

2016 DEC -1 PM 3:41

FILED BY TAMMY WELCH

1 Fritz X. Haemmerle (ISB No. 3862)  
2 HAEMMERLE LAW, PLLC  
3 P.O. Box 1800  
4 Hailey, ID 83333  
5 Telephone: (208) 578-0520  
6 Facsimile: (208) 578-0564  
7 fXH@haemlaw.com

8 Attorneys for Petitioner, Nelson Mackay Ranch, LLC et al.

9  
10 IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
11 STATE OF IDAHO, IN AND FOR THE COUNTY OF BUTTE COUNTY  
12

13 MOJANET and DEBORAH BROADIE; )  
14 HARRY and BEVERLY CRAWFORD; )  
15 NOTCH BUTTE FARMS LLC; MAGEE )  
16 FAMILY TRUST; NELSON MACKAY )  
17 RANCH LLC; BYRON PEHRSON; LANA )  
18 PEHRSON; TERRI PEHRSON; LOY )  
19 PEHRSON; PEGGY and RANDY )  
20 PEHRSON; JENNIE and ORVILLE )  
21 SMITH; WIGHT ENTERPRISES LLC; )  
22 BELL SMITH LLC; JOHN AND )  
23 PATRICK POWERS; LAST RANCH LLC; )  
24 and JOHN LEZAMIZ FAMILY LIMITED )  
25 PARTNERSHIP )

Case No. CV- 2016-92  
PETITION FOR JUDICIAL REVIEW  
L(3): \$221.00

Petitioner,

vs.

IDAHO DEPARTMENT OF WATER  
RESOURCES and Gary Spackman, in his  
official capacity as Director of the Idaho  
Department of Water Resources,

Respondent.

COME NOW the Petitioners, Nelson Mackay Ranch, et al. ("Petitioners" or "Nelson"),  
by and through its attorneys of record, Fritz X. Haemmerle of Haemmerle Law, P.L.L.C., and

1 pursuant to Idaho Code Sections 67-5270 through 67-5279 and I.R.C.P. 84 files this Petition for  
2 Judicial Review as follows:

3 **PETITION FOR JUDICIAL REVIEW**

4 1. Petitioners are owners of water rights in Basin 34.

5 2. This matter stems from a *Final Order Re: Suspension of Rotation Credit in Water*  
6 *District 34 ("Order")*, issued by Gary Spackman, Director of the Idaho Department of Water  
7 Resources ("Department").

8 3. Name of agency from which judicial review is sought: Idaho Department of  
9 Water Resources ("Respondent") and its Director Gary Spackman, an agency of the State of  
10 Idaho.

11 4. The Petition is taken to the District Court of the Seventh Judicial District, County  
12 of Butte.

13 5. Decisions being appealed: *The Order*.

14 6. A transcript of all *proceedings In The Matter of Rotation Credit in Water District*  
15 *34, Big Lost River Basin* is requested. A transcript of those proceedings has been prepared  
16 previously. Hearings in the matter were held on June 28-29, and on August 2, 2016, in Arco,  
17 Idaho. The hearings were recorded. Also, there was a transcript prepared by M&M Court  
18 Reporters, Boise, Idaho. All other proceedings, including monthly status conferences, were  
19 recorded by the Department.  
20

21 7. Petitioner has requested an estimate for preparation of the transcript and record,  
22 and Petitioner has tendered an estimated fee for same.

23 8. The Petitioner's substantial rights have been prejudiced by the Department's *Order*  
24 including, but not necessarily limited to the diminishment of water rights as those rights were  
25

1 Decried by the Snake River Basin Water Adjudication and permitted and licensed by the  
2 Department.

3 9. Under the standards of evaluation as set forth under Idaho Code Section 67-5279,  
4 the *Order* is;

- 5 a. in violation of constitutional, statutory provisions or administrative rules of  
6 the Department;
- 7 b. in excess of the statutory authority or authority of the Department under the  
8 administrative rules of the Department;
- 9 c. was made upon unlawful procedures; and
- 10 d. was arbitrary, capricious, and/or an abuse of the agency discretion.

11 10. Petitioner reserves the right to file a separate statement of the issues within  
12 fourteen (14) days after the filing of this Petition.

13 11. Other parties to the case include the Big Lost River Irrigation District, Marshall  
14 Todd Perkes; Melvin Marx Hintze, PE; Mike Telford; Mitchell Sorensen; Seth Beal; and Young  
15 Harvey Walker.  
16

17 12. Service of this Petition has been made on the Department, and notice of this filing  
18 has been made on parties to the contested case.

19 **DEMAND FOR ATTORNEY FEES AND COSTS**

20 As a result of the Department's actions, Petitioner has had to retain counsel. For services  
21 rendered, the Petitioner is entitled to attorney fees and costs should they prevail in this action  
22 pursuant to Idaho Code Section 12-117 and pursuant to Rule 54 of the Idaho Rules of Civil  
23 Procedure.  
24  
25

**RIGHT TO AMEND**

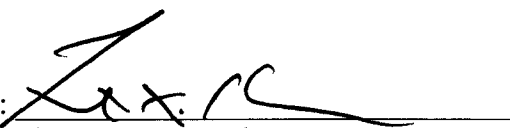
1  
2 The Petitioner reserve the right to amend this Petition in any respect as motion practice  
3 and discovery proceed in this matter.

4 WHEREFORE, the Petitioner prays for the following relief:

- 5 A. A finding that the *Order* was: :
  - 6 a. in violation of constitutional, statutory provisions or current administrative
  - 7 rules of the Department;
  - 8 b. in excess of the statutory authority or administrative rules of the Department;
  - 9 c. made upon unlawful procedures; and
  - 10 d. arbitrary, capricious, and/or an abuse of the agency discretion.
- 11 B. That the Court set aside the *Order* in whole or part, and/or remand the foregoing
- 12 Orders back for further proceedings;
- 13 C. For an award of reasonable costs and attorneys' fees pursuant to applicable law,
- 14 including but not limited to Idaho Code Section 12-117, and Idaho Rule of Civil
- 15 Procedure 54; and
- 16 D. For such other and further relief as the Court deems just and equitable.

17  
18 RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of December, 2016.

19 HAEMMERLE LAW, P.L.L.C.

20  
21 By:   
22 Fritz X. Haemmerle

CERTIFICATE OF SERVICE

1  
2 I HEREBY CERTIFY that on this 15<sup>th</sup> day of December, 2016, I caused to be served a  
3 true copy of the foregoing document by the method indicated below, and addressed to each of  
4 the following by United State Mail:  
5

6  
7 Copy to:  
8 Snake River Basin Adjudication District Court  
9 P.O. Box 2707  
10 Twin Falls, Idaho 83303-2707

11 Original:  
12 Gary Spackman  
13 322 East Front Street  
14 P.O. Box 83720  
15 Boise, ID 83720-0098  
16 deborah.gibson@idwr.idaho.gov

17 Big Lost River Irrigation District  
18 Represented by:  
19 W. Kent Fletcher  
20 Fletcher Law Offices  
21 P.O. Box 248  
22 Burley, Idaho 83318  
23 wkf@pmt.ort

24 Marshal Todd Perkes  
25 2790 N 3325 W  
Moore, Idaho 83255

Melvin Marx Hintze, PE  
Darla Ann Hintze  
4372 W. Houston Road  
Mackay, Idaho 83251  
marxhintz@hintze.net

Mike Telford  
Telford Lands, LLC  
1450 W. Highway 24  
Paul, Idaho 83347-8666

1 Mitchell D. Sorensen  
2 3871 W. 2500 N.  
3 Moore, Idaho 83255

4 Seth Beal  
5 2827 N. 3375 W.  
6 Moore, Idaho 83255

7 Young Harvey Walker  
8 2338 N. 2930 W.  
9 Arco, Idaho 83213

10   
11 FRITZ X. HAEMMERLE