

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 37-10166 V1

WATER RIGHT NUMBER: 37-10166 V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	4 BROS DAIRY INC 427 N 250 W SHOSHONE, ID 83352 (208)886-7716
Directors Report Owner	DOROTHY B HUBBS 156 4 MI RD SHOSHONE, ID 83352 (208)886-7545
Directors Report Owner	LOREN C HUBBS 156 4 MI RD SHOSHONE, ID 83352 (208)886-7545

Priority Date: 01/01/1930

Basis: Beneficial Use

Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
DOMESTIC	1/01 to 12/31	0.040 CFS	
STOCKWATER	1/01 to 12/31	0.020 CFS	
	<u>Total Diversion:</u>	0.040 CFS	

Location of Point(s) of Diversion

GROUND WATER	SE1/4SE1/4SE1/4	Sec. 9, Twp 05S, Rge 17E, B.M.
LINCOLN County		

Place of UseDOMESTIC Within LINCOLN County

T05S R17E S09 SESE

Total Acres: 0

STOCKWATER Within LINCOLN County

T05S R17E S09 SESE

Total Acres: 0

Conditions of Approval:

1. N11 THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.
2. N13 THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000 GALLONS PER DAY.

Remarks:

1. Explanatory PARCEL NO. 05S17E097201 STOCKWATER, 10 CATTLE

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommendation Report 37-10166 V1

Dates and Other Information:

Decreed Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Defendant:
Plaintiff:
Civil Case Number:
Judicial District:
Notice of Error Flag: NONE RECEIVED
State or Federal: S
Owner Name Connector:
Water District Number:
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

SOUTHERN REGION

August 23, 2001

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

4 BROS DAIRY INC
427 N 250 W
SHOSHONE ID 83352

RE: Decreed Water Right 37-10166, 37-10545

Gentlemen:

Pursuant to the change in ownership request that has been submitted to the Department, we have changed the record of current ownership to you. Please find the enclosed copies of the computer record of the water right(s) noting the change in owner. Review these records and if there is an error, or you have any questions, please contact this office.

Sincerely,

Trish Fawcett
Technical Records Specialist

enc.

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

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

RECEIVED
AUG 16 2001
Department of Water Resources
Southern Region

1. Water Right Number(s) _____
Adjudication Claim Number(s) 37-10166 and 37-10545
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 document 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) DOROTHY B. HUBBS, a Widow
LOREN C. HUBBS, Deceased (Case No. SP 95-00003 Lincoln County)
4. New Owner/Claimant(s) 4-BROS DAIRY, INC., an Idaho Corporation
Name connector (Check one): ☐ AND, ☐ OR, ☐ AND/OR
New Mailing Address 427 North 250 West
City, State and ZIP Code Shoshone, Idaho, 83352
New Telephone Number (208) 886 - 7603 Andrew (208) 886-2185 Jerome
5. Date you acquired the property April 23, 2001
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 _____ Number and type of stock _____
Diversion rate in CFS _____ Number of homes 1 Other uses _____
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) *Andrew Fitzgerald* Sec-TRES Date 4-23-01
Jerome Fitzgerald Pres. Date 4-23-01
8. (Corporations or other organizations must submit 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.

INDEXED
✓✓✓✓

158957

158957
DISTRICT COURT
FIFTH JUDICIAL DISTRICT
County of Lincoln, State of Idaho

Filed 1-19-95 4:55 pm

Dana Johnson
CLERK
DEPT. II

STATE OF IDAHO
COUNTY OF LINCOLN
Reported at the request of
Loren C. Hubbs
JAN 25 1995
et 39 minutes past 2 P.M.
Recorded by *Nellie Jackson, Dep.*
Fee: *Rec. Return to S. Hubbs*
By hand.

TERRY LEE JOHNSON
Attorney At Law
P.O. Box X
527 Blue Lakes Blvd.
Twin Falls, Idaho 83303-0080
Telephone: (208) 734-6051
Attorney for : Petitioner

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LINCOLN
MAGISTRATE DIVISION

* * *

In the Matter of the Estate of:)

LOREN C. HUBBS,)

Deceased.)

Case No. SP 95-00003

DECREE VESTING ESTATE
IN SURVIVING SPOUSE

* * *

UPON consideration of the Petition for Summary Administration
Of Estate In Which Surviving Spouse is Sole Beneficiary filed by
Dorothy Hubbs on January 17, 1995, the Court finds that:

1. The facts set forth in the petition are true.
2. The required notice is unnecessary as there are no other interested persons as defined in Idaho Code Section 15-1-201(24).
3. The decedent, Loren C. Hubbs, died on April 15, 1989, domiciled in Lincoln County, State of Idaho.
4. Venue is proper.
5. The decedent and petitioner were duly married at Shoshone, Idaho, on November 21, 1937, and remained married until the date of

DECREE VESTING ESTATE
IN SURVIVING SPOUSE

decedent's death.

6. The surviving spouse, Dorothy Hubbs, is the sole heir or devisee of the decedent.

7. The decedent died intestate.

8. The schedule of property attached to this Decree is a full and complete inventory of the property owned by the decedent and properly characterizes the property as community or separate property.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, as follows:

1. Dorothy Hubbs, is the surviving spouse of the decedent and is the sole heir or devisee of the decedent.

2. The property of the decedent described on the schedule attached to this decree is hereby vested in and distributed to Dorothy Hubbs free and clear of all right, title, claim or demand of any person or persons claiming or attempting to claim under the estate of the decedent as heir, devisee, or otherwise, except as a proper creditor.

3. The surviving spouse shall assume and be liable for any and all indebtedness that might be a claim against the estate of the decedent.

4. There shall be no administration of the estate of the decedent.

STATE OF MISSISSIPPI DISTRICT COURT his 17th day of January, 1995.

I hereby certify that this is a true copy of the original in my office.

Dated 1/17/95

151
Magistrate Judge

By Debra McHitt
Clerk, Auditor and Recorder
DEGREE VESTING ESTATE
IN SURVIVING SPOUSE

Community Property of decedent, Loren C. Hubbs,
and Petitioner, Dorothy Hubbs:

Personal Property:

All personal property including any tractors and equipment
and household furnishings and livestock.

Real Property:

PARCEL NO. 1

TOWNSHIP 5 SOUTH, RANGE 17 EAST OF THE BOISE MERIDIAN,
LINCOLN COUNTY, IDAHO

Section 9: E $\frac{1}{2}$ SE $\frac{1}{4}$

EXCEPTING THEREFROM the North 417.4 feet of the East 1043.5
feet of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 9, Township 5 South, Range 17,
East of the Boise Meridian, in Lincoln County, State of Idaho.

ALSO EXCEPTING property described in a Highway Right of Way
Deed to the State of Idaho dated November 2, 1948, recorded
December 10, 1948 as Instrument Number 92654, Lincoln County
records.

ALSO EXCEPTING that certain property described in Highway
Right of Way Deed in favor of State of Idaho dated July 11,
1949, recorded July 18, 1949 as Instrument Number 93673,
Lincoln County records.

PARCEL NO. 2

TOWNSHIP 5 SOUTH, RANGE 17 EAST OF THE BOISE MERIDIAN,
LINCOLN COUNTY, IDAHO

Section 9: E $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$

EXCEPTING THEREFROM that certain property described in Highway
Right of Way Deed in favor of State of Idaho dated July 11,
1949, recorded July 18, 1949 as Instrument Number 93673,
Lincoln County records.

WARRANTY DEED

#L-29959

For Value Received

DOROTHY B. HUBBS, a widow, also shown of record as Dorothy Hubbs

RECEIVED

Hereinafter called the Grantor, hereby grants, bargains, sells and conveys unto

AUG 16 2001

4 - BROS. DAIRY, INC., an Idaho corporation
Address: 427 North 250 West Shoshone, Idaho 833352

Department of Water Resources
Southern Region

Hereinafter called the Grantee, the following described premises situated in LINCOLN County, Idaho, to-wit:

See Exhibit "A" Attached Hereto:
(1 page attachment)

SUBJECT TO:

All reservations in patents or deeds in the chain of title.

TOGETHER WITH all water and water rights, ditches and ditch rights used thereon or appurtenant thereto including but not limited to 40 shares of Big Wood Canal Company Water Stock

TO HAVE AND TO HOLD, the said premises, with their appurtenances unto the said Grantee and to the successors heirs and assigns of the Grantee forever. The Grantor does hereby covenant to and with the said Grantee, that the Grantor is the owner in fee simple of said premises; that they are free from all incumbrances except as above described and that Grantor will warrant and defend the same from all lawful claims whatsoever.

Dated: April 23, 2001

Dorothy B. Hubbs by
Ronald D. Wright Attorney In Fact
DOROTHY HUBBS, by Ronald D. Wright,
as her attorney in fact.

STATE OF IDAHO)
) ss.
COUNTY OF JEROME)

On this 23rd day of April, 2001, before me, the undersigned, a Notary Public in and for said State, personally appeared Ronald D. Wright, known or identified to me to be the person whose name is subscribed to the within instrument, as the attorney in fact of Dorothy D. Hubbs, and acknowledged to me that he subscribed the name of Dorothy B. Hubb, thereto as principal, and his own name as attorney in fact..

[Signature]
Notary Public

Residing at: _____

My Commission expires: _____

170358

STATE OF IDAHO COUNTY OF LINCOLN Recorded at the request of LAND TITLE & ESCROW
APR 23 2001
at <u>18</u> minutes past <u>4P</u> M
recorded by <u>[Signature]</u>
Fee: <u>6.00</u> Return to: <u>Same as above</u>

RICK BERNSSEN
★ NOTARY PUBLIC ★
STATE OF IDAHO
RESIDING AT JEROME, ID
MY COMMISSION EXPIRES 7-30-03

PARCEL NO. 1

TOWNSHIP 5 SOUTH, RANGE 17 EAST OF THE BOISE MERIDIAN,
LINCOLN COUNTY, IDAHO

Section 9: E $\frac{1}{2}$ SE $\frac{1}{4}$

EXCEPTING THEREFROM the North 417.4 feet of the East 1043.5 feet of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 9, Township 5 South, Range 17, East of the Boise Meridian, in Lincoln County, State of Idaho.

ALSO EXCEPTING property described in a Highway Right of Way Deed to the State of Idaho dated November 2, 1948, recorded December 10, 1948 as Instrument Number 92654, Lincoln County records.

ALSO EXCEPTING that certain property described in Highway Right of Way Deed in favor of State of Idaho dated July 11, 1949, recorded July 18, 1949 as Instrument Number 93673, Lincoln County records.

PARCEL NO. 2

TOWNSHIP 5 SOUTH, RANGE 17 EAST OF THE BOISE MERIDIAN,
LINCOLN COUNTY, IDAHO

Section 9: E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$

EXCEPTING THEREFROM that certain property described in Highway Right of Way Deed in favor of State of Idaho dated July 11, 1949, recorded July 18, 1949 as Instrument Number 93673, Lincoln County records.

COMMONWEALTH LAND TITLE INSURANCE COMPANY

OWNERS POLICY

SCHEDULE A

FILE NO.	POLICY NO.	DATE OF POLICY	AMOUNT	PREMIUM
L-29959	A60-920820	April 23, 2001 at 4:20 p.m.	~~\$100,000.00~~	~~\$495.00~~

1. Name of Insured: **4-BROS. DAIRY, INC., an Idaho Corporation**

2. The estate or interest in the land which is covered by this Policy is:

FEE SIMPLE

3. Title to the estate or interest in the land is vested in:

4-Bros. Dairy, Inc., an Idaho Corporation

4. The land referred to in this Policy in said instrument, is situated in the County of **Lincoln**, State of Idaho, and is identified as follows:

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Department of Water Resources
Southern Region

SEE ATTACHED SCHEDULE A, PAGE 2

LAND TITLE AND ESCROW, INC.

Countersigned: _____

Authorized Officer or Agent

This Policy is valid only if Schedule B is attached.

CONTINUATION

SCHEDULE A

Policy Number: A60-920820

PARCEL NO. 1

**TOWNSHIP 5 SOUTH, RANGE 17 EAST OF THE BOISE MERIDIAN,
LINCOLN COUNTY, IDAHO**

Section 9: E½SE¼

EXCEPTING THEREFROM the North 417.4 feet of the East 1043.5 feet of the NE¼SE¼ of Section 9, Township 5 South, Range 17, East of the Boise Meridian, in Lincoln County, State of Idaho.

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**TOWNSHIP 5 SOUTH, RANGE 17 EAST OF THE BOISE MERIDIAN,
LINCOLN COUNTY, IDAHO**

Section 9: E½SW¼SE¼

EXCEPTING THEREFROM that certain property described in Highway Right of Way Deed in favor of State of Idaho dated July 11, 1949, recorded July 18, 1949 as Instrument Number 93673, Lincoln County records.

OWNERS POLICY

SCHEDULE B

EXCEPTIONS FROM COVERAGE

Policy Number: A60-920820

This Policy does not insure against loss or damage (and the Company will not pay costs, attorney's fees or expenses) which arise by reason of:

GENERAL (STANDARD) EXCEPTIONS:

1. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession, or claiming to be in possession, thereof.
2. Easements, liens, encumbrances, or claims thereof, which are not shown by the public records.
3. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey of the land would disclose, and which are not shown by the public records.
4. Any lien, or right to a lien, imposed by law for services, labor, or material heretofore or hereafter furnished, which lien, or right to a lien, is not shown by the public records.
5. Taxes or assessments which are not now payable or which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
6. Any service, installation, connection, maintenance or construction charges for sewer, water, electricity or garbage collection or disposal or other utilities unless shown as an existing lien by the public records.
7. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) Indian treaty or aboriginal rights, including, but not limited to, easements or equitable servitudes; or, (d) water rights, claims or title to water, whether or not the matters excepted under (a), (b), (c) or (d) are shown by the public records.

SPECIAL EXCEPTIONS

8. 2001 taxes and subsequent years, taxes are an accruing lien, not yet due or payable.
9. Assessments of the Big Wood Canal Company and the rights and powers of said Company as by law provided.

-Continued-

CONTINUATION

SCHEDULE B

Policy Number: A60-920820

10. Assessments of the American Falls Reservoir District No. 2 and the rights and powers of said District as by law provided.
11. Right of way for canals, laterals and waste ditches of Big Wood Canal Company.
12. Power Line Easement given by H.V. Cannon and Lillian Cannon, his wife, to Idaho Power Company, a corporation, dated march 17, 1941, recorded September 18, 1941 as Instrument Number 81159, Lincoln County records, affecting SW¼SW¼ of Section 9, Township 5 South, Range 17 East, Boise Meridian.
13. A Mortgage to secure payment of a note for ~~\$70,000.00~~ and any other amounts as therein provided, together with interest and any other obligations secured thereby:

Recorded: April 23, 2001 as Instrument No. 170359, records of Lincoln County, Idaho.
Dated: April 23, 2001
Mortgagor: 4 Bros Dairy, Inc., an Idaho corporation
Mortgagee: Dorothy Hubbs, a widow

END OF SCHEDULE B

Schedule B (Owners Policy)

MEMORANDUM OF AGREEMENT OF SALE

THIS AGREEMENT is made and entered into this 4th day of Apr., 2001, by and between **DOROTHY HUBBS**, a widow, hereinafter referred to as "Seller" and **4 BROS. DAIRY, INC.**, an Idaho corporation, hereinafter referred to as "Buyer".

RECITALS

- A. The Seller presently owns real property located in Lincoln County, Idaho, more particularly described as:

TOWNSHIP 5 SOUTH, RANGE 17 EAST OF THE BOISE MERIDIAN,
LINCOLN COUNTY, IDAHO

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Section 9: E $\frac{1}{2}$ SE $\frac{1}{4}$

Department of Water Resources
Southern Region

EXCEPTING THEREFROM the North 417.4 feet of the East 1043.5 feet of the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 9, Township 5 South, Range 17, East of the Boise Meridian, in Lincoln County, State of Idaho

ALSO EXCEPTING property described in a Highway Right of Way Deed to the State of Idaho dated November 2, 1948, recorded December 10, 1948 as Instrument Number 92654, Lincoln County Records.

ALSO EXCEPTING that certain property described in Highway Right of Way Deed in favor of State of Idaho dated July 11, 1949, recorded July 18, 1949 as Instrument Number 93673, Lincoln County records.

AND

TOWNSHIP 5 SOUTH, RANGE 17 EAST OF THE BOISE MERIDIAN,
LINCOLN COUNTY, IDAHO

Section 9: E $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$

EXCEPTING THEREFROM that certain property described in Highway Right of Way Deed in favor of State of Idaho dated July 11, 1949, recorded July 18, 1949 as Instrument Number 93673, Lincoln County records.

Together with forty (40) shares in the Big Wood Canal Company and all other water rights appurtenant thereto.

- B. The parties wish to agree upon terms and conditions whereby Seller will sell to Buyer and Buyer will purchase from Seller all the above described real property.

IT IS THEREFORE AGREED in consideration of these premises and the promises and covenants hereafter contained as follows:

1. **Sale.** Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller all the real property described above in Recital A.

2. **Purchase Price.** The total purchase price for the real property shall be the sum of One Hundred Thousand Dollars (~~\$100,000.00~~), lawful money of the United States of America, paid as follows:

- * ~~\$10,000~~ in earnest money payable upon execution of this agreement shall be paid to Land, Title and Escrow, Inc., Jerome, Idaho to be applied to the purchase price at closing.
- * ~~\$20,000~~ additional cash payable at closing.
- * The remaining balance of the purchase price, the sum of ~~\$70,000~~ shall be reduced to a Promissory Note in the form attached hereto as Exhibit "A" which shall accrue interest from the date of closing as hereinafter defined at 7% per annum. The note shall be payable in two annual installments in the amount of ~~\$35,000~~ principal and accrued interest on the unpaid principal. The first installment shall be due on the first anniversary of the date of closing, and the second on the second anniversary of the date of closing. The Promissory Note shall be secured by a Mortgage, a copy of which is attached hereto as Exhibit "B". A \$500 late payment penalty will accrue for any payment not received within fifteen (15) days of its due date.

3. **Escrow.** The Promissory Note to be given by Buyer to Seller hereunder together with the recorded Mortgage which secures the payment shall be placed in escrow with Land, Title and Escrow, Jerome, Idaho. The parties shall bear the set up and ongoing fees of escrow in equal shares. Land, Title and Escrow, Inc., shall be entitled to hold the documents described in this paragraph, together with the original Memorandum of Agreement of Sale, receive money from Buyer, disperse it to the Seller and receipt to the parties therefor.

4. **Prepayment.** Buyer may prepay any or all of the outstanding balance of the promissory note at any time without penalty.

5. **Closing.** The closing of the transaction shall take place at Land Title and Escrow, Jerome, Idaho, on or before the 23rd day of April, 2001. The parties shall bear their own respective attorney fees and costs incurred in the negotiation of this Agreement. The parties shall bear the costs of closing in equal shares.

At closing, Seller shall execute and deliver to Buyer an executed Warranty Deed, conveying good and marketable title to the real property, with no liens and encumbrances, except for existing recorded easements and rights-of-way, certificates of water stock in the Big Wood Canal Company and a Seller Disclosure Statement. Seller shall also execute a Satisfaction of Mortgage to be retained in escrow pending full performance of this contract. The Warranty Deed and Seller Disclosure Statement shall be in the forms as attached hereto collectively as **Exhibit "C."**

At closing, Buyer shall execute and deliver to Seller a Promissory Note and Mortgage, in the form as attached hereto as **Exhibits "A and B"**, respectively.

6. **Possession.** Buyer shall have possession of the above described real property upon the date of closing. Provided, however, that the Seller and the Seller's family may have thirty (30) days after the date of closing to remove their personal property from the premises. Buyer acknowledges that it is taking the residence on the real property subject to the existing month-to-month lease with Sharon Sorrell.

7. **Exclusions.** This sale specifically does not include any irrigation equipment or any other personal property of the Seller, the Seller's family, or the tenant occupying the residence on the premises.

8. **Prohibition of Assignment; Due on Sale, Encumbrance; Partial Release:** Buyer shall not, without the express written consent of the Seller first having been obtained, sell, assign, transfer, contract, convey or encumber the above described real property to any third party. Buyer's failure to comply with this paragraph shall accelerate the full balance remaining due and owing hereunder. Seller's consent under this paragraph shall not be unreasonably withheld. Provided, however, that Buyer shall, upon the payment of \$10,000 as a prepayment, be entitled to a partial release of Seller's mortgage as to twenty (20) acres of the real property, excluding the residence, not presently subject to irrigation. This prepayment, if made, shall not relieve the Buyer from making the next regular installment due and owing and shall be credited to accrued interest and then to principal.

9. **Inspection; As Is.** Buyer agrees and warrants as part of the consideration for the sale to them of said premises that it has personally inspected same and that it is not relying upon any representations made by Seller, except for those stated in this Agreement, or by any servant or agent of Seller, and that it is relying upon its own personal knowledge of the premise and that it knows the situation, character, quality and condition of the premises, and of the quantity of land being acquired hereunder, and of the existence of noxious weeds and/or rock thereon, and is purchasing the real and personal property "AS IS".

10. **Warranties of Seller:** Seller warrants to Buyer that, to the best of her knowledge:

- a) There are no hazardous substances present on or under the real property in violation of any environmental law. The term "environmental law" for purposes of this agreement shall mean:

Any statute, regulation, rule, order or decision of the United States of America, the State of Idaho or the County of Lincoln, or any commission, department, agency or tribunal thereof, regulating the presence of hazardous substances on or under real property including, but not limited to, the following Federal acts:

- The Resource Conservation and Recovery Act
- The Comprehensive Environmental Response, Compensation and Liability Act
- The Clean Water Act

- b) There are no buried fuel tanks on the real property.

11. **Title Insurance.** Seller shall, at its sole expense, as soon as practicable, obtain a commitment for title insurance demonstrating Seller's ability to convey marketable title to the above described real property free and clear of all liens and encumbrances except for existing easements, rights of way and liens for taxes and assessments for 2001 and future years. The commitment shall be in the amount of the purchase price of the real property. As soon as the commitment is available, a copy shall be delivered to the Buyer. Buyer shall have fifteen (15) days from the date of receipt of the commitment to object in writing to any of the exceptions noted on the title insurance policy which rendered the title unmarketable. Notice of such objection must be given to the Seller at least fifteen (15) days prior to closing. If the objectionable features to the title cannot be removed at or before the date of closing, this agreement shall be null and void. Seller shall pay for a policy of title insurance in the amount of the purchase price insuring good and marketable title, subject only to and deliver the same to Buyer at closing or as soon thereafter as practicable.

12. **Taxes, Assessments:** Real property taxes and assessments for the year 2000 and prior years shall be the responsibility of the Seller. The parties shall *pro rate* real property taxes for the year 2001 as of the date of closing. Buyer shall pay the water assessments of the Big Wood Canal Co. for the year 2001 and future years. Buyer shall be responsible for real property taxes and assessments for the year 2002 and future years and shall not allow the same to become in default.

13. **Representation by Counsel:** Buyer has been represented by Robert E. Williams of the law firm Fredericksen, Williams & Meservy, Jerome, Idaho, in the negotiation, preparation and execution of this agreement. Seller has been represented by Barry Peters. Each party shall pay their attorney fees and costs incurred in the negotiation and execution of this agreement.

14. **Default:** It is agreed that time is of the essence of this Agreement. Should Buyer become in default under any term or condition of this agreement, Seller shall give written notice by certified mail to Buyer at the address provided hereinafter, setting forth the nature of each claimed event of default. Buyer shall have THIRTY (30) days from the receipt of such notice to fully complete a cure of every alleged claimed event of default. Should Buyer not timely cure the event(s) of default, Seller may then pursue any remedy to which she may be entitled under the laws of the State of Idaho, which remedies may include, but not be limited to, accelerating all unpaid principal balances owing under this contract and commencing an action to foreclose the mortgage.

15. **Notices:** Any notices, demands and the like, which are required to be given hereunder, or which either party hereto may desire to give to the other, shall be given in writing and may be delivered personally or may be sent by registered mail or certified mail, postage prepaid, to each of the parties as follows:

Seller:	Dorothy B. Hubbs c/o Ronald D. Wright 5209 Decatur Drive Boise, Idaho 83704
Buyer:	4 Bros. Dairy 427 North 250 West Shoshone, Idaho 83352

or at any other address of which the parties may advise each other at any future time.

16. **Fire and Casualty Insurance:** Buyer further agrees that it will insure and keep insured during the life of this Agreement, the buildings and improvements on said premises against loss by fire and other casualty in an amount for the reasonable replacement value thereof, but in no event less than \$25,000. Such insurance policy shall have a loss payable clause payable to Seller in an amount as their respective interests may from time to time appear, and such policy or policies shall be placed with the escrow holder herein above provided for. In the event of loss by fire or other casualty, both parties shall cooperate in making proof of loss promptly, and any insurance recovery shall be applied toward the restoration and repair of said damaged or destroyed buildings and improvements or may be applied to the balance due under this contract if the Buyer determines not to rebuild. Further, Seller shall be provided with at least 15 days' written notice prior to termination of any such insurance required hereunder.

17. **Additional Documents.** The parties agree to execute such other, further and additional documents as may be required to carry into effect the terms and conditions of this agreement.

18. **Covenants to Survive Closing.** The parties agree that the terms and conditions of this agreement shall survive closing.

19. **Integration.** The parties hereto acknowledge that the terms, conditions and covenants of this agreement shall supersede any prior negotiations and agreements of the parties, that there are no other agreements not contained in this agreement, and that this agreement shall be the final expression of the agreement of the parties and shall control. No modifications of this agreement shall be valid unless in writing and executed by all the parties hereto.

20. **Attorneys Fees on Default.** If default be made by any party hereto in keeping or performing any of the covenants, conditions or agreements herein agreed to be kept by them, and the other party is required to employ an attorney to enforce any of the covenants, conditions or agreements herein contained, then and in such event, the party in default agrees to pay to the non-defaulting party, in addition to all other sums herein agreed to be paid by them, a reasonable attorney's fee, together with any costs and disbursements that may be incurred in enforcing this agreement.

21. **Time is of the Essence:** The parties hereto acknowledge and agree that time is, and shall be, the essence of each and every term and condition contained herein.

22. **Binding Effect.** This agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, administrators and assigns.

23. **Personal Guarantees; Warranties.** Andrew Fitzgerald and Jerome Fitzgerald, Shareholders of Buyer, agree to personally guarantee the performance of each and every term and condition of this Agreement. Buyer warrants that it is a corporation existing under the laws of the state of Idaho and that it has authorized its officers to enter into this agreement and execute all documents necessary to carry it into effect.

24. **Incorporation Into Mortgage.** The terms of this Memorandum of Agreement of Sale shall be incorporated by reference into the Mortgage to be executed by the Buyer described above, and an event of default under this agreement shall be considered an event of default under the terms and conditions of said Mortgage.

IN WITNESS WHEREOF, the parties hereto have hereunto subscribed their names, the day and year in this agreement first above written.

"SELLER"

DOROTHY B. HUBBS

Dorothy B. Hubbs by
Ronald D. Wright Attorney In Fact.
By: Ronald D. Wright, Attorney-in-Fact

"BUYER"
4 BROS DAIRY, INC.

Andrew Fitzgerald SECRETRES
By: _____
Its: _____

STATE OF IDAHO)
SS:
County of Ada)

On this 04 day of April, 2001, before me, the undersigned, a Notary Public in and for said County and State, personally appeared RONALD D. WRIGHT, Attorney-in-Fact for DOROTHY B. HUBBS, known to me to be the person whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that he executed the same on behalf of Dorothy B. Hubbs.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the day and year in this certificate first above written.



B. Peters
NOTARY PUBLIC for Idaho
Residing at: Exile, ID
Commission Expires: 02-20-02

STATE OF IDAHO)
SS:
County of Jerome)

On this 12th day of April, 2001, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Andrew Fitzgerald, Secretary-Treasurer of 4 BROS DAIRY, INC., known to me to be the person whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that he executed the same on behalf of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the day and year in this certificate first above written.



Sheri L. Hansten
NOTARY PUBLIC for Idaho
Residing at: Jerome, Idaho
Commission Expires: 12/15/2006

MEMORANDUM OF AGREEMENT OF SALE, Page 7

C:\bsb\Docs\Data\Fitzgerald\Hubbs\agreement.wpd

HALE

9-5-17

"This plat is made solely for the purpose of assisting in locating the land, and the company assumes no liability for variations, if any, with an actual survey."

P

= 2

PCL #1
(W²SW⁴SE⁴)

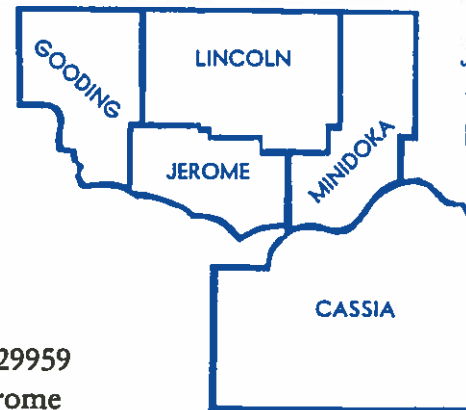
Department of Water Resources
Southern Region

AUG 16 2001

RECEIVED

Land Title and Escrow, Inc.

A FULL SERVICE TITLE COMPANY



REFER TO: L-29959
OFFICE: Jerome

August 15, 2001

Idaho Department of Water Resources
1341 Fillmore Street Suite #200
Twin Falls, ID 83301

RECEIVED

AUG 16 2001

Department of Water Resources
Southern Region

RE: Change of Ownership HUBBS TO 4-BROS. DAIRY, INC.

Gentlemen and Ladies:

Please find enclosed the following items to transfer water rights to the new buyers.

1. Original executed Notice of Change form
2. Copy of Decree Vesting Estate in Surviving Spouse
3. Copy of Memorandum of Agreement of Sale
4. Copy of Warranty Deed
5. Copy of Owners Policy of Title Insurance
6. Memorandum of Agreement of Sale
7. Copy of Plat Map

If you have any questions regarding this matter, please do not hesitate to contact this office at 208-324-3357. We ask that you refer to our Order Number above when cal

Very truly yours,
Nancy Jackson

Nancy Jackson
LAND TITLE AND ESCROW, INC.

BOX 177, BURLEY, IDAHO 83318
PHONE 878-3524 - FAX 878-4435

BOX 348, JEROME, IDAHO 83338
PHONE 324-3357 - FAX 324-8861

BOX 473, GOODING, IDAHO 83330
PHONE 934-8477 - FAX 934-5890

BOX 111, RUPERT, IDAHO 83350
PHONE 438-0808 - FAX 438-1199

AJ5856NP

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

DATE: OCT-24-1997
PAGE: A-91

RIGHT NUMBER: 37-10166

NAME & ADDRESS: LOREN C HUBBS
DOROTHY B HUBBS
156 4 MI RD
SHOSHONE ID 83352

SOURCE: GROUNDWATER

QUANTITY: 0.04 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
GALLONS PER DAY.

PRIORITY DATE: 01/01/1930

POINT OF DIVERSION: T05S R17E S09 SESESE Within LINCOLN County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	STOCKWATER	01-01 12-31	0.02 CFS
	DOMESTIC 1 HOME	01-01 12-31	0.04 CFS

PLACE OF USE:	STOCKWATER	Within LINCOLN County
	T05S R17E S09	SESE
	DOMESTIC	Within LINCOLN County
	T05S R17E S09	SESE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - BENEFICIAL USE
PARCEL NO. 05S17E097201
STOCKWATER, 10 CATTLE

Claim proofread by: 
Date: OCT 31 1997

D 7-27-98

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A37-10166
Date Received: 6/20/1988
Receipt No: #48825
Received By: CLW

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: LOREN C. HUBBS 208-886-7545
Address: 156 4 MI RD
SHOSHONE, ID 83352

AND/OR

Name: DOROTHY B. HUBBS 208-886-7545
Address: 156 4 MI RD
SHOSHONE, ID 83352

2. Date of Priority: JAN 01, 1930

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
05S	17E	9	SE	SE	SE		LINCOLN

5. Description of diverting works:
WELL & PUMP 270 FT DEEP, 6" HOLE

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
DOMESTIC	01/01	12/31	0.040		
STOCKWATER	01/01	12/31	0.020		

7. Total Quantity Appropriated is:
0.040 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
D/1 HOUSE, S/10 CATTLE

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
05S	17E	9	SE	SE		DOMEST	
			SE	SE		STOCK	

11. Place of use in counties: LINCOLN

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
NONE

14. Remarks:

15. Basis of Claim: BENEFICIAL USE
Water Right Number:

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not ☒ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 4

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): _____ Date: _____

_____ Date: _____

State of Idaho)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this _____ day

of _____ 19 _____

Notary Public

Seal

Residing at _____

My Commission Expires _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576
Ident. Number A37-10166
Date Received 6/20/88
Receipt Number 48825

NOTICE OF CLAIM
TO A
WATER RIGHT

ACQUIRED UNDER STATE LAW

For Domestic and/or Stockwater Purposes

Where Daily Use is less than 13,000 gallons per day. Filing fee \$25

Please type or print clearly DOROTHY B. HUBBS and/or

1. Name of Claimant (s) LOREN C. HUBBS Phone () 886-7545

Mailing Address 1564 MILE RD SHOSHONE IDAHO Zip 83352

2. Date of Priority (Only one (1) per claim) 1957 1/1/1930

3. Source of water supply (a) WELL 9 ACRES AND MORE
which is tributary to (b) _____

4. Location of point of diversion is: Township 5S Range 17 E

Section 9, SE 1/4 of SE 1/4 of SE 1/4, Govt. Lot _____, B.M.,

County of LINCOLN

Additional points of diversion if any: _____

5. Description of existing diversion works (Ditches, Wells, Pumps, Pipelines, Headgate Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well. 6 IN. HOLE 270 FT DEEP

6. Water is claimed for the following: (Limited to Domestic and/or Stockwater only. See Instructions)

(Both dates are inclusive) (cfs)
For DOMESTIC purposes from JANUARY 1 to DEC. 31 amount .04

For STOCKWATER purposes from JANUARY 1 to DEC. 31 amount .02

7. Total quantity claimed .04 (cfs)

8. Total consumptive use claimed is de minimus

9. Non-irrigation uses. Describe fully. (Domestic: give number of households served; Stockwater: Type and number of livestock) ONE household, CATTLE 10

MICROFILMED

FEB 24 1993 How-Claimant

10. Place a "D" for domestic and "S" for stockwater use in the corresponding place of use below.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4			
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4
5	17	9																D:S

11. In which county (ies) are lands listed above as place of use located? LINCOLN

12. Do you own the property listed above as place of use? Yes ☒ No ☐
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.
SMALL POND FOR STALK WATER or None ()

14. Remarks: _____

15. Basis of Claim (check one) Beneficial Use ☒ Posted Notice ☐ License ☐ Permit ☐
Decree ☐
If applicable provide IDWR Water Right Number _____
Court _____ Case Number _____ Decree Date _____
Plaintiff vs Defendant _____

16. Signature (s)
(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled
"How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do ☐ do not ☒
wish to receive and pay a small annual fee for monthly copies of the docket sheet.
Number of attachments 1

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) Loren C Hubbo Date 6-20-88

Date _____

For Organizations: I do solemnly swear or affirm that I am _____
of _____, that I have signed the foregoing
document in the space below as _____ of _____
and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____
Title and Organization _____ Date _____

State of Idaho/or _____)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 20th day of June 19 88

SEAL

Notary Public Mary A. Baldwin

Residing at Gooding, Id

My Commission Expires 10/16/1992

Last Name _____ Ident No. _____

FEB 24 1993

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS PROOF READING REPORT

MICROFILMED
OCT 25 1994

WATER RIGHT NUMBER - A37-10166

PREFIX TRANSLATION: ADJUDICATION CLAIM

+ - - - - CONDITIONS OF APPROVAL - - - - - +
NO CONDITIONS OF APPROVAL FOUND.

+ - - - - DECREE PLAINTIFF - - - + + - - - - DECREE DEFENDANT - - - + + - DECREE DATE - +
00/00/0000

+ - - AUDIT FIELDS - 06/20/88 MOBILE2 09/26/89 REFUNDML

+ - - - - COMMENTS - - - - - +
NO COMMENTS FOUND

+ - - - - ADJUDICATION RIGHTS DATES AND FLAGS AREA - - - - - +

COURT REPORT FILING	- 00/00/0000	FIELD INSPECTION MADE	- 00/00/0000	CIVIL CASE NUMBER	- 39576
OBJECTION FILED DATE	- 00/00/0000	FIELD INSPECTION FLAG	-	OLD CASE NUMBER	-
RESPONSE FILED DATE	- 00/00/0000	VERIFIED DATE	- 00/00/0000	OLD JUDICIAL DISTRICT	-
CLAIM RECEIVED DATE	- 06/21/1988	LAST AMENDED DATE	- 00/00/0000	TEMPORARY RIGHT	- P
PROOF DUE DATE	- 00/00/0000	PROOF MADE DATE	- 00/00/0000	WATER DISTRICT	-
LICENSED DATE	- 00/00/0000	RECEIPT NUMBER	- M000143	FEDERAL/STATE INDICATOR	- S
CLAIMS TAPE ERROR FLG	-	POU OWNERSHIP FLAG	- Y	PRESUMPTION FLAG	-
FEE EXEMPT FLAG	-	NAME CONNECTOR	- AND/OR	NOTICE OF ERROR FLAG	-

05517E097201

DATA ENTRY

ENTERED 11-3-93 NS

CHECKED 2/6/94 AD

"Verified By"
Topo Map/Ortho-PQ
ASCS Map
Watermaster Records
NAPP Photos
Field Exam
Other (See Remarks)
County Records
Witness Statement
Project Records
IDWR Records

VERIFIED
FEB 1 1 1992

PROOF
JAN 10 1992

CERTIFIED
MAR 12 1992
WATER EXAMINER