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Attorneys for Buckeye Farms

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DEPARTMENT OF
WATER RESOURCES

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DEPT. OF WATER RESOURCES
SOUTHERN REGION

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

IN THE MATTER OF:

APPLICATION FOR TRANSFER NO.
82924 IN THE NAME OF BUCKEYE
FARMS INC.

**BUCKEYE FARMS' PETITION FOR
RECONSIDERATION**

COMES NOW Applicant, Buckeye Farms Inc. ("Buckeye"), by and through its counsel of record, Barker Rosholt & Simpson LLP, and pursuant to Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730) and Idaho Code § 67-5243(3), and hereby files this *Petition for Reconsideration and Request for Hearing* on the preliminary orders issued by IDWR in this matter on March 18, 2019.

On March 18, 2019, IDWR identified the Transfer of Water Right as a Preliminary Order and conditioned water rights 36-8335, 36-8728, 36-8729 and 36-8730 with a surface area limitation 165.7 acres for each pond. This condition was not included on the initial licenses of those rights. Typically, the Department will analyze whether a proposed transfer will injure existing water rights when deciding whether or not to approve that transfer. It is unclear how the

Department decided upon the addition of these conditions as risk of injury to other rights from the transfers without surface limitations would be no greater than the initial licenses which did not bear the limitations.

The primary purpose of the Application for Transfer No. 82924 was to move ponds away from the Snake River to other locations on the property and to be certain that new ponds would be covered by water rights. As noted in the memo accompanying the Application for Transfer the starting place for the transfer was IDWR's shapefile of the ponds which showed 165.7 acres. That number was used to balance the area of ponds to be abandoned with the acres of new ponds to be constructed but the area was never verified as the total area of all ponds. The field exam file for some of the ponds includes a table with initials "ADM", that shows a total of 195.93 acres. **Exhibit A.** However, as noted above, there had been no acreage limitation on any of the initial licenses for the ponds. Additionally, the Applicant is not aware of historic use data with which to determine the past surface levels of the ponds. Seemingly, such an analysis would be necessary to attach the correct surface limitation, if at all.

Several of the ponds rest in areas which are covered by both storage and irrigation rights. In these areas, crops are grown during a portion of the year and are later flooded to create the pond. Without a careful mapping of all pond areas and giving consideration to the timing of such mapping, the Applicant requests the acreage limitation be removed from the water rights for the ponds.

Although the Applicant believes that the limitation should be removed in its entirety, in the alternative, the Applicant requests that the conditioned acreage of 165.7 be replaced with the acreage of 195.93 found in the field report (Exhibit A). It should be noted that this field report was the origin for the volume identified in the original license.

DATED this 28th day of March, 2019.

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in blue ink, appearing to be 'JS', is written over a horizontal line.

John K. Simpson

Nicole L. Swafford

Attorneys for Buckeye Farms Inc

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of March, 2019, I caused to be served a true and correct copy of the foregoing **BUCKEYE FARMS' PETITION FOR RECONSIDERATION** by the method indicated below, and addressed to each of the following:

Idaho Department of Water Resources
Attn: Corey Skinner
322 E. Front Street
Boise, ID 83702

☐ U.S. Mail, postage prepaid
☒ Hand Delivery
☐ Facsimile
☐ Email

Water District 36A
Frank Erwin (Watermaster)
711 E. Ave. North
Hagerman, Idaho 83332

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Facsimile
☐ Email

Buckeye Farms Inc.
P.O. Box 269
Hagerman, Idaho 83332-0269

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Facsimile
☐ Email

ERO Resources Corp.
c/o Dave Shaw
4001 E. Main St.
Emmett, Idaho 83617

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Facsimile
☐ Email



John K. Simpson

BUCKEYE PONDS FIELD REVIEW

By: ADM
Date: 11/5/1998

Pond #	Area "sq ft"	Perimeter "ft"	Area "Acres"	Ave Depth "ft"	Volume "acre-ft"
1	40566	1288	0.93	2	1.9
2	228496	2377	5.25	2.5	13.1
3	6379	322	0.15	1.5	0.2
4	37793	941	0.87	1.5	1.3
5	284686	2771	6.54	8	52.3
6	208453	2864	4.79	3.3	15.8
7	78621	1470	1.80	2.5	4.5
8	277908	3775	6.38	3	19.1
9	30700	958	0.70	1.5	1.1
10	45690	1169	1.05	1.5	1.6
11	177738	2355	4.08	2	8.2
12	39027	929	0.90	3	2.7
13	31993	839	0.73	2	1.5
14	97700	1586	2.24	2.5	5.6
15	9875	419	0.23	2	0.5
16	25442	753	0.58	2	1.2
17	59020	1498	1.35	1.5	2.0
18	32005	868	0.73	2	1.5
19	173225	2699	3.98	4.3	17.1
20	41977	1366	0.96	2.5	2.4
21	115400	1841	2.65	1	2.6
22	219948	3544	5.05	2	10.1
23	19605	603	0.45	1.4	0.6
24	38006	1300	0.87	2	1.7
25	325479	3432	7.47	3.4	25.4
26	152533	3036	3.50	2.4	8.4
27	94275	1337	2.16	4.4	9.5
28	64325	1046	1.48	4	5.9
29	112930	1756	2.59	2.8	7.3
30	169319	1968	3.89	3	11.7
31	232575	2605	5.34	2.2	11.7
32	67887	974	1.56	2	3.1
33	35017	724	0.80	3	2.4
34	34652	731	0.80	1.5	1.2
35	844600	5626	19.39	12	232.7
36	171851	2113	3.95	2.7	10.7
37	301993	2599	6.93	4.4	30.5
38	758743	4898	17.42	8	139.3
39	62671	989	1.44	2.4	3.5
40	132411	1958	3.04	6.2	18.8
41	315314	2387	7.24	2.8	20.3
42	355752	3195	8.17	6.3	51.5
43	324754	2869	7.46	2.5	18.6
44	535113	4083	12.28	2.2	27.0
45	62569	1057	1.44	2.7	3.9
46	64004	1662	1.47	2.4	3.5
47	84817	1871	1.95	2.6	5.1
48	18065	1162	0.41	1.5	0.6
49	248118	1999	5.70	3	17.1
50	92664	1923	2.13	2.8	5.5
51	285500	2548	6.55	1.6	10.5
52	30349	1152	0.70	3.5	2.4
53	235638	3182	5.41	2.7	14.6
871.3 Acre-foot TOTAL POND VOLUME					
HATCHERY	29946	820	0.69	4	2.7
HATCHERY	30523	817	0.70	4	2.8
5.6 Acre-foot TOTAL HATCHERY VOLUME					

BUCKEYE PONDS FIELD REVIEW					By: ADM Date: 11/5/1998
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33	35017	724	0.80	3	2.4
34	34852	731	0.80	1.5	1.2
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