

Needs:

1. Field Exam:

- a.) Div. works
- b.) Div. Rates (Worms)
- c.) Purposes of Use

2. Photos:

- a.) POD
- b.) Pou

3. Contact Person

25 August 1998

Koch Agricultural
% Jason Russell
PO Box 967
Blackfoot ID 83221

Re: Notice of Error, 35-02857B

Dear Mr. Russell:

The Department of Water Resources has received the Notice of Error for the water right referenced above. You indicate that the Period of Use should read 01/01-12/31, instead of 04/01-10/31. I have corrected the recommendation to read 01/01-12/31, per Transfer No. 5226. A copy of the new recommendation is enclosed for your records.

Thank you for your response to the Notice of Error. Should you have further questions regarding your water rights please feel free to contact this office.

Respectfully submitted,

Allen B. Ruberry
Sr. Water Resources Agent
Adjudication Bureau

cc: file



KOCH FISHER MILLS, L.L.C.

C:\WINDOWS\START MENU\RESOURCES\KFM\FAX.DOC

TO:	DEPT OF WATER RESOURCES - EAST
COMPANY:	
FAX:	2085257177
PHONE:	
CC:	

FROM:	JASON W. RUSSELL
PHONE:	316-828-2859
FAX:	316-828-6235
PAGER:	888-214-9875
EMAIL:	RUSSEL0J@KOCHIND.COM
Time:	09:20
Date:	08/21/98
Pages w/	1
Cover:	

SUBJECT:	ERROR ON WATER RIGHT # 35-02857B
REMARKS:	☐ URGENT ☐ REPLY ASAP ☐ PLEASE CALL ☒ FOR REVIEW ☐ PLEASE COMMENT

AFTER REVIEW OF THE PRELIMINARY RECOMMENDATION, IT WAS FOUND TO LIST THE PERIOD OF USE INCORRECTLY AND WAS STATED AS 4/1 TO 10/31. THE ACTUAL PERIOD OF USE SHOULD BE STATED AS 1/1 TO 12/31. PLEASE CORRECT ON YOUR RECORDS ACCORDINGLY.

ATTACHED IS THE NOTICE OF ERROR REPLY FORM SENT OUT BY YOUR OFFICE. I AM MAILING IN THE ORIGINAL TO BACKUP THIS FAX.

I NEED TO UNDERSTAND FUTURE STEPS TO FOLLOW THROUGH ON THIS CORRECTION. WOULD YOU PLEASE HAVE A REPRESENTATIVE GIVE ME A CALL AT THE NUMBER ABOVE.

LET ME KNOW IF YOU HAVE QUESTIONS.
THANKS
JASON

RECEIVED
AUG 24 1998
Department of Water Resources
Eastern Region

ORIGINAL

al

July 17, 1998

**NOTICE OF ERROR
REPLY**

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: August 14, 1998

Water right number: 35-02857B

KOCH AGRICULTURE
PO BOX 967
BLACKFOOT ID 83221

c/o JASON Russell

FAXED
8/21/98

Daytime Telephone Number: 316-828-2859

Evening Telephone Number: 316-729-4379

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

Period of use - Chg to 01/01 to 12/31

2. Describe the changes you wish to make in the proposed recommendation:

Chg use date from 4/01 - 10/31
to
01/01 - 12/31

3. Give a brief explanation as to why you disagree with these portions:

INDUSTRIAL/Commercial use - year round
manufacturing use.

ORIGINAL

☐ I AGREE with this proposed recommendation; no changes need to be made.

DATE: 8/4/98 SIGNATURE: Jason W Russell
Please print your name: JASON W Russell

Period of use CHANGED TO comply w/ Tr 5226, as 01/01 to 12/31.

IDWR Eastern Regional Office, 900 N. Skyline Drive, Suite A, Idaho Falls, ID 83402-1718, (208) 525-7161

FAX 208-525-7177

cc: MAIL

TO: ALLEN RUBERRY

May 12, 1998

FROM: KEITH C. WILSON

RE: KOCH AGRICULTURAL RIGHT A35-02857B

I CALLED 785-4460 AND TALKED WITH CRAIG GOODWIN. MR GOODWIN TOLD ME THAT THE WELL WOULD BE DRILLED IN THE NEXT COUPLE OF MONTHS, AND WILL GO ON LINE IN DECEMBER 1998.


KEITH C. WILSON
SENIOR RESOURCE AGENT

Field exam pending development is not needed
per BME 8/25/98. Recommend claim per TX 5226,





State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Idaho Falls, Idaho 83402-1718 - (208) 525-7161 - Fax (208) 525-7177

EASTERN REGION

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

May 5, 1998

KOCH AGRICULTURE
PO BOX 967
BLACKFOOT ID 83221

RE: Transfer #5226 (water right A35-02857)

Dear Sirs:

The Idaho Department of Water Resources (IDWR) approved Transfer #5226, modifying the above referenced water right. Based on this transfer, IDWR water right records for the Snake River Basin Adjudication (SRBA) have been updated.

Please feel free to contact me if you have any questions concerning this matter.

Respectfully,

Jennifer Hoagland
Technical Records Specialist

Enclosure: Notice of Claim

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE OF WATER RIGHT OWNERSHIP

RECEIVED

MAY 04 1998

Please print or type. Attach pages with additional information. Instructions are on the back of this page.
Incomplete forms will be returned.

Department of Water Resources
Eastern Region

1. Water Right Number(s) 35-028578
Adjudication Claim Number(s) A35-02857
2. The following REQUIRED information must be submitted with this form.
 - A. A copy of the most recent DEED, TITLE POLICY, CONTRACT OF SALE, or other legal documents indicating your ownership of the property and water rights or claims in question, WITH ATTACHED LEGAL DESCRIPTION.
AND
 - B. PLAT OF PROPERTY or SURVEY MAP for parcel of ten acres or less. (These are usually on file with the county.)
OR
 - C. For water rights or adjudication claims involving ten or more irrigated acres, a USDA Farm Service Agency (formerly ASCS) AERIAL PHOTO with irrigated acres outlined and point(s) of diversion clearly marked.
3. Name and Address of Former Owner/Claimant(s) Todd Burke
839 West 100 North Blackfoot, Id 83221
4. New Owner/Claimant(s) Koch Agriculture Company
New Mailing Address P.O. Box 967
City, State and ZIP Code Blackfoot, Id 83221
New Telephone Number (208) 785-4460
5. Date you acquired the property April 28, 1998
6. If you have acquired only a portion of the former owner's property, IDWR may need to split the water right(s) or adjudication claim(s). If this applies, describe in detail your portion of each water right or adjudication claim in the spaces below. If necessary, attach additional pages.
Number of acres actually irrigated 11.5 Number and type of stock N/A
Diversion rate in CFS 0.23 Number of homes N/A Other uses Industrial
cubic feet per second
If a water right or adjudication claim is being split and you are not sure how to identify your portion of the original right or claim, please contact the nearest IDWR office for assistance.
7. Signature of New Owner/Claimant(s) Chris Wilkin Date 5/1/98
all Date _____
8. (Corporations or other organizations must submit a list of directors/officers demonstrating authority to sign form.)
For Snake River Basin Adjudication Claims: If you are represented by an attorney and you want IDWR to correspond directly with your attorney for all matters related to your claims, please attach a Notice of Appearance completed by your attorney.

AGREEMENT TO CONVEY WATER RIGHTS

This Agreement between Koch Agriculture Company, a Nebraska corporation with its principal place of business located at 4111 East 37th Street North, Wichita, Kansas 67220 ("Koch") and Todd Burke, an individual with an address of 839 W. 100 N., Blackfoot, ID 83221 ("Burke").

WHEREAS, Koch wishes to purchase and Burke wishes to sell, pursuant to the terms of this Agreement certain described water rights.

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, Koch and Burke agree as follows:

I. Conveyance of Water Rights

1.1 **Description of Water Rights.** Burke hereby conveys to Koch and Koch hereby purchases Burke's right, title and interest in the water rights from the two parcels of property described as follows (hereinafter referred to as "Water Rights"):

Right Number: 35-02857(B)

Quantity: 0.23 cfs

Property Descriptions of real estate from where the Water Rights are being conveyed:

East Parcel

Part of the Northeast Quarter of the Northwest Quarter (NE 1/4 NW 1/4) of Section 7, Township 2 South, Range 34 East of the Boise Meridian, Bingham County, Idaho described as follows:

Beginning at the North Quarter corner of said Section 7 and running thence S.89°55'08"W. 819.81 feet along the section line to a point on a curve; thence southeasterly 1211.23 feet along said curve to the right, Curve Data: Delta = 49°45'04", Radius = 1394.91 feet, Chord bearing = S.44°25'11"E. 1173.53 feet to the East line of the Northwest Quarter of said Section 7; thence N.00°06'23"W. 839.34 feet along said East line to the point of beginning.

Parcel contains 5.55 acres.

West Parcel

Part of the Northwest Quarter of the Northwest Quarter (NW 1/4 NW 1/4) of Section 7, Township 2 South, Range 34 East of the Boise Meridian, Bingham County, Idaho, described as follows:

Beginning at the Northwest Quarter of said Section 7 and running thence N.89°55'08"E. 841.57 feet along the section line to a point on a curve; thence southwesterly 1279.59 feet along said curve to the left, Curve Data: Delta = 52°33'32", Radius = 1394.91 feet, Chord bearing = S.42°51'14"W. 1235.19 feet to the West line of said Section 7; thence N.00°05'36"W. 904.32 feet along said West line to the point of beginning.

Parcel contains 5.98 acres and is subject to the existing County Road right-of-way along the West side of the above described property.

1.2 **Seller's Warranty.** Burke hereby warrants that he is the true and lawful owner of the Water Rights described above and such Water Rights are free and clear of any mortgage, lien, security interest, or encumbrance of any other kind. Burke shall make, execute, acknowledge and deliver to Koch, in a form acceptable to Koch's attorneys any document as may be reasonably necessary to transfer all of the purchased Water Rights free and clear of all mortgages, security interests, liens, charges and encumbrances.

II. Purchase Price

2.1 **Purchase Price.** As consideration for the conveyance of the water rights as set forth in Article I above, Koch hereby agrees to pay, within 15 days of the date set forth below, the sum of Six Thousand Dollars (\$6,000.00).

2.2 **Taxes.** Burke is responsible for and shall defend, indemnify and hold Koch harmless against all taxes arising by reason of or which are attributable to Burke's sale of the Water Rights.

III. Miscellaneous Provisions

3.1 **Amendment.** This Agreement may be amended, but only by mutual written agreement of the parties. Either party hereto may waive any rights to which it is entitled under this Agreement, but such waiver shall be in writing and be strictly limited to the part waived.

3.2 **Applicable Law.** This Agreement and the legal relations between and among the parties hereto shall be governed by and construed in accordance with the laws of the State of Idaho.

3.3 **Entire Agreement.** This Agreement embodies the entire Agreement and understanding of the parties hereto in respect of the subject matter contained in this Agreement; and this Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

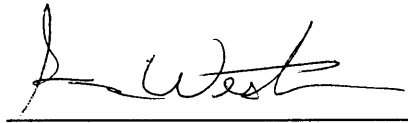
3.4 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which executed counterparts together shall constitute one Agreement.

3.5 **Construction.** This document is prepared at the mutual request and instruction of both parties and shall be interpreted in accordance with equity and good conscience and not strictly against either Burke or Koch. If any portion of this Agreement should be adjudged illegal or unenforceable, the remainder of this Agreement shall continue to be enforceable.

3.6 **Survival of Representations.** All representations and warranties, and covenants contained in this Agreement shall survive the date of this Agreement and be binding upon the heirs, successors or assigns of the parties to this Agreement.

IN WITNESS WHEREOF, Burke and Koch have each caused this Agreement to be signed on the day, month, and year written below.

Koch Agriculture Company:



Name:

Title:

Date: 5-4-98

Todd Burke:



Date:

5/4/98

Eastern AJ

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER OF WATER RIGHT

TRANSFER NO. 5226
WATER RIGHT NO. 35-02857B

This is to certify that: **TODD BURKE**
839 W 100 N
BLACKFOOT ID 83221

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
INDUSTRIAL	01/01 to 12/31	0.23 CFS	34.0 AF

SOURCE
GROUNDWATER

Priority: 01/16/1967

LOCATION OF POINT(S) OF DIVERSION:

SWNW , Sec. 32, Township 02S, Range 35E
BINGHAM County

PLACE OF USE: INDUSTRIAL

TWN RGE SEC

02S 35E 32

SWNW

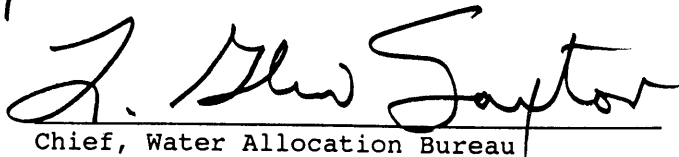
CONDITIONS OF APPROVAL AND REMARKS

1. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
2. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
3. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
4. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.
5. Industrial use is to temper grain for milling purposes.

Dated this 28th day of

April

, 1998.


Chief, Water Allocation Bureau

MEMORANDUM

TO: File 35-02857

FROM: Pam Skaggs/State Office

SUBJECT: Transfer 5226

DATE: April 27, 1998

Transfer 5226 changes the point of diversion, place, nature and season of use under a portion of Right 35-02857, splitting the right into Parts A and B. The applicant is selling a portion of his irrigation right to Koch Industries for use in a grain tempering facility.

Standard diversion and consumptive use volumes were used to evaluate the change in nature of use. Year round use was also allowed for industrial use. Recommended conditions include drilling permit requirements and standard transfer conditions.

Change in Nature of Use Evaluation

	<u>Rate</u>	<u>Acres</u>	<u>Div. Vol./C.U. Vol</u>
35-02857	4.68 cfs	234.0 acres	819.0 afa (@3.5 afa)/702.0 afa
Part A	4.45 cfs	222.5 acres	768.3 afa (@3.5 afa)/667.5 afa
Part B	0.23 cfs	(11.5 acres)	34.0 afa/ ? (34.0 afa maximum)
Total	4.68 cfs	222.5 acres	802.3 afa/ 701.5 afa maximum

Should this be a AF/acre?

Change results in a reduction of irrigated acres, diversion and consumptive use volumes.

APPLICATION FOR TRANSFER OF WATER RIGHT

PART 1

Name of applicant TODD BURKE Phone (208) 684-4258
Post Office address 839 W. 100 N. Blackfoot, ID 83221

A. PURPOSE OF TRANSFER

- ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☒ Change nature of use ☐ Change period of use ☐ Other _____
- Describe the reason for the proposed changes Koch Agriculture is purchasing a portion of my water right to transfer to their facility to temper grain for milling purposes.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

- | Right Number | Priority | Amount (cfs/ac-ft) | Nature of Use | Period of Use |
|---------------------|------------------|--------------------|-------------------|----------------------------|
| <u>35-02857 (B)</u> | <u>1/16/1967</u> | <u>0.23 cfs</u> | <u>Industrial</u> | <u>1/1</u> to <u>12/31</u> |
| _____ | _____ | _____ | _____ | _____ to _____ |
| _____ | _____ | _____ | _____ | _____ to _____ |
| _____ | _____ | _____ | _____ | _____ to _____ |
- Total amount of water being transferred 0.23 cubic feet per second and/or _____ acre-feet per annum.
- Source of water Groundwater tributary to _____

4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
			<u>SW NW</u>	<u>32</u>	<u>2S</u>	<u>3SE</u>	<u>Bingham</u>	<u>Koch Agriculture</u>

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
<u>2S</u>	<u>3SE</u>	<u>32</u>							<u>I</u>										
<u>2S</u>	<u>34E</u>	<u>7</u>									<u>30.5</u>	<u>33</u>	<u>39</u>	<u>39</u>	<u>39</u>	<u>39</u>	<u>39</u>	<u>38</u>	<u>296.5</u>

* Permissible place of use for 35-02857A + 35-02858B Total acres _____

A. DESCRIPTION OF RIGHT AS RECORDED:

Water Right No. 35-02857

STAGE: LICENSE

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	04/01 to 11/01	4.68 CFS	819.0 AF

SOURCE

GROUNDWATER

Priority: 01/16/1967

LOCATION OF POINT(S) OF DIVERSION:SWNW , Sec. 7, Township 02S, Range 34E
BINGHAM CountyPLACE OF USE: IRRIGATION

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
02S	34E	7	NENW 39	NWNW 39	SWNW 39	
			SESW 39	NESW 39	NWSW 39	234
Total number of acres irrigated:						234

CONDITIONS/REMARKS:

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

_____ If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

35-02857B

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 0.23 cfs for Irrigation purposes from 4/01 to 10/31
 (cfs/ac-ft) _____
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft) _____
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft) _____

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	NW	7	2S	34E	Bingham	

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
2S	34E	7					5.5	6											11.5

Total acres 11.5

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

35-02857A

1. amount 4.45 cfs for Irrigation purposes from 4/01 to 10/31
 (cfs/ac-ft) _____
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft) _____
 amount _____ for _____ purposes from _____ to _____
 (cfs/ac-ft) _____

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
		SW	NW	7	2S	34E	Bingham	

3. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
2S	34E	7					30.5	33	39	39	39	39	39	38					296.5

* Limited to 296.5 acres within Permissible P.O.U. Total acres 296.5

PART 1

6. General Information:

a. Description of diversion system Well + pump to 3 Facilities for the
tempering of grain

Done b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? X Yes _____ No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:

This ground will now be dry farm

d. Remarks:

11.5 acres of the original place of use will be dried up. 0.23 of
originally apartment will be transferred to a grain processing
facility

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____

And said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 19 _____