

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

<b>IN THE MATTERS OF APPLICATION )</b>	
<b>FOR AMENDMENT OF PERMIT No )</b>	
<b>63-32225 IN THE NAME OF )</b>	<b>ORDER CONSOLIDATING</b>
<b>INTERMOUNTAIN SEWER &amp; )</b>	<b>MATTERS FOR HEARING,</b>
<b>WATER, CORP. AND )</b>	<b>NOTICE OF STATUS CONFERENCE</b>
<b>APPLICATION FOR TRANSFER )</b>	<b>NOTICE OF HEARING, AND</b>
<b>No 83875 IN THE NAME OF )</b>	<b>SCHEDULING ORDER</b>
<b>GREGORY B. JOHNSON )</b>	
<b>_____ )</b>	

On January 31, 2020, Intermountain Sewer & Water, Corp. ("Intermountain") filed Application for Amendment of Permit to amend Water Appropriation Permit No. 63-32225 with the Idaho Department of Water Resources (Department). On the same day, Gregory B. Johnson ("Johnson") filed Application for Transfer No 83875 with the Department. The Department published notice of both applications in the Idaho Statesman for two consecutive weeks on February 20 and February 27, 2020. Mary Walsh timely protested Intermountain's application and Gayle Remine, Lacey Wilde, and Mary Walsh each timely protested Johnson's application.

The Department held a pre-hearing conference to discuss both applications on May 28, 2020 and a status conference on June 5, 2020. At the June 5 conference, the parties asked to schedule a hearing and to initiate discovery. The parties did not oppose a proposal to consolidate the contested applications for hearing.

**ORDER CONSOLIDATING MATTERS FOR HEARING**

Pursuant to Rule 556 of the Department's rules of procedure (IDAPA 37.01.01), "[t]he agency may consolidate two (2) or more proceedings for hearing upon finding that they present issues that are related and that the rights of the parties will not be prejudiced." In this case, both applications propose to divert water from the same proposed new ground water wells to supply water to the same planned community development. The parties for the applications overlap and the issues raised by the protestant against each application are identical. Consolidating these matters for hearing will promote administrative efficiency and limit the expenditure of resources by the parties.

**IT IS HEREBY ORDERED** that the contested cases for Application for Amendment of Permit to amend Water Appropriation Permit No. 63-32225 and Application for Transfer No 83875 are consolidated for hearing.

**NOTICE OF STATUS CONFERENCE**

NOTICE IS HEREBY GIVEN that the hearing officer will hold a status conference in this matter on July 7, 2020, at 2:30 p.m. at the Idaho Department of Water Resources' State Office, located at 322 E. Front St., 6th Floor, Boise, Id 83720. The presiding officer will be

Cynthia Bridge Clark, whose mailing address is 322 E. Front St., 6th Floor, Boise, ID 83720-0098 and whose email address is [Cynthia.Clark@idwr.idaho.gov](mailto:Cynthia.Clark@idwr.idaho.gov).

All parties must be present at the status conference in person or by telephone. If participating by telephone, please dial 1-720-2479-0026 at the appropriate time and enter the assigned participation code number: 126664, followed by the '#' key.

The status conference will be held in accordance with provisions of Chapter 2 and 17, Title 42 and 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the Department, IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department upon request or at <https://adminrules.idaho.gov/rules/current/37/index.html>.

The status conference 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 status conference, please contact Kensie Thorneycroft, at (208) 334-2190, no later than five (5) days prior to the conference.

### **NOTICE OF HEARING**

**The Department has scheduled the matter for a hearing beginning at 9:00 a.m. on Thursday, August 27, 2020 at IDAHO DEPARTMENT OF WATER RESOURCES, STATE OFFICE, located at 322 E. Front St., 6th Floor, Boise, ID 83720.**

The presiding officer at the hearing will be Cynthia Bridge Clark, whose mailing address is 322 E. Front St., 6th Floor, Boise, ID 83720-0098 and whose email address is [Cynthia.Clark@idwr.idaho.gov](mailto:Cynthia.Clark@idwr.idaho.gov).

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 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. Copies of the code/rules are obtained from the Department's website, [www.idwr.idaho.gov](http://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 applications.

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 Kensie Thorneycroft, at (208) 334-2190.


### **SCHEDULING ORDER**

1. General discovery began on June 5, 2020 and shall end on July 24, 2020.
2. Written requests for discovery shall be either interrogatories or requests for documents.

3. Answers to written discovery must be served on the requesting party within fourteen (14) days of service of the request. All responses to discovery shall be served on or before the end of the discovery period.
4. Expert reports shall be served on all other parties and the hearing officer on or before July 2, 2020. Rebuttal reports, if prepared, shall be served on all other parties and the hearing officer on or before July 13, 2020.
5. On or before August 10, 2020, each party must disclose to all other parties and the hearing officer, in writing, the identity of all witnesses that will or may testify for the party at the hearing.
6. On or before August 10, 2020, each party seeking to offer exhibits at the hearing must physically serve on all other parties and the hearing officer copies of the exhibits. Service of the proposed exhibits will satisfy Rule 606 of the Department's rules of procedure.
7. To avoid duplication of exhibits, pursuant to Rule 602 of the Department's Rules of Procedure (IDAPA 37.01.01), the hearing officer will officially notice the following documents from the application file and Department records. For ease of reference, these documents have been assigned the following exhibit numbers:

IDWR1	The Department's water right file for Permit 63-32225, including the application for amendment of permit filed January 31, 2020 and protests to that application.
IDWR2	The Department's water right file for Right 63-32616, including Application for Transfer 83875 filed January 31, 2020 and protests to that application.

Dated this 19<sup>th</sup> day of June, 2020

  
Cynthia Bridge Clark  
Hearing Officer

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19 day of June 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, postage prepaid and properly addressed to the following:

### Documents Served:

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

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Kensie Thorneycroft  
Administrative Assistant 1

# **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](http://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.

## **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 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 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**

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