

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

**IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 63-12459 IN THE)
NAME OF TIM FEASE &/OR KATHY)
ELLENSOHN, APPLICATION)
FOR TRANSFER OF WATER RIGHT)
NO. 63-00289 IN THE NAME OF)
BALLENTINE DITCH CO. LTD, AND)
APPLICATION FOR PERMIT NO.)
63-12384 IN THE NAME OF KENLEY)
HINRICH &/OR LISA O'TOOLE.)
_____)**

**NOTICE OF PREHEARING
CONFERENCE AND
NOTICE OF HEARING**

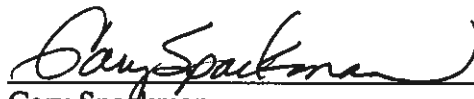
On March 18, 1997, Kenley Hinrich &/or Lisa O'Toole filed with the Department of Water Resources (department) an application for permit to appropriate the public waters of the State of Idaho. The application was protested by Tim Fease &/or Kathy Ellensohn and Ballentyne Ditch Co. LTD.

On March 11, 1998, Tim Fease &/or Kathy Ellensohn filed with the Department of Water Resources (department) an application for permit to appropriate the public waters of the State of Idaho. On April 20, 1998, Ballentyne Ditch Co. LTD filed with the department an application for transfer of water right. The applications were protested by Kenley Hinrich.

The department has scheduled a conference for the protests to be held on Monday, November 9, 1998, at 10:00 a.m. at the Idaho Department of Water Resources (IDWR), conference room c, 1301 N. Orchard, Boise, Idaho. The department has also scheduled a hearing to be held on Tuesday and Wednesday, December 8 and 9, 1998, at 9:00 a.m. at IDWR, conference rooms a & b, 1301 N. Orchard, Boise Idaho 83706. 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 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. The presiding officer at the hearing will be Gary Spackman.

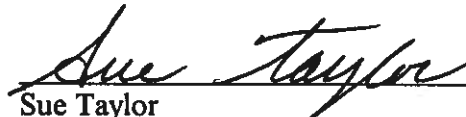
The conference and hearing will be conducted in a facility which satisfies the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please advise the department within (10) days prior to the conference and/or hearing.

Dated this 9th day of October, 1998.



Gary Spackman

I hereby certify that on the 9th day of October, 1998, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed:



Sue Taylor
Senior Secretary

TIMOTHY F FEASE &/OR
KATHY ELLEN SOHN
4557 OLD VALLEY RD
EAGLE ID 83616

BALLENTYNE DITCH CO.
325 PARK LN
EAGLE ID 83616

KENLEY HINRICH
4695 OLD VALLEY RD
EAGLE ID 83616

SUSAN BUXTON ESQ
999 W MAIN
BOISE ID 83702

RICHARD BURLEIGH
HAWLEY TROXELL ENNIS & HAWLEY
PO BOX 1617
BOISE ID 83701

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 written 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, by 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 prior to any scheduled hearing.

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.