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DEPARTMENT OF  
WATER RESOURCES

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## STATE OF IDAHO

## DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF APPLICATION  
FOR TRANSFER 89232 IN THE NAME  
OF GOOD TIMBER RANCH, LLC

**GOOD NEIGHBORS' REPLY BRIEF  
IN FURTHER SUPPORT OF  
MOTION TO STAY PROCEEDINGS**

The Protestants of Transfer 89232 collectively known as the “Good Neighbors” (Georgie Stanley, Susan Miller, the Maguire Family Trust, Rafe Rivers, Ainsley Rivers, and Gregory Collins) hereby submit the following *Reply Brief In Further Support of Motion to Stay Proceedings*. The rules governing this transfer proceeding are found in IDAPA 37.01.01 *et seq.* The following IDAPA Rules are pertinent to the issues here:

**102. FORMAL PROCEEDINGS.**

When the agency determines that informal proceedings are unlikely to resolve a contested *case*, ***the agency will initiate formal proceedings by issuing a Notice of Prehearing Conference and identifying a presiding officer.*** (Emphasis added)

**510. PURPOSES OF PREHEARING CONFERENCE.**

***To initiate formal proceedings*** in a contested case pursuant to Rule 102, the agency will ***issue a Notice of Prehearing Conference, identifying the presiding officer for the case and setting the date and time for prehearing conference.*** The prehearing conference shall be convened for purposes of formulating or simplifying the issues, obtaining concessions of fact or identification of documents to avoid unnecessary proof, scheduling discovery (when discovery is allowed), arranging for the exchange of

proposed exhibits or prepared testimony, limiting witnesses, discussing settlement offers or making settlement offers, scheduling hearings, establishing procedure at hearings, and addressing other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. (Emphasis added)

#### **514. ORDERS RESULTING FROM CONFERENCE.**

The presiding officer may issue a prehearing order or notice based upon the results of the agreements reached at or rulings made at a conference. *A prehearing order will control* the course of subsequent proceedings *unless modified by the presiding officer for good cause.* (Emphasis added)

#### **710. INTERLOCUTORY ORDERS.**

Interlocutory orders or intermediate orders are orders that do not decide all previously undecided issues presented in a proceeding, except the presiding officer may by order decide some of the issues presented in a proceeding and provide that the decision on those issues is final and subject to review by reconsideration or exceptions filed with the agency head, or judicial review in district court, but is not final on other issues. Unless an order contains or is accompanied by a document containing one (1) of the paragraphs set forth in Rules 720, 730 or 740 or a paragraph substantially similar, the order is interlocutory. *The following orders are ALWAYS interlocutory:* orders joining, consolidating or separating issues, proceedings or parties; orders granting or denying intervention; *orders scheduling prehearing conferences, discovery, hearing, oral arguments or deadlines for written submissions;* and orders authorizing, compelling or refusing to compel discovery. Interlocutory orders may be reviewed by the presiding officer issuing the order pursuant to Rules 711, 760, and 770. (Emphasis added)

#### **711. REVIEW OF INTERLOCUTORY ORDERS.**

*Any party or person affected by an interlocutory order may petition* the presiding officer to review the interlocutory order. *The presiding officer may rescind, alter or amend any interlocutory order* on the presiding officer's own motion, but will not on the presiding officer's own motion review any interlocutory order affecting any party's substantive rights without giving all parties notice and an opportunity for written comment. (Emphasis added)

#### **780. STAY OF ORDERS.**

*Any party may petition* the agency to stay *any order, whether interlocutory or final.* Interlocutory or final orders may be stayed by the judiciary according to statute. The agency may stay any interlocutory or

final order on its own motion. (Emphasis added)

**This Is A Formal Proceeding.**

The Idaho Department of Water Resources (“IDWR”) conducted an informal settlement conference for this contested case on December 4, 2024. The *Notice* for this conference stated:

“If informal proceedings are unlikely to resolve this contested case, the Department *will initiate formal proceedings by issuing a notice of prehearing conference and identifying a presiding officer.*” (Emphasis added)

Then, on January 13, 2025, IDWR did indeed issue a *Notice* for the pre-hearing conference, appointing Mr. James Cefalo as the Presiding Officer. The *Notice* acknowledged that “*The parties requested* that a pre-hearing conference be scheduled.” (Emphasis added) The prehearing conference was held on January 30, 2025.

All of this is expressly acknowledged in the *Notice of Hearing and Scheduling Order* that was issued by Presiding Officer Cefalo on February 26, 2025 as a result of this prehearing conference. The *Order* set the formal hearing for this matter for July 22-24, 2025 and stated:

“All parties appearing in this matter will have the opportunity to present information, examine witnesses, and provide argument on issues related to the contested application.”

The *Order* then set deadlines for discovery, expert witnesses, depositions, and rebuttal reports. Discovery requests were required to be served on or before March 14, 2025, and all discovery completed by April 14, 2025. Good Timber served their first round of discovery requests to the Good Neighbors on February 5, 2025. Good Neighbors timely provided their discovery responses and disclosures on March 7, 2025, and they served their first round of discovery requests to Good Timber on March 13, 2025.

Formal proceedings were initiated when the prehearing conference was held. (Rules 102

and 510) Moreover, a presiding officer has been assigned to this contested case. (Rules 102 and 510) A scheduling order was issued as result of the prehearing conference, setting a date for the formal hearing and establishing deadlines for discovery, witnesses, depositions, and rebuttal. (Rule 514) Discovery has begun, with responses filed. This is now a formal proceeding.

**Good Neighbors Did NOT Cite The Wrong Rule.**

Good Neighbors have asked for a stay of the February 26, 2025 interlocutory *Notice of Hearing and Scheduling Order* for this contested case because there are three ongoing disputed legal issues: 1. Clean Water Act violations, 2. U.S. Army Corps of Engineers Nationwide permit noncompliance, and 3. civil Trespass/Damages claims. If we prevail on even one of these three issues, the result will totally moot this transfer proceeding by eliminating the requested place of use and purpose of use for Transfer 89232. Judicial economy and the avoidance of contradictory rulings necessitates this transfer proceeding be stayed pending the outcome of these other proceedings.

In their *Opposition to Motion to Stay Proceedings*, Good Timber misled the presiding officer by stating:

“The Motion argues that a stay is warranted under rule 780 of the Department’s rules of procedure. (Motion, p. 2.) However, rule 780 ***applies to recommended, preliminary, and final orders*** issued by the Department, none of which have been issued in this case.”  
(*Opposition to Motion to Stay Proceedings* at page 2)

This is an incorrect statement. Rule 780 IS THE CORRECT RULE. It should be read in its entirety, not just selectively summarized to conspicuously omit key provisions:

**780. STAY OF ORDERS.**

***Any party may petition*** the agency to stay ***any order, whether interlocutory or final***. Interlocutory or final orders may be stayed by the judiciary according to statute. The agency may stay any interlocutory or final order on its own motion. (Emphasis added)

To underscore this point, Rule 710, declares that scheduling Orders resulting from prehearing conferences “*are ALWAYS interlocutory.*” Furthermore, ANY PARTY may petition a presiding officer to review, amend, or even stay ANY ORDER WHETHER INTERLOCUTORY OR FINAL. (Rules 514, 711, and 780) Receiving a petition from a party is not even a precondition here; Rule 514 appears to authorize a presiding officer to modify orders *sua sponte*. And Rule 780 expressly authorizes presiding officers to stay proceedings *sue sponte* of their own accord and without a motion from the parties.

### **The Contested Legal Proceedings Are Underway.**

Section 505 of the Clean Water Act (“CWA”) requires a 60-day notice period before any citizen suit is initiated. The purpose of this window of time is to encourage the parties to negotiate a solution. We have already taken this first procedural step, issuing a 60-day letter to Good Timber on May 28, 2025. Unfortunately, Counsel for Good Timber Ranch notified our office via email on June 5, 2025 that they will oppose the Clean Water Act and related suits referenced in our letter. In the interest of time, **we asked for Good Timber to waive the 60-day statutory waiting period** since they are unwilling to negotiate any kind of settlement. We have received no response. As such, we intend to proceed to the next step: filing the CWA and Trespass/Damages claims when the 60-day notice period ends on **July 27, 2025**. If necessary, we will ask the court presiding over these claims to issue an order staying the Transfer 89232 and the Application for Permit No. 22-14667.

### **Good Timber’s New Application for Permit To Appropriate Groundwater Further Necessitates A Stay To Provide Due Process.**

It is hard to adjudicate a water right transfer when the background assumptions, information, calculations, and other factors are continually evolving. Just this very month, Good

Timber Ranch applied for a groundwater right (Application for Permit 22-14667 filed June 10, 2025) to supplement the evaporative loss from Lake Washakie. Good Timber has requested an expedited schedule, and seeks to consolidate this application with the formal hearing proceedings on Transfer 89232. Notification is scheduled to be published June 18th and 25, 2025. Assuming publication successfully occurs on these dates, the protest period would end ten (10) days after the publication, on **July 4, 2025**. Good Neighbors intend to timely protest on or before this deadline. On verified information and belief, other affected parties have confirmed to us that they also intend to timely protest.

Due process requires that Application 22-14667 is vetted and reviewed of its own accord. If there are objections and protests, they must be appropriately and thoughtfully addressed through the agency procedure. Running against this ethos, Good Timber asks that the review process for Application 22-14667 be *accelerated*:

“If the Department will promptly advertise the enclosed permit application, we expect that any protests can be addressed on the same hearing schedule as Transfer No. 89232.” (June 9 2025 cover letter enclosed with Application 22-14667)

Where Good Timber seeks to speed up the process mid-stream for this last-minute permit, we have the exact opposite opinion: Transfer 89232 should be slowed down to accommodate the proper review and incorporation of Application 22-14667. This new Application is a significant change to the calculations and impacts of Transfer 89232. A core issue for the Good Neighbors living downstream are the ongoing impacts to surface waters. As we will demonstrate at formal hearing, the Good Neighbors are already experiencing reduced flows as a result of Good Timber’s unpermitted scraping and excavation work last summer. We need time to take into account the impacts the Application 22-14667 will have on the whole system. Due process requires that discovery and fact-finding be done to view Transfer 89232 and Application 22-14667 from the

beginning, on the same schedule that is afforded to every other ground water application that is submitted to IDWR.

**A Stay Is Necessary To Prevent Further Irreparable Harm, Not Only To Good Neighbors,  
But Also To The People of Teton County Idaho, It Will Also Ensure Good Timber's  
Compliance With The Law.**

Idaho Code section 42-202B specifically defines "local public interest" as "the 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." Good Neighbors are the people in the area who have already been profoundly affected by this proposed weather use, with diminished flows and increasing algae. While Good Timber characterizes their "single failing was an oversight of a contractor who did not secure a grading permit" (Brief at page 3) the truth looks very different. To construct their intended place of use for Transfer 89232, Good Timber scraped away 13.9 acres of land, including 1.8 acres of wetland, 2,310 feet of stream channels with **no erosion control measures in place**. They took all of these destructive actions without a Stream Channel Alteration Permit (I.C. § 42-3803 ), without a Teton County Grading and Excavation Permit (Teton County Land Development Code 5-2-1), and without the appropriate water rights to fill their Lake Washakie. (I.C. § 42-222(1)). The public record shows that county and state agents repeatedly reported in emails that Good Timber's representative Nathan Godfrey had told them he had these permits, when in fact he did not. Teton County issued a **Stop Work Order** identifying multiple violations of the zoning and building code **which is still in effect**.<sup>1</sup>

This digging and scraping of wetland and creeks to build the place of use for Transfer

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<sup>1</sup> *Teton County Stop Work Order*. Issued July 24, 2024 against Good Timber Ranch for (1) Grading without a Grading & Erosion Control Permit, (2) Building a rock retaining wall without a permit, and (3) constructing with an expired building permit.

89232 sent a huge bolus of sediment down Little Warm Creek, damaging the Good Neighbors property. Little Warm Creek and the entire Warm Creek watershed is a **303(d) listed stream** that is impaired for cold water aquatic life, Salmonid spawning, and secondary contact recreation. Good Timber eventually installed some erosion control measures which were inadequate, have been neglected all winter, and are failing. Thus, Good Timber **continues to discharge** sediment downstream, flowing directly from the place of use for Transfer 89-232..



*A foot of sediment now sits in the downstream reaches of Little Warm Creek. May 26, 2025*

Continuing to process Transfer 89232 will make this bad situation worse by disregarding the ongoing injury to the local public interest here: allowing further stream disruption and sediment discharges which reduce streamflow in Little Warm Creek and spread large algae blooms. Because Good Timber has refused to negotiate a solution, Good Neighbors have been

forced to seek injunctive relief and an award of damages for restoration costs to their property and Little Warm Creek. As a state agency administrative proceeding, the court will have the power “where necessary in aid of its jurisdiction” to enjoin this Transfer 89232.<sup>2</sup> See 28 U.S.C. § 2283. The Supremacy Clause Article VI, Clause 2 of the U.S. Constitution is the ultimate basis for why a valid federal law like the Clean Water Act can override conflicting state law or state agency actions. Where an administrative action conflicts with the CWA, the CWA prevails and the court has inherent authority and a duty to enforce the law and issue remedies. The construction of Lake Washakie has disrupted the entire water system and caused irreparable harm to Little Warm Creek. By absolute necessity, Transfer 89232 must be stayed to prevent continued additional harm.

Ironically, the Good Timber cites *Shokal v Dunn* to argue IDWR has no jurisdiction to defer to other agencies who have expertise and overlapping regulatory authority. Once again, Good Timber provided only a small misleading passage from the written decision; here is what they failed to show you:

[We] add a word of caution regarding the differing functions of Water Resources and the Department of Health and Welfare. Water Resources must oversee the water resources of the state, insuring that those who have permits and licenses to appropriate water use the water in accordance with the conditions of the permits and licenses and the limits of the law. It is not the primary job of Water Resources to protect the health and welfare of Idaho's citizens and visitors--that role is vested in the Department of Health and Welfare, including compliance with the water quality regulations and monitoring effluent discharge in our state's waterways. Nevertheless, although these agencies may have separate functions, Water Resources is precluded from issuing a permit for a water appropriation project which, when completed, would violate the water quality standards of the Department of Health and Welfare. **It makes no sense whatsoever for Water Resources to blindly grant permit requests without regard to water quality regulations.** Hence, Water Resources should

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<sup>2</sup> *Federal Savings and Loan Insurance Corporation V. PSL Realty Co.*, 630 F.2d 515 (7th Cir. 1980) Example of “in aid of its jurisdiction exception to the Anti-Injunction Act)

condition the issuance of a permit on a showing by the applicant that a proposed facility will meet the mandatory water quality standards. Under this rule, **Water Resources has the authority to withhold a permit application until it receives a proposed design which appears to be in compliance with the water quality standards.** Once the conditional permit is granted, Water Resources has continuing jurisdiction over compliance with the conditions of the permit, including suspension or revocation of the permit for proven violations of the permit's conditions regarding water quality.<sup>3</sup> (Emphasis added.)

The IDWR can, and should stay this transfer to ensure compliance with other agency determinations regarding injury to the local public interest.

**The Clean Water Act and US Corps Proceedings Will Make Key Factual Determinations  
Relevant To Local Public Interest Standard in I.C. § 42-202(B)(3), Which Includes  
Irreparable Harm.**

In this contested case, the IDWR must consider whether the proposed transfer would injure existing water rights, be detrimental to the local public interest, or create return flows that would cause injury. A federal court's findings on CWA and Nationwide Permit compliance would be highly relevant to these statutory considerations. Furthermore, it speaks directly to the "local public interest" criterion that the IDWR must evaluate under Idaho Code § 42-222; Good Timber's repeated violations of the CWA and NWP 27 would weigh heavily against a finding of public interest by this agency.

The evidence and legal arguments in the IDWR proceeding will likely overlap substantially with the issues in the related actions (e.g., harm to the local public interest in the form of pervasive environmental impacts, reduced flows due to sedimentation, and legality of current operations). A stay would allow these foundational issues to be resolved first, providing clarity and potentially

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<sup>3</sup> *Shokal v. Dunn*, 707 P.2d 441, 451-52, 109 Idaho 330 340-41 (Idaho 1985) Emphasis Added.

simplifying the IDWR's decision-making process. ***IF*** the transfer proceeding is not stayed, Good Neighbors will be forced to litigate the transfer application without the benefit of critical information and legal determinations from the other pending actions. Good Neighbors seek judicial confirmation of the applicant's noncompliance with their NWP 27 and the Clean Water Act, which are needed in order to fully present arguments regarding injury to existing water rights, the local public interest, and the impacts on the common water resource (Little Warm Creek).

### **Conclusion.**

By the end of July, the Good Neighbors will have filed their Clean Water Act and Trespass/Damages complaint, protests will be filed on Application 22-14667, and the USACE may have made final determination on the issue of Good Timber's Nationwide Permit 27 noncompliance. These are key steps that loom immediately on the horizon. Having been formalized into pending cases, these ongoing legal disputes will be solidified into ongoing litigation that is directly related to the future existence of Lake Washakie. The CWA and Trespass/Damages complaint will trigger dispositive motions. The protests for Application No. 22-14667 will likewise initiate contested case proceedings with IDWR. For the foregoing reasons, the Good Neighbors respectfully request the presiding officer grant the *Motion to Stay Application for Transfer No. 89232* pending the final resolution of the Clean Water Act violations and Trespass with Damages claims. Please allow the time for the USACE to finish their review of Good Timber's Nationwide Permit 27. This contested case touches on three escalating legal disputes, any one of which has the potential to totally moot the proceedings before IDWR. Granting a stay allows IDWR to benefit from a better-developed factual record, upon which to base this agency's administrative determinations on impacts to the local public interest, which the Presiding Officer identified as a key issue in this contested case, at the January 30, 2025 pre-hearing conference.

Respectfully submitted.

Dated this 20th day of June, 2025.

TRENTADUE LAW OFFICE PLLC.

BY   
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Anna Trentadue  
*Attorney for the Good Neighbors*

## CERTIFICATE OF SERVICE

I hereby certify that on this 20 day of June, 2025, I served the foregoing documents on the persons below via email or as otherwise indicated:



BY \_\_\_\_\_

Anna Trentadue

*Attorney for the Good Neighbors*

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