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DEPARTMENT OF
WATER RESOURCES

Anna Trentadue (ISB # 7519)
Trentadue Law Office PLLC
PO Box 1443
Driggs, Idaho 83422
208-557-4846
anna@trentaduelawoffice.com
Attorneys for The Good Neighbors

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

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

**BRIEF IN SUPPORT OF THE GOOD
NEIGHBORS' 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 *Brief in Support of the Good Neighbors’ Motion to Stay Proceedings*. The rules governing this transfer proceeding are found in IDAPA 37.01.01 *et seq.* Rule 514 allows orders resulting from a prehearing conference to be modified: “A prehearing order will control the course of subsequent proceedings **unless modified** by the presiding officer for good cause.” Rule 780 provides that: “Any party may petition the agency to **stay any order**, whether interlocutory or final.”

This motion requests that the February 26, 2025 interlocutory *Notice of Hearing and Scheduling Order* for this contested case be stayed as there are 3 disputed legal issues that have the potential to 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.

PROCEDURAL HISTORY

On June 21, 2022 the US Army Corps (“USACE”) issued a Nationwide Permit No. 27 (“NWP 27”) for the transfer applicant Good Timber Ranch LLC (“Good Timber”) to construct a 3.94 artificial lake “Lake Washakie” over a site that contained 20 mapped wetlands and 10 named springs.¹ In order to construct Lake Washakie, the permit required Good Timber to still comply with all state and local permitting requirements.² On information and belief, for a period of over 2 weeks last summer, Good Timber scraped away 13.9 acres of land, including 1.8 acres of wetland, and 2,310 feet of stream channels with no erosion control measures in place.³

Good Timber 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.⁴ On July 23, 2024, Teton County issued a Stop Work Order identifying multiple violations of the zoning and building code by Good Timber.⁵ It is still in effect.

¹ See Exhibit : Good Timber Ranch LLC joint application for permits - *Declaration of Counsel in Support of Motion to Stay*.

² See Exhibit D: Good Timber Ranch Nationwide Permit 27 authorization letter - *Declaration of Counsel in Support of Motion to Stay*.

³ See the facts, images, and allegations documented within Exhibits A (60-Day Notice Letter) and D (USACE Complaint) - *Declaration of Counsel in Support of Motion to Stay*.

⁴ *Id.*

⁵ See Exhibit E: Photo of Good Timber Ranch posted stop work order - *Declaration of Counsel in Support of Motion to Stay*.

This digging and scraping of wetland and creeks 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 also a 303(d) listed stream that is impaired for cold water aquatic life, Salmonid spawning, and secondary contact recreation.⁶ 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.⁷

After the county Stop Work Order was issued, Good Timber submitted Transfer No. 89232 on August 2, 2024, which proposed to impound storage water to fill Lake Washakie from the onsite springs and Little Warm Creek. The outflow of the dam for Lake Washakie would also be Little Warm Creek. The Good Neighbors timely protested on October 11, 2024. An amended transfer was submitted December 13, 2024, proposing to pull water from Pole Creek; the outflow of the dam from Lake Washakie would still be Little Warm Creek.

A Notice of Hearing and Scheduling Order was issued by the Presiding Officer James Cefalo on February 26, 2025, setting trial for July 22-24, 2025. Good Timber served their first round of discovery requests to the Good Neighbors on February 5, 2025. The 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. The next day, counsel for Good Timber emailed to ask if discovery could be postponed, and we agreed. On April 10, 2025 the day before discovery was due, Good Timber asked for another extension on discovery deadlines and we discussed postponing the trial. By April 21, 2025 the parties had agreed to push the trial back to Oct 27-31, 2025; a confirmation email was sent to the Presiding Officer.

⁶ Warm Creek - source to mouth Assessment Unit ID: ID17040204SK034_02 has been listed as 303(d) impaired in 2016, 2020, 2022, and 2024.

⁷ See the facts, images, and allegations documented within Exhibits A (60-Day Notice Letter) and D (USACE Complaint) - *Declaration of Counsel in Support of Motion to Stay*.

However, no interim deadlines were finalized for trial. Moreover, no discovery was provided by Good Timber. The last communication the Good Neighbors received from Good Timber was May 12, 2025 in which their counsel proposed a schedule where their discovery would be tendered by May 19, 2025.⁸

With no further response from Good Timber, and due to the ongoing sediment and debris discharges flowing down Little Warm Creek causing continued damage to the Good Neighbors' property, a *Notice of intent to sue Good Timber Ranch LLC, Nathan Godfrey, Jared Smith, and the Jared Smith Revocable Living Trust over violations of the Clean Water Act and their Nationwide Permit #27 at Good Timber Ranch in Victor, Idaho* was delivered to Good Timber and relevant state agencies on May 28, 2025.⁹ The notice states that the Good Neighbors will seek a declaratory judgment, injunctive relief, civil penalties, costs, and any other relief the court deems appropriate if a settlement cannot be reached. The 60-day letter also gave notice of the Good Neighbors' intent to file a Trespass with Damages suit to recover for the damage caused to Little Warm Creek by Good Timber, and seek other injunctive relief.

Also on May 28, 2025, the *Good Neighbors' complaint and request to revoke Nationwide Permit 27 authorization for Good Timber Ranch NWW-2021-303-I02, under 33 CFR 330.5 for egregious noncompliance* was served to the US Army Corps of Engineers, and cc'd to the United States Environmental Protection Agency, the Idaho Department of Environmental Quality, the Idaho Department of Water Resources, and Teton County, Idaho.¹⁰ The complaint asks USACE to revoke Good Timber's Nationwide Permit #27, issue a cease and desist order, and mandate comprehensive remediation of the site proposed to be the palace of use for Transfer 89232.

⁸ See Exhibit F: Email communication between counsel - *Declaration of Counsel in Support of Motion to Stay*.

⁹ See Exhibit A: 60-Day Notice Letter - *Declaration of Counsel in Support of Motion to Stay*.

¹⁰ See Exhibit B: USACE Complaint - *Declaration of Counsel in Support of Motion to Stay*.

The next day, on May 29, 2025 Good Timber produced their first round of discovery to the Good Neighbors, and proposed a schedule for interim deadlines.

TRANSFER 89232 WOULD BE RENDERED MOOT

The purpose of Transfer 89232 is to provide water to fill Lake Washakie, which will then flow out of the lake's spillway into Little Warm Creek. The outcome of any one of these three pending legal actions will directly determine whether Lake Washakie (which is both the purpose and place of use for Transfer 89232) becomes a reality.

Impact of the USACE Complaint: The USACE complaint directly challenges the foundational permit (NWP 27) that conditionally allowed Good Timber to conduct activities integral to the proposed place of use and purpose of use for Transfer 89232. If the USACE revokes or even significantly modifies Good Timber's permit, their ability to construct Lake Washakie – and thus utilize the transferred Pole Creek water – would be severely curtailed or totally eliminated. The IDWR's decision on Transfer 89232 would then be based on a flawed premise, potentially leading to an approval of a water right for an unlawful or unfeasible use. The complaint also asks for remediation of both the place of use for Transfer 89232 and Little Warm Creek in order to stop the continued discharge of sediment in an 303(d) listed waterway.

Impact of a Clean Water Act Suit for Violating the Act and NWP 27: A federal suit under Section 505 of the Federal Water Pollution Control Act (CWA) 33 U.S.C. § 1365 would focus on the ongoing discharge of sediment into Little Warm Creek and repeated violations of the NWP 27. The outcome of this litigation could result in injunctive relief whereby Good Timber is enjoined from continuing certain operations, including discharges, which would directly impact the proposed nature and place of use of the transferred water - Lake Washakie. Any judicial

findings of CWA violations could also result in significant changes to Good Timber's proposed operations, including costly remediation that could make the proposed use economically unfeasible or require different water management strategies. The CWA suit will also foreseeably delve into the water quality impacts on Little Warm Creek. In this particular 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 water quality and CWA compliance would be highly relevant to these IDWR considerations.

Impact of Trespass and Damages Suit: The estimated cost to remediate the damage that Good Timber has caused to the section of Little Warm Creek owned by the Good Neighbors is \$814,000.¹¹ This estimate does not include the cost to stabilize and restore the 13.9 acres of disturbed land located directly in the place of use for Transfer 89232. Although no cost estimate to remediate the Good Timber property has been done yet, it is a necessary step in order to stop the ongoing discharges of sediment into Little Warm Creek. Injunctive relief in order to stop the ongoing damage would also require Good Timber to cease or modify its operations, which again, directly affects the viability and legality of the proposed water use. Furthermore, it speaks directly to the "local public interest" criterion that the IDWR must evaluate under Idaho Code § 42-222, as repeated violations of the CWA and NWP 27 would weigh heavily against a finding of public interest.

GROUND FOR STAY

A Stay Will Promote Judicial and Administrative Economy. Proceeding with the water right transfer application at this time would be an inefficient use of time and financial resources

¹¹ See Exhibit G: Little Warm Creek Restoration Project Preliminary Estimate of Restoration Costs - *Declaration of Counsel in Support of Motion to Stay*.

for the IDWR, Good Timber, the Good Neighbors, and any other parties.

Avoidance of Futile Proceedings. If any of the three pending/imminent legal actions result in outcomes adverse to Good Timber Ranch (e.g., NWP 27 revocation, injunction, finding of widespread CWA violations), the entire basis for the proposed water right transfer could be undermined. Forcing the parties and IDWR to litigate the transfer now, only to potentially revisit or void it later, would be a waste of time and resources.

Streamlined Evidence and Arguments. The evidence and legal arguments in the IDWR proceeding likely overlap substantially with the issues in the related actions (e.g., water quality, harm to the local public interest in the form of environmental impacts, and legality of current operations). A stay would allow these foundational issues to be resolved first, providing clarity and potentially simplifying the IDWR's decision-making process.

A Stay Will Prevent Inconsistent Rulings. Allowing the IDWR proceeding to advance concurrently with the federal and state actions creates a significant risk of inconsistent rulings. For example, the IDWR could approve the transfer based on an assumption of lawful operations, local public interest, and noninjury, only for a federal court or the USACE to subsequently find those very operations to be illegal or to require substantial modification. Such costly conflicting outcomes would undermine public confidence in administrative and judicial processes.

A Stay Will Prevent Prejudice to Protestant and Protect the Public Interest. If the transfer proceeding is not stayed, the Good Neighbors will be forced to litigate the transfer application without the benefit of critical information and legal determinations from the other pending actions. The Good Neighbors seek judicial confirmation of the applicant's noncompliance with the NWP 27 and the CWA, 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). Conversely, Good Timber Ranch will suffer no undue prejudice from a temporary stay. The already-existing delay in this transfer proceeding is attributable to Good Timber; furthermore, the need to stay this proceeding directly stems from the defensive legal actions the Good Neighbors have been forced to take in response to the ongoing harm caused by Good Timber. Any minor delay in obtaining the transfer is outweighed by the significant benefits of clarity, efficiency, and the protection of the public interest that a stay would provide.

CONCLUSION

For the foregoing reasons, the Good Neighbors respectfully requests the Presiding Officer grant the Motion to Stay Application for Transfer No. 89232 pending the final resolution of the USACE complaint regarding Nationwide Permit 27, the 60-day notice of intent to sue for Clean Water Act violations, and the notice of intent to sue for trespass and damages. The outcome of any one of these three disputed legal issues has the potential to moot this transfer proceeding, 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.

Dated this 3rd day of June, 2025.

TRENTADUE LAW OFFICE PLLC.

BY



Anna Trentadue

Attorney for the Good Neighbors

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd 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

Idaho Department of Water Resources Eastern Region Office 900 North Skyline Drive, Suite A Idaho Falls, Idaho 83402-1718	christina.henman@idwr.idaho.gov file@idwr.idaho.gov
Good TimberRanch, LLC % Nathan Godfrey 1300 Good Timber Ranch Road Victor, Idaho 83455	nathan@coldwaterpaint.com
Georgie Stanley PO Box 928 Jackson, WY 83001 208-201-3625	georgiews4@gmail.com
Susan Miller 10435 S. 1750 W. Victor, Idaho 83455	suebmm11@gmail.com
Maguire Family Trust 10165 S. 2000 W. Victor, Idaho 83455	brianm@vertsolutions.com
Rafe and Ainsley Rivers 1566 W. 10250 S. Victor, Idaho 83455	raferivers@gmail.com
Gregory G. Collins 10435 S. 1750 W. Victor, Idaho 83455	gcollins@wyoming.com
Jerry Rigby Rigby, Andrus & Rigby Law PLLC 25 N. 2nd E. PO Box 250 Rexburg, Idaho 83440	jrigby@rex-law.com

Fremont-Madison Irrigation District % Aaron Dalling	aaron.fmid@myidahomail.com
Sean R. Moulton Moulton Law Office PO Box 631 Driggs, Idaho 83422	seanmoulton@tetonvalleylaw.com
Richard Gebhardt PO Box 168 Victor, Idaho 83455	Served to counsel: seanmoulton@tetonvalleylaw.com
Thomas J. Budge Elisheva Patterson Scott Smith Racine Olson, PLLP 201 E. Center Street PO Box 1391 Pocatello, Idaho 83204	tj@racineolson.com elisheva@racineolson.com scott@racineolson.com