



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region • 900 N Skyline Drive, Suite A • Idaho Falls ID 83402-1718

Phone: (208) 525-7161 • Fax: (208) 525-7177

Website: idwr.idaho.gov • Email: easterninfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

July 1, 2020

DAN SHARP
PO BOX 135
DAYTON, ID 83232

ANDREW J. WALDERA
PO BOX 7985
BOISE, ID 83707

RE: Application for Transfer 84102

Dear Parties:

This letter is intended to acknowledge the receipt of a protest against the above referenced application from the following:

- ELDON GOLIGHTLY and E & M TRUST

Please contact Christina Henman within 14 days from the date of this letter to communicate any dates that you will be unavailable to attend a prehearing conference during the next 3 months. If you do not provide these dates within 14 days, the department will be unable to take your scheduling needs into consideration.

The parties are encouraged to discuss the protest(s) prior to the pre-hearing conference to see if the issues of protest can be resolved prior to the conference. The attached document summarizes the procedure used to address a contested application for transfer. Please feel free to contact our office if you have questions about the procedures described in this letter. Additional information about water rights and other Department matters is available on the Department's website: www.idwr.idaho.gov.

Sincerely,

Christina Henman
Administrative Assistant
Christina.henman@idwr.idaho.gov
(208) 497-3793

Encl: Protest(s)

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 that the department can 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, 7, 8, and 9 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 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 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.

Henman, Christina

From: Henman, Christina
Sent: Wednesday, July 01, 2020 12:26 PM
To: 'cottontop3634@yahoo.com'; 'andy@sawtoothlaw.com'; 'egolightly@plmw.com';
'Fredrick Olsen'
Subject: 84102 Acknowledgement of Protest & 84102 + 83930 Request for Unavailability
Attachments: 84102 Acknowledgement of Protest & Request for PHC Dates.pdf

Hello,

Please see attached acknowledgement of protest against application 84102 in the name of Dan Sharp.

Because of similarities between the applications and parties involved, the department will schedule the prehearing conference for application 84102 to run jointly with a status conference for application 83930 in the name of E&M Trust.

Please respond within 14 days from the date of this email with any days during which you would be unavailable to attend these conferences during the months of July, August, and September. If responses are not received within 14 days the department will be unable to take your scheduling needs into consideration.

Thank You,

Christina Henman
Administrative Assistant
Idaho Dept. of Water Resources, Eastern Region
900 N Skyline Ste. A
Idaho Falls, ID 83402
Phone: (208) 497-3793