

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

IN THE MATTER OF APPLICATIONS FOR)	NOTICE OF HEARING,
TRANSFER 83471, 83915 AND 83918)	SCHEDULING ORDER,
IN THE NAME OF ROCKY MOUNTAIN)	AND REQUEST FOR
<u>WATER EXCHANGE</u>)	ARGUMENT BRIEFS

On July 19, 2019, Rocky Mountain Water Exchange ("RMWE") filed Application for Transfer 83471 with the Idaho Department of Water Resources ("Department"). Application 83471 was protested by A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, Twin Falls Canal Company, American Fall Reservoir District #2 and Minidoka Irrigation District (collectively the "Coalition"). Application 83471 proposes to move a portion of ground water right 27-7545 to the Jefferson Greens Estates Subdivision for irrigation of residential lots within the subdivision.

On February 24, 2020, RMWE filed Application for Transfer 83915 with the Department. Application 83915 proposes to move Snake River water right 01-7017 to the Jefferson Greens Estates Subdivision. Application 83915 was protested by the Coalition.

Also on February 24, 2020, RMWE filed Application for Transfer 83918 with the Department. Application 83918 proposes to move ground water right 35-7720 to the Jefferson Greens Estates Subdivision for irrigation of residential lots. Application 83918 was protested by the Coalition.

On April 10, 2020, the Department issued an order consolidating contested Applications 83471, 83915 and 83918 into a single proceeding for the purposes of conducting an administrative hearing. The Department conducted a pre-hearing conference for the consolidated cases on May 4, 2020. During the conference, the parties requested that a hearing be held to decide the pending contested cases.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that an administrative hearing will be conducted for the above-referenced contested cases on **August 27 and 28, 2020, beginning at 9:00 am at the Department's Eastern Regional Office located at 900 North Skyline Drive in Idaho Falls, Idaho.** The hearing officer will be James Cefalo, whose mailing address is 900 North Skyline Drive, Suite A, Idaho Falls, ID 83402-1718 and whose email address is James.Cefalo@idwr.idaho.gov.

The hearing 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 Rules of Procedure may be obtained from the Department upon request or at <https://idwr.idaho.gov/>.

The hearing 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 contact Christina Henman (208) 525-7161, no later than five (5) days prior to the hearing.

SCHEDULING ORDER

1. Discovery shall commence immediately.
2. Discovery requests shall be served on the opposing party on or before May 29, 2020. Responses shall be filed within 30 days of the service date of the request. Discovery closes on June 30, 2020.
3. Expert reports, if any are prepared, shall be served on the other parties and the hearing officer on or before July 30, 2020.
4. On or before August 13, 2020, each party shall 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.
5. On or before August 13, 2020, each party seeking to offer exhibits at the hearing (including any rebuttal expert reports) shall serve on all parties and the hearing officer copies of all exhibits which may be offered at the hearing. Service of the proposed exhibits will be the method of providing copies to the parties as required by Rule 606 of the Department's Rules of Procedure (IDAPA 37.01.01).
6. To avoid duplication of exhibit numbers, the parties should use the following numbers for their proposed exhibits:

RMWE	Exhibits 1 – 100
Coalition	Exhibits 101 – 200
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 take official notice of the following documents from the application file and Department records. For ease of reference, these documents will be identified by the following exhibit numbers:

IDWR1	Application for Transfer 83471
IDWR2	Application for Transfer 83915
IDWR3	Application for Transfer 83918
IDWR4	Coalition Protest for Application 83471
IDWR5	Coalition Protest for Application 83915
IDWR6	Coalition Protest for Application 83918
IDWR7	Water Right License 25-14162 (September 29, 2015)
IDWR8	Amended SRBA Partial Decree 35-7720 (January 12, 2004)
IDWR9	SRBA Partial Decree 01-7017 (September 14, 2007)

REQUEST FOR ARGUMENT BRIEFS

During the May 4, 2020 pre-hearing conference, the parties identified certain questions of law arising from the consolidated cases. The parties asked for an opportunity to file argument briefs addressing those questions of law and for the hearing officer to issue a decision on those questions prior to the scheduled administrative hearing. Pursuant to Rule 564 of the Department's Rules of Procedure, a hearing officer may request briefs from the parties setting forth arguments and positions on any questions of law in the case.

The hearing officer requests that the parties prepare argument briefs addressing the following questions of law:

1. Does Idaho Code § 42-222 prohibit the approval of a transfer which would result in a water user violating the approval conditions of a separate water right?
2. If Applications 83471, 83915 and 83918 were approved, would the approval cause Jefferson Greens Estates Subdivision to be in violation of Condition No. 3 of water right 25-14162, which states: "Irrigation water for lawns, gardens, landscaping, and common areas is provided by a separate pressurized surface water system with appurtenant canal shares of the North Rigby Irrigation Canal Company, Inc. (Stock Certificate No. 216, issued on 8/24/2000)."?
3. Do the conditions of water rights 01-7017 and 35-7720 require the water right holder to use surface water right 01-7017 as a primary source or water and ground water right 35-7720 as a supplemental source of water?
4. Do Idaho Code §§ 31-3805 or 67-6537 prohibit or constrain the approval of Applications 83471, 83915 and 83918?

Argument briefs shall be filed on or before **June 12, 2020**. The parties may serve the briefs on the hearing officer and opposing parties by email. For consistency of exhibit numbers throughout the record, if documents are referenced in the argument briefs, please assign or apply exhibit numbers consistent with the Scheduling Order. The exhibit number assigned to a document in the argument briefs should be the same exhibit number used for the document during the administrative hearing.

Dated this 14th day of May 2020.

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

James Cefalo
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of May 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 with return receipt requested, postage prepaid and properly addressed, to the following:


RE: Notice of Hearing, Scheduling Order, and Request for Argument Briefs

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Christina Henman
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