



**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](http://www.idwr.idaho.gov)**

**C.L. "BUTCH" OTTER**  
Governor

**GARY SPACKMAN**  
Director

October 1, 2013

NANCY LINELL BILLS  
BOX 137  
CARMEN, ID 83462

RE: Application for Transfer No(s). 78799 and Application for Exchange 78800

Dear Applicant(s):

Enclosed is a copy of a protest(s) filed against the approval of Transfer No(s). 78800. 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. If you are interested in this option, please contact our office for details.

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](http://www.idwr.idaho.gov).

Sincerely,



James Cefalo  
Water Resources Program Manager

Enclosure(s): Pre-Hearing Conference Notice  
Copies of Protests

cc: HOLDEN KIDWELL HAHN & CRAPO PLLC  
C/O ROBERT L HARRIS  
PO BOX 50130  
IDAHO FALLS, ID 83405

## **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](http://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.



## 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](http://www.idwr.idaho.gov)

**C.L. "BUTCH" OTIER**  
Governor

**GARY SPACKMAN**  
Director

October 1, 2013

GEORGE MATEJKO  
PO BOX 129  
CARMEN, ID 83462

RODNEY HUGH EDMISTON  
PO BOX 155  
CARMEN, ID 83462

JOHN E BURNS  
PO BOX 264  
CARMEN, ID 83462

WILLIAM W CLEMENTZ  
PO BOX 225  
CARMEN, ID 83462

JAMES R TIPPETT  
PO BOX 15  
CARMEN, ID 83462

JOHNNY J CABIGAS  
PO BOX 145  
CARMEN, ID 83462

IDAHO DEPT OF FISH & GAME  
99 HWY 93 N  
SALMON, ID 83467

JAMES PAUL HUDSON  
PO BOX 173  
CARMEN, ID 83462

JOHN WAYNE CAMPBELL  
PO BOX 49  
CARMEN, ID 83462-0049

RICK RICE  
PO BOX 285  
CARMEN, ID 83462

ROBERT D MOSHER  
54 PARMENTER RD  
PO BOX 213  
CARMEN, ID 83462-0213

LOWELL EDWARDS  
PO BOX 176  
CARMEN, ID 83462

JAMES W BINGHAM  
410 SHOUP ST  
SALMON, ID 83467

WESLEY G DANA  
PO BOX 134  
CARMEN, ID 83462

ANTELOPE HILLS NORTH HOMEOWNERS & WATER CO  
PO BOX 241  
CARMEN, ID 83462

BETSY RIEFFENBERGER  
PO BOX 232  
CARMEN, ID 83462

DAVID MEACHAM  
318 WILLIAMS CRK RD  
SALMON, ID 83467

BARBARA RIDIHALGH  
PO BOX 29  
CARMEN, ID 83462

JAMES DARRELL SPAIN  
PO BOX 203  
CARMEN, ID 83462

CHRISTOPHER DEAN  
PO BOX 14  
CARMEN, ID 83462

CHARLES R MORTON  
BOX 133  
CARMEN, ID 83462

SETH MC FARLAND  
PO BOX 127  
CARMEN, ID 83462

DAVID M MC FARLAND  
PO BOX 125  
CARMEN, ID 83462

BRUCE A MC FARLAND  
PO BOX 124  
CARMEN, ID 83462

TOM MC FARLAND  
PO BOX 127  
CARMEN, ID 83462

RE: Application for Transfer No(s). 78799 and Application for Exchange No. 78800

Dear Protestant(s):

This office acknowledges receipt of your protest to the approval of Transfer No(s). 78800. As part of the application process, the following options are available for the resolution of contested (protested) applications:

- 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 consider with the applicant 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 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](http://www.idwr.idaho.gov).

Sincerely,



James Cefalo  
Water Resources Program Manager

Enclosure(s): Pre-Hearing Conference Notice

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 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](http://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.