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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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

In Re SRBA

Case No. 39576

) Subcase No: 36-7534B, 36-15998,
) 36-15999
)
)

) NOTICE OF COMPLETED
) ADMINISTRATIVE PROCEEDING

IDWR has completed the following Administrative proceeding: I.C. § 42-222 TRANSFER

An Administrative Proceeding pursuant to I.C. § 42-222 has been completed. The following changes have been made to the water right(s):

☒ Change in Ownership

☒ Point of Diversion

☒ Period of Use

☒ Split of Water Right

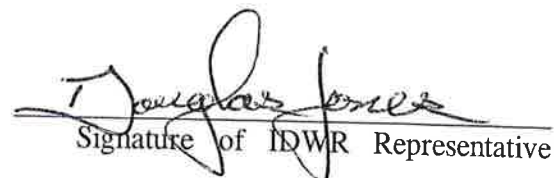
☒ Place of Use

☒ Nature of Use

IDWR certifies that it has completed its investigation into the changes to the elements of the water rights listed above as set forth in the attached *Amended Director's Reports* for said water rights. No other changes have been made to the elements of these water rights except as set forth above.

IDWR has served copies of the *Notice of Completed Administrative Proceeding* and *Amended Director's Report(s)* on the claimant(s), prior claimant(s) and all parties in the subcases affected, if any, as reflected on the attached certificate of mailing.

Dated: 4/10/02


Signature of IDWR Representative

CERTIFICATE OF MAILING

I certify that on 4/11, 2002, I mailed the original and copies of this form to the following persons, postage prepaid and addressed as follows:

1. Original to:
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls ID 83303-2707
2. One Copy to:
Claimant/Seller for Substitution of Party or attorney of record:
Taylor Farms Inc
2813 S 1600 E
Wendell ID 83355
3. One Copy to:
Claimant/Purchaser for Substitution of Party or attorney of record:
Jack Verbree
Margaret Verbree
1574 E 2900 S
Wendell ID 83355
4. One Copy to:
Each party in the subcase or attorney of record:
5. One Copy to:
Chief Natural Resources Division
Office of the Attorney General
PO Box 44449
Boise ID 83711-4449
6. One Copy to:
United States Dept of Justice
Environment & Natural Resource Div
550 W Fort St MSC 033
Boise ID 83724



Signature of person or attorney mailing the form

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

4/9/02

RIGHT NUMBER: 36-7534B

SPLIT RIGHT: SEE RIGHT NOS. 36-15998 and 36-15999.

04/09/2002

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

RIGHT NUMBER: 36-15998

NAME AND ADDRESS: JACK VERBREE
1574 E 2900 S
WENDELL ID 83355

MARGARET VERBREE
1574 E 2900 S
WENDELL ID 83355

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.380 CFS
76.00 AFY

USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 4.08 CFS. COMBINED RIGHT NOS.: 36-7434A,
36-2229.

PRIORITY DATE: 04/08/1975

POINT OF
DIVERSION:

T07S R14E S23 SWNWSW Within GOODING County
T07S R14E S23 SENWSE Within GOODING County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE
IRRIGATION

PERIOD OF USE
03/15 11/15

QUANTITY
0.380 CFS
76.00 AFY

PLACE OF USE: IRRIGATION Within GOODING County
T07S R14E S23 SWSE 19.0

19 ACRES TOTAL

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

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY
FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF
THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A
POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION
42-1412(6), IDAHO CODE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

THIS RIGHT IS A SPLIT FROM FORMER RIGHT 36-7534B PER APPROVED TRANSFER
5538.

04/09/2002

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

RIGHT NUMBER: 36-15999

NAME AND ADDRESS: JACK VERBREE
1574 E 2900 S
WENDELL ID 83355

MARGARET VERBREE
1574 E 2900 S
WENDELL ID 83355

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.300 CFS
45.00 AFY

PRIORITY DATE: 04/08/1975

POINT OF
DIVERSION: T07S R14E S25 NWSW Within GOODING County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

STOCKWATER

1/01 12/31

0.300 CFS

COMMERCIAL

1/01 12/31

45.00 AFY

0.300 CFS

45.00 AFY

PLACE OF USE: STOCKWATER Within GOODING County

T07S R14E S25 NWSW

COMMERCIAL Within GOODING County

T07S R14E S25 NWNW

T07S R14E S25 NWSW

T07S R14E S25

SWNW

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

THE RIGHT HOLDER SHALL MEASURE AND ANNUALLY REPORT TO THE DEPARTMENT THE AMOUNT (CFS AND AF) OF WATER DIVERTED UNDER THIS TRANSFER.

THE PLACE OF COMMERCIAL USE AUTHORIZED BY THIS TRANSFER INCLUDES LAND UPON WHICH WASTEWATER MAY BE APPLIED FOR IRRIGATION PURPOSES TO SATISFY WATER QUALITY REQUIREMENTS. WATER DIVERTED UNDER THIS APPROVAL SHALL NOT BE USED FOR IRRIGATION UNLESS THE WATER IS FIRST BENEFICIALLY USED IN THE DAIRY AS AUTHORIZED BY TRANSFER. FIFTEEN ACRES LOCATED IN THE SWSE, S23, T7S, R14E B.M. ARE NO LONGER AUTHORIZED FOR IRRIGATION WITH GROUND WATER UNDER THE RIGHT BEING TRANSFERRED.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

THE DAIRY FACILITY IS LOCATED IN THE NWSW, S25, T7S, R14E.

Hancock, Vikie

From: Skaggs, Pam
Sent: Wednesday, April 10, 2002 9:00 AM
To: Hancock, Vikie
Subject: Comment for 36-15999

Hi Vickie,

An Order was issued that affects 36-15999 (previously 36-7534D, split of B). I usually add a comment to the Transfer Application and the affected rights, but can't add it to your AJ record.

Here is a copy the comment: An Order Granting Extension of Time to Complete Transfer 66958 was issued on 4-9-2002 extending the completion date to 3-28-2003.

Thanks.

Pam

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER OF WATER RIGHT

TRANSFER NO. 5538
WATER RIGHT NO. 36-07534D

This is to certify that: **JACK VERBREE**
MARGARET VERBREE
1574 E 2900 S
WENDELL ID 83355

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>
STOCKWATER	01/01 to 12/31	0.30 CFS	45.0 AF
COMMERCIAL	01/01 to 12/31	0.30 CFS	45.0 AF
	Totals	0.30 CFS	45.0 AF

SOURCE

GROUNDWATER

Priority: 04/08/1975

LOCATION OF POINT(S) OF DIVERSION:

NWSW, Sec. 25, Township 07S, Range 14E
GOODING County

PLACE OF USE: STOCKWATER

TWN RGE SEC

07S 14E 25 NWSW

PLACE OF USE: COMMERCIAL

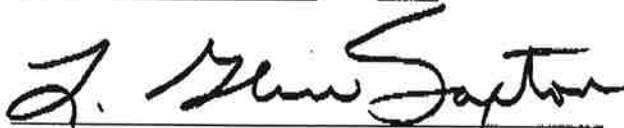
TWN RGE SEC

07S 14E 25 NWNW SWNW NWSW

CONDITIONS OF APPROVAL AND REMARKS

Right 36-07534D is subject to the conditions of the Preliminary Order in the matter of Application for Transfer 5538.

Dated this 19th day of June, 2000.


Chief, Water Allocation Bureau

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

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 5538 IN THE)
NAME OF JACK OR MARGARET)
VERBREE)
_____)

PRELIMINARY ORDER

This matter having come before the Idaho Department of Water Resources (the "Department") in the form of a protested application for transfer and the Department having held a conference and a hearing in the matter, the hearing officer enters the following Findings of Fact, Conclusions of Law and Preliminary Order:

FINDINGS OF FACT

1. The Department's recommendation of a part of License No. 36-07534 to the Snake River Basin Adjudication ("SRBA") court is as follows:

Identification. No: **36-07534B**
Source: Groundwater
Priority: April 8, 1975
Rate of diversion: 0.68 cubic feet per second ("cfs")
Volume: 136 AF per annum ("AFA")
Points of diversion: NWSW and NWSE Section 23, T7S, R14E, B.M., Gooding County
Use: Irrigation
Place of use: 34 acres within the SWSE Section 23, T7S, R14E, B.M., Gooding County
Conditions of approval: The total combined rate of diversion of water right nos 36-07534A, 36-07534B and 36-02229 is limited to 4.38 cfs.

A partial decree has not yet been issued for this right.

(Note: The "1/4" designations will be omitted from subsequent legal descriptions in this order).

2. Permit No. **36-08666** issued by the Department to Jack and Margaret Verbree on July 8, 1994 provides the following :

Source: Groundwater
Priority: July 10, 1992

Rate of diversion: 0.27 cfs
Point of diversion: NWSW Section 25, T7S, R14E, B.M., Gooding County
Uses: Stockwater, commercial and domestic
Season of use: Year-round
Place of use: NWSW Section 25, T7S, R14E, B.M., Gooding County
Conditions of approval: 430 head of dairy cattle and 100 head of range cattle

The permit holder has submitted proof of beneficial use for the permit to the Department. The Department will conduct a field examination to determine the extent of beneficial use under terms of the permit.

3. On July 12, 1999, Jack Verbree and Margaret Verbree ("applicant") filed Application for Transfer No. **5538** ("application") with the Department seeking to change part of water right no. 36-07534B used for irrigation to stockwater and commercial uses in a dairy. The proposed rate of diversion is 0.30 cfs and the volume is 45 AFA. One new well is proposed for use within the NWSW Section 25, T7S, R14E, B.M. The place of use is within parts of Section 25, T7S, R14E, B.M. The applicant proposes to add 1187 dairy cows to an existing dairy herd of 463 cows at the site.

4. To make this water available, the applicant proposes to change the place of use of groundwater appurtenant to 15 irrigated acres located in the SWSE Section 23, T7S, R14E, B.M.

5. The Department published notice of the application which was subsequently protested by Lee Halper ("protestant").

6. On March 2, 2000, the Department conducted a hearing in the matter. The applicant was present and was represented by Robert E. Williams. Protestant Lee Halper represented himself.

7. Issues identified by the protestants are as follows:

- a. The proposed changes will injure other water rights.
- b. The proposed changes will constitute an enlargement in use of the original right.
- c. The proposed changes are not in the local public interest.
- d. The proposed changes are not consistent with the conservation of water resources within the state of Idaho.

8. Exhibits premarked, offered or accepted as a part of the record are as follows:

ORDER - Pg 2

- a. Applicant's Exhibit 1 - Site Vicinity Map - Livestock Confinement Operations - Water Requirements and Consumptive Use Worksheet
- b. Applicant's Exhibit 2 - Livestock Confinement Operations - Water Requirements and Consumptive Use Worksheet
- c. Applicant's Exhibit 3 - Livestock Confinement Operations - Water Requirements and Consumptive Use Worksheet
- d. Applicant's Exhibit 4 - IDWR - Dairies: Water Use Worksheet
- e. Applicant's Exhibit 5 - Verbree Dairy Expansion - Analysis of Water Right Transfer to Dairy
- f. Applicant's Exhibit 6 - Verbree Dairy - Site Vicinity Plan
- g. Applicant's Exhibit 7 - Site Plan Map
- h. Applicant's Exhibit 8 - Letter dated June 29, 1999 to Verbree Dairy from Jenifer Beddoes and Preliminary Nutrient Management Plan
- i. Applicant's Exhibit 9 - NOT OFFERED
- j. Applicant's Exhibit 10 - Gooding County New CAFO Siting Permit
- k. Applicant's Exhibit 11 - Letters from Keith Soderquist, Sherman Young and Del Holyoak
- l. Applicant's Exhibit - 12 - Findings of Fact and Conclusions of Law of Gooding County Planning and Zoning Commission
- m. Applicant's Exhibit 13 - NOT OFFERED
- n. Applicant's Exhibit 14 - Well Interference Analysis - Verbree Dairy
- o. Applicant's Exhibit 15 - Large Vicinity Map - Verbree Dairy #2
- p. Protestant's Exhibit A - NOT ADMITTED
- q. Protestant's Exhibit B - Memorandum dated July 27, 1981 to Al Murray from Alex Schaefer, Letter dated March 13, 1990 to Governor Cecil Andrus from Richard P. Donovan, Letter dated March 28, 1990 to Lee J. Halper from Governor Cecil D. Andrus and letter to JFAC from Lee Halper

- r. Protestant's Exhibit C - NOT ADMITTED
- s. Protestant's Exhibit D1 - NOT ADMITTED
 - D2 - NRCS Nutrient Management - Code 90
 - D3 - NOT ADMITTED
- t. Protestant's Exhibit E - NOT ADMITTED
- u. Protestant's Exhibit F - NOT ADMITTED
- v. Protestant's Exhibit G - NOT ADMITTED
- w. Protestant's Exhibit H - NOT OFFERED
- x. Protestant's Exhibit I - NOT OFFERED
- y. Protestant's Exhibit J - NOT ADMITTED
- z. Protestant's Exhibit K - NOT OFFERED
- aa. Protestant's Exhibit L - NOT OFFERED

- ab. Protestant's Exhibit M - IDAPA 02.04.14 - Rules Governing Dairy Waste - Notice of Temporary and Proposed Rule

- ac. Protestant's Exhibit N - NOT ADMITTED
- ad. Protestant's Exhibit O - NOT ADMITTED
- ae. Protestant's Exhibit P - NOT ADMITTED
- af. Protestant's Exhibit Q - NOT OFFERED
- ag. Protestant's Exhibit R - NOT OFFERED
- ah. Protestant's Exhibit S - NOT ADMITTED
- ai. Protestant's Exhibit T - NOT ADMITTED
- aj. Protestant's Exhibit U - NOT OFFERED
- ak. Protestant's Exhibit V - NOT OFFERED
- al. Protestant's Exhibit W - NOT OFFERED

9. Subsequent to the hearing, the hearing officer requested information from the applicant to show that the applicant was authorized to file the application. Notice of the request was provided to the protestant who objected to the augmentation but did not show adequate reason why the record should not be augmented. The hearing record is augmented with the following information:

- a. Certificate of Sale, recorded as Instrument No. 181475, Gooding County, Idaho, records
- b. Warranty Deed, recorded as Instrument No. 181564, Gooding County, Idaho, records
- c. Warranty Deed, recorded as Instrument No. 182436, Gooding County, Idaho, records

10. Gooding County has issued a New CAFO Siting Permit to the applicant for 1,650 animal units. (See Applicant's Exhibit 10).

11. The applicant presently purchases some of the feed for his existing dairy from local producers and plans to purchase feed from local producers for the enlarged dairy. The applicant also does a lot of business in the area. The enlarged dairy would require the hiring of 7 or 8 additional employees.

12. The design of the dairy provides for the scraping of alleys rather than flushing. The applicant recycles cooling water to the wash pen and to water troughs.

13. The Department of Agriculture has prepared a preliminary nutrient management plan for the dairy enlargement proposal of the applicant. (See Applicant's Exhibit 8). A final nutrient management plan is being prepared.

14. The rate of diversion, consumptive use and total volume of water diverted will not be larger after the transfer than before the transfer. (See Applicant's Exhibit 5).

15. Using an average annual pumping rate of 0.062 cfs, which is the continuous diversion rate to provide the required annual volume of water and a pumping period of 40 days, the estimated drawdown in a well 1/4 mile distant from the dairy wells is 0.02 feet. Using a maximum pumping rate of 0.30 cfs for 40 days, the estimated drawdown in a well 1/4 mile distant from the dairy wells is about 0.06 feet. (See Applicant's Exhibit 14).

16. A monitoring well located in Section 26, about a mile west of the dairy site showed a concentration of nitrate of 2.4 milligrams per liter ("mg/l") when measured in 1993. When remeasured in 1997, the concentration of nitrate had decreased to 0.662 mg/l.

17. The protestant lives approximately 15 or 20 miles away from the dairy site of the applicant.

18. The protestant is concerned that the existing statutes and rules and county requirements which govern the siting and operations of dairies is not sufficient to protect the quality of groundwater.

19. The protestant did not show that the changes proposed in the application will injure other water rights including his own, will enlarge the use of water under the right being transferred, is not in the local public interest or is not consistent with the conservation of water resources within the state of Idaho.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, provides in pertinent part as follows:

The director of the department of water resources shall examine all

the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-203A(5), Idaho Code;

2. The applicant carries the burden of coming forward with evidence that the proposed change will not injure other water right holders, that it will not constitute an enlargement of the use and will be consistent with principles of conservation of the water of the state of Idaho.

3. Both the applicant and the protestant have the responsibility of coming forward with evidence regarding matters of public interest of which they are each most cognizant.

4. The applicant has the ultimate burden of persuasion for all of the criteria of Section 42-222, Idaho Code.

5. Observation well data show that low level nitrate impact has occurred to the groundwater in the general area of the applicant's dairy and that the nitrate level has decreased by 1.74 mg/l from 1993 to 1997.

6. The proposed changes will not injure other water rights.

7. The proposed changes do not constitute an enlargement in use of the original right.

8. The proposed changed uses of water are as efficient as other similar uses of water for irrigation and dairy uses within the area and are consistent with the local public interest and conservation of water resources within the state of Idaho.

9. The Department should approve the application with certain conditions.

ORDER

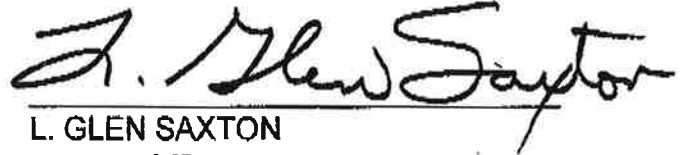
IT IS THEREFORE, hereby ORDERED that Application for Transfer No.5538 in the name of Jack and Margaret Verbree is **APPROVED** subject to the following conditions:

1. The right holder shall design and construct the dairy facility in a manner that it is capable of complying with the requirements of the Division of Environmental Quality of the Idaho Department of Health and Welfare and of the Idaho Department of Agriculture. Prior to diverting water under this

approval, the right holder shall provide evidence to the Department that it has met compliance requirements.

2. The right holder shall measure and annually report to the Department the amount (cfs and AF) of water diverted under this transfer.
3. The place of commercial use authorized by this transfer includes land upon which wastewater may be applied for irrigation purposes to satisfy water quality requirements. Water diverted under this approval shall not be used for irrigation unless the water is first beneficially used in the dairy as authorized by this transfer.
4. Fifteen (15) acres located in the SWSE Section 23, T7S, R14E, B.M. are no longer authorized for irrigation with groundwater under the right being transferred.
5. The right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
6. Prior to use of water under this approval, the dairy operation shall comply with applicable county zoning ordinances.
7. The dairy facility is located in the NWSW Section 25, T7S, R14E, B.M.
8. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
9. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

Signed this 28th day of March, 2000.


L. GLEN SAXTON
Hearing Officer

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 28th day of March, 2000, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

Robert E. Williams
Fredericksen, Williams & Meservy
117 South Adams St.
P.O. Box 168
Jerome, ID 83338-0168

Allen Merritt
IDWR - Southern Region
1341 Fillmore St., Ste 200
Twin Falls, ID 83301-3380 .

Lee Halper
331 S 230 W
Jerome, ID 83338


Deborah Drew-Ellis, Administrative Assistant
Water Allocation Bureau