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*Attorneys for American Falls Reservoir  
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RECEIVED

MAR 30 2020

DEPT OF WATER RESOURCES  
SOUTHERN REGION

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

IN THE MATTER OF APPLICATION )  
FOR TRANSFER NO. 83918 )  
(in the name of Rocky Mountain Water )  
Exchange, LLC) )  
\_\_\_\_\_ )

**NOTICE OF JOINT PROTEST**

A&B IRRIGATION DISTRICT, BURLEY IRRIGATION DISTRICT, MILNER  
IRRIGATION DISTRICT, NORTH SIDE CANAL COMPANY, TWIN FALLS CANAL  
COMPANY, AMERICAN FALLS RESERVOIR DISTRICT #2, AND MINIDOKA  
IRRIGATION DISTRICT (hereinafter "Protestants"), by and through their attorneys of record,  
BARKER ROSHOLT & SIMPSON LLP, and FLETCHER LAW OFFICE, hereby file this  
*Notice of Joint Protest* to the approval of the above-numbered application for transfer filed by  
ROCKY MOUNTAIN WATER EXCHANGE, LLC ("Applicant"). The initial bases for the  
protests are as follows:

1. The Applicant has failed to justify in their companion transfer applications, the transfer of ground water to a place of use already covered by surface water shares in contravention to I.C. §§ 31-3805, 67-6537; and
2. The application violates the criteria of I.C. § 42-222(1); and
3. For such other and further reasons as may be discovered or set forth at the hearing on this matter.


DATED this 30<sup>th</sup> day of March, 2020.

**FLETCHER LAW OFFICE**

  
\_\_\_\_\_  
W. Kent Fletcher

*Attorneys for American Falls Reservoir  
District #2 & Minidoka Irrigation District*

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## 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](http://idwr.idaho.gov) • Email: [easterninfo@idwr.idaho.gov](mailto:easterninfo@idwr.idaho.gov)

BRAD LITTLE  
Governor

GARY SPACKMAN  
Director

April 2, 2020

ROCKY MOUNTAIN WATER EXCHANGE  
482 CONSTITUTION WAY STE 303  
IDAHO FALLS, ID 83402

BARKER ROSHOLT & SIMPSON  
PO BOX 63  
TWIN FALLS, ID 83303

FLETCHER LAW OFFICE  
PO BOX 248  
BURLEY, ID 83318

RE: Application for Transfer 83918

Dear Parties:

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

- A&B IRRIGATION DISTRICT
- BURLEY IRRIGATION DISTRICT
- MILNER IRRIGATION DISTRICT
- NORTH SIDE CANAL COMPANY
- TWIN FALLS CANAL COMPANY
- AMERICAN FALLS RESERVOIR DISTRICT #2
- MINIDOKA IRRIGATION DISTRICT

A representative from the Department will contact you in the coming weeks to find availability dates for a pre-hearing conference. 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](http://www.idwr.idaho.gov).

Sincerely,

Christina Henman  
Administrative Assistant  
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](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.