

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

IN THE MATTER OF APPLICATION	)	NOTICE OF HEARING,
FOR TRANSFER NO. 81805 IN THE	)	ORDER SCHEDULING DISCOVERY,
NAME OF RAM HOUSE LLC	)	AND DISCLOSURE ORDER
_____	)	

On July 18, 2017, Jess and Brenda Baugh, on behalf of Ram House LLC, filed Application for Transfer No. 81805 with the Idaho Department of Water Resources ("Department"). Mackay Bar Outfitters and Guest Ranch, Inc. protested the application. The parties have requested a formal hearing to resolve the protested matter.

On April 13, 2017, the Department issued *Notice of Hearing, Order Scheduling Discovery, and Disclosure Order* that scheduled a hearing for this contested case to be held beginning on June 25, 2018.

On June 13, 2018, at the request of the parties, the Department issued *Order Vacating Hearing and Notice of Status Conference*. That order vacated the scheduled hearing, as well as the associated discovery and disclosure schedules and set a status conference for August 17, 2018.

At the August 17, 2018 status conference, the parties asked the hearing officer to reopen discovery and schedule a hearing for the first week of December.

NOTICE OF HEARING

The department has scheduled the matter for a hearing beginning at 9:00 a.m. on Thursday, December 6th, 2018, at IDAHO DEPARTMENT OF WATER RESOURCES, WESTERN REGION, 2735 AIRPORT WAY, BOISE, ID 83705.

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 presiding officer at the hearing will be Nick Miller, whose mailing address is 2735 Airport Way, Boise, ID 83705-5082

The hearing will be held in accordance with the 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. 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 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, hearing facilities etc, should be directed to Rachel Neely, at (208)334-2190.

ORDER SCHEDULING DISCOVERY

IT IS HEREBY ORDERED that all parties may engage in discovery as follows:

1. General discovery can begin immediately and shall end on November 5, 2018.
2. Responses to discovery requests served prior to June 13, 2018 must be served on the requesting party on or before September 10, 2018. All other responses to discovery requests must be served within fourteen (14) days of the request. All responses to discovery shall be served on or before discovery end.
3. Written requests for discovery shall be either interrogatories or requests for documents. Requests for admission are not allowed.

DISCLOSURE ORDER

1. On or before November 21, 2018, 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.
2. On or before November 21, 2018, 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 Rules of Procedure. Applicant's exhibits shall be numbered between 1 and 100. Protestant's exhibits shall be numbered between 101 and 200.
3. In an attempt to reduce the number of duplicate exhibits offered by the parties at hearing, the department has assigned exhibit numbers to the following documents from the application files:

IDWR #1: Application for Transfer 81805 with attachments (5 pages).

IDWR #2: Mackay Bar Outfitters and Guest Ranch, Inc. protest to Application 81805 (2 pages)

IDWR #3: Water Right Report 77-14277

IDWR #4: Water Right Report 77-14302

IDWR #5: Water Right Report 77-14303

Dated this 28th day of August, 2018.



Nick Miller
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of August, 2018, 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:

- Notice of Hearing, Order Scheduling Discovery, and Disclosure Order
- Hearing Procedures for Application for Transfer.

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Administrative Assistant I

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 for the department to 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, and 7 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 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 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 . 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.