

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 95-9508 IN THE NAME OF) NOTICE OF CONFERENCE
PHILIP W BARNHART AND/OR PATSY BARNHART)
_____)

On August 19, 2008, PHILIP W BARNHART AND/OR PATSY BARNHART filed with the Department of Water Resources (department) Application for Permit No. 95-9508. The application was protested by Susan Bourguignon, Linda Williams, Judith L. Adams and Joan Tope.

The department has scheduled the matter for conference on June 9, 2009 at 9:00 AM, at the Idaho Department of Water Resources, 7600 N Mineral Drive, Suite 100, Coeur d'Alene, ID 83815. The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, the adopted Rules of Procedure of the department and Water Appropriation Rules 40 and 45. A copy of the rules may be obtained from the department upon request. The presiding officers at the conference will be Keith Franklin and Eric Davis, and can be contacted at the IDWR Northern Regional Office (208) 762-2800.

If you plan to offer exhibits for the record, note that IDAPA Rule of Procedure 37.01.01606 requires that you provide a copy of exhibits to each party and to the presiding officer.

The conference 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 conference, please advise the department within ten (10) days prior to the conference.

All parties to the matter will have the opportunity to respond and present information and argument on all issues involved.

Dated this 8 day of May, 2009.



Regional Manager

I hereby certify that on the 8th day of May, 2009, I mailed a true and correct copy, postage prepaid, of this document to the applicants(s) and protestant(s) listed below:



Administrative Assistant

Certified Mail

PHILIP W &/or PATSY BARNHART
486 KRIPPLE CREEK
ATHOL ID 83801

SUSAN BOURGUIGNON
1201 SUNSET RD
ATHOL ID 83801

LINDA WILLIAMS
PO BOX 403
BAYVIEW ID 83803

JUDITH L ADAMS
C/O EUGENE MURR
1201 SUNSET RD
ATHOL ID 83801

JOAN TOPE
132 SUNSET RD
ATHOL ID 83801

CONFERENCE AND HEARING PROCEDURE

APPLICATION FOR PERMIT

ISSUES

Section 42-203A, Idaho Code, requires the department to consider the following issues in connection with an application for permit:

1. Will the proposed appropriation injure other water rights?
2. Is the water supply sufficient for the purpose for which it is sought to be appropriated?
3. Was the application made in good faith or for delay or speculative purposes?
4. Does the applicant have sufficient financial resources with which to complete the proposed project?
5. Will the proposed use 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 have in the effects of such use on the public water resource?
6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?
7. Will the proposed use 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?

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, 3, 4, 6 and 7 above and must provide evidence for the department to evaluate these criteria.

The initial burden of proof on issue 5 above 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 prehearing 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, identify documents to avoid unnecessary proof, 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.

HEARING

The department will tape record the hearing. Copies of a hearing are available upon request and the payment of the cost of reproducing the tape.

The hearing likely will 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 order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the director.

Parties may by written stipulation waive the right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order and judicial review of the order.

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 advise the department within ten (120) days prior to the hearing.

CONFERENCE

File No.: 95-9508
Name: PHILLIP W &/OR PATSY BARNHART
Date: June 9, 2009
Time: 9:00 AM
Place: Department of Water Resources
7600 N Mineral Drive Suite 100
Coeur d Alene, ID 83815
(208) 762-2800

ROSTER OF ATTENDANCE

NAME _____

ADDRESS

NAME	ADDRESS
Joan Tape	132 Sunset Rd, Athol Id 83801
Steve Barnhart	485 Kripple Creek Athol ID. 83801
Philip Barnhart	486 Kripple Creek Athol Rd 83801
Patsy Barnhart	41 " " " "