

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE  
STATE OF IDAHO

IN THE MATTER OF APPLICATIONS )  
FOR PERMIT NOS. 51-7357 AND ) NOTICE OF CONFERENCE  
51-7358 IN THE NAME OF LITTLE )  
BASIN MUTUAL DRAINAGE CO. INC. AND )  
51-7355 AND 51-7356 IN THE NAME OF )  
TRIVAIL INC. )  


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On July 18, 1995, Little Basin Mutual Drainage Co. Inc. filed with the Department of Water Resources two applications for permit to appropriate the public waters of the State of Idaho. The applications were protested by Bruneau Cattle Co. and M. L. Investment. On July 18, 1995, Trivial, Inc. filed with the Department of Water Resources two applications for permit to appropriate the public waters of the State of Idaho. These applications were also protested by Bruneau Cattle Co. and M. L. Investment Co.

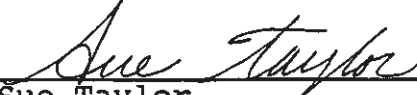
The Department has set the matter of protest for a conference to be held on Friday, October 27, 1995, at 10:00 a.m., at the Elmore County Courthouse, 150 S 4th St. E., Mountain Home, Idaho 83647. The conference will be held in accordance with provisions of Chapters 2 and 17, Title 42, and Chapter 52, Title 67, of the Idaho Code, the adopted Rules of Practice and Procedure of the Department of Water Resources, and Rules 40 and 45 of the adopted Rules and Regulations of Water Appropriation of the Department of

Water Resources. Opportunity shall be afforded all parties to respond and present information and argument on all issues involved.

Dated this 11<sup>th</sup> day of October, 1995.

  
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DAVID R. TUTHILL, JR., P. E.  
Manager, Western Regional Office

I hereby certify that on the 11<sup>th</sup> day of October, 1995, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:

  
\_\_\_\_\_  
Sue Taylor  
Secretary/Office Coordinator

Certified Mail

TRIVIAL INC.  
HC 85 BOX 139  
BRUNEAU ID 83604

KENT KOHRING PRESIDENT  
LITTLE BASIN MUTUAL DRAINAGE CO INC  
HC 85 BOX 140  
BRUNEAU ID 83604

ERIC DAVIS  
BRUNEAU CATTLE CO  
HC 85 BOX 138  
BRUNEAU ID 83604

M L INVESTMENT CO  
HC 85 BOX 275  
BRUNEAU ID 83624

## CONFERENCE AND HEARING PROCEDURE

### APPLICATION FOR PERMIT

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 injure other water rights?
- 2) Is the proposed 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) Is the proposed appropriation in the local public interest, which is defined as the affairs of the people in the area directly affected by the proposed use?
- 6) Is the proposed use contrary to conservation of water resources within the state of Idaho?

### BURDEN OF PROOF

The Applicant has the initial burden of proof on issues 1, 2, 3, 4, & 6 above and must provide evidence for the department to evaluate these criteria.

The initial burden of proof on issue 5 above lies with both the applicant and protestant as to factors 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 prehearing 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, identify documents to avoid unnecessary proof, exchange proposed exhibits or prepared testimony, limit witnesses, discuss settlement offers, schedule hearings, establish procedure at hearings and address other matters that may expedite orderly conduct and disposition of the proceeding or its settlement.

#### **HEARING**

The department will tape record the hearing. Copies of a hearing tape are available upon request and the payment of the cost of reproducing the tape.

The hearing likely will be conducted by a hearing officer appointed by the Director rather than the Director himself. If so, the hearing officer will prepare a recommended order for the Director's consideration. Parties can file exceptions to a recommended order, briefs in support of the exceptions or may request oral argument. Parties may seek judicial review of any final order issued by the Director.

Parties may be written stipulation waive their right to a recommended order, particularly when a shortened decision process is desirable or necessary. Such a waiver does not eliminate any rights of the parties in connection with the final order of the Director and judicial review of the order.

#### **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 advise the department within ten (10) days prior to the hearing.