

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

**IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 76630)
IN THE NAME OF:)
JESSICA K AND TERRY A MCNELLIS)**

**NOTICE OF HEARING AND
ORDER AUTHORIZING DISCOVERY**

NOTICE OF HEARING

On July 1, 2010, Jessica K and Terry A McNellis, filed an Application for Transfer No. 76630 with the Idaho Department of Water Resources (department). Protest(s) were filed by Clayne Hanson, Randy R. Olson and David A. Lowry.

On Monday, October 18, 2010, a pre-hearing conference was conducted and the parties requested that a formal hearing be held to resolve the protested matter.

The department has scheduled the matter for hearing on Friday, December 17, 2010 beginning at 10:00 AM, at Bureau of Land Management, 1206 S. Challis St, Salmon, ID 83467.

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.

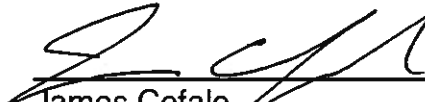
The hearing will be conducted in a facility that satisfies the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in, or understand the conference, please notify the department at least (10) days prior to the hearing. Inquiries about scheduling or hearing facilities should be directed to Sharla Cox at (208)525-7161.

ORDER AUTHORIZING DISCOVERY

IT IS HEREBY ORDERED that the parties may engage in discovery as follows:

1. General discovery will begin on October 25, 2010.
2. Written requests for discovery must be interrogatories or requests for documents. Requests for admission are not allowed. No more than 5 interrogatories may be served by any party (or the attorney for several parties) on another party. Division of a single interrogatory into more than two sub-questions is not permissible. All discovery requests shall be served on or before November 15, 2010.
3. Answers to written discovery must be served on the requesting party within fourteen (14) days of service of the request. All responses to discovery shall be served on or before November 30, 2010.
4. On or before November 30, 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 November 30, 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 20th day of October, 2010.



James Cefalo
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st 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

Clayne Hanson
3543 E 630 N
Menan ID 83434

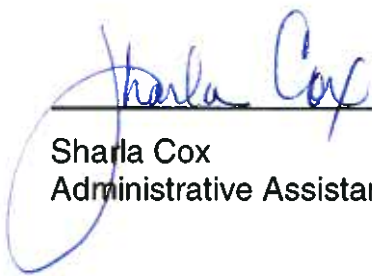
Randy R Olson
226 Sandy Creek
Salmon ID 83467

Pat Mconnaghy
373 Sandy Creek
Salmon ID 83467

David A. Lowry
366 Sandy Creek Rd
Salmon ID 83467

Jerry R. Rigby
PO Box 250
Rexburg ID 83440

Jessica K and Terry A McNellis
PO Box 834
Rancho Santa Fe CA 92067



Sharla Cox
Administrative Assistant

MEMORANDUM

To: Parties to Contested Application

From: James Cefalo JRC

Date: October 19, 2010

RE: Changes to Points of Diversion Proposed by Transfer 76630

In the pre-hearing conference held on October 18, 2010, it was apparent that there is confusion as to which points of diversion on the West Fork of Sandy Creek are associated with certain water rights. There is also confusion as to how the transfer will change the water right points of diversion. To eliminate some of the confusion, I have prepared a map and this memo. I hope these documents will help the parties understand the issues at hand, engage in informal settlement discussions, and prepare for hearing. The map identifies the four points of diversion (A-D) on the portion of West Fork Sandy Creek in question.

Existing Water Right Locations

POD A: 74-200 (McNellis, 1882, 2.0 cfs); 74-7231 (Lemhi Hydropower, 1983, 4.5 cfs)

POD B: 74-203 (McNellis, 1894, 1.0 cfs); 74-204 (McNellis, 1895, 1.0 cfs);
74-408B (McNellis, 1896, 1.06 cfs); 74-480A (Lomont, 1900, 0.13 cfs);
74-480B (Lomont, 1900, 0.15 cfs); 74-480C (Lowry, 1900, 1.72 cfs)

POD C: Alternate point of diversion for Lomont/Lowry rights (74-480A, 74-480B, 74-480C)

POD D: 74-408A (Fisher, 1896, 0.94 cfs); 74-433 (McNellis, 1904, 1.60 cfs)
74-15238 (Goulet, 1907, 0.02 cfs); 74-15589 (Andrews, 1907, 0.06 cfs);
74-15590 (Hanson, 1907, 1.92 cfs)

Proposed Water Right Locations (Transfer App. 76630)

POD A: 74-200 (McNellis, 1882, 2.0 cfs); 74-203 (McNellis, 1894, 1.0 cfs);
74-204 (McNellis, 1895, 1.0 cfs); 74-408B (McNellis, 1896, 1.06 cfs);
74-408A (Fisher, 1896, 0.94 cfs); 74-433 (McNellis, 1904, 1.60 cfs);
74-7231 (Lemhi Hydropower, 1983, 4.5 cfs)

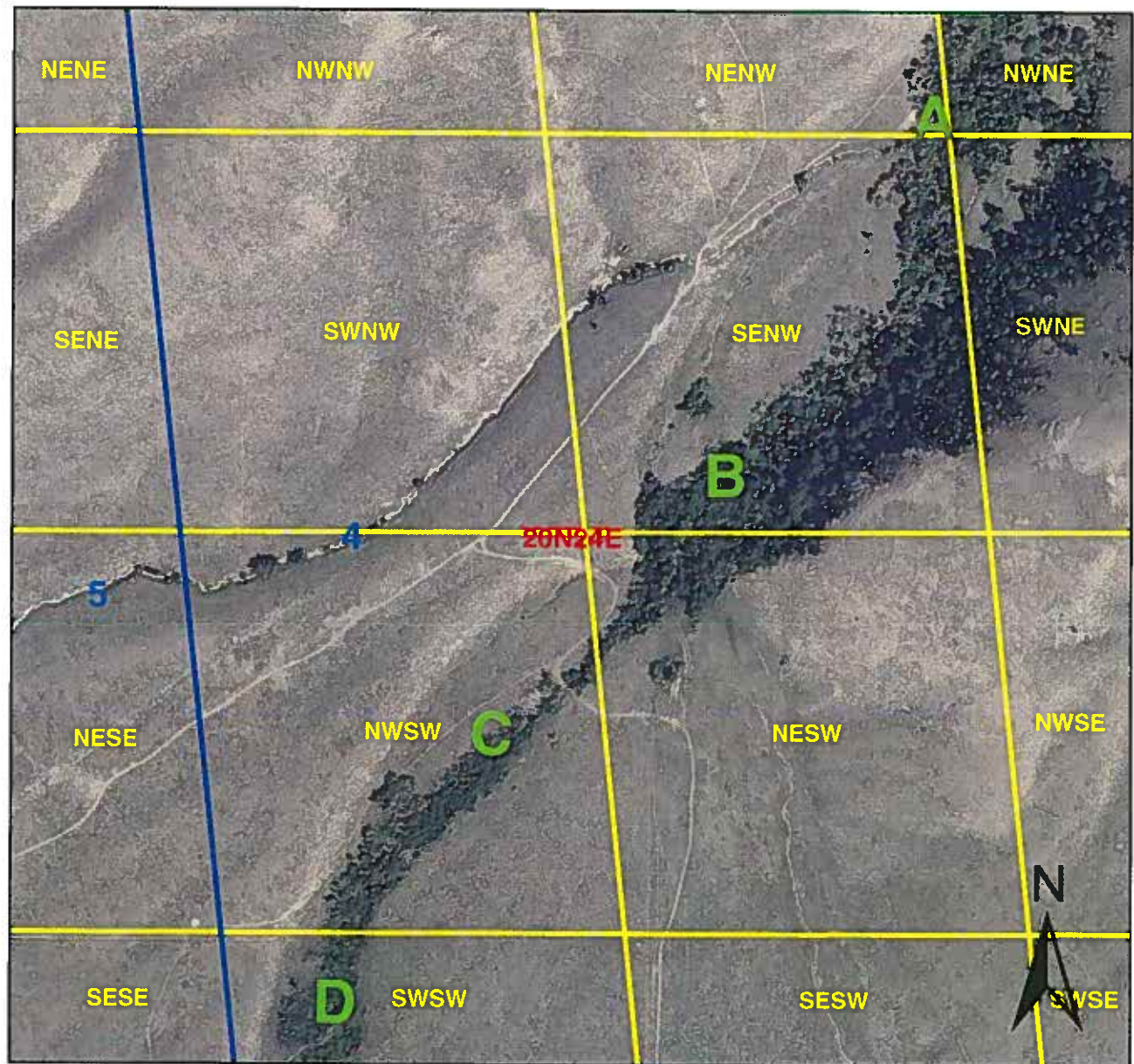
POD B: 74-480A (Lomont, 1900, 0.13 cfs); 74-480B (Lomont, 1900, 0.15 cfs);
74-480C (Lowry, 1900, 1.72 cfs)

POD C: Alternate point of diversion for Lomont/Lowry rights (74-480A, 74-480B, 74-480C)

POD D: 74-15238 (Goulet, 1907, 0.02 cfs); 74-15589 (Andrews, 1907, 0.06 cfs);
74-15590 (Hanson, 1907, 1.92 cfs)

Transfer App. 76630 (McNellis)

Points of Diversion on West Fork Sandy Creek



Legend

- Township/Range
- Sections
- QQ

0 500 1,000 2,000 Feet

Map prepared by James Cefalo on October 19, 2010.
2009 Aerial Photography