

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

**IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 72799 IN THE) NOTICE OF
OF THE JUDD WHITWORTH) PRE-HEARING CONFERENCE**

The Department has scheduled this matter for a pre-hearing conference at 9:00 A.M. on December 10, 2008, at Challis Courthouse in the Commissioner's Room, 801 E Main St, Challis, ID, in accordance with the provisions of the adopted Rules of Procedure of the Department of Water Resources.

Agenda items for this pre-hearing conference will include:

- 1. Identify spokesman and/or counsel representing the protestant.**
- 2. Review of the application.**
- 3. Identify issues of protest.**
- 4. Designate date for identifying witnesses.**
- 5. Designate target date for conducting administrative hearing if resolution
is not possible during the pre-hearing conference. Please come prepared
to discuss available dates for hearing.**

The pre-hearing conference 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 pre-hearing conference, please advise the Department within ten (10) days prior to the pre-hearing conference.

Dated this 19 day of November 2008.

Ernest Carlsen
ERNEST CARLSEN
Program Manager

I hereby certify that on the _____ day of November 2008, I mailed a true and correct copy, postage prepaid, of this document to the applicant(s) and protestant(s) listed below:

SHARLA COX
Administrative Assistant

CERTIFIED MAIL

Judd A Whitworth
2604 Pahsimeroi Road
May ID 83253

Larry Zuckerman
Western Watersheds Project
PO Box 132
Salmon ID 83467

David Rosenkrance
Bureau of Land Management
1151 Blue Mountain Rd
Challis ID 83226

CONFERENCE AND/OR HEARING PROCEDURE APPLICATION FOR TRANSFER

ISSUES

Section 42-222, Idaho Code, identifies the following potential issues that the department can consider in connection with an application for transfer:

1. Will the proposed transfer injure other water rights?
2. Will the proposed transfer constitute an enlargement in use of the original right?
3. Is the proposed transfer in the local public interest, where local public interest is defined as the affairs of the people in the area directly affected by the proposed use?
4. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?

BURDEN OF PROOF

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

The initial burden of proof on issue 3 above 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 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, 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.

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 the Idaho Code Sections and the Rules are available upon request or by accessing the Department's website: www.idwr.idaho.gov. The department will record the hearing. Copies of a hearing are available upon request and there may be a charge for reproducing the recording.

The hearing likely will 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 for the Director's consideration. Parties can file exceptions to a recommended order, and a brief in support of the exceptions or may request oral argument, or file a petition for reconsideration to a preliminary order. Parties may seek judicial review of any final order issued by the Director.

Parties may by written stipulation waive the 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 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 no later than ten (10) days prior to the hearing.