

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

IN THE MATTER OF APPLICATION FOR)	
TRANSFER NO. 81039 IN THE NAME OF)	
MICHAEL AND EULLA WALLACE)	
AND PERMIT NOS. 78-12439 IN THE)	ORDER CONSOLIDATING CASES,
NAME OF EDWARD KALINOWSKI)	AUTHORIZING DISCOVERY, AND
AND 78-12447 IN THE NAME OF)	SETTING DISCLOSURE DEADLINES
<u>JAMES AND SANDRA HENLEY)</u>	

On July 12, 2016, Michael and Eulla Wallace filed Application for Transfer No. 81039 with the Idaho Department of Water Resources (department). The application was protested by Edward Kalinowski.

On May 2, 2016, Edward Kalinowski filed Application for Permit No. 78-12439 with the department. The application was protested by Leonard Wallace and by Michael and Eulla Wallace. On December 20, 2016, Leonard Wallace withdrew his protest.

On July 12, 2016, James Henley filed application for Permit No. 78-12447 with the department. The application was protested by Michael and Eulla Wallace.

The department conducted a pre-hearing conference for transfer application 81039 on December 1, 2016, which was attended by all of the parties listed above except Leonard Wallace (who was only a protestant to Application 78-12439). At the conference, the parties discussed consolidating the three applications for hearing and asked to commence discovery.

On December 5, 2016 the department received a stipulation signed by counsel for the transfer applicants and the permit applicants requesting the department consolidate the matters for hearing.

ORDER CONSOLIDATING MATTERS

Pursuant to Rule 556 of the Department's Rules of Procedure (IDAPA 37.01.01), "[t]he 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." In this case, the three applications propose water use from the same spring sources. The applicants and protestants overlap and the issues raised by the protestants against each application are identical. Consolidating these matters for hearing will promote administrative efficiency and limit the expenditure of resources by the parties.

IT IS HEREBY ORDERED that the contested cases for Application for Transfer No. 81039 and Application for Permit Nos. 78-12439 and 78-12477 are consolidated for hearing.

ORDER AUTHORIZING DISCOVERY

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

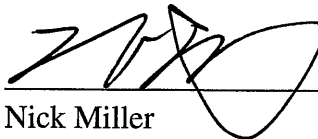
1. General discovery can begin immediately and shall end fourteen (14) days prior to the hearing.
2. Written requests for discovery shall be served at least twenty (20) days prior to the hearing. Written requests shall be either interrogatories or requests for documents. Requests for admission are not allowed.
3. Answers to written discovery must be served on the requesting party within fourteen (14) days of service of the request. All responses to discovery shall be served on or before the end of the discovery period.

DISCLOSURE ORDER

1. Expert witness reports must be submitted to all other parties at least thirty (30) days prior to the hearing.
2. Any party desiring to file prepared testimony pursuant to Rule 605 of the Department's Rule of Procedure must submit testimony to the hearing officer and the other parties at least thirty (30) days prior to the hearing. Service of the prepared testimony by email is acceptable. All witnesses whose testimony is pre-filed must appear at the hearing to verify that the prepared testimony is their own and will be subject to cross examination about the written testimony. Failure to appear is cause for the hearing officer to reject the prepared testimony.
3. At least fourteen (14) days prior to the hearing date, 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.
4. At least fourteen (14) days prior to the hearing, 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 Department's Rules of Procedure. Applicant's exhibits shall be numbered between 1 and 100. Protestant's exhibits shall be numbered between 101 and 200.

The hearing for this contested case shall be held in late May or early June 2017. Formal notice of the hearing will be served on the parties at a later date.

Dated this 28th day of December, 2016,



Nick Miller
Manager, IDWR Western Region

CERTIFICATE OF SERVICE

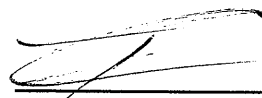
I HEREBY CERTIFY that on this 29th day of December, 2016, true and correct copies of the documents described below were served by placing a copy of the same with the United States Postal Service, postage prepaid and properly addressed to the following:

Documents Served:

- Order Consolidating Contested Cases, Authorizing Discovery, and Setting Disclosure Deadlines

SHELLEY DAVIS
BARKER ROSHOLT & SIMPSON
1010 W JEFFERSON STE 102
PO BOX 2139
BOISE ID 83701-2139

SCOTT CAMPBELL
MOFFATT THOMAS BARRETT ROCK & FIELDS CHTD
101 S CAPITOL BLVD 10TH FL
PO BOX 829
BOISE ID 83701-0829



Rachel Neely
Administrative Assistant I

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.