

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

**IN THE MATTER OF TRANSFER NO.)
78283 (FORMERLY NO. 66354))**

**NOTICE OF PRE-HEARING
CONFERENCE**

**IN THE NAME OF:)
BUCKEYE FARMS INC)
_____)**

On January 25, 1994, BUCKEYE FARMS INC, filed an Application for Transfer No. 78283 (formerly numbered 66354) with the Idaho Department of Water Resources (department). Protest(s) were filed by WESTERN LEGENDS LC, MICHAEL BRANCHFLOWER, AQUA LIFE INC, VERL C BELL. All protests have been withdrawn *except for the protest filed by Mr. Bell.*

The department has scheduled the matter for pre-hearing conference on Wednesday, May 22, 2013, beginning at 10:00 AM, at IDAHO DEPT OF WATER RESOURCES, Southern Region, 1341 FILLMORE ST, STE 200, TWIN FALLS, ID, 83301.

Agenda items for the pre-hearing conference will include:

1. Identify spokesman and/or counsel representing the protestant
2. Review of the application
3. Identify issues of protest
4. Designate date for identifying witnesses
5. Designate target date for conducting administrative hearing if resolution is not possible during the pre-hearing conference.

The department encourages the applicant and protestants to discuss and resolve the protests before the pre-hearing conference. If private discussions are not possible or do not resolve the protests, the department's Rules of Procedure provide for a pre-hearing conference to be held before scheduling a formal hearing.

The pre-hearing conference provides another informal opportunity for the applicant and protestants to meet. The parties often settle their differences at the pre-hearing conference. If a formal hearing is needed to resolve the protests, the pre-hearing conference serves as an opportunity to formulate or simplify the issues, obtain concessions of fact or identification of documents to avoid unnecessary proof, schedule discovery (when discovery is allowed), arrange for the exchange of proposed exhibits or prepared testimony, limit witnesses, schedule hearings, establish procedure at hearings, and address other matters that may expedite orderly conduct and disposition of the proceeding.

It is important for all parties to give considerable thought to each of these matters before appearing at the pre-hearing conference and to make the most of the opportunity to resolve the dispute informally.

The pre-hearing conference 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 pre-hearing conference, please notify the department at least (10) days prior to the hearing. Inquiries about scheduling, hearing facilities, etc., should be directed to Denise Maline, #(208) 736-3033.

Dated this 6th day of May, 2013.

A handwritten signature in black ink, appearing to read "Allen Merritt". The signature is stylized with a large, sweeping initial "A" and a cursive "Merritt".

Allen Merritt
Regional Manager

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of May, 2013, 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:

**Document Served: Notice Of Pre-Hearing Conference
 Hearing Procedure for Application for Transfer**

BUCKEYE FARMS INC
PO BOX 269
HAGERMAN, ID 83332

BARKER ROSHOLT & SIMPSON LLP
ATTN JOHN K SIMPSON
1010 W JEFFERSON STE 102
PO BOX 2139
BOISE, ID 83701-2139

BARKER ROSHOLT & SIMPSON LLP
ATTN PAUL ARRINGTON
195 RIVER VISTA PL STE 204
TWIN FALLS, ID 83301

VERL C BELL
853 E 2830 S
HAGERMAN, ID 83332

A handwritten signature in cursive script that reads "Denise Maline". The signature is written in dark ink and is positioned above a solid horizontal line.

Denise Maline
Administrative Assistant

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.