

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

**IN THE MATTER OF APPLICATIONS)
FOR TRANSFER 86942 AND 86951)
IN THE NAME OF ROHN R. NELSON)
AND LORI A. NELSON)**

REQUEST FOR BRIEFS

On August 18, 2022, Rohn. R. Nelson and Lori A. Nelson (collectively “Applicants”) filed Applications for Transfer 86942 and 86951 with the Idaho Department of Water Resources (“Department”). M. Gene Bair filed a protest against Application 86942. Phil Moulton, Kirk Klemmer and Fred Payne each filed protests against both applications. The contested cases were consolidated for the purpose of conducting an administrative hearing. The Department conducted an administrative hearing for the consolidated cases on May 23 and 24, 2023, in Salmon, Idaho. Applicants were represented by attorney Robert Harris. Protestants were jointly represented by attorneys Chip Giles and Fred Snook.

Pursuant to Rule 562 of the Department’s Rules of Procedure (IDAPA 37.01.01), a presiding officer may request briefs from the parties setting forth arguments and positions on any questions of law in a contested case. The evidence presented during the administrative hearing raises important questions of law. Therefore, the hearing officer invites the parties to file briefs addressing the following questions:

- 1. Does Section 42-222(1), Idaho Code, or relevant case law require an applicant to demonstrate legal access to the proposed point(s) of diversion, conveyance system, and place of use in conjunction with an application for transfer?**
- 2. Does a transfer applicant’s legal access to the proposed point(s) of diversion, conveyance system, and place of use fall within any of the review criteria for transfer applications set forth in Section 42-222(1), Idaho Code.**
- 3. Section 42-222(1), Idaho Code, states that the director of the Department shall approve a transfer application “provided no other water right are injured thereby” Does this protection against injury to existing rights extend to the use of high flow described in the General Provisions for Basin 74 as decreed in the Snake River Basin Adjudication?**
- 4. Section 42-222(1), Idaho Code, states that the director of the Department shall approve a transfer application “provided . . . the change . . . is in the local public interest as defined in section 42-202B, Idaho Code” Does**

this local public interest review extend to the use of high flow described in the General Provisions for Basin 74 as decreed in the Snake River Basin Adjudication?

Initial briefs from all parties shall be filed on or before June 30, 2023. Response briefs, if any are prepared, shall be filed on or before July 14, 2023. The briefs may be filed with the Department electronically (file@idwr.idaho.gov) and may be served on other parties by email. See IDAPA 37.01.01.053.

Judge Wildman, the presiding judge over the Snake River Basin Adjudication signed the General Provisions for Basin 74 on April 3, 2012. The General Provisions for Basin 74 can be found on the adjudication website: <http://www.srba.state.id.us/GENPROV.HTM>

Dated this 30th day of May 2023.



James Cefalo
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of May 2023, true and correct copies of the documents described below were served by placing a copy of the same with the United States Postal Service, postage prepaid and properly addressed to the following:

Document Served: Request for Briefs

ROBERT L HARRIS
HOLDEN KIDWELL HAHN & CRAPO
PO BOX 50130
IDAHO FALLS, ID 83402
rharris@holdenlegal.com

FRED SNOOK
44 CEMETERY LN
SNOOK EVENTS CENTER, STE 12
SALMON, ID 83467
fsnook@custertel.net

CHIP GILES
GILES LAW GROUP
PO BOX 301
CONGRESS, AZ 85532
chip@gileslaw.org

Courtesy copy sent by email to:

Rohn & Lori Nelson	fullcurl@mtaonline.net
Gene Bair	pkbair@gmail.com
Kirk Klemmer	kirk047@centurytel.net
Fred Payne	fred@fpayne.com
Phil Moulton	prattcreekbranch71@yahoo.com



Christina Henman
Administrative Assistant