**BEFORE THE DEPARTMENT OF WATER RESOURCES**

**OF THE**

**STATE OF IDAHO**

| | | |
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| **IN THE MATTER OF APPLICATION** | ) | |
| **FOR TRANSFER NO. 70645 IN THE** | ) | **NOTICE OF** |
| **MOUNT OXFORD RANCH COMPANY** | ) | **PRE-HEARING CONFERENCE** |

On June 20, 2003, Downata Ranch & Recreation Inc, filed an Application for Transfer No. 70645 with the Idaho Department of Water Resources (department). The transfer proposed to change the point of diversion and the place of use for Water Right 29-2293. Protests were filed by Egan Ranch LLC, Lynn Bastian, Carl Barnes and Cris Davis. On June 8, 2010, Mount Oxford Ranch Company, represented by Jarin Hammer of Beard St. Clair Gaffney, filed an Amended Application for Transfer to only add a point of diversion and to change the name of the applicant.

The department has scheduled this case for pre-hearing conference on Thursday, September 16, 2010, beginning at 9:00 AM, at the Racine Olson Nye Budge & Bailey Law Office, 201 E Center St, Pocatello ID 83204.

Agenda items for the pre-hearing conference will include:

1. Review of the applications.

2. Identify issues of protest.

3. Designate date for identifying witnesses.

4. Designate target date for conducting administrative hearing if resolution is not possible during the pre-hearing conference.

The department encourages the applicant and protestants to discuss and resolve the protests before the pre-hearing conference. If private discussions are not possible or do not resolve the protests, the department's Rules of Procedure provide for a pre-hearing conference to be held before scheduling a formal hearing.

The pre-hearing conference provides another informal opportunity for the applicant and protestants to meet. The parties often settle their differences at the pre-hearing conference. If a formal hearing is needed to resolve the protests, the pre-hearing conference serves as an opportunity to formulate or simplify the issues, obtain concessions of fact or identification of documents to avoid unnecessary proof, schedule discovery (when discovery is allowed), arrange for the exchange of proposed exhibits or prepared testimony, limit witnesses, schedule hearings, establish procedure at hearings, and address other matters that may expedite orderly conduct and disposition of the proceeding.

It is important for all parties to give considerable thought to each of these matters before appearing at the pre-hearing conference and to make the most of the opportunity to resolve the dispute informally.

The pre-hearing conference 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 pre-hearing conference, please notify the department at least (10) days prior to the hearing. Inquiries about scheduling, hearing facilities, etc., should be directed to Sharla Cox, (208)525-7161.

Dated this 4th day of August, 2010.

James Cefalo
Water Resources Program Manager

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of August, 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, postage prepaid and properly addressed to the following:

Document Served: Notice Of Pre-Hearing Conference
Hearing Procedure for Application for Transfer

Mount Oxford Ranch Company
PO Box 185
Downey ID 83235

Egan Ranch LLC
1451 W Hawkins Rd
Arimo ID 83214

Lynn Bastian
16580 S Marsh Valley Rd
Arimo ID 83214

Jarin O Hammer
Beard St. Clair Gaffney Attorneys
2105 Coronado St
Idaho Falls ID 83404

Carl Barnes
3717 E Back Downata Rd
Downey ID 83234

Cris Davis
PO Box 75
Downey ID 83234

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.