



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

September 2, 2009

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

TO: Lawrence & Kay Hansen, Applicants
Fred Nitz- Protestant
Herb Nitz- Protestant
John Jobe- Protestant
Herbert Lloyd- Protestant

RE: Contested Application for Permit #63-33064-Lawrence & Kay Hansen Hearing Information

Dear Parties:

Attached is the hearing notice for the above contested Hansen application for permit. The purpose of this letter is to provide you with information regarding the hearing process. The following outlines the evaluation criteria and party responsibilities:

Identified Issues

The Department's Rules of Procedure relating to contested matters, state that one of the purposes of a pre-hearing conference is to formulate or simplify the issues, see attached rule references. The hearing conference held on May 6, 2009 identified the following issues related to the contested matter:

-Sustainability of area ground water by lowering of aquifer—injury to senior ground water rights/domestic uses. Applicants should be required to utilize surface water available to property.

-Injury to protestants. Lowering of pumping levels in nearby irrigation and domestic wells—costs of lowering of pumps and/or construction of deeper wells.

Evaluation Criteria

Idaho water appropriation statutes and rules establish evaluation criteria that our agency must follow in processing of new appropriation applications. The criteria apply to all applications whether protested or not protested. Please refer to the application criteria summary attached, ref. IC 42-203A(5).

Hearing Participation

An officer is appointed to preside over the hearing and to record the testimony and evidence presented during the proceeding. A preliminary order decision will be issued by the officer following the hearing. The decision is based on the hearing evidence presented and evaluation criteria. **Parties are required to present a case and arguments.** The case may include the testimony of witnesses/experts and submittal of documents /exhibits. Parties may represent themselves or retain an attorney for the hearing.

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Burden of Proof

The burden of proof is divided between the applicant and protestant for a contested case. The applicant bears the initial burden of coming forward with evidence for items #1 thru #4 of the evaluation criteria. Both applicant and protestant bear the initial burden of evaluation item #5. **However, the applicant bears the ultimate burden of proof for all the evaluation criteria, see "Water Appropriation Rules" (Rule 40) reference.**

Should have any questions/concerns please contact me at the Western Regional Office, phone 34-2190.

Sincerely,

A handwritten signature in cursive script that reads "John Westra".

John Westra, Manager
Western Region

Enclosure: Evaluation Criteria-Application for Permit
Web Site References

cc: Steve Hannula, ERO Resources