

Cefalo, James

From: Cefalo, James
Sent: Wednesday, August 16, 2023 3:44 PM
To: Rob Harris; chip@gileslaw.org; Fred Snook
Cc: fullcurl@mtaonline.net; pkbair@gmail.com; prattcreekbranch71@yahoo.com; kirk047@centurytel.net; fred@fpayne.com
Subject: RE: Motion for Reconsideration

Dear Parties:

Rob Harris just forwarded me an email message he received yesterday, August 15, 2023. It looks like the email was supposed to be sent to me but was sent to the wrong email address. The Certificate of Service lists the correct email address (james.cefalo@idwr.idaho.gov), but the actual email was sent to an incorrect email address (james.cefalo@idwr.net).

Even if the email was sent to the correct address, the Motion for Reconsideration is not timely. Pursuant to Rule 730.02.b of the Department's Rules of Procedure (IDAPA 37.01.01): "A party may file a petition for reconsideration of this preliminary order with the agency within fourteen (14) days of the service date of [a preliminary] order." The preliminary order included document titled "Explanatory Information to Accompany a Preliminary Order" which set forth the appeals deadlines and stated "[T]he petition [for reconsideration] must be received by the Department within this fourteen (14) day period." The Preliminary Order Approving Transfers was issued on July 31, 2023. Therefore, any petition for reconsideration was due by August 14, 2023.

The Motion for Reconsideration has not been successfully sent to or received by the Department. Even if the August 15th email had been to the correct email address, the Motion for Reconsideration was still one day past the deadline and cannot be considered by the Department.

James

 IDAHO DEPARTMENT OF
WATER RESOURCES
James Cefalo | Regional Manager
900 N Skyline Drive, Idaho Falls, ID 83402
(208) 525-7161 | www.idwr.idaho.gov

From: Rob Harris <rharris@holdenlegal.com>
Sent: Wednesday, August 16, 2023 2:40 PM
To: Cefalo, James <James.Cefalo@idwr.idaho.gov>
Subject: FW: Motion for Reconsideration

From: Chip Giles <chip@gileslaw.org>
Sent: Tuesday, August 15, 2023 11:54 AM
To: james.cefalo@idwr.net; fsnook@custertel.net; Rob Harris <rharris@holdenlegal.com>
Subject: Motion for Reconsideration

Please see attached motion for reconsideration. Thanks.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATIONS
FOR TRANSFER 86492 AND 86951
IN THE NAME OF ROHN R. NELSON
AND LORI A. NELSON

Motion for Reconsideration

PROTESTANT'S POST-TRIAL BRIEF

JAMES CEFALO, HEARING EXAMINER, PRESIDING

Pursuant to the Department's Preliminary Order the Protestant Fred Payne hereby files this Motion for Reconsideration as follows:

1. Ditch Capacity.

In its Preliminary Order the Department relied solely upon the testimony of Water Master Lacey French that the ditch capacity of the LWPM 5 Ditch is 2.25 CFS. Protestant Fred Payne testified at hearing that the ditch capacity of the LWPM 5 Ditch is 2 CFS. This testimony was supported by the attached photograph of the weir at LWPM 5. This evidence proves that capacity for the ditch is 2 CFS.

2. Injury.

The attached photograph shows the current damage to the ditch at high flows, prior to the Department granting this Preliminary Order and allocating another .11 CFS to the ditch. The current ditch is already beyond capacity and as the testimony of Fred Payne and the exhibits admitted at trial prove the ditch is currently beyond capacity, in need of repair. The damage to the ditch and need for further repair will only be increased by the granting of this preliminary order, further increasing costs and damages to all ditch users.

3. Water Call.

The only evidence offered at trial regarding whether there has ever been a call for water came from the former and current watermasters. There was no other evidence admitted that there has never been a call for water on the ditch or that the water rights on Wimpey Creek have never been regulated with respect to priority date during their terms of service. This testimony does not establish that there has never been a call for water on the ditch or that the water rights on Wimpey Creek have never been regulated, this testimony only shows that calls or regulation have never occurred during the current of former watermaster's service.

4. Conclusion.

There is sufficient evidence in the record that the ditch is beyond current ditch is beyond capacity, and in need of repair. The preliminary order increases that water in an already damaged and full ditch system. The increase causes further injury and damage to all current ditch users. Thus the Preliminary Order should be reconsidered, and the Nelson's request for transfer should be denied.

Certificate of Service

I certify that on August 15, 2023, I caused a true and correct copy of the foregoing post-trial brief to hearing examiner James Cefalo via email at james.cefalo@idwr.idaho.gov.

Chip Giles

GILES LAW GROUP

chip@gileslaw.org

Attorney for Protestants

/S/ _____
Chip Giles

Cefalo, James

Subject: Motion for Reconsideration
Attachments: Motion for Reconsideration.pdf

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To: james.cefalo@idwr.net; fsnook@custertel.net; Rob Harris <rharris@holdenlegal.com>
Subject: Motion for Reconsideration

Please see attached motion for reconsideration. Thanks.

-CG-