

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

**IN THE MATTER OF APPLICATION )  
FOR PERMIT 74-16233 IN THE NAME )  
OF ERIC P MILLER )**

**NOTICE OF  
PRE-HEARING CONFERENCE**

On April 30, 2020, Eric P Miller filed Application for Permit 74-16233 with the Idaho Department of Water Resources (department). A protest was filed by Marlene Gibson.

The department has scheduled this matter for a pre-hearing conference to be held on June 26, 2020, beginning at 1:00 PM, at the USDA Forest Service Room 8, located at 1206 S Challis St., Salmon, ID, 863467.

Agenda items for the pre-hearing conference will include:

1. Review of the application.
2. Identify issues of protest.
3. Designate target date for conducting administrative hearing if resolution is not possible during the pre-hearing conference.
4. Set dates for discovery and pre-hearing disclosures.

The department encourages the applicant and protestants to discuss and resolve the protests before the pre-hearing conference. If private discussions are not possible or do not resolve the protests, the department's Rules of Procedure provide for a pre-hearing conference to be held before scheduling a formal hearing.

The pre-hearing conference provides another informal opportunity for the applicant and protestants to meet. The parties often settle their differences at the pre-hearing conference. If a formal hearing is needed to resolve the protests, the pre-hearing conference serves as an opportunity to formulate or simplify the issues, obtain concessions of fact or identification of documents to avoid unnecessary proof, schedule discovery (when discovery is allowed), arrange for the exchange of proposed exhibits or prepared testimony, limit witnesses, schedule hearings, establish procedure at hearings, and address other matters that may expedite orderly conduct and disposition of the proceeding.

It is important for all parties to give considerable thought to each of these matters before appearing at the pre-hearing conference and to make the most of the opportunity to resolve the dispute informally.

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

Dated this 12<sup>th</sup> day of June, 2020

A handwritten signature in dark ink, appearing to read 'J Cefalo', written over a horizontal line.

James Cefalo  
Regional Manager

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12<sup>th</sup> 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, postage prepaid and properly addressed to the following:

Document Served: Notice of Pre-Hearing Conference  
Hearing Procedure for Application for Permit

ERIC MILLER  
892 HIGHWAY 28  
SALMON, ID 83467-5329

MARLENE J GIBSON  
1015 LEMHI RD  
SALMON, ID 83467-5148



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Christina Henman  
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](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.