

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

IN THE MATTER OF APPLICATION)
FOR PERMIT TO APPROPRIATE)
WATER NO.)
63-33321)
IN THE NAME OF:)
ELK CREEK CORP)

NOTICE OF HEARING

On December 21, 2009, ELK CREEK CORP, filed an Appropriation of a Water Right Permit No. 63-33321 with the Idaho Department of Water Resources (department). Protest(s) were filed by CITY OF IDAHO CITY.

On December 17, 2010, a pre-hearing conference was held and the parties requested that a formal hearing be held to resolve the protested matter.

The department has scheduled the matter for hearing on Tuesday, November 8, and Wednesday November 9, 2011, beginning at 9:30 AM, at IDAHO DEPARTMENT OF WATER RESOURCES, STATE OFFICE, CONFERENCE ROOMS C & D, 322 E FRONT ST, BOISE, ID, 83702.

If you plan to offer exhibits for the record at the hearing, note that Rule 606 of the department's Rules of Procedure requires that a copy be provided to the presiding officer.

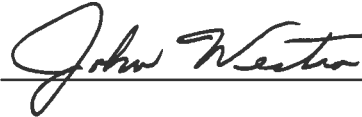
The presiding officer at the hearing will be Jeff Peppersack, whose mailing address is Idaho Department of Water Resources, 322 E Front St., PO Box 83720 , Boise, ID 83720-0098.

The hearing will be held in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, the adopted Rules of Procedure of the department, IDAPA 37.01.01, and Water Appropriation Rules 40 and 45. A copy of the code/rules may be obtained from the department's website, www.idwr.idaho.gov , or upon request.

All parties appearing in the matter will have the opportunity to present information, examine witnesses, and provide argument on issues related to the contested application.

The hearing 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 conference, please notify the department at least (10) days prior to the hearing. Inquiries about scheduling, hearing facilities, etc., should be directed to Denise Buffington, # (208) 334-2190.

Dated this 21st day of June, 2011.

A handwritten signature in cursive script, reading "John Westra", is positioned above a horizontal line.

John Westra
Regional Manager

For: Jeff Peppersack
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of June, 2011, true and correct copies of the documents described below were served by placing a copy of the same with the United States Postal Service, certified mail with return receipt requested, postage prepaid and properly addressed to the following:

**Document Served: Notice of Hearing
 Hearing Procedure for Application for Permit**

ELK CREEK CORP
ATTN: GRANT HAWK
PO BOX 401
IDAHO CITY, ID 83631

MARCUS MERRICK CHRISTIAN & HARDEE LLP
ATTN: BARRY L MARCUS
737 N 7TH ST
BOISE, ID 83702

SPF WATER ENGINEERING LLC
C/O TERRY SCANLAN
300 E MALLARD DR, STE 350
BOISE, ID 83706

CITY OF IDAHO CITY
C/O RICHARD K LINVILLE, ATTY
PO BOX 671
EMMETT, ID 83617

A handwritten signature in cursive script, reading "Denise Buffington", is written over a horizontal line.

Denise Buffington
Administrative Assistant

PRE-HEARING CONFERENCE AND/OR HEARING PROCEDURE APPLICATION FOR PERMIT

ISSUES

Applications to appropriate the water of the State of Idaho are referred to as applications for permit, and are for the development of new water rights. 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 reduce the quantity of water under existing 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, 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 pre-hearing 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.