

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

IN THE MATTER OF APPLICATIONS FOR	)	CONSOLIDATION ORDER,
PERMIT TO APPROPRIATE WATER NOS.	)	NOTICE OF HEARING, AND
96-9683, 96-9685, AND 96-9686	)	DISCLOSURE ORDER
	)	

BACKGROUND

On October 25, 2017, Marc Brinkmeyer ("Brinkmeyer") filed Application for Permit No. 96-9683, Priest River Land Company filed Application for Permit No. 96-9685, and Riley Creek Lumber Company filed Application for Permit 96-9686 (collectively the "Applications") with the Idaho Department of Water Resources ("IDWR"). According to Application for Permit No. 96-9686, Brinkmeyer is the "Owner/President" of Riley Creek Lumber Company. According to Application for Permit No. 96-9685, Brinkmeyer is the "Owner/President" of Priest River Land Company.

Paul Curless, Marse Shobe and Charles W. Shobe, Robert Becker, Brett Evans, and Mark Kubiak ("Protestants") protested each of the Applications. Brinkmeyer and the Protestants are collectively the "Parties."

On January 30, 2019, IDWR conducted a joint pre-hearing conference for the Applications. No settlement or agreements were reached, and the Parties have now requested that an administrative hearing be held to decide the contested cases for the Applications.

CONSOLIDATION ORDER

Pursuant to Rule 556 of the IDWR's Rules of Procedure (IDAPA 37.01.01), "The 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." Each of the Applications proposes storage of water in the Hornby Creek drainage. Brinkmeyer is the applicant or represents the applicant for each of the Applications. The Protestants are identical for each of the Applications. The issues raised by the Protestants against each of the Applications are identical. Consolidating these contested cases for hearing will promote efficiency for the Parties and IDWR.

IT IS HEREBY ORDERED that the contested cases for the Applications are consolidated for hearing.

NOTICE OF HEARING

IDWR has scheduled a joint hearing at **8:30 a.m. on Wednesday, June 19th, 2019 and Thursday, June 20th, 2019**, at the **Bonner County Commissioners Office, 1500 US HWY 2, Sandpoint, ID, 83864**.

The presiding officer at the hearing will be Shelley Keen, whose mailing address is P.O. Box 83720, Boise, ID, 83720-0098.

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 IDWR's Rules of Procedure (IDAPA 37.01.01), and the IDWR's Water Appropriation Rules (IDAPA 37.03.08). A copy of the code and rules may be obtained from the IDWR'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 application.

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 or hearing facilities should be directed to Tammy Alleman at (208) 762-2800.

DISCLOSURE ORDER

On or before May 31, 2019, each party must disclose to all other Parties and the hearing officer in writing the identity of all witnesses who will or may testify for the party at the hearing.

On or before May 31, 2019, each party seeking to offer exhibits at the hearing 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 IDWR's Rules of Procedure, which states:

Exhibit numbers may be assigned to the parties before hearing. Exhibits prepared for hearing should ordinarily be typed or printed on eight and one-half inch (8 1/2") by eleven inch (11") white paper, except that maps, charts, photographs and non-documentary exhibits may be introduced on the size or kind of paper customarily used for them. A copy of each documentary exhibit must be furnished to each party present and to the presiding officer, except for unusually bulky or voluminous exhibits that have previously been made available for the parties' inspection. Copies must be of good quality. Exhibits identified at hearing are subject to appropriate and timely objection before the close of proceedings. Exhibits to which no objection is made are automatically admitted into evidence

without motion of the sponsoring party. Neither motion pictures, slides, opaque projections, videotapes, audiotapes nor other materials not capable of duplication by still photograph or reproduction on paper shall be presented as exhibits without approval of the presiding officer prior to the hearing.

The Parties shall label their exhibits prior to serving them on the Parties and the hearing officer as follows:

Brinkmeyer – 100, 101, 102, etc.

Curless – 200, 201, 202, etc.

Shobe – 300, 301, 302, etc.

Becker – 400, 401, 402, etc.

Evans – 500, 501, 502, etc.

Kubiak – 600, 601, 602, etc.

Dated this 9th day of April, 2019.

A handwritten signature in blue ink that reads "Shelley Keen". The signature is written in a cursive style with a large, stylized 'K'.

Shelley Keen
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of April, 2019, 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: *Consolidation Order, Notice of Hearing, Disclosure Order*

**MARC BRINKMEYER
PO BOX 220
LA CLEDE, ID 83841**

**FORESITE ENGINEERING
C/O RYAN FOBES
418 E LAKESIDE AVE, SUITE 1
COEUR D'ALENE, ID 83814**

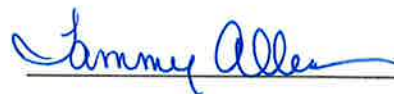
**PAUL CURLESS
278 HORSESHOE LANE
SANDPOINT, ID 83864**

**BRETT EVANS
PO BOX 111
DOVER, ID 83825**

**MARSE SHOBE
CHARLES W SHOBE
13874 W PINE ST
SANDPOINT, ID 83864**

**MARK KUBIAK
PO BOX 142
DOVER, ID 83825**

**ROBERT BECKER
13717 W PINE ST
SANDPOINT, ID 83864**



Tammy Alleman
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 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.