

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

**IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 75-15092)
IN THE NAME OF:)
DAN MITCHELL)**
_____)

**NOTICE OF PREHEARING
CONFERENCE**

On 9/29/2023, DAN MITCHELL, filed Application for Water Right Permit No. 75-15092 with the Idaho Department of Water Resources (Department). Protest(s) were filed by ROBERT L BLACKADAR, & ARROWHEAD WATER DISTRICT.

The Department has scheduled the matter for prehearing conference on **May 14, 2024**, beginning at 10:00 AM, at IDWR, Webex Meeting or 322 E FRONT ST BOISE, ID 83720. Webex information is:

Join from the meeting link

<https://idahogov.webex.com/idahogov/j.php?MTID=md6d945774f531733ceeea79a3417b4d6>

Meeting number (access code): 2634 219 9855

Meeting password: 6WEzdRhJ2G2

The presiding officer will be Hearing Officer Cherie Palmer.

Agenda items for the prehearing conference will include:

1. Identify spokesperson and/or counsel representing the applicant and protestant,
2. Review the application,
3. Identify issues of protest,
4. Discovery needs,
5. Designate date for identifying witnesses and exhibits,
6. Designate target date for conducting administrative hearing if resolution is not possible during the prehearing conference, and
7. 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 prehearing conference.

The Department encourages the applicant and protestant(s) to discuss and resolve the protest(s) before the prehearing conference. If private discussions are not possible or do not resolve the protest(s), the Department's Rules of Procedure provide for a prehearing conference to be held before scheduling a formal hearing.

The prehearing 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 prehearing conference, please notify the Department at least ten (10) days prior to the hearing. Inquiries about scheduling, hearing facilities, etc., should be directed to Jean Hersley at 208-287-4942.

Dated this 25th day of April, 2024.



Cherie Palmer
Hearing Officer

CERTIFICATE OF SERVICE

I certify that on the 25th day of April 2024, I served or caused to be served the Notice of Prehearing Conference to the parties by the following method(s):

DAN MITCHELL
20 POLLARD CREEK ACRES RD
SALMON, ID 83467
4066601709
dmitchell1947@gmail.com
Applicant

- ☐ U.S. Mail, Certified, postage prepaid
- ☐ U.S. Mail, postage prepaid
- ☐ Overnight Mail
- ☒ Email

JAMES R LUKENS
39 POLLARD CREEK ACRES RD
SALMON, ID 83467-4752
2089401055
wharfrat051@gmail.com
Representative

- ☐ U.S. Mail, Certified, postage prepaid
- ☐ U.S. Mail, postage prepaid
- ☐ Overnight Mail
- ☒ Email

ROBERT L BLACKADAR
10 N CHEROKEE RD
SALMON, ID 83467
2087564967
bobbblackadar@gmail.com
Protestant

- ☐ U.S. Mail, Certified, postage prepaid
- ☒ U.S. Mail, postage prepaid
- ☐ Overnight Mail
- ☒ Email

Courtesy Copies:

ARROWHEAD WATER DISTRICT
C/O GARY LEUZINGER
23 OLIVER DR
SALMON, ID 83467
2089930491
GBFV16A@YAHOO.COM

- ☐ U.S. Mail, Certified, postage prepaid
- ☐ U.S. Mail, postage prepaid
- ☐ Overnight Mail
- ☒ Email



Jean Hersley
Technical Records Specialist 2

PREHEARING CONFERENCE AND/OR HEARING PROCEDURE
APPLICATION FOR PERMIT

ISSUES

Applications to appropriate the water of the state of Idaho are referred to as applications for permit and are for the development of new water rights. Section 42-203A, Idaho Code, requires the Idaho Department of Water Resources (Department) to consider the following issues in connection with an application for permit:

1. Will the proposed appropriation reduce the quantity of water under existing water rights?
2. Is the 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. Will the proposed use 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 have in the effects of such use on the public water resource?
6. Will the proposed use be contrary to the conservation of water resources within the State of Idaho?
7. Will the proposed use 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?

BURDEN OF PROOF

The applicant has the initial burden of proof for issues 1, 2, 3, 4, 6, and 7 above and must provide evidence for the Department to evaluate these criteria.

The initial burden of proof on issue 5 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 all of these issues.

PROCEDURE

The Department conducts a formal prehearing 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 protested 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

The scheduled hearing will 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. 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.