

RECEIVED

MAR 28 2019

DEPARTMENT
WATER RESOURCES

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APR 01 2019

DEPT. OF WATER RESOURCES
SOUTHERN REGION

**WITHDRAWAL
OF
APPLICATION FOR TRANSFER OF WATER RIGHT(S)**

I/We, Buckeye Farms, Inc and _____,
(Applicant's Printed Name) (Applicant's Printed Name)

_____ and _____,
(Applicant's Printed Name) (Applicant's Printed Name)

hereby withdraw our Application for Transfer No. 81972 of Water Right

No(s). 36-3H, 36-7739, 36-8335

Signed this 28th day of March, 20 19.

 Attorney Lee Buckeye Farms
(Signature/Title of Applicant)

BUCKEYE FARMS INC
PO BOX 269
HAGERMAN ID 83332

(Signature/Title of Applicant)

(Signature/Title of Applicant)

(Signature/Title of Applicant)

SUPPORT DATA
IN FILE # 36-3H

6. GENERAL INFORMATION

- a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future:

This application proposes to change the point of diversion from Billingsley Creek to the Snake River to eliminate the need to maintain the Buckeye Ditch.

- b. Who owns the property at the point(s) of diversion? Applicant

If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:

- c. To your knowledge, has/is any portion of the water right(s) proposed to be changed:

Yes No

☐☒

undergone a period of five or more consecutive years of non-use,

☐☒

currently used in a mitigation plan limiting the use of water under the right(s), or

☐☒

currently enrolled in a Federal set-aside program limiting the use of water under the right(s)?

If yes, describe:

- d. Is any portion of the water right(s) proposed to be changed currently leased to the Water Supply Bank? ☐ Yes ☒ No

☐ If yes and there are multiple owners, attach a [Lessor Designation](#) form.

☐ If yes, the individual owner or designated lessor must complete, sign and attach an [IRS Form W-9](#).

(Disregard if these items are on file and ownership has not changed.)

7. **MAP** – ☒ Attach a map of the diversion, measurement, control and distribution system. Include the place of use if a split of the water right occurred. Clearly label the map with township, range, section and ¼ ¼ of section information. The *Map Tool*, available at maps.idwr.idaho.gov/TransferApplicationLayouts/ provides a satisfactory template for creating the required map.

8. **SIGNATURE** – The information in this application is true to the best of my knowledge. I understand any willful misrepresentations in this application may result in rejection of the application or cancellation of an approval.



Signature of applicant or authorized agent

John K. Simpson

Print name and title if applicable

9-22-17

Date

Signature of applicant or authorized agent

Print name and title if applicable

Date

9. **FEE** – ☐ The application filing fee provided in Section 42-221, Idaho Code, must be submitted with the application for transfer. The Application fee is based on the total amount of water proposed for transfer in Item 4: the larger fee for either cubic feet per second (diversion rate) or acre-feet per annum (storage volume). The [Fee Schedule](#) is available at www.idwr.idaho.gov, *Water Right Transfers, Step 4* and in the [Application for Transfer Instructions](#).

FOR DEPARTMENT USE ONLY

Transfer includes _____ pages of attachments.

Received by SB

Date 9/22/17

Fee paid 1,380

Date 9/22/17

Received by SB

Receipt # C104159

Preliminary review by _____

Date _____

Active in the Water Supply Bank? Yes ☐ No ☐

W-9 received? Yes ☐ No ☐

Name on W-9 _____

W-9 forwarded to fiscal? Yes ☐ No ☐

(Do NOT scan the W-9 – confidential information is held by fiscal only)

Buckeye Farms Inc.
Application for Transfer Narrative

September 2017

Buckeye Farms, Inc. (Applicant) seeks to change the point of diversion for water right nos. 36-3H, 36-7739 and 36-8335¹ from Billingsley Creek, where the rights are diverted into the Buckeye Ditch, to the Snake River to eliminate the ditch maintenance for delivery of the rights. The proposal is to pump the rights from the Snake River into the existing on farm distribution system thereby improving the efficiency of water delivery and eliminating the cost of maintaining the existing Buckeye Ditch system. The Applicant is located at the end of the Buckeye Ditch and removing its water from the ditch should not cause injury to existing Buckeye Ditch users, all located upstream of the Applicant.

Water rights 36-3H and 36-8335 are part of that exchange agreement dated May 28, 1999 between the Applicant and Western Legends LC, the owner of water rights 36-4 and 36-15534. The exchange allows Buckeye to use portions of water rights 36-4 and 36-15534 in exchange for allowing Western Legends LC to use portions of 36-3H and 36-8335. The amount of the exchange can vary with time of year and the amount of water in Billingsley Creek at the Curren Ditch diversion. The minimum amount of the exchange is 8 cfs that the Applicant can divert through the South Bar-S Pipeline.

Western Legends LC is entitled to receive a minimum of 8 cfs from the Applicant that can be diverted into the Buckeye Ditch as provided in Section II. A. of the exchange agreement. The exchange agreement also provides that 2 cfs of the 8 cfs the Applicant must provide the Western Legends LC can come from the Applicant's Weatherby Springs water right 36-15. The Weatherby Springs water right is specifically addressed in Section III of the exchange agreement.

When the Weatherby Springs water is included as part of the exchange water provided by the Applicant, the Applicant is left with 5.9 cfs of the 36-3H and 36-8335 water rights available for diversion through the Buckeye Ditch. The accompanying transfer application is based on moving up to 5.9 cfs from the Buckeye Ditch point of diversion to a new point of diversion on the Snake River for the same purposes and the same places of use as the current water rights.

Should the Western Legends LC 1999 exchange agreement terminate, the applicant would divert its entire 11.9 cfs at the new point of diversion providing that amount of water is available for diversion at the current point of diversion into the Buckeye Ditch.

¹ Water right nos. 36-7739 and 36-8335 are for the same water diverted pursuant to water right no. 36-3H to be used for purposes other than irrigation. The total amount of all rights is 11.9 cfs.

The water rights diverting from the Snake River between the proposed point of diversion and the mouth of Billingsley Creek are small compared to the discharge of the river in that reach and will not be injured by the propose change in point of diversion.

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

8/22/2017

WATER RIGHT NO. 36-3H

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	BUCKEYE FARMS INC PO BOX 269 HAGERMAN, ID 83332 2088376595
Attorney	JOHN A ROSHOLT BARKER ROSHOLT & SIMPSON LLP 163 2ND AVE W PO BOX 63 TWIN FALLS, ID 83303-0063 2087330700

Priority Date: 09/10/1884
Basis: Decreed
Status: Active

<u>Source</u>	<u>Tributary</u>
BILLINGSLEY CREEK	SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	2/15	11/30	11.9 CFS	
Total Diversion			11.9 CFS	

Location of Point(s) of Diversion:

BILLINGSLEY CREEK|SESENE|Sec. 11|Township 07S|Range 13E|GOODING County

Place(s) of use:

Place of Use Legal Description: IRRIGATION GOODING County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
07S	13E	27		SWSW	1									
		28	8	SWSE	40		SESE	35						
		33		NENE	40	1	NWNE	36	4	SWNE	26		SENE	10
			1	NENW	6		SENE	4						
				NESW	1									
				NESE	6	5	NWSE	24	8	SWSE	5		SESE	29
		34		NWNW	2		SWNW	15						
			4	NWSW	10									

Total Acres: 290

Conditions of Approval:

1. USE OF THIS RIGHT WITH RIGHT NOS. 36-00001 AND 36-00002 IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 28.55 CFS.
2. USE OF THIS RIGHT WITH RIGHT NOS. 36-00001 AND 36-00002 IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 761 ACRES IN A SINGLE IRRIGATION SEASON.
3. WATER IS DELIVERED THROUGH THE BUCKEYE DITCH.

Dates:

Licensed Date:

Decreed Date: 08/27/2001

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector: OR

Water District Number: 36A

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit: 761

Combined Volume Limit:

Combined Rate Limit: 28.55

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

8/22/2017

WATER RIGHT NO. 36-7739

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	BUCKEYE FARMS INC PO BOX 269 HAGERMAN, ID 83332 2088376595
Original Owner	BUCKEYE LAND CO RT 1 HAGERMAN, ID 83332 2088376174

Priority Date: 08/01/1977

Basis: License

Status: Active

<u>Source</u>	<u>Tributary</u>
BILLINGSLEY CREEK	SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
FISH PROPAGATION	01/01	12/31	11.9 CFS	8620 AFA
Total Diversion			11.9 CFS	

Location of Point(s) of Diversion:

BILLINGSLEY CREEK|SESENE|Sec. 11|Township 07S|Range 13E|GOODING County

Place(s) of use:

Place of Use Legal Description: FISH PROPAGATION GOODING County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
07S	13E	34	7	SWNW										

Conditions of Approval:

1. R05 Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 36A.
2. R43 The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
3. X35 Rights 36-00003H, 36-08335 and 36-07739 when combined shall not exceed a total diversion rate of 11.9 cfs.
4. 027 Use of water under this right shall be non-consumptive.
5. 122 The right holder shall not divert water at a rate exceeding what is reasonably necessary for the beneficial use authorized by this right.
6. 004 This right does not grant any right-of-way or easement across the land of another.
7. F01 Water is delivered through Buckeye Ditch.

Dates:

Licensed Date: 09/15/2011

Decreed Date:

Permit Proof Due Date: 12/1/1988

Permit Proof Made Date: 11/29/1988

Permit Approved Date: 12/5/1983

Permit Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date: 08/01/1977

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal:

Owner Name Connector:

Water District Number: 36A

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit:
Combined Volume Limit:
Combined Rate Limit: 11.9
Civil Case Number:
Old Case Number:
Decree Plaintiff:
Decree Defendant:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Cary Act Number:
Mitigation Plan: False

Close

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

9/19/2014

WATER RIGHT NO. 36-8335

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	BUCKEYE FARMS INC PO BOX 269 HAGERMAN, ID 83332 (208)837-6595

Priority Date: 09/24/1987

Basis: License

Status: Active

<u>Source</u>	<u>Tributary</u>
BILLINGSLEY CREEK	SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
WILDLIFE STORAGE	01/01	12/31		646 AFA
RECREATION STORAGE	01/01	12/31		646 AFA
AESTHETIC STORAGE	01/01	12/31		646 AFA
DIVERSION TO STORAGE	01/01	12/31	11.9 CFS	
Total Diversion			11.9 CFS	

Location of Point(s) of Diversion:

BILLINGSLEY CREEK|SESENE|Sec. 11|Township 07S|Range 13E|GOODING County

Place(s) of use:

Place of Use Legal Description: WILDLIFE STORAGE GOODING County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
07S	13E	28		SESW										
				NESE			NWSE			SWSE			SWSE	
				SWSE			SESE							
		33		NENE			NENE			NWNE			SWNE	
				SWNE			SENE							
				NENW			NENW			SENE				
				NESE			NESE			NESE			NWSE	
				NWSE			SESE							
		34		SWNW			SWNW							
				NWSW			NWSW			NWSW			NWSW	
				NWSW			SWSW			SWSW				

Place of Use Legal Description: RECREATION STORAGE GOODING County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
07S	13E	28		SESW										
				NESE			NWSE			SWSE			SWSE	
				SWSE			SESE							
		33		NENE			NENE			NWNE			SWNE	
				SWNE			SENE							
				NENW			NENW			SENE				
				NESE			NESE			NESE			NWSE	
				NWSE			SESE							
		34		SWNW			SWNW							
				NWSW			NWSW			NWSW			NWSW	
				NWSW			SWSW			SWSW				

Place of Use Legal Description: AESTHETIC STORAGE GOODING County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
07S	13E	28		SESW										
				NESE			NWSE			SWSE			SWSE	
				SWSE			SESE							
		33		NENE			NENE			NWNE			SWNE	
				SWNE			SENE							
				NENW			NENW			SENE				
				NESE			NESE			NESE			NWSE	
				NWSE			SESE							
		34		SWNW			SWNW							

		NWSW		NWSW		NWSW		NWSW
		NWSW		SWSW		SWSW		

Conditions of Approval:

1. R05 Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 36A.
2. R43 The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
3. X35 Rights 36-00003H, 36-07739 and 36-08335 when combined shall not exceed a total diversion rate of 11.90 cfs.
4. Rights 36-08728, 36-08729, 36-08730 and 36-08335 when combined shall not exceed a total annual maximum storage volume of 871 af.
5. 004 This right does not grant any right-of-way or easement across the land of another.
6. F01 Water is delivered through Buckeye Ditch.

Dates:

Licensed Date: 09/15/2011

Decreed Date:

Permit Proof Due Date: 9/1/1991

Permit Proof Made Date: 7/10/1991

Permit Approved Date: 9/16/1988

Permit Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date: 09/24/1987

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal:

Owner Name Connector:

Water District Number: 36A

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Combined Acres Limit:

Combined Volume Limit:

Combined Rate Limit: 11.9

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close



State of Idaho

DEPARTMENT OF WATER RESOURCES

SOUTHERN REGION • 650 ADDISON AVE W STE 500 • TWIN FALLS ID 83301-5858

Phone: (208) 736-3033 • Fax: (208) 736-3037

Website: www.idwr.idaho.gov • Email: southerninfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

April 9, 2019

BUCKEYE FARMS INC
PO BOX 269
HAGERMAN ID 83332

Re: Withdrawal of Application for Transfer No. 81972
Water Right No(s). 36-3H, 36-7739, 36-8335

Dear Applicant(s):

Thank you for your recent withdrawal of the above referenced application. No further action is required and the matter is now closed.

Please contact our office at 208-736-3033 if you have additional questions in this matter. Also, more information about water rights and other matters administered by this agency is available on the Internet at www.idwr.idaho.gov.

Sincerely,

A handwritten signature in blue ink that reads "Denise Maline". The signature is fluid and cursive, with a small flourish at the end.

Denise Maline
Administrative Assistant

c: John K Simpson, attorney

Skinner, Corey

From: Skinner, Corey
Sent: Tuesday, February 26, 2019 2:15 PM
To: 'John Simpson'
Subject: Buckeye Farms Transfer Application # 81972
Attachments: withdrawal-of-application-for-transfer.pdf

John,

As we discussed today, Buckeye Farms filed a transfer application, # 81972, in September of 2017 involving some of their Billingsley Creek rights. The application proposes changing the source for these rights from Billingsley Creek to the Snake River. In November of 2017, I wrote you a letter expressing concerns relating to the transfer application and indicating that the Department will issue an order rejecting the application. In December of 2017, you wrote me a letter asking for IDWR to hold processing of the application. Today you indicated that it is likely that the transfer will be withdrawn. I have attached a form that would allow you to accomplish this.

It looks like Barker, Rosholt and Simpson paid a \$1380.00 filing fee for this transfer (IDWR receipt # C104159). Since we have not advertised this particular transfer application, if you were to request a refund of the filing fee along with the withdrawal submittal we would be able to issue a refund.

Let me know if you have any questions,

Corey

Skinner, Corey

From: Skinner, Corey
Sent: Friday, July 20, 2018 3:09 PM
To: 'John Simpson'
Cc: Weaver, Mathew; Keen, Shelley
Subject: Buckeye Farms Applications

Mr. Simpson,

Our office, along with personnel from the state office, have had a chance to review the most recent "Buckeye Operating Plan" (dated 5/7/2018) and examine the applications for permit in more detail since their original submittal.

With regards to the "Buckeye Operating Plan", it appears that progress is being made to address some of our concerns. However, the Department still has some concerns that need to be addressed with the proposal...

- The timing of the provided mitigation water versus the timing of the pumping/use should be addressed. The plan proposes to provide mitigation of up to 7.5 cfs to the river throughout the year, in order to offset diversion/use of up to 20 cfs. The provided mitigation will be quantified at points upstream and near the location of the proposed pumping. While the plan indicates that on an annual basis the provided mitigation volume should exceed the consumptive use volume, the plan does not address the instantaneous impacts to the river. Pumping up to 20 cfs from the wells, near the river, will have an impact on river flows. Will this pumping near the river exceed the amount of instantaneous recharge benefit to the river resulting in a net reduction in river flows?
- The report assumes a mixture of crops as an estimate of the consumptive use. The mitigation plan, and possible water right approval, will be ongoing, indefinitely, into the future. Crop mixes could change in the future. It appears that the plan should be based on the most water consumptive crop to insure that mitigation can be provided for all scenarios. IDWR does not want to be in the position to tell a water user what particular crop they can grow.

With regards to the applications, it appears that there are several discrepancies &/or issues that need to be addressed in order to have a complete, consistent, package of applications to be processed. The place of use listed on the applications appear to be based on places of use described on the existing Buckeye water rights. However, the existing rights' places of use do not completely match areas shown on the maps included with the applications or aerial photography. In addition, it appears that there may have been an error in analyzing the total amount of irrigated acres allowed by the existing water rights.

- The application narrative and operating plan both indicate that these applications aim to provide an alternate water source for existing irrigated acres on the property. The applications identify 1183.5 acres of irrigation. However, existing irrigation water rights for this property only cover 1104 acres. Rights 36-1, 36-2, and 36-3H are limited to 761 acres when combined and rights 36-16987 and 36-16988 are limited to 343 acres when combined. The Department's irrigation place of use shapefile for rights 36-16987 and 36-16988 reflect the total number of acres in their permissible place of use (439.2 acres) rather than the specific acre limit (343 acres). These rights were part of a transfer that was approved in 2014 and both rights have a condition indicating that the right holder was to provide IDWR with a land list and map or shapefile identifying the specific 343 acres to be irrigated. This does not appear to have been done. This results in the shapefile for these rights, and the resulting overlapping applications for permit's land list and map being too large, unless new irrigated acres are proposed.

- The place of use land list and shapefile for rights 36-1, 36-2, and 36-3H are not consistent with each other which results in inconsistencies with the place of use land list and map for the applications for permit. Multiple tracts have different acre amounts indicated on the place of use land list versus what is indicated on the map. This includes tracts with acres listed on the land list, but not shown on the map and vice versa.
- The place of use land list for rights 36-1, 36-2, and 36-3H and the applications for permit do not identify the correct legal descriptions. In particular, numerous government lots are not identified.
- The place of use land list indicates a total of 138 acres in Section 26 of T7S R13E; however, the sum of the acreages in that section add up to 137 acres.
- The map submitted with the application appears to include more irrigation acres in the SWSE and SESE of Section 26, T7S R13E than what is identified in the application land list as well as what is covered by existing water rights.
- The place of use land list identifies code "L" in the NENE of Section 34, Township 7S, Range 13E.
- The place of use land list for the pond uses includes the SWNE of Section 34, T7S R13E. This tract does not currently have any storage water rights. Is the applicant proposing a new pond in this tract? The narrative only notes new ponds being proposed in the NWNW of Section 35, T7S 13E.

It appears that there are quite a few issues relating to the places of use of the existing water rights on the Buckeye Farms property that cause issues with the applications for permit. Buckeye Farms may want to consider cleaning up their existing rights via the transfer process to reflect actual conditions. This would also allow the applications for permit to be submitted to reflect actual conditions. If a transfer is only changing the place of use with no hydraulic impacts, the application could be processed without advertising, which would allow for the application to be processed in a shorter time frame.

You have indicated that you would like IDWR to continue to hold processing of transfer # 81972. As indicated in our 11/28/2017 letter, there are some major issues with the transfer application. At some point, IDWR may issue an order rejecting the transfer application. As an alternative, Buckeye Farms could withdraw the currently filed application prior to IDWR rejecting the application.

Let me know if you want to discuss further,

Corey

ALBERT P. BARKER
JOHN A. ROSHOLT
JOHN K. SIMPSON
TRAVIS L. THOMPSON
SHELLEY M. DAVIS
SCOTT A. MAGNUSON



John K. Simpson
jks@idahowaters.com

December 27, 2017

1010 W. Jefferson, Suite 102
Post Office Box 2139
Boise, ID 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

163 Second Avenue West
Post Office Box 63
Twin Falls, ID 83303-0063
(208) 733-0700 telephone
(208) 735-2444 facsimile

RECEIVED

DEC 29 2017

**DEPT OF WATER RESOURCES
SOUTHERN REGION**

VIA E-MAIL AND U.S. MAIL

Corey Skinner, PE
Southern Region Manager
Idaho Department of Water Resources
650 Addison Ave. W, Suite 500
Twin Falls, ID 83301-5858

Re: Buckeye Farms, Inc.

Dear Corey,

Buckeye Farms, Inc. received your November 28, 2017 correspondence regarding certain applications for permit and a transfer application. In that letter, the Department of Water Resources ("IDWR") requested certain information from Buckeye prior to moving forward with the applications. This letter will constitute Buckeye's response.

First, with respect to the transfer application, Buckeye would request that IDWR hold the processing of the transfer. Buckeye intends to continue gathering information to support the application, but doesn't believe it is in a position to move forward at this time. Buckeye will keep IDWR informed of its progress.

As to the applications for groundwater, Buckeye would offer the following comments:

1. Again, Buckeye acknowledges that the source of water for these appropriations is trust-water as defined in the Swan Falls Settlement. Hence, the permits for appropriations should include the conditions suggested by Idaho Power Company.
2. Given that the applications arguably are within the moratorium, Buckeye is willing to provide mitigation for the consumptive use portion of each of the rights permitted. Further, while Buckeye intends to divert a portion of the water for non-consumptive purposes, Buckeye is willing submit an operating plan, including measurements, to ensure that it doesn't annually consume an amount of water greater than the mitigation identified.

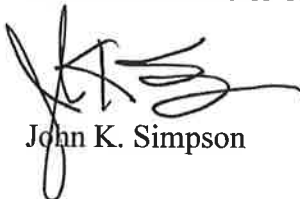
Buckeye will develop this operating plan for filing with IDWR prior to publication of the applications.

3. Pursuant to an agreement with the Idaho Ground Water Appropriators ("IGWA"), IGWA shall be providing Buckeye with 7.5 cfs of consumptive use mitigation arising from IGWA's mitigation activities on the Eastern Snake Plain Aquifer. Buckeye would intend to memorialize in greater detail this arrangement with IGWA, including, but not limited to, IGWA's annual actions and the resulting benefits to the reaches of the Snake River below Milner Dam from those actions. Similar to the SWC/IGWA Agreement and implementation, where IGWA supplies IDWR with an annual report and modeling necessary to support the Agreement, Buckeye will be proposing similar reporting to support the mitigation condition identified herein.
4. Buckeye believes that it has complied with sections c-f of Rule 40.05. If IDWR needs additional information or following publication, protests, if filed necessitate more filings consistent with the Rule, Buckeye will comply as required.

Thank you for the opportunity to provide additional information to support the applications in order to hopefully resolve any uncertainties prior to publication. Buckeye would request additional time to comply with the actions identified herein.

Very truly yours,

BARKER ROSHOLT & SIMPSON LLP



John K. Simpson

JKS/jlw



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region • 650 Addison Ave W, Suite 500 • Twin Falls, Idaho 83301-5858

Phone: (208) 736-3033 • Fax: (208) 736-3037 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

November 28, 2017

John K Simpson
Barker Rosholt & Simpson LLP
PO Box 2139
Boise, ID 83701-2139

Dear Mr. Simpson:

You recently filed two applications for permit and a water right transfer application in the name of Buckeye Farms Inc. The transfer application proposes changing the point of diversion of water rights 36-3H, 36-7739, and 36-8335 from the Buckeye Ditch on Billingsley Creek to a new point of diversion on the Snake River. The two applications for permit each propose diverting 10 cfs from four new wells to be drilled for irrigation use and uses associated with existing and new ponds. The Department has initiated preliminary processing of the applications and assigned numbers to the applications with the transfer application being assigned number 81972, and the two applications for permit being assigned numbers 36-17121 and 36-17122. During our preliminary processing of the applications there were some items noted that prevent IDWR from continuing further processing of the applications.

Transfer Application

The transfer application proposes changing the point of diversion from Billingsley Creek to a location on the Snake River upstream of the confluence of Billingsley Creek and the Snake River. Section 42-222, Idaho Code, allows for a change in point of diversion, but does not allow for a change in source. If a point of diversion is proposed to be moved from a stream to the stream which it is tributary, and the proposed point of diversion location is upstream of the confluence, the proposal would result in a change in source. Instead, an application for exchange pursuant to Section 42-240, Idaho Code, is the typical process for the kind of change proposed in the transfer application. Alternatively, you may want to consider a new water right filing from the Snake River that utilizes "non-use" of the Billingsley Creek rights as mitigation.

The transfer application proposes removing water rights from the Buckeye Ditch which is a shared ditch carrying water for numerous rights and users. When a water user proposes moving water rights out of a shared ditch, injury can result from requiring the remaining water rights to overcome all of the conveyance losses in the ditch. In the past, this injury has been mitigated by the applicant providing an analysis of conveyance losses in the ditch and a proposal to leave a certain percentage of rights to be delivered into the ditch after the proposed change. As an alternative, some applicants have provided written permission/agreement from all of the other users on the shared ditch indicating their agreement with the proposed change without mitigation. The narrative that was included with the transfer application includes the following statement, "*The Applicant is located at the end of the Buckeye Ditch and removing its water from the ditch should not cause injury to existing Buckeye Ditch users, all located upstream of the applicant.*" This statement is not enough for the Department to ascertain whether or not there will be injury to other users on the Buckeye Ditch if the applicant removes their rights from the ditch. Note that this issue will still exist even if an exchange application is filed, or by filing for a new water right from the Snake River that utilizes "non-use" of the Billingsley Creek rights as mitigation.

The transfer application did not include a map showing the changes proposed by the application. Note that this is a requirement for an acceptable application of any kind, including an exchange or a new water right filing from the Snake River that utilizes "non-use" of the Billingsley Creek rights as mitigation.

Applications for Permit

The two applications for permit each propose diverting 10 cfs of water (20 cfs total) from new wells to be drilled for irrigation and pond uses, which are consumptive uses, in a moratorium area. The applications include a narrative and various attachments that refer to “7.5 cfs of depletion from the Snake River” and/or “mitigation credit from its *ESPA* Aquifer enhancement activities”. There is not much detail provided relating to exactly what this “credit” is referring to and how it mitigates for the new proposed uses of water. A mitigation plan must offset the depletion of water associated with a new appropriation in quantity, time, location, and quality to protect senior water right holders. The applications are lacking specific information detailing the actual source of mitigation and whether or not adequate mitigation will occur. The details of the mitigation proposal are important not only because of the moratorium, but also because of the Trust Water analysis required in Rule 45.02 of IDWR’s Water Appropriation Rules (IDAPA 37.03.08). If the proposed appropriation will deplete the Snake River by more than two acre feet per day, the proposal must be evaluated to determine if it causes a significant reduction (Water Appropriation Rule 45.02.c) and possibly whether it is in the public interest (Water Appropriation Rule 45.03).

In addition, because the applications exceed five cfs each, you must submit the supporting documentation required by Water Appropriation Rules 40.05.c-g. IDWR may request information pursuant to Water Appropriation Rule 40.05.h at a later time, if necessary.

Finally, although Water Appropriation Rule 40.02.a exempts applications of ten cfs or less from statewide advertising, if the applications are advertised, IDWR will advertise the two applications statewide because together they represent a single development proposal for more than ten cfs.

This letter serves as notice that the two applications for permit will be considered on hold and subject to the moratorium awaiting the submittal of more detailed information regarding the actual source of mitigation and whether or not adequate mitigation will occur. As currently filed, IDWR cannot ascertain if injury will occur, as a result of the transfer application. The Department will hold further processing of the transfer application for 30 days to allow submittal of additional items &/or information. After that time, if adequate information is not received, the Department will issue a preliminary order to reject the application. As an alternative, you can withdraw the application(s) if desired.

If you have any questions, or if you want to discuss these matters any further, feel free to contact me at your convenience.

Sincerely,



Corey Skinner, PE
Southern Region Manager

cc: Buckeye Farms, Inc.

ALBERT P. BARKER
JOHN A. ROSHOLT
JOHN K. SIMPSON
TRAVIS L. THOMPSON
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John K. Simpson
jks@idahowaters.com

September 22, 2017

Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

Re: Buckeye Farms, Inc.

Dear Clerk:

Enclosed herewith for filing, please find two applications for groundwater and one transfer application on behalf of Buckeye Farm's Inc. Also enclosed herewith, please find the original *Settlement Agreement* and original *Stipulated Mitigation Plan and Request for Order*. Check number 25588 is also enclosed herewith for the applications and transfer filing fees.

Please contact our office should you have any questions.

Very truly yours,

BARKER ROSHOLT & SIMPSON LLP

Jessica L. Witt, Assistant to
John K. Simpson

/jlw
Encl.

RECEIVED

SEP 22 2017

DEPARTMENT OF
WATER RESOURCES

RECEIVED

SEP 26 2017

DEPT OF WATER RESOURCES
SOUTHERN REGION