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JUN 04 2026

DEPT. OF WATER RESOURCES
EASTERN REGIONSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

This form may be used to file a protest under Sections 42-203A, 42-203C, 42-211, 42-222 or 42-240, Idaho Code. The Department will also accept a timely protest completed in a different format if it contains the same information requested on this form. Each protestant must provide a separate \$25 filing fee for each application protested. The Department's Rules of Procedure (IDAPA 37.01.01) require the protestant to **send a copy of the protest to the applicant.**

1. Matter protested. Application for ☐ Permit ☐ Amendment of Permit ☒ Transfer ☐ Exchange

No. 90405 in the name of Richard and Holly Natelson

2. Protestant's Name: Rohn Nelson and Lori Nelson

Address: 1531 Lemhi Road

Telephone: 907-982-5551 Email: fullcurl@custertel.net

3. Protestant's Representative: Robert L. Harris - Holden, Kidwell, Hahn & Crapo, P.L.L.C.

Address: P.O. Box 50130, Idaho Falls, ID 83405

Telephone: 208-523-0620 Email: rharris@holdenlegal.com

4. Basis of protest. Clearly state your objections to approval of the application and identify the applicable review criteria. See Instructions for Filing a Notice of Protest for the relevant review criteria.
See attached supplemental sheet.

(Additional pages may be attached to describe the basis of your protest.)

Identify any review criteria that are not a basis for your protest:

Idaho Code section 42-222 review criteria 5, 6, and 7 (see protest instructions).

5. ☒ Check here if Protestant and Representative will accept service of documents by email at the email address(es) listed under Item #2 and #3 above.

I acknowledge that if I, or my designated representative, fail to appear at any regularly scheduled conference or hearing in the matter, of which I have been properly notified, the Department may issue a notice of proposed default against me in this matter for failure to appear. **I also verify that I have served a copy of this protest upon the applicant.**

Robert L. Harris
Protestant's or Representative's Signature

Robert L. Harris, Attorney
Printed Name and Title (if applicable)

June 4, 2026
Date

FOR DEPARTMENT USE ONLY

\$25.00 fee received by 25.00

Receipt # E051688

Date 6-4-26

Notice of Protest for Application for Transfer of Water Right, 90405
Supplemental Sheet
Basis of Protest

I spoke with Mr. Natelson on or about May 11, 2026. Mr. Natelson informed me that he wanted to keep the pasture, described in his Application for Permit, green to prevent fire hazard. I told Mr. Natelson that I would like to keep my pasture green for the same reason. I explained to Mr. Natelson that his Application for Permit was somehow being combined with his Application for Transfer of Water Right, and that his Application for Transfer of Water Right pertained to his water right, 74-14983, with a priority date of 05/01/1885. I informed Mr. Natelson that his water right had a senior priority date to mine, and I asked Mr. Natelson if combining the two applications would result in new points of diversion and new places of use that would retain his senior priority date. Mr. Natelson stated that the transfer would create new places of use and retain his senior priority date. I informed Mr. Natelson that if that were the case, it would injure my existing and applied for water rights due to his ability to call for water and force me to curtail my water rights. Mr. Natelson stated that he would not do that to me. I told Mr. Natelson that I appreciated that, but I oppose any points of diversion or places of use located downstream of my water right, 74-1799B, or upstream of any of the water permits I have applied for, that retains a senior priority date. Mr. Natelson stated that he was only doing what IDWR recommended.

I received an email from IDWR on May 13, 2026, informing me that public notice of Application for Permit, number 74-16708, and Application for Transfer of Water Right, 90405 will be published as described within the application document, and to contact IDWR if I have any questions regarding the applications. On May 14, 2026, I sent an email to IDWR with the following questions regarding the applications:

Application for Permit, 74-16708.

Item 12., on Application for Permit, 74-16708, states, "This permit will be administered as junior to other users on Sandy Creek."

What will the priority date be for Application for Permit, 74-16708, provided it is approved, particularly where there appear to be combined conditions with existing water rights?

Item 12., on Application for Permit, 74-16708, states, "Since permit is being combined with existing right, 74-14983, it will not create additional demand on Sandy Creek."

Specifically, how is this permit being combined with existing right, 74-14983?

How will this permit not create additional demand on Sandy Creek if this is a new POD and a new POU?

Will the amount of water being diverted for water right, 74-14983, be reduced to provide 0.04 cfs for permit, 74-16708?

Will combining permit, 74-16708, with existing water right, 74-14983, create a new POU and POD for water right 74-14983 with a 05/01/1885 priority date?

Application for Transfer of Water Right, 90405.

Part 2 (C), Current Location of Irrigated Acres.

The applicant checked the box indicating "N/A." "This application does not propose to change the place of use or nature or use of an irrigation water right or this application proposes to change the place of use or nature of use for an entire irrigation right."

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The applicant did not provide any response or information in the table Current Location of Irrigated Acres to be Changed, or for Total Irrigated Acres to be Changed.

Item 4., Application for Permit, 74-16708, states the location of point(s) of diversion are T20N, R23E, Sec. 24, SESE, which is not a POD for water right, 74-14983.

The map attached to Permit Application, 74-16708, depicts both a new POD and a new POU.

Is Application for Transfer of Water Right, 90405, proposing to change the place of use of water right 74-14983?

Is Application for Transfer of Water Right, 90405, proposing to change the point of diversion for water right 74-14983?

The map attached to Permit Application, 74-16708, depicts both a new POD and a new POU.

The map attached to Application for Transfer of Water Right, 90405, depicts a much larger place of use than applied for with Application for Permit, 74-16708.

The map attached to Application for Transfer of Water Right, 90405, has no points of diversion depicted.

What point(s) of diversion will be used to irrigate the new places of use depicted on the map attached to Application for Transfer of Water Right, 90405?

The map attached to Application for Transfer of Water Right, 90405, states that it depicts 73.7 acres within the Natelson Parcel that could be realistically irrigated and the overlapping application, 74-16687.

Application for Permit, 74-16687, has been withdrawn.

Part 3 – Description of Proposed Changes

Part 3 (A). Purpose of Transfer.

Identify the changes proposed in this application:

The applicant did not check the box indicating "Change point(s) of diversion."

The applicant checked the box indicating "Change place of use."

The applicant's answers provided in Part 2 (C) and in Part 3(A) are ambiguous.

Does Application for Transfer of Water Right, (74-90405), propose to change the place of use?

Does Application for Transfer of Water Right, (74-90405), propose to change the point(s) of diversion?

Part 3 (B). Proposed Changes

The applicant provided, "Updating shape file to reflect actually irrigated acres and creating a combined POU with a proposed new application for permit so no additional demand is put on Sandy Creek." "14.3 acres are changing legal descriptions."

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What 14.3 acres are changing legal descriptions?

What water right or permit will be used to irrigate the 14.3 acres?

What point of diversion will be used to divert water to irrigate the 14.3 acres?

How will this transfer not create additional demand on Sandy Creek if an additional 14.3 acres will be irrigated if it is approved?

On May 15, 2026, IDWR replied via email and stated that questions regarding the content of applications should be directed to the applicants, as the Department is not able to answer questions or explain intent on their behalf. As a result, I feel that I am obligated to submit a Notice of Protest for Application for Transfer of Water Right, 90405.

Review criteria for Applications for Transfer set forth in Idaho Code § 42 222(1).

1. Whether the proposed change will injure existing water rights.

The Application for Transfer of Water Right, 90405, is somehow being combined with Application for Permit, 74-16708. The specific results of this combination and the effects on existing or applied for water rights is unclear.

Application for Transfer of Water Right, 90405, states the proposed changes as “Updating shapefile to reflect actually irrigated acres and creating a combined POU with a proposed new application for permit so no additional demand is put on Sandy Creek.” “14.3 acres are changing legal descriptions.” “New application and 74-14983 will be combined for 0.97 cfs and 73.7 acres.”

The Application for Transfer of Water Right, 90405, seems to state that no change will occur to the applicant’s water right, 74-14983; however, a new place of use for 14.3 acres is proposed to be included in 74-14983. The 14.3 acres will be subject to the senior priority date for water right 74-14983, 05/01/1885. The 14.3 acres includes the proposed place of use for Application for Permit, 74-16708, which also proposes a new point of diversion.

A new place of use and a new point of diversion with a senior priority date will injure water right, 74-1799B. This would allow Mr. Natelson to call for water for permit, 74-16708, and force me to curtail water from, 74-1799B, due to Mr. Natelson’s point of diversion being located downstream.

Water License, 74-16686, is owned by Rohn and Lori Nelson. Water license, 74-16686, will be injured by this Application for Transfer of Water Right, 90405, provided the new point of diversion and the new place of use retain the senior priority date for water right, 74- 14983. This would allow Mr. Natelson to call for water and divert water from Sandy Creek upstream from the point of diversion for this water license.

I have submitted Applications for Permit for, 74-16706, and 74-16707. These water permits have not been authorized by IDWR at this time; however, if approved, they will also be injured by this Application for Transfer of Water Right, 90405, provided the new point of diversion and the new place of use retain the senior priority date for water right, 74- 14983. This would allow Mr. Natelson to call for water and divert water from Sandy Creek upstream from the points of diversion for these water permits.

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2. Whether the proposed change will result in an enlargement in use under existing rights.

Application for Transfer of Water Right, 90405, appears to create an enlargement of 14.3 acres; however, Application for Permit, number 74-16708, is somehow being combined with Application for Transfer of Water Right, 90405. The specific results of this combination and the effects on existing or applied for water rights is unclear. It is unknown and not specified how this combination will be administered and accomplished.

3. Whether the proposed change is contrary to conservation of water resources within the state of Idaho.

Application for Transfer of Water Right, 90405, proposes changes to the place of use for water right, 74-14983, resulting in 14.3 acres being irrigated that previously were not irrigated. Additionally, Application for Permit, 74-16708, is somehow being combined with Application for Transfer of Water Right, 90405. Application for Permit, 74-16708 proposes a new place of use and a new point of diversion. The specific results of this combination and the effects on existing or applied for water rights is unclear. It is unknown and not specified how this combination will be administered and accomplished. Regardless, the irrigation of 14.3 acres that was previously not irrigated is contrary to conservation of water resources within the state of Idaho.

4. Whether the proposed change will conflict with the local public interest. ("Local public interest" is defined as the interests of the people in the area directly affected by the proposed use and it's effects on the public water resource.)

Application for Transfer of Water Right, 90405, will conflict with the local public interest, provided the new point of diversion and the new place of use retain the senior priority date for water right, 74- 14983. This would allow Mr. Natelson to call for water for permit, 74-16708, and force me to curtail water from, 74-1799B, due to Mr. Natelson's point of diversion being located downstream.

The reduced quantity of water available, or the curtailment of water right 74-1799B will prevent adequate irrigation of my 16.20 acres, especially after high flow is no longer available, and significantly reduce the grass production and grazing opportunities on our property and is not in the local public interest.

Application for Transfer of Water Right, 90405, will conflict with the local public interest, provided the new point of diversion and the new place of use retain the senior priority date for water right, 74- 14983. This would allow Mr. Natelson to call for water and divert water from Sandy Creek upstream from the point of diversion for water license, 16686, and water permits, 74-16706, and 74-16707. This would reduce grass production and grazing opportunities on our property and is not in the local public interest.

All other individuals, located downstream of the lands proposed to be irrigated in Application for Transfer of Water Right, 90405, will likewise be affected by the proposed use, the reduction of available water, and its effects on the public water resources. Any reduction in available water will affect downstream water users, whether they use the public water resource for domestic, stock water or other beneficial use.

Notice of Protest for Application for Transfer of Water Right, 90405

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Additionally, the Application for Permit will add another water right to the Applicant's water rights that already authorize the diversion of water at **six** different diversion locations. It is not in the local public interest to place additional administrative burden on local watermasters to track delivery of water through so many diversions. In other words, it is not in the local public interest to approve applications that place unreasonable administrative demands on the local watermaster(s).

5. In a case where the place of use is outside the watershed or local area containing the source of water, whether the proposed change will adversely affect the local economy of the watershed or local area within which the source of water originates.

The proposed place of use for Application for Transfer of Water Right, 90405, is not outside the watershed or local area containing the source of water.

6. In a case where the nature of use is changing from agricultural use, whether the proposed nature of use change will significantly affect the agricultural base of the local area.

The nature of use is to mitigate fire danger according to the applicant. I don't believe this proposed nature of use will significantly affect the agriculture base of the local area.

7. In a case where the water right is for municipal purposes, whether the proposed change is consistent with the requirements for municipal providers.

I don't believe this water right is for municipal purposes.