

RECEIVED

JUN 30 2016

Department of Water Resources
Eastern Region

Robert L. Harris, Esq. (ISB #7018)
rharris@holdenlegal.com
HOLDEN, KIDWELL, HAHN & CRAPO,
P.L.L.C.
P.O. Box 50130
1000 Riverwalk Drive, Suite 200
Idaho Falls, ID 83405
Telephone: (208) 523-0620
Facsimile: (208) 523-9518

Attorneys for Lynn and Robin Herbst

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

IN THE MATTER OF APPLICATION FOR
PERMIT NO. 74-16008 AND APPLICATION
FOR TRANSFER NO. 80150 IN THE NAME
OF LYNN AND ROBIN HERBST

**APPLICANT'S
WITNESS AND EXHIBIT LIST**

Lynn Herbst and Robin Herbst (hereinafter collectively the "Applicant"), by and through their attorneys of record, Holden, Kidwell, Hahn & Crapo, P.L.L.C., pursuant to Hearing Officer Cefalo's *Notice of Hearing and Disclosure Order* dated May 24, 2016, hereby submits *Applicant's Witness and Exhibit List* summarizing the witnesses that may testify at the hearing and the exhibits that may be offered as evidence at the hearing scheduled for the above matter on July 14, 2016.

WITNESSES

The following witnesses may be called by the Applicant to testify at the hearing:

1. **Lynn Herbst:** Lay witness who will testify about his historic irrigation practices, crops raised on his farm, his water rights and related matters, filing of the application for permit for 74-16008 and application for transfer no. 80150, history of use of water in the L-31 ditch, local public interest matters concerning his applications, and all other matters

relating to or rebutting evidence submitted in opposition to application for permit for 74-16008 and application for transfer no. 80150.

2. **Robin Herbst:** Lay witness who will only be called to testify concerning the same matters as Lynn Herbst if Lynn Herbst is unavailable to testify or if her testimony is needed to augment or clarify Lynn Herbst's testimony.
3. **Bob Loucks:** Lay witness and expert witness who will testify about the history behind diversion rates in excess of .02 cfs per acre in the Lemhi River basin, Herbst water rights matters, and his general knowledge of water rights matters in the Lemhi River basin. Mr. Loucks may also be called as a rebuttal witness if necessary.
4. **Cynthia Bridge-Clark, Idaho Water Resource Board:** Unless called as part of the IWRB's case in chief, Ms. Bridge-Clark will be called as part of the Applicant's case-in-chief as an adverse witness to testify as the representative of the Idaho Water Resource Board entity (similar to a corporate witness under I.R.C.P. 30(b)(6)) to answer questions relating to the IWRB's protest of this matter described both in the written protest and otherwise, IWRB's position concerning subordination on previously issued water rights, IWRB's discovery responses, and other matters raised at the hearing.
5. **Any of the Protestant Idaho Water Resource Board's witnesses.**

EXHIBITS

The following exhibits may be introduced at the hearing:

100. Herbst Notice of Violation Letter, dated August 19, 2013.
101. Application for Permit for 74-16008.
102. Amended Application for Permit for 74-16008.
103. Notice of Protest filed by the Idaho Water Resource Board for Application for Permit for 74-16008.
104. Lynn and Robin Herbst Water Right Summary (submitted with Transfer No. 80150).
105. Field Visit Photographs (Powerpoint) from July 29, 2014.
106. GIS Map showing Herbst Place of Use over 2015 NAIP Aerial Photo.
107. GIS Map showing Herbst Place of Use over 2013 NAIP Aerial Photo.
108. GIS Map showing Herbst Place of Use over 2011 NAIP Aerial Photo.

109. Proposed Findings of Fact, Lemhi River Draining, page 376 (page describing springs being used on an exchange basis for John and/or Emma Herbst in the NE1/4NW1/4 of Section 29, Township 19N., Range 24E).
110. GIS Map showing NE1/4NW1/4 of Section 29, Township 19N., Range 24E) over 2011 NAIP Aerial Photo.
111. Old Water Right License Document issued to Joseph Pattee on Agency Creek.
112. Email from Bob Loucks to Robert Harris, June 15, 2016.
113. Stipulation for Withdrawal of Protests, in the Matter of Application for Permit No. 74-16008.
114. Partial Decree for Federal Reserved Water Rights 75-13316 and 77-11941.
115. Basin 74 General Provisions.
116. Spreadsheet of Wild & Scenic Water Rights (downloaded from IDWR website).
117. Administrator's Memorandum, Application Processing No. 70.
118. Email from James Cefalo to parties to Application for Permit No. 74-16030.
119. Comparison of Water Right No. 75-13316 to Flow at Salmon River near Shoup (May-July, 2003, 2015).
120. IWRB's Discovery Responses to Lynn Herbst's Discovery Requests.
121. Application for Permit for Water Right No. 74-16010 (filed by Lamar Cockrell and Sons LLC).
122. Amended Application for Permit for Water Right No. 74-16010 filed by Lamar Cockrell and Sons LLC.
123. Notice of Protest to Application for Permit No. 74-16010 filed by the Idaho Water Resource Board.
124. Email from James Cefalo to Ann Vonde, March 13, 2014 (on file under the water right backfile of Water Right No. 74-16010).
125. Letter from Mike Kossler of Eagle Valley Ranch LLC to the Idaho Department of Water Resources, March 4, 2014 (on file under the water right backfile of Water Right No. 74-16010).
126. Withdrawal of Protest filed by the Idaho Water Resource Board for 74-16010 (on file under the water right backfile of Water Right No. 74-16010).
127. Permit to Appropriate Water, Water Right No. 74-16010.

128. Water Right Report for Water Right No. 74-2047L.
129. Water Right Map for Water Right No. 74-2047L obtained from the Idaho Department of Water Resources.
130. Water Right Report for Water Right No. 74-1835.
131. Water Right Map for Water Right No. 74-1835 obtained from the Idaho Department of Water Resources.
132. Application for Transfer No. 80150.

The Applicant reserves the right to submit additional exhibits, such as those necessary for rebuttal of any of the testimony of the protestants' witnesses or protestants' exhibits, and to use any official documents that are included within IDWR's files.

Dated this 30th day of June, 2016.



Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the following described pleading or document on the parties listed below by hand delivery, email, mail, or by facsimile, with the correct postage thereon, on this 30th day of June, 2016.

DOCUMENT SERVED: APPLICANT'S WITNESS AND EXHIBIT LIST

ORIGINAL TO: James Cefalo
Idaho Department of Water Resources
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402-1718
james.cefalo@idwr.idaho.gov

ATTORNEYS AND/OR INDIVIDUALS SERVED:

Ann Y. Vonde
Deputy Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
Fax: 208-854-8072
ann.vonde@ag.idaho.gov

- ☐ First Class Mail
- ☒ Overnight Mail
- ☐ Facsimile
- ☒ Email
- ☐ Email



Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

G:\WPDATA\RLH\17836-000, Lynn Herbst\Hearing Exhibits\Witness Exhibit List.docx