

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 70722 IN THE)
NAME OF EL RAY AND/OR)
JANICE BALLS)

NOTICE OF HEARING AND
ORDER REQUIRING EXCHANGE
OF EXHIBITS AND WITNESS LISTS

On September 22, 2003, El Ray and Janice Balls filed an Application for Transfer No. 70722 with the Idaho Department of Water Resources (department). Protest(s) were filed by Sidney L. Schvaneveldt and Jay Norman Fannesbeck. A pre-hearing conference was held on November 10, 2003, but the parties were unable to resolve the issues of protest at that time. The parties have had seven years to resolve the issues of protest through informal means, but have been unable to do so.

Therefore, the department has scheduled the matter for hearing, to be held on Wednesday, January 5, 2011 beginning at 10:00 am, at Franklin County Ag Extension Office at 561 W. Oneida, Preston, Idaho

The transfer file indicates that there are a number of ongoing conflicts between water users in the area. Many of the sources of conflict fall outside the scope of this transfer application. The parties and any witnesses called to testify at the hearing must understand that the hearing will be strictly limited to the approval or denial of the transfer application. In accordance with Idaho Code Section 42-222, the department considers specific factors when determining whether to approve or deny a transfer. The factors are set forth in the enclosed document titled "Pre-Hearing Conference and/or Hearing Procedure Application for Transfer." In addition to these factors, the department may consider whether the water right proposed to be transferred constitutes a valid water right. The department will not make a determination on any of the following issues:

1. Easements. If a transfer proposes to move the point of diversion for a water right onto property not owned by the water right holder, the department may include a condition to the transfer approval stating: "This right does not grant any right-of-way or easement across the land of another."
2. Allocation of Maintenance Costs.
3. Ownership of Pumps or Ground Water Wells. The location of a water right does not imply ownership of pumps or wells or any other physical structure.
4. Allocation of Pumping/Power Costs.

These four items are private matters related to property and contract and should be resolved in a civil court. The hearing officer will limit the testimony offered at the hearing to the factors the department can consider, as set forth in the attached document.

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 James Cefalo, whose mailing address is 900 N. Skyline Dr., Ste A, Idaho Falls, ID 83402-1718.

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 or hearing facilities should be directed to Sharla Cox at (208)525-7161.

ORDER REQUIRING EXCHANGE OF EXHIBITS AND WITNESS LISTS

IT IS HEREBY ORDERED that on or before December 15, 2010, each party must disclose to all other parties, in writing, the identity of all witnesses that will or may testify for the party at the hearing. Further, on or before December 15, 2010, each party seeking to offer exhibits at the hearing must serve on all parties, including the hearing officer, copies of exhibits that may be offered at the hearing. Service of the proposed exhibits will be the method of providing copies of exhibits to the parties as required by Rule 606 of the Rules of Procedure. All parties shall review the proposed exhibits prior to the hearing, and come to the hearing prepared to discuss whether each of the proposed exhibits should be admitted into evidence.

Dated this 26th day of October, 2010.



James Cefalo
Hearing Officer

CERTIFICATE OF SERVICE

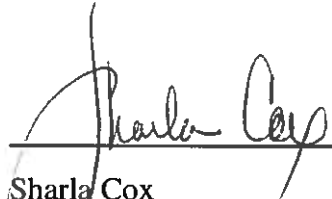
I HEREBY CERTIFY that on this 26th day of October, 2010, true and correct copies of the documents described below were served by placing a copy of the same with the United States Postal Service, certified mail with return receipt requested, postage prepaid and properly addressed to the following:

Document Served: Notice of Hearing and Order Requiring Exchange of Exhibits and Witness Lists

Sidney L Schvaneveldt
6762 W 2200 S
Weston ID 83286

Jay Norman Fonnesbeck
6022 W Hwy 36
Weston ID 83286

El Ray Balls
203 N Westside Hwy
Weston ID 83286



Sharla Cox
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.