

VLM

Agenda for Prehearing Conference
Re Protested Transfer Application # 74727: Randy Heffner
[WR # 65-3803B]

9:00 a.m. - noon, October 7, 2010, at IDWR Western Region, Conference Room

1. Attendance sign in
2. Participant introductions
3. Opening Statements by IDWR (5 minutes)
 - (a) Brief description of application, applicants and protestants
 - (b) Purpose of prehearing conference
 - (c) Review conference conduct & agenda
4. Applicant presentation (5 minutes) – Randy Heffner
 - (a) Status of settlement attempts
 - (b) Why transfer is required
5. Protestant presentation (5 minutes) – Kathy and Linda
 - (a) Basis of protest
 - (b) Current status re settlement
- IDWR role – (5-10 minutes) – Vicky Music
 - (a) Department's application criteria
 - (b) Contested application and hearing process
 - (c) What the Department can and cannot do
6. Open Discussion
 - (a) Narrow & identify the issues
Trespass
Deficiency on application
 - (b) What will the applicant agree to
 - (c) What will the protestants agree to
7. Settlement
 - (a) Yes –
 - (i) Can IDWR administer settlement
 - (ii) Protestant to submit protest withdrawal – set date
 - (b) No –
 - (i) Hearing ?
 - A - IDWR appoints Hearing Officer
 - b- applicant and protestant prepare a case to be heard
 - c - The hearing officer issues a written decision
 - (ii) IDWR rejects application due to deficiencies
8. Summarize pre-hearing conference

for decision

Prehearing Conference – Information Handout
Application for Transfer No. 74727 by Randy Heffner [65-3803B]

Purpose of Prehearing Conference

- ☐ Formulate and simplify the issues
- ☐ Discuss and propose settlement
- ☐ Address other matters that may expedite settlement
- ☐ Schedule deadlines, hearings, discovery

Conference Conduct

- ☐ Do not interrupt someone who is speaking
- ☐ Direct your wish to speak to the Department representative for acknowledgement
- ☐ If you have exceeded your time allotted or have drifted away from the subject, the Department representative may stop you.
- ☐ Be respectful of the process and other participants

IDWR Evaluation Criteria for Application for Transfer

- ☐ Will the proposed transfer use injure existing water rights?
- ☐ Will the proposed transfer enlarge the original right? [rate, volume]
- ☐ Is the Application made in good faith or delay/speculation?
- ☐ Will the proposed use conflict with the local public interest? (Local public interest is defined as the affairs of the people in the area directly affected by the proposed use).
- ☐ Will the proposed use be contrary to the conservation of water resources?

What the Department can do

- ☐ Place conditions on transfers
- ☐ Acknowledge agreements between parties
- ☐ Enforce statutes re illegal diversions, issue NOV's, initiate actions seeking injunctive relief & obtain cease and desist orders

What the Department cannot do

- ☐ Place irrelevant conditions on permits
- ☐ Deny an application if the statutory evaluation criteria are met
- ☐ Decide trespass/ right-of-way issues

The applicant has the burden of proof and must provide IDWR with information sufficient to evaluate these criteria.

Heffner Conference Bullets

-It appears the contested issue is P/D access/right of way to the Aldape Ranch

-Application form #5B – Ownership of PD
Not filled in

-Applicant should note, he has had over a year to work out access issues with protestant.

Application not complete

Based on Good faith criteria—speculation –delay 42-203A5(c) assume same for transfers. Also, evaluation Criteria-- Rule 45 Appropriations Rules

-If applicant calls and says he can't make the conference. **No**, notices were sent in May, conference will be held. Application filed in 2008, can no longer hold.

-If applicant does not show up—default order to reject application

-If protestant does not show up—default order to dismiss protest.

However, that does not change that the applicant must show access to P/D

-Issue Notice of Intent to Reject (following conference)

Provide 30 days for documentation --Heffner P/D access to Aldape property.

-Issue Preliminary Rejection Order (if no documentation provided)

Based on incomplete application – not answering 5B or providing documentation info.

Trespass/No access to P/D -- appropriation rule #45.01.c.i

Pre Hearing Conference Purpose

- Formulate/simplify the issues*
- Discuss settlements, make settlement offers*
- Address matters that may expedite conduct of the proceeding or settlement*
- Schedule hearings, discovery.***

Evaluation Criteria --Applications for Transfer

Pursuant to Idaho Code §42-222

1. Authority to file a transfer application?
2. Evaluation of Water Right Validity—Is this a valid right?
3. Injury to other water rights?
4. Enlargement of use
5. Local Public Interest-- *that is, the 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 transfer be contrary to conservation of water resources within the State of Idaho?
7. Effect on economy and Ag. economy of local area

Web References www.idwr.idaho.gov, select forms-rules-statutes

- Idaho Code 42-203A *Protests—Hearings Appeals*
- Rules of Procedure; IDAPA 37.01.01
- Water Appropriation Rules; IDAPA 37.03.08

Attachment #7a Heffner Transfer No. 74727



Legend

- 65-3803B Existing P/D
- ▨ 65-3803B P/U
- Township/Range
- Sections
- QQ

X PROPOSED P/D



SCANNED
AUG 11 2009