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RECEIVED
APR 30 2019
Department of Water Resources
Eastern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT
NO. 13-7649 IN THE NAME OF
G & H DAIRY, LLC.,

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PERMIT NO. 13-7649
G&H DAIRY LLC.'s PETITION
CONTESTING IDWR'S APRIL 4,
2019 PRELIMINARY ORDER
VOIDING PERMIT

COMES NOW, G&H DAIRY LLC. (hereinafter G&H), by and through its attorney of record, ADAM J. MCKENZIE, of MCKENZIE & MCKENZIE, P.A., and respectfully submits the following *Petition Contesting Idaho Department of Water Resources (IDWR) April 4, 2019 Preliminary Order Voiding Permit.*

In 2004, J7, LLC, an Idaho Limited Liability Company applied for a permit to appropriate water for irrigation of land located in Franklin County Idaho. The Idaho Department of Water Resources issued a Permit to appropriate water identified as Permit No.13-07649, signed on May 26, 2005. As a condition of approval, the permit owner, J7, LLC, was required to mitigate for the depletion of water resulting from use of the water right. Accordingly, Permit No. 13-2164, ("the Mitigation Right"), which was also owned by J7, LLC, was set aside, not to be used. Also the holder was to maintain control of 20 shares of water in the West Cache Irrigation Company. The holder was also to maintain a measuring device of a type, approved by the Department as a part of the diverting works. Pursuant to the terms of the permit, the Mitigation Right was not used, the 20 shares were maintained in J7, LLC's name, but it appears a measuring device was not installed. J7, LLC transferred the property to Checketts Oxford Mountain Farm LLC (hereinafter "Checketts") in 2005. This transfer specifically included Permit No.13-7649 and the 20 shares of West Cache Irrigation. The Mitigation Right was not

specifically included but continued to be unused. The transfer to Checketts included the properties to which Permit No. 13-7649 and No. 13-2164, were appurtenant. In 2008, Checketts transferred portions of the property once owned by J7, LLC, to the Corporation of the Presiding Bishopric of the Church of Jesus Christ of Latter day Saints (hereinafter CPB), and to G&H. In the transfer to G&H, Checketts specifically transferred water right No. 13-7649. However, the Mitigation Right was not referenced in the transfer documents. The property to which the Mitigation Right was appurtenant, was transferred to the CPB by Checketts in August of 2008, specific water rights were listed as part of the transfer to the CPB and discussed during negotiation. The Mitigation Right was not listed or discussed as a right to be transferred, and was never intended to be part of the transfer to the CPB. It was not listed as an excluded water right in documents transferring the property to the CPB. Because it had not been used, it appears to have been overlooked, in subsequent transfers. (IDWR's ownership records continue to reflect ownership in the name of J7, LLC.) At the time of the transfer to G&H, the 20 shares in West Cache Irrigation Company were also transferred to G&H.

In May of 2017, IDWR began a review of Permit No. 13-7649 for licensing purposes. During this review, IDWR became aware of the fact that a measuring device had not been placed on the pump and that the Mitigation Right was not owned by G&H. Based on the review, IDWR issued a letter, dated May 24, 2017, addressed to G&H c/o John Gomez, addressing these concerns. G&H employed McKenzie & McKenzie P.A. to work with IDWR to resolve these issues. Efforts began to attempt to get the water right transferred into the name of G&H and get the CPB to transfer the Mitigation Right to G&H. Upon investigation of the matter, it was confirmed that the Mitigation Right, though not in the name of G&H, was not being used as required by Permit No. 13-7649.

Beginning in the summer of 2017, G&H began to experience financial issues and the milk produced at the dairy operated on the land owned by G&H, could no longer shipped. In December of 2017, the dairy, operating on the land to which Permit No. 13-7649 is appurtenant, closed. The closure resulted in a major financial loss. Also, beginning in the summer of 2017, G&H became involved in multiple law suits, stemming from the financial difficulties that began in the summer of 2017. The members of G&H also became involved in a lawsuit against each other. These ongoing law suits have created strain and difficulties at G&H and have demanded the additional focus and time of its managers and employees. Adding to the

complexity of circumstances, separate counsel has been employed to represent the members of G&H against each other and in pending lawsuits of which G&H is involved in Franklin County. These legal troubles have continued on throughout 2018 and are ongoing as of the date of this Petition. These troubles have made it difficult to address the issues raised by IDWR relating to Permit No. 13-7649. During this time frame and in part because of the above, G&H and Counsel lost contact and communication with each other. Neither G&H or Counsel had any communication between themselves for several months prior to February of 2019, Counsel was also unaware of the ongoing legal matters involving G&H, and its members. In December of 2018, G&H was administratively dissolved for failure to file its annual report.

In February of 2019, Counsel was contacted by IDWR to request an update. At that time, Counsel advised that he had no communication with his client, was unsure of the status, and had received no further information regarding transfer of the water right from the CPB.

On February 15, 2019, a letter was submitted to G&H, via certified mail, giving Notice of Intent to Void Permit and giving G&H until March 29, 2019 to resolve the issues with the licensing of the permit. This Notice was not received by John Gomez, manager of G&H, or G&H, and neither were aware of IDWR's intent to void the permit, if matters were not resolved by March 29, 2019. (It should be noted that there is another business located at the same address as G&H, at 299 Addison Ave. West, in Twin Falls, Idaho, Century Motor Sports and Marine. See attached Exhibit "A") After the deadline indicated in the February 15, 2019 letter from IDWR had passed, the IDWR issued the *Preliminary Order Voiding Permit*, dated April 4, 2019. Upon receipt of this Notice, Counsel made an additional effort to attempt to contact G&H. Counsel was able to contact John Gomez, manager of G&H, who was unaware of the status of the matter and even the fact that G&H had been administratively dissolved for failure to file its annual report. Upon discussing the Order and the circumstances, Mr. Gomez advised that he wanted Counsel to continue to work to resolve this matter on behalf of G&H. As such, Counsel has again renewed its efforts to address the issues raised by IDWR. To that end, additional discussions with the CPB have indicated that it is willing to transfer the Mitigation Right to G&H. Additionally, arrangements have been made to place a measuring device on the pump and it is anticipated that said device shall be installed, as required by the Permit, by May 18, 2019. G&H is, through Counsel, working to address the issues raised by the IDWR.

Voiding Permit No. 13-7649 will have an adverse impact on G&H and use of the land to which the water is appurtenant. G&H has not had an opportunity to have a hearing before any official of IDWR to address the issues raised by the IDWR. G&H will be injured by a final determination, voiding Permit No. 13-7649. G&H is entitled to a hearing, pursuant to Idaho Code 42-1701A(3). G&H requests the hearing to enable them to demonstrate that they have and will be in compliance with the requirements imposed by IDWR for issuance and licensing of Permit No. 13-7649 and as such, show that voiding the Permit would be improper.

Referencing paragraph 8 of the Preliminary Order, G&H has maintained its 20 shares in West Cache Irrigation Company, certification of which is attached hereto and incorporated herein as Exhibit "B". G&H requests that the Preliminary Order be reversed in so far as it is influenced by the fact of a lack of communication between Counsel and G&H as those issues have been resolved and direct communication is occurring at this time. Further G&H contests the Preliminary Order as it is based on G&H's failure to remedy the issues raised by IDWR. Since the summer of 2017 G&H has had financial and legal troubles, has been involved in multiple lawsuits as an entity and as between its members, which have complicated resolution of this matter, and slowed its efforts. The issues, which have called into question the licensing of the permit, are being addressed and will be resolved. G&H did not get the February 15, 2019 Notice, G&H requests that IDWR reconsider its decision to void the Permit and allow G&H time to resolve the Permit issues on the basis that although the water right has not been transferred to G&H, it was an oversight and despite the failure to transfer the water right, it has not been used and continues to not be used, pursuant to the requirements of Permit No. 13-7649.

CONCLUSION:

Idaho Code Section 42-1701A(3) provides that, "unless the right to a hearing before the director or water resource board is otherwise provided by statute, any person aggrieved by any action of the director, including any decision, determination, or order or other action, including the action upon any application for a permit, license, ... or similar form of permission required by law to be issued by the director, ...and who has not previously been afforded an opportunity for a hearing on the matter, shall be entitled to a hearing before the director to contest the action."

G&H is entitled to a hearing to contest the preliminary Order issued by IDWR. G&H's failure to resolve the issues raised by IDWR have been delayed because of legal and financial issues, which have added weight and strain on G&H's staff and personnel. Communication breakdown

between Counsel and G&H has also made it difficult to resolve this matter. Further, working with the CPB is ongoing and slow. However, G&H is making efforts to come into compliance. It has not been G&H's intent to disregard this matter. Circumstances have combined to complicate and slow G&H's efforts. Had G&H received the February 15, 2019 Notice, efforts to contact IDWR and work on compliance would have been made, but no Notice was received. However, communication issues between counsel and G&H have been resolved. Progress has been made with the CPB to obtain a transfer of the Mitigation Right and the measuring device will be placed on the pump as of May 18, 2019. Based on these facts, voiding the permit would be unfairly prejudicial to G&H, as such, G&H requests an opportunity for a hearing to present argument and evidence in support of licensing Permit No. 13-7649 and reversing the April 4, 2019 Preliminary Order to Void Permit.

DATED this 30th of April, 2019.

MCKENZIE & MCKENZIE, P.A.

By:


ADAM J. MCKENZIE

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of April, 2019, I mailed/e-mailed a true and correct copy of the foregoing, on the person(s) listed below by the method indicated:

James Cefalo
Department of Water Resources
Eastern Region
900 North Skyline Dr., Ste. A
Idaho Falls, ID 83402
Phone: 208-525-7161
Fax: 208-525-7177
E-mail: James.Cefalo@idwr.idaho.gov

G&H Dairy, LLC.
c/o John Gomez
299 Addison Ave. W
Twin Falls, ID 83301

Exhibit "A"



CERTIFICATE OF ASSUMED BUSINESS NAME

Pursuant to Section 53-504, Idaho Code, the undersigned submits for filing a certificate of Assumed Business Name.

Please type or print legibly.
Instructions are included on back of application.

FILED EFFECTIVE

2012 NOV -6 AM 9:07

SECRETARY OF STATE
STATE OF IDAHO

1. The assumed business name which the undersigned use(s) in the transaction of business is:

Century Motorsports & Marine

2. The true name(s) and business address(es) of the entity or individual(s) doing business under the assumed business name:

Name

Complete Address

Century Boat Land, LLC

299 Addison Ave W, Twin Falls, ID 83301

(W78955)

3. The general type of business transacted under the assumed business name is:

- | | |
|--|--|
| ☒ Retail Trade | ☐ Transportation and Public Utilities |
| ☐ Wholesale Trade | ☐ Construction |
| ☐ Services | ☐ Agriculture |
| ☐ Manufacturing | ☐ Mining |
| ☐ Finance, Insurance, and Real Estate | |

Submit Certificate of
Assumed Business
Name and \$25.00 fee to:

Secretary of State
450 North 4th Street
PO Box 83720
Boise ID 83720-0080
208 334-2301

4. The name and address to which future correspondence should be addressed:

Century Boat Land, LLC

299 Addison Ave W

Twin Falls, ID 83301

5. Name and address for this acknowledgment copy is (if other than # 4 above):

Signature: [Signature]

Printed Name: Scott Yore

Capacity/Title: CFO

Signature: [Signature]

Printed Name: SCOTT YORE

Capacity/Title: CFO

Secretary of State use only

IDAHO SECRETARY OF STATE
11/06/2012 05:00
CK: 3618 CT: 275965 BH: 1346567
1 @ 25.00 = 25.00 ASSUM NAME # 2

D159113

Exhibit "B"

These shares can only be assigned to Deep Creek and cannot be combined with any other certificates



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NO. 13-7649 IN THE NAME OF
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) PERMIT NO. 13-7649
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) G & H DAIRY LLC.'S
) REQUEST FOR HEARING
)
)

G & H DAIRY LLC., by and through its attorney, ADAM J. MCKENZIE of MCKENZIE & MCKENZIE, P.A., and pursuant to Idaho Code 42-1701A(3) and Rule 37.01.01.730.02.e of the Rules of Procedure for the Idaho Department of Water Resources (IDWR), requests a hearing regarding the above-referenced Permit.

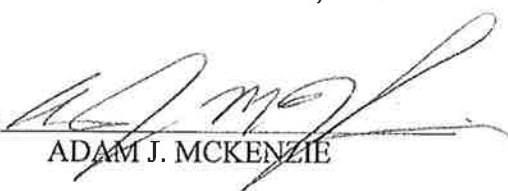
The Preliminary Order Voiding Permit, was signed April 4, 2019. The *Preliminary Order Voiding Permit* was served April 16, 2019. Pursuant to I.C. 42-1701A(3) and IDWR Rule 730.02.e, G & H DAIRY LLC., who has not previously been afforded an opportunity for a hearing, has fifteen (15) days after receipt of the Preliminary Order, to file a written petition stating the grounds for contesting the Preliminary Order and requesting a hearing.

G & H DAIRY LLC., therefore requests a hearing on this matter. This request for hearing is based on the legal and factual allegations in G & H DAIRY'S LLC.'S, April 30, 2019, *Petition Contesting IDWR's April 4, 2019 Preliminary Order Voiding Permit*.

RESPECTFULLY SUBMITTED this 30th day of April, 2019.

MCKENZIE & MCKENZIE, P.A.

By:


ADAM J. MCKENZIE

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of April, 2019, I mailed/e-mailed a true and correct copy of the foregoing, on the person(s) listed below by the method indicated:

James Cefalo
Department of Water Resources
Eastern Region
900 North Skyline Dr., Ste. A
Idaho Falls, ID 83402
Phone: 208-525-7161
Fax: 208-525-7177
E-mail: James.Cefalo@idwr.idaho.gov

G&H Dairy, LLC.
c/o John Gomez
299 Addison Ave. W
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