

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

IN THE MATTER OF APPLICATIONS)	
FOR PERMIT No 63-34832 THROUGH)	ORDER CONSOLIDATING
63-34838 AND 63-34840 THROUGH)	MATTERS FOR HEARING,
63-34846 ALL IN THE NAME OF)	NOTICE OF HEARING, AND
ONE MORE MILE LLC)	SCHEDULING ORDER
_____)	

On January 2, 2020, One More Mile LLC (Applicant) filed Applications for Permit to Appropriate Water No. 63-34832 through 63-34838, and 63-34840 through 63-34846 with the Idaho Department of Water Resources (Department). The Department published notice of each of the 14 applications in the Idaho Press-Tribune for two consecutive weeks on January 16 and January 23, 2020. Farmer's Co-Operative Ditch Company timely protested each of the applications.

The Department held a pre-hearing conference on March 19, 2020. At the 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, all 14 applications are nearly identical as each proposes domestic and irrigation use of ground water for similarly-sized parcels within a proposed residential development. The parties for the applications are identical 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 Applications for Permit to Appropriate Water No. 63-34832 through 63-34838, and 63-34840 through 63-34846 are consolidated for hearing.

NOTICE OF HEARING

The Department has scheduled the matter for a hearing beginning at 9:00 a.m. on Monday, June 15, 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 Nick Miller, whose mailing address is 2375 Airport Way, Boise, ID 83705 and whose email address is Nick.Miller@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, 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 may begin immediately and shall end on May 18, 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 twenty-one (21) days of service of the request. All responses to discovery shall be served on or before the end of the discovery period.
4. Depositions shall be completed on or before May 18, 2020.
5. On or before June 1, 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 June 1, 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. Applicant's exhibits shall be numbered between 1 and 100. Protestant's exhibits shall be numbered between 101 and 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 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 through IDWR14 Applications for Permit No. 63-34832 through 63-34838, and 63-34840 through 63-34846 (January 2, 2020)

IDWR15 through IDWR28 Notices of Protest – Farmer's Co-Operative Ditch Company.

Dated this 6th day of April, 2020



Nick Miller
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of April 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 Hearing, and Scheduling Order
- Hearing Procedures for Application for Permit

For Applicant One More Mile LLC

ALBERT BARKER

BARKER ROSHOLT & SIMPSON LLP

1010 W JEFFERSON ST STE 102

PO BOX 2139

BOISE ID 83701-2139

For Protestant Farmer's Co-Operative Ditch Company

S. BRYCE FARRIS

SAWTOOTH LAW OFFICES, PLLC

1101 W. RIVER ST., STE. 110

P.O. BOX 7985

BOISE, IDAHO 83707

FACSIMILE: (208) 629-7559



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. 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.