

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

IN THE MATTER OF LICENSE
NO. 37-07842 IN THE NAME OF THE
IDAHO WATER RESOURCE BOARD

**NOTICE OF PREHEARING
CONFERENCE**

BACKGROUND

On August 1, 2017, William Arkoosh, the Estate of Vernon Ravenscroft, Koyle Hydro, Inc., Koosh, Inc., and Shorock Hydro (“Petitioners”), filed a *Petition for Hearing, and Petition for Declaratory Ruling* (“Petition”). The Petitioners requested that the Idaho Department of Water Resources (“Department”) hold a hearing on its order issued in the above-captioned matter on September 2, 2010, “granting an extension of time to submit proof of beneficial use, and for its ruling on the applicability of Idaho statutes, administrative rules and administrative orders on the subject permit” *Petition* at 1.

On August 22, 2017, the Idaho Water Resource Board (“Board”) submitted to the Department a *Motion to Dismiss Petition for Hearing*, and a *Memorandum in Support of Motion to Dismiss Petition for Hearing* (“Hearing Memo”). The Board asserted the petition for hearing should be dismissed as untimely because the Petition was filed more than fifteen days after the Petitioners received written or actual notice of the September 2, 2010, order. *Hearing Memo* at 6.

On August 22, 2017, the Board also submitted a *Motion to Dismiss Petition for Declaratory Ruling* and *Memorandum in Support of Motion to Dismiss Petition for Declaratory Ruling* (“Declaratory Ruling Memo”). The Board asserted the petition for declaratory ruling should be dismissed because it does not state “any specifics regarding which statute, rule, or order it seeks a ruling on” or “the specific declaratory ruling that the Petitioners are seeking and the facts upon which the Petition is based.” *Declaratory Ruling Memo* at 5.

On September 11, 2017, the Department received the *Petitioner’s Motion to Allow Amendment to the Pleadings* (“Motion to Amend”) and a *First Amended Petition for Hearing, and Petition for Declaratory Ruling* (“Amended Petition”). The Petitioners asked the Director of the Department (“Director”) to allow them to amend the Petition pursuant to the Department’s Rule of Procedure 305 (IDAPA 37.01.01.305), asserting the Petition “incorrectly identified the order for which a hearing was being requested.” *Motion to Amend* at 1. The Petitioners stated “[t]he actual order for which the Petitioners are requesting a hearing is the Notice of Issuance of License No. 37-7842, issued on July 14, 2017 [“July 2017 Order”].” *Id.* The Petitioners also stated the Petition “was filed within fifteen days of Petitioners receiving notice of the [July 2017

Order].” *Id.* at 2. The Petitioners also requested the Director allow them to amend the Petition to “provide greater clarification as to the declaratory ruling which Petitioners seek.” *Id.*

On September 25, 2017, the Department received *IWRB’s Response to Petitioners’ Motion to Allow Amendments to the Pleadings* (“Board’s Response”). The Board did “not object to the Motion to Amend with regard to changing the order referenced to the [July 2017 Order] so as to cure the timeliness issue raised in the [*Motion to Dismiss Petition for Hearing*].” *Board’s Response* at 4. However, the Board asserted the Petitioners’ request to amend the Petition to clarify the requested declaratory ruling should be denied and the Board’s *Motion to Dismiss Petition for Declaratory Ruling* should be granted. *Id.* at 17-18.

On December 21, 2017, the Director issued an *Order Re: Prehearing Motions*. The Director denied the Board’s *Motion to Dismiss Petition for Hearing*, denied the Petitioner’s Motion to Amend to clarify the requested declaratory ruling, and granted the Board’s *Motion to Dismiss Petition for Declaratory Ruling*. The Director also granted the Petitioners’ Motion to Amend to identify the July 14, 2017 Notice of Issuance of License No. 37-7842 as the order upon which the Petitioners request a hearing pursuant to Idaho Code § 42-1701A(3). The Director informed the parties he would issue a separate notice of prehearing conference.

NOTICE OF PREHEARING CONFERENCE

The Director hereby notifies the parties that a prehearing conference will be held in this matter on **January 31, 2018, at 10:30 a.m. (MDT)**, at the Department’s State Office, located at 322 E. Front Street, 6th Floor, Director’s Conference Room, Boise, Idaho 83702. The presiding officer will be the Director, Gary Spackman.

The parties must be represented at the prehearing conference in person or by telephone. If participating by telephone, **please dial 1-720-279-0026 and enter the following guest code when prompted: 544840#.**

The prehearing conference will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the Department, IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department or at <https://adminrules.idaho.gov/rules/current/37/0101.pdf>.

The prehearing 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 conference, please contact Kimi White at (208) 287-4815, no later than five (5) days prior to the conference.

Dated this 3rd day of January 2018.



GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of January 2018, I served a true and correct copy of the foregoing document on the following by the method(s) indicated.

JOSEPH F JAMES BRONW & JAMES 125 FIFTH AVENUE WEST GOODING ID 83330 joe@brownjameslaw.com dana@brownjameslaw.com	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
ANN Y VONDE DEPUTY ATTORNEY GENERAL IDAHO WATER RESOURCE BOARD STATE OF IDAHO PO BOX 83720 BOISE ID 83720-0010	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
BRIAN PATTON IDAHO WATER RESOURCE BOARD 322 EAST FRONT STREET PO BOX 83720 BOISE ID 83720-0098	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
KEVIN LAKEY WATER DISTRICT #37 107 W 1 ST SHOSHONE ID 83352 watermanager@cableone.net	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email



Kimi White