



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N Skyline Dr., Ste A, Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 FAX: (208) 525-7177 www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

September 25, 2017

SUNRAIN VARIETIES LLC
5466 W 49TH S
IDAHO FALLS, ID 83402

RE: Application for Transfer No(s). 81789

Dear Applicant(s):

Enclosed is a copy of a protest(s) filed against the approval of Transfer No(s). 81789. 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,



James Cefalo
Water Resources Program Manager

Enclosure(s): Pre-Hearing Conference Procedures
Copy of Protest(s)

cc: LUKE H MARCHANT
HOLDEN KIDWELL HAHN & CRAPO PLLC
PO BOX 50130
IDAHO FALLS, ID 83405

JC:sc

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. 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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C.L. "BUTCH" OTTER
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GARY SPACKMAN
Director

September 25, 2017

AARON JENKINS
PO BOX 409
DRIGGS, ID 83422

FREMONT MADISON IRRIGATION DISTRICT
PO BOX 15
ST ANTHONY, ID 83445

RIGBY ANDRUS & MOELLER CHTD
JERRY RIGBY
PO BOX 250
REXBURG, ID 83440

RE: Application for Transfer No(s). 81789

Dear Protestant(s):

This office acknowledges receipt of your protest to the approval of Transfer No(s). 81789. As part of the application process, the following options are available for the resolution of contested (protested) applications:

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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,



James Cefalo

Water Resources Program Manager

Enclosure(s) Pre-Hearing Conference Procedures

JC:sc

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Cox, Sharla

From: Cox, Sharla
Sent: Monday, September 25, 2017 10:46 AM
To: 'Luke Marchant'; 'Jerry Rigby RAR'; 'arjs9A@gmail.com'; 'aaron.fmid@myidahomail.com'; 'Mandy Davis'
Subject: Application for Transfer 81789 for SunRain Varities

Gentleman, we received 2 protests for the above Application for Transfer #81789. One from Fremont-Madison Irrigation District and the other from Aaron Jenkins. We would like to schedule a pre-hearing conference for this matter. We were wondering if everyone would agree to either hold the prehearing conference in the IDWR conference room here in Idaho Falls or if we could hold it in Rigby Andrus Conference room in Rexburg or if we could hold it in St. Anthony at Fremont-Madison conference room. Please let me know your preference and please give me your availability calendar from October 1 thru October 31st. I will schedule it to fit everyone's schedule and in the place that is the majority.

I have put the acknowledgement letters and copies of protests in the mail to the parties.

If anyone has any questions, please feel free to contact myself.

Sharla

*Sharla Cox
Administrative Assistant
Idaho Dept of Water Resources
900 N Skyline Dr. Ste A.
Idaho Falls ID 83402
sharla.cox@idwr.idaho.gov
208-525-7161 phone
208-525-7177 fax*

Cox, Sharla

From: Cox, Sharla
Sent: Monday, September 25, 2017 10:48 AM
To: 'arjs9n@gmail.com'
Subject: FW: Application for Transfer 81789 for SunRain Varities

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Sharla

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