



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region • 7600 N Mineral Drive, Suite 100 • Coeur D'Alene ID 83815-7763

Phone: (208) 762-2800 • Fax: (208) 762-2819

Website: idwr.idaho.gov • Email: northerninfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

December 10, 2019

NANCY (& JAMES) MILLER
40880 LITTLE CANYON ROAD
PECK, ID 83545

RE: Application for Transfer No(s). 83543

Dear Protestant(s):

This office acknowledges receipt of your protest to the approval of Transfer No(s). 83543. A protest can only be in one person's name and since Nancy signed the protest, it is listed that she is the protestant. As part of the application process, the following options are available for the resolution of contested (protested) applications:

- Direct contact with the applicant(s) to determine the nature of the protest(s) and to attempt to resolve the protest. Sincere conversation between the parties prior to initiation of formal proceedings can often resolve protest(s).

- Formal proceedings administered by the Department pursuant to the transfer of a water right. A pre-hearing conference identifies the protestant's concerns and reviews the resolution possibilities with the parties. If the concerns cannot be resolved, a formal hearing will be scheduled.

- Mediation through a certified professional mediator can reduce costs and time that are associated with formal proceedings, present the opportunity to address non-water concerns, provide influence over a final settlement, and fast track the processing of the application if a mediated agreement is reached.

Please consider with the applicant the best option(s) for resolution of the contested application and forward your choice to the Department's regional manager. If no response is received within a few weeks, you may be notified that a pre-hearing conference will be scheduled.

You may contact this office if you have any questions regarding the procedure discussed in this letter or additional information about water rights and other matters administered by this agency is available on the Internet at www.idwr.idaho.gov.

Sincerely,

Douglas Jones, P.E.
Northern Regional Manager

Enclosure(s)

Pre-Hearing Conference Procedures

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 . 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.



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BRAD LITTLE
Governor

GARY SPACKMAN
Director

December 10, 2019

JARRED M HOLZ
JESSICA R HOLZ
501 S WICKHAM FEN WAY
BOISE, ID 83709-0185

RE: Application for Transfer No(s). 83543

Dear Applicants:

Enclosed is a copy of a protest(s) filed against the approval of Transfer No(s). 83543. As part of the application process, the following options are available for the resolution of contested (protested) applications:

- Direct contact with the protestant(s) to determine the nature of the protest(s) and to attempt to resolve the protest. Sincere conversation between the parties prior to initiation of formal proceedings can often resolve protest(s).

- Formal proceedings administered by the department pursuant to the transfer of a water right. A pre-hearing conference identifies the protestant's concerns and reviews the resolution possibilities with the parties. If the concerns cannot be resolved, a formal hearing will be scheduled.

- Mediation through a certified professional mediator can reduce costs and time that are associated with formal proceedings, present the opportunity to address non-water concerns, provide influence over a final settlement, and fast track the processing of the application if a mediated agreement is reached.

Please consider with the protestant the best option(s) for resolution of the contested application and forward your choice to the Department's regional manager. If no response is received within a few weeks, you may be notified that a pre-hearing protest conference will be scheduled.

You may contact this office if you have any questions regarding the procedure discussed in this letter or additional information about water rights and other matters administered by this agency is available on the Internet at www.idwr.idaho.gov.

Sincerely,

Douglas Jones, P.E.
Northern Regional Manager

Enclosure(s)

Pre-Hearing Conference Procedures
Copy of Protest

07/2008

RECEIVED

DEC 09 2019

IDWR / NORTH

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, and 42-222, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested APPLICATION NO. 83543 1
2. Name of protestant JAMES & NANCY MILLER
3. Protestant's Representative for service (If different than protestant)

4. Service mailing address 40880 LITTLE CANYON RD
5. Service telephone no. 1-208-486-7671 Email Address: MILLERTIME2152@GMAIL.COM
6. Basis of protest (including statement of facts and law upon which the protest is based)
SEE ATTACHED LETTER

(additional pages may be attached to describe nature of the protest)
7. What would resolve your protest? _____

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 5TH day of DECEMBER, 20 19.

Nancy Miller
Protestant

Protestant's Representative

December 5, 2019

James and Nancy Miller
Little Canyon Road
Peck, ID 83545

Department of Water Resources
Northern Region
7600 N Mineral Dr. Ste 100
Coeur d'Alene, ID 83815

To whom it may concern:

I am submitting the attached notice of protest regarding Application No. 83543 for changes to the following water rights within Nez Perce County: #85-15799 and #85-15800.

We live at 40880 Little Canyon Rd adjacent to Mr. Dave Renberg. Attached is a map printed from the Idaho Department of Water Resources (IDWR) website that identifies the location of our residence.

We are concerned that the proposed transfer of the point of diversion upstream of the current location would injure the water right associated with the domestic water supply for our home. We own water right #85-11198, a spring located on Mr. Renbergs property, which supplies both our residence, Mr. Renbergs residence and farm with domestic water supply. This sharing agreement is spelled out in the deeds for our properties. It's been our observance in the 40+ years we've lived here that this spring has very high connectivity to the level of Little Canyon Creek. Often, during the summer months of the year when the creek level is very low there is very little supply from the spring. Several times over the recent past summers we have had to truck water in to supply both domestic and stock water for our homes/farms. We are very concerned if the point of diversion change as proposed is moved upstream of our domestic spring location that it will have a negative and injurious impact on our domestic water supply.

I appreciate your review and consideration of my concerns and look forward to your response.

Sincerely,

A handwritten signature in cursive script that reads "Nancy Miller". The signature is written in dark ink and is positioned above the printed name "Nancy Miller".

Nancy Miller

Enclosure

Cc: Jared M Holz and Jessica R Holz, 501 S Wickham Fen Way, Boise, ID 83709

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