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May 05, 2025

DEPARTMENT OF
WATER RESOURCES

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

IN THE MATTER OF APPLICATIONS
FOR TRANSFER 89297 IN THE NAME
OF PANCHERI INC.

**APPLICANT'S MOTION FOR PARTIAL
SUMMARY JUDGMENT AND
MEMORANDUM IN SUPPORT**

Pancheri, Inc. ("Pancheri" or the "Applicant"), by and through its counsel, Holden, Kidwell, Hahn & Crapo, P.L.L.C., hereby submits this *Applicant's Motion for Partial Summary Judgment and Memorandum in Support*. The motion is submitted as provided in the *Notice of Hearing and Scheduling Order* dated January 13, 2025 (the "Procedural Order"). This motion is supported by the *Declaration of Robert L. Harris* (the "Harris Declaration") and *Notice of Deemed Admissions* ("Notice") submitted with this pleading.

The above-described contested case is associated with Transfer No. 89297 (the "Transfer" or "89297") before the Idaho Department of Water Resources ("IDWR" or "Department"). Department employee James Cefalo is the designated hearing officer (the "Hearing Officer").

The Transfer was protested by Roy Sermon ("Sermon"), who is *pro se* in this matter. Two other entities (Hawley Land and Livestock and Woodie Land & Livestock, both of whom are represented by counsel) remain protestants to this matter. This motion for summary judgment only

concerns Sermon's protest and does not address the protests of Hawley Land and Livestock and Woodie Land & Livestock.

As to Sermon's protest, Pancheri hereby moves for summary judgment on each of the legal issues associated with a contested water right transfer, which are described in the following portion of the notice provided to the parties to 89297:

**INFORMAL SETTLEMENT CONFERENCE PROCEDURE
APPLICATION FOR TRANSFER**

ISSUES

Applications for transfer are filed for the purpose of changing a point of diversion, purpose of use, period of use or nature of use of all or part of a licensed, decreed or statutory water right. Section 42-222, Idaho Code, identifies the following potential issues that the Idaho Department of Water Resources (Department) considers in connection with an application for transfer:

1. Will the proposed transfer reduce the quantity of water under existing water rights?
2. Will the proposed transfer constitute an enlargement in use of the original water right?
3. Will the proposed transfer be contrary to the conservation of water resources within the State of Idaho?
4. Will the proposed transfer 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 and its potential effects on the public water source?
5. Will the proposed transfer 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?
6. Is the proposed transfer consistent with the requirements for municipal providers, if applicable?
7. Will the proposed transfer change the nature of use from an agricultural use, and would such a change significantly affect the agricultural base of the local area?

In all legal proceedings in Idaho, *pro se* litigants are held to the same standard as licensed attorneys. "Pro se litigants are not entitled to special consideration or leniency because they represent themselves. To the contrary, it is well-established that courts will apply the same

standards and rules whether or not a party is represented by an attorney and that pro se litigants must follow the same rules, including the rules of procedure.” *Bettwieser v. New York Irrigation Dist.*, 154 Idaho 317, 322, 297 P.3d 1134, 1139 (2013) (citations omitted). The Idaho Supreme Court has stated:

Idaho courts have long held that: Pro se litigants are held to the same standards and rules as those represented by an attorney. Pro se litigants are not accorded any special consideration simply because they are representing themselves and are not excused from adhering to procedural rules.

Greenfield v. Smith, 162 Idaho 246, 253, 395 P.3d 1279, 1286 (2017) (citations and quotation marks omitted). This principal was recently reiterated in 2024, where the Idaho Supreme Court held that “[w]hen it comes to motion practice, pro se litigants are held to the same standards and rules as those represented by an attorney.” *Axelrod v. Reid Ltd. P’ship*, 551 P.3d 777, 785 (Idaho 2024) (citations and quotation marks omitted).

IDAPA 37.01.01.220.03 states that the “motions for summary judgment may be filed in any contested case,” and that Idaho Rules of Civil Procedure 56 (a), (c), (d), (e), and (f) apply to hearings before the Department. Therefore, the hearing officer “must grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Idaho Rule of Civil Procedure 56(a). In considering a summary judgment motion:

The burden of establishing the absence of a genuine issue of material fact rests at all times with the party moving for summary judgment. [The] Court liberally construes the record in the light most favorable to the party opposing the motion, drawing all reasonable inferences and conclusions in that party’s favor. If there is no genuine issue of material fact, only a question of law remains.

Davison v. Debest Plumbing, Inc., 163 Idaho 571, 574–75, 416 P.3d 943, 946–47 (2018) (citations and internal quotation marks omitted). While the nonmoving party is entitled to all contested facts

and every reasonable inference, it “may not rest upon the mere allegations or denials of that party’s pleadings, but the party’s response, by affidavits or as otherwise provided in [Rule 56], must set forth specific facts showing that there is a genuine issue for trial.” *Path to Health, LLP v. Long*, 161 Idaho 50, 54, 383 P.3d 1220, 1224 (2016) (footnote, citation, and quotation marks omitted).

For the reasons set forth below, summary judgment on all seven issues in favor of Pancheri is appropriate as to Sermon’s protest to 89297.

I. ARGUMENT.

A. As a matter of law, several of the transfer criteria under Idaho Code § 42-222 are inapplicable to the Transfer.

As described above, there are seven criteria under Idaho Code § 42-222, all of which are matters that the Applicant has the burden to prove at hearing (except for the local public interest, where both the applicant and any protestants share the burden of establishing). As a matter of law, matters 5, 6, and 7 are inapplicable in this matter, and summary judgment on them must be granted.

Matters 5-7 are:

5. Will the proposed transfer 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?
6. Is the proposed transfer consistent with the requirements for municipal providers, if applicable?
7. Will the proposed transfer change the nature of use from an agricultural use, and would such a change significantly affect the agricultural base of the local area?

The Transfer application is clear that it does not involve water rights “where the place of use is outside of the watershed or local area where the source of water originates.” Nor is the Transfer “for a municipal use.” And the Transfer does not propose to “change the nature of use from an agricultural use.” Accordingly, matters 5-7 are not implicated in any way in this matter, and the Hearing Officer must grant summary judgment on these matters.

Even if the hearing officer were to determine that matter 5 does apply here, Sermon is deemed to have admitted that the Transfer “will not adversely affect the local economy of the watershed or the local area within which the source of water for the proposed use originates, as described under Idaho Code § 42-222(1).” *See Notice of Deemed Admissions* at 2.

B. Sermon has admitted as a matter of law that the transfer meets the applicable criteria associated with the Transfer under Idaho Code § 42-222.

The Department’s procedural rules authorize use of the written interrogatories, requests for admission, and requests for production of documents when authorized by “presiding officers in contested cases before the [Department].” IDAPA 37.01.01.520.01. The parties were authorized to use “written discovery requests” in the *Procedural Order*.

Discovery serves important purposes as it allows the parties to request and receive information to prepare for a hearing. It also provides the opportunity to narrow the issues at hearing. Legal proceedings are intended to be orderly, and not a trial by ambush.

In this matter, the Sermon was served with discovery requests on February 7, 2025, with responses due on or before 30 days of service of the discovery requests, or Monday, March 10, 2025.¹ *See Notice of Discovery Requests*; *See also Harris Declaration* ¶4. The discovery requests are attached to the *Harris Declaration*, and they include interrogatories, requests for production of documents, and requests for admission. *Id.* Sermon did not provide responses to any of these discovery requests on March 10, 2025, the deadline for filing responses, *Id.* ¶6, nor the date of filing of this memorandum (May 5, 2025).

Specific to requests for admission, under Rule 36 of the Idaho Rules of Civil Procedure,

¹ Thirty (30) days from July 30, 2021 is August 29, 2021, but because that day falls on a Sunday, by rule, the deadline is moved to the next business day, in this case, August 30, 2021. IDAPA 37.01.01.056.

“[a] matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party or its attorney.” Idaho R. Civ. P. 36(a)(4). Rule 36 further provides:

A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. The court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits.

Idaho R. Civ. P. 36(b) (emphasis added).

Among other matters, the requests for admission are specific to matters 1, 2, 3, and 4 set forth above, which are:

1. Will the proposed transfer reduce the quantity of water under existing water rights?
2. Will the proposed transfer constitute an enlargement in use of the original water right?
3. Will the proposed transfer be contrary to the conservation of water resources within the State of Idaho?
4. Will the proposed transfer 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 and its potential effects on the public water source?

As set forth in the *Notice of Deemed Admissions*, Sermon was asked (1) to admit that his water rights will not be affected or injured by the Transfer; (2) to admit that the Transfer will not allow for an enlargement, as described under Idaho Code § 42-222; (3) to admit that the Transfer is consistent with the conservation of water resources within the state of Idaho, as described under Idaho Code § 42-222; and (4) admit that the Transfer is in the local public interest, as described under Idaho Code § 42-222. *See Notice of Deemed Admissions* at 1,3-5.

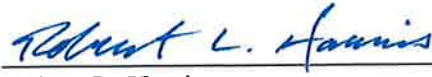
These requests for admission remain unanswered, and are therefore admitted under I.R.C.P. 36—in the words of the rule, “[a] matter admitted under this rule is conclusively

established . . .” Accordingly, the hearing officer must grant summary judgment on matters 1-4, with one caveat. Despite the lack of response, Pancheri represented in the expert report submitted in this matter, and maintains here that any water rights transferred under the Transfer shall be subordinate to all surface water rights with a source described as the Little Lost River prior to June 2, 1891. *Evaluation of Water Rights and Administration in Little Lost River Valley for Transfer Application 89297 in the name of Pancheri, Inc.*, Rocky Mountain Environmental Associates, Inc., February 7, 2025, at 4. Should the hearing officer grant summary judgment, the order approving the Transfer must include a condition to this effect.

Finally, as to any other water rights that may be injured by this transfer, no other water user on Little Lost River or any streams it is tributary to will be injured because the point of diversion change proposed in this transfer does not affect any water users other than those owned by the remaining protestants.

For the reasons set forth above, as to Sermon’s protest, summary judgment must be granted in Pancheri’s favor on all 7 matters evaluated in a contested transfer application. After conclusion of the contested case, at a minimum, the Hearing Officer should issue a preliminary order approving the Transfer with a condition consistent with Pancheri’s expert report submitted in this matter that that any water rights transferred under the Transfer shall be subordinate to all surface water rights with a source described as the Little Lost River prior to June 2, 1891 (along with any other standard IDWR conditions). Upon grant of this motion, Sermon’s protest must be deemed fully addressed and not at issue at the hearing scheduled in this matter.

Dated this 5th day of May, 2025.



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

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May, 2025, I served a true and correct copy of the following described pleading or document on the attorneys and/or individuals listed below by the method(s) indicated.

DOCUMENT SERVED: APPLICANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT

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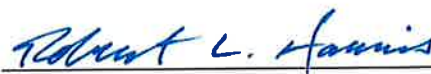
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