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RECEIVED
MAY 01 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.,

)
) PERMIT NO. 13-7649
)
) G&H DAIRY LLC.'s AMENDED
) 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 *Amended Petition Contesting Idaho Department of Water Resources (IDWR) April 4, 2019 Preliminary Order Voiding Permit*, relating to, and in support of *G&H Dairy LLC.'s Request for Hearing* dated April 30, 2019.

In 2004, J7, LLC, an Idaho Limited Liability Company (hereinafter "J7") 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, J7 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 was set aside for mitigation purposes and not to be used. J7 was required to maintain control of 20 shares of water in the West Cache Irrigation Company and to maintain a totalizing measuring device of a type, approved by the Department as a part of the diverting works for the permit.

Pursuant to the terms of the permit, the Mitigation Right was not used by J7, and the 20 shares of West Cache Irrigation were maintained in J7's name. However, it appears a measuring device was not installed for the new permit.

AMENDED PETITION CONTESTING IDWR'S APRIL 4, 2019 PRELIMINARY ORDER VOIDING PERMIT

J7 sold the property to Checketts Oxford Mountain Farm LLC (hereinafter "Checketts") in 2005. The sale specifically included Permit No. 13-7649 and the 20 shares of West Cache Irrigation. The Mitigation Right was inadvertently not specifically included in the sale to Checketts but remained unused. The sale to Checketts included the real properties to which Permit No. 13-7649 and No. 13-2164, were appurtenant.

In 2008, Checketts sold portions of the real property once owned by J7, to the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints (hereinafter "CPB"), and to G&H. In the sale to G&H, Checketts included Water Right No. 13-7649. However, the Mitigation Right was not referenced in the sale documents. The real property to which the Mitigation Right was appurtenant, was sold to the CPB by Checketts in August of 2008, specific water rights were listed as part of the sale 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 sale to the CPB. It also was not listed as an excluded water right in documents transferring the property to the CPB. Because it had not been used, it appears the Mitigation Right was overlooked, in the transactions to Checketts, G&H, and the CPB. (IDWR's ownership records continue to reflect ownership of the Mitigation Right in the name of J7.) However, at the time of the sale to G&H, 20 shares in West Cache Irrigation Company were also transferred to G&H. (A true and correct copy of Stock Certificate 2002 issued by West Cache Irrigation Company to G&H is attached hereto as Exhibit "B".)

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 ownership of the Mitigation Right into the name of G&H and to have the CPB 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 severe financial issues as the milk produced at the dairy owned by G&H, no longer had a buyer. As a consequence, in December of 2017, the dairy, on the land to which Permit No. 13-7649 is appurtenant, ceased

operations. The closure resulted in a major financial loss. Additionally, in 2017, G&H became involved in multiple law suits, stemming from the financial difficulties that began that summer. The members of G&H are also embroiled in a lawsuit between them which is still pending. These ongoing law suits have created strain and difficulties at G&H and have demanded the additional focus and time of its members. 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 nor Counsel had any communication between themselves for several months immediately 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. G&H is in the process of reinstating its status with the Idaho Secretary of State.

In February of 2019, Counsel was contacted by IDWR requesting an update on this matter. 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, 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 contact G&H. Counsel was able to contact John Gomez, a member of G&H, who was unaware of the status of this matter or even that G&H had been administratively dissolved. 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 renewed 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). (see *G&H Dairy LLC's Request for Hearing* dated April 30, 2019, incorporated herein by reference). 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, as demonstrated by Exhibit "B" attached hereto. 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

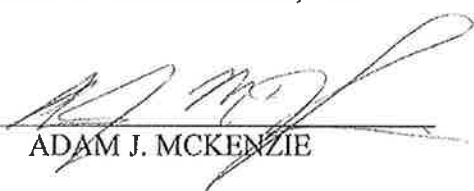
action of the director, including any decision, determination, or order or other action, including the action upon any application for a permit, license, ... or similar form of permission required by law to be issued by the director, ...and who has not previously been afforded an opportunity for a hearing 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 1st of May, 2019.

MCKENZIE & MCKENZIE, P.A.

By:


ADAM J. MCKENZIE

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of May, 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

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.

FILED EFFECTIVE

2012 NOV -6 AM 9:07

SECRETARY OF STATE
STATE OF IDAHO

Please type or print legibly.

Instructions are included on back of application.

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

