



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

May 15, 2015

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

James, Jacklyn, Jeffrey and /or Darcy Klausman
PO Box 1218
Driggs ID 83422

RE: Application for Transfer No(s). 79935

Dear Applicants:

This office acknowledges receipt of a protest to the approval of Transfer No(s). 79935. As part of the application process, the following options are available for the resolution of contested (protested) application:

-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. If you are interested in this option, please contact our office for details.

Please see enclosed letter requesting availability for a prehearing in June, 2015.
Please return availability calendars by May 26, 2015.

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,

A handwritten signature in blue ink, appearing to read 'James Cefalo', written over a horizontal line.

James Cefalo
Water Resources Program Manager

Enclosures Letter Requesting Availability
Availability Calendar
Pre-Hearing Conference Procedures
Copy of Protest

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

RIGBY ANDRUS & RIGBY LAW PLLC
C/O JERRY R RIGBY
25 N SECOND EAST
REXBURG, ID 83440

RE: Application for Transfer No(s). 79935

Dear Protestant(s):

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Sincerely,



James Cefalo
Water Resources Program Manager

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Governor

James, Jacklyn, Jeffrey and / or Darcy Klausmann
PO Box 1218
Driggs ID 83422

GARY SPACKMAN
Director

RE: Application for Transfer No. 79935

Dear Protestants:

We need to schedule a pre-hearing conference on the above matters. I am requesting you to let me know your **UNAVAILABLE** dates for June and July, 2015. **Please list your unavailable dates during June or July, 2015 on the calendars that are enclosed, please note, that the xxxxxx on the calendar days are for the unavailability for IDWR. Please return your calendars no later than May 26, 2015 (note, you may scan and email the calendars to: sharla.cox@idwr.idaho.gov .**

If you have any questions or concerns, please feel free to contact me at your earliest convenience.

Respectfully Submitted,

Sharla Cox
Water Rights Administrative Assistant

Enclosure: Blank Calendar

cc: Fremont Madison Irrigation District
PO Box 15
St. Anthony ID 83445

Jerry Rigby
Rigby Andrus & Rigby
PO Box 250
Rexburg ID 83440-0250