

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

IN THE MATTER OF APPLICATIONS FOR)	ORDER CONSOLIDATING
TRANSFER 83930 IN THE NAME OF)	PROCEEDINGS AND
E & M TRUST AND 84102 IN THE)	NOTICE OF PRE-HEARING /
<u>NAME OF DAN SHARP</u>)	STATUS CONFERENCE

On March 4, 2020, E & M Trust filed Application for Transfer 83930 with the Idaho Department of Water Resources (“Department”), proposing to change the point of diversion and place of use for a 139-acre portion of water rights 13-60B, 13-61B, and 13-274. Dan Sharp filed a protest against the application. The Department conducted a pre-hearing conference for protested Application 83930 on June 17, 2020.

On May 28, 2020, Dan Sharp filed Application for Transfer 84102 with the Department, proposing to change the place of use for the same 139-acre portion of water rights 13-60B, 13-61B and 13-274 described in Application 83930. E & M Trust filed a protest against the application.

Rule 556 of the Department’s Rules of Procedure (IDAPA 37.01.01) authorizes the Department to consolidate two or more proceedings upon a finding that they “present issues that are related and that the rights of the parties will not be prejudiced.”

The parties to protested Applications 83930 and 84102 are identical. The two contested cases present similar issues: (1) ownership of the 139-acre portion of water rights 13-60B, 13-61B, and 13-274; (2) validity of the portion of the water rights to be moved; (3) administration of water rights at the Chadwick Dam. The parties will not be prejudiced if the proceedings are consolidated for hearing. Therefore, it is appropriate to consolidate Applications 83930 and 84102 for hearing.

ORDER

IT IS HEREBY ORDERED that Applications 83930 and 84102 are consolidated for the purpose of conducting an administrative hearing. The Department has not yet established any discovery or disclosure deadlines for either of the consolidated cases.

NOTICE OF PRE-HEARING / STATUS CONFERENCE

The Department conducted a pre-hearing conference for Application 83930 on June 17, 2020 but has not yet conducted a pre-hearing conference for Application 84102. The Department has now scheduled these consolidated cases for a joint pre-hearing / status conference to be held on **Wednesday, August 19, 2020 at 10:00 am.**

The conference will be conducted by telephone only. To participate by telephone, please use the following numbers:

Telephone: 1-877-820-7831

Participant Code: 889693

The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the Department IDAPA 37.01.01. A copy of the Rule of Procedure may be obtained from the Department upon request.

The 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 conference, please notify the department at least (10) days prior to the pre-hearing. Inquiries about scheduling or pre-hearing facilities should be directed to Christina Henman at (208) 525-7161.

Dated this 17th day of July 2020.



James Cefalo
Regional Manager

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of July 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, postage prepaid and properly addressed, to the following:

Document: Order Consolidating Proceedings and Notice of Pre-Hearing/Status Conference

DAN SHARP
PO BOX 135
DAYTON, ID 83232

E & M TRUST
2414 S 1600 E
PRESTON, ID 83263

ANDREW J. WALDERA
SAWTOOTH LAW OFFICES
P.O. BOX 7985
BOISE, ID 83707

W. PAULINE BECKSTEAD SURVIVORS TRUST
FREDRICK H. OLSEN
330 NELSON AVENUE
PRESTON, ID 83263



Christina Henman
Administrative Assistant

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 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 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.