
BUHL, ID 83316-5234

NATHAN FOWLER
JUSTIN MAY
ANGSTMAN JOHNSON
199 S CAPITOL BLVD STE 200
BOISE, ID 83702

JAMES MICHAEL HAMILTON
526 SAWTOOTH AVE
BUHL, ID 83316-5708

SALLY K HAMILTON
526 SAWTOOTH AVE
BUHL, ID 83316-5708

PATRICK D BROWN
PATRICK D BROWN, PC
PO BOX 125
TWIN FALLS ID 83303-0125



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.

Maline, Denise

From: Maline, Denise
Sent: Wednesday, December 09, 2020 10:16 AM
To: Patrick Brown; Mike Hamilton; Justin May; Nathan Fowler
Cc: 'Muamera Makas'; 'assistant@pblaw.co'; 'Sheri Mitchell'; Cindy Yenter; Cefalo, James; Skinner, Corey; Baxter, Garrick
Subject: Amended Notice of Hearing & Amended Scheduling Order for Linderman contested case 47-17664
Attachments: Amended Notice of Hearing & Amended Scheduling Order (Linderman 47-17664).pdf

Dear Parties,

Attached please find Amended Notice of Hearing and Amended Scheduling Order for the above referenced contested matter. Please note, the start time for the Hearing has been moved to 10:00 a.m.

Please contact myself or Hearing Officer Cindy Yenter if you have any questions.

Sincerely,

Denise Maline, IDWR Twin Falls

Denise Maline
Administrative Assistant I
Idaho Dept of Water Resources, Southern Region
650 Addison Ave W, Ste 500
Twin Falls, ID 83301
(208) 293-9908
denise.maline@idwr.idaho.gov