

RECEIVED

AUG 28 2000

Department of Water Resources
Eastern Region

TRANSFER NO. 5660

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>		<u>ACRES</u>		<u>ACRES</u>		<u>ACRES</u>	<u>TOTAL</u>
03N	25E	1	NENE	33	NWNE	33	SWNE	33	
			SENE	33					132
04N	25E	25	NENW	33	NWNW	33	SWNW	33	
			SENW	40	NESW	40	NWSW	33	
			SWSW	33	SESW	39	NESE	33	
			NWSE	40	SWSE	39	SESE	33	429
					Total number of acres irrigated:				561

TRANSFER NO. 5660
WATER RIGHT NO(S). 34-07096A/34-07097A/34-07223

CONDITIONS OF APPROVAL AND REMARKS

Rights 34-07096A, 34-07097A and 34-07223 are subject to the conditions of the Preliminary Order dated 06-06-2000 which has become final in the matter of Application for Transfer 5660.

Dated this 24th day of

August, 2000

J. Glen Saxton
Chief, Water Allocation Bureau

Protested 3/16/2000

Page 1 of 10

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 5660

APPLICATION FOR TRANSFER OF WATER RIGHTS
PART 1

Name of Applicant Mitchell D. Sorensen Phone (208) 527-3271
Post Office address Rt. 1 Box 63-A, Moore, ID 83255

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. Describe the reason for the proposed changes Settlement of litigation with Kirby and Doyle Jensen

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1.	Right Number	Priority	Amount (cfs/ac-ft)	Nature of Use	Period of Use
	<u>34-07096A</u>	<u>Jan 31, 1975</u>	<u>1.84 cfs</u>	<u>Irr.</u>	<u>04-15 to 10-15</u>
	<u>34-07097A</u>	<u>Jan 31 1975</u>	<u>1.58 cfs</u>	<u>Irr.</u>	<u>04-15 to 10-15</u>
	<u>34-07223</u>	<u>April 16, 1979</u>	<u>1.58 cfs</u>	<u>Irr.</u>	<u>04-15 to 10-15</u>

} 10/3/00

2. Total amount of water being transferred 5.0 cubic feet per second and/or _____ acre-feet per annum.
3. Source of water Groundwater tributary to _____
4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge.	County	Local name for diversion
	NW	SE	NW	17	4N	26E	Butte	Kirby Jensen farm (07096A and 07097A)
	NE	SW	SE	8	4N	26E	Butte	Doyle Jensen farm (07223)

} on Trust
but will
be rechan-
ged for surface
water

5. Lands irrigated or place of use: (Permissible Place of Use-lands owned by M. Todd Perkes)

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
3N	25E	1	33	33	33	33													132
4N	25E	25					33	33	33	40	40	33	33	39	33	40	39	33	429

Total Acres 561

Todd Perkes Signed

6. General Information:

- a. Description of diversion system wells and pumps on Jensen farms in exchange for surface water diverted through Moore Canal of Big Lost River Irrigation District to Crossover ditch to Timberdome Canal Co. system to Perkes farm
- b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts? x Yes No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes. See attached approvals.
- c. Describe the effect on the land now irrigated if the place of use is changed pursuant to this transfer:
There will be no effect
- d. Remarks:
A copy of the Jensen/Sorensen Settlement Agreement is attached

ACTION OF THE DIRECTOR DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____
and said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 2000.

PART 2

TRANS NO. 5660

A. DESCRIPTION OF RIGHT AS RECORDED:

Claim No. R34-07223

STAGE: LICENSE

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
IRRIGATION	04/01 to 11/01	1.58 CFS

SOURCE

GROUNDWATER

Priority: 04/16/1979

LOCATION OF POINT(S) OF DIVERSION:NESWSE , Sec. 8, Township 04N, Range 26E
BUTTE CountyPLACE OF USE:

IRRIGATION

				NE				NW				SW				SE																						
				NENE	NWNE	SWNE	SENE	: NENW				NWNW	SWNW	SENW	: NESW				NWSW	SWSW	SESW	: NESE				NWSE	SWSE	SESE	:	SUM								
T	R	S	:	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	:	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	:	Lt	Ac	Lt	Ac	Lt	Ac	:	Lt	Ac	Lt	Ac	Lt	Ac	:	
03N	25E	2	:											:	03-39	04-39	40	40					:													:	158.0	
03N	25E	3	:	01-39	02-39									:									:													:	78.0	
04N	25E	34	:	39	38	40	40							:									:	40	40	40	40									:	317.0	
04N	25E	35	:											:	38	38	40	40					:	20	40	39	20									:	275.0	
																												TOTAL ACRES	828.0									

CONDITIONS/REMARKS:

- RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.
- USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 11.55 CFS AND TO A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 4134.4 AF.
- COMBINED RIGHT NOS.: 34-02428, 34-07096A, 34-07096B, 34-07097A, 34-07097B AND 34-12416.
- WATER DIVERTED UNDER THIS RIGHT IS EXCHANGED WITH WATER DIVERTED FROM THE BIG LOST RIVER UNDER RIGHT NO. 34-00093. WATER DIVERTED UNDER THIS RIGHT IS USED FOR THE PURPOSES AND AT THE PLACES OF USE DESCRIBED IN RIGHT NO. 34-00093, AND WATER DIVERTED FROM THE BIG LOST RIVER IS USED FOR THE PURPOSES AND AT THE

Claim No. R34-07223

PLACES OF USE DESCRIBED IN THIS RIGHT.

5. USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 945 ACRES WITHIN THE PLACE OF DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.
6. COMBINED RIGHT NOS.: 34-00496A, 34-00692D 34-02428, 34-07096A, 34-07096B, 34-07097A, 34-07097B AND 34-12416.
7. THIS RIGHT IS LIMITED TO THE IRRIGATION OF 80 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.

Describe any other water rights used for the same purpose as described above:

To your knowledge has any portion of this water right undergone a period of five or more consecutive years of non-use? _____ If yes, describe:

Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☒ Tax Notice ☐ Warranty Deed ☐ Other _____

PART 2

TRANS NO. 5660

A. DESCRIPTION OF RIGHT AS RECORDED:

Claim No. R34-07097A

STAGE: ~~PERMIT~~ LICENSE

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
IRRIGATION	04/01 to ~~11/01~~ <u>10/31</u>	1.57 CFS - <u>1.58 cfs</u>
<u>SOURCE</u>		

GROUNDWATER

Priority: 01/31/1975

LOCATION OF POINT(S) OF DIVERSION:NWSENW , Sec. 17, Township 04N, Range 26E
BUTTE CountyPLACE OF USE:

IRRIGATION

				NE				NW				SW				SE						
				NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE			
T	R	S	:	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	SUM
03N	25E	2	:																			158.0
03N	25E	3	:	01-39	02-39																	78.0
04N	25E	34	:	39	38	40	40									40	40	40	40			317.0
04N	25E	35	:					38	38	40	40	20	40	39	20							275.0
																			TOTAL ACRES	828.0		

CONDITIONS/REMARKS:

- THIS RIGHT IS CONDITIONED UPON COMPLETION OF THE APPROPRIATION IN ACCORDANCE WITH THE STATUTORY PROCEDURE FOR APPROPRIATION OF WATER RIGHTS. THIS RIGHT REMAINS SUBJECT TO ALL CONDITIONS SET FORTH IN THE PERMIT UPON WHICH THIS RIGHT IS BASED, AND WILL BE SUBJECT TO ALL CONDITIONS SET FORTH IN THE LICENSE ISSUED BY IDWR UPON COMPLETION OF THE STATUTORY APPROPRIATION PROCESS.
- RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.
- USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 11.55 CFS AND TO A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 4134.4 AF.
- COMBINED RIGHT NOS.: 34-02428, 34-07096A, 34-07096B, 34-07097B,

Claim No. R34-07097A

34-07223 AND 34-12416.

5. WATER DIVERTED UNDER THIS RIGHT IS EXCHANGED WITH WATER DIVERTED FROM THE BIG LOST RIVER UNDER RIGHT NO. 34-10037. WATER DIVERTED UNDER THIS RIGHT IS USED FOR THE PURPOSES AND AT THE PLACES OF USE DESCRIBED IN RIGHT NO. 34-10037, AND WATER DIVERTED FROM THE BIG LOST RIVER IS USED FOR THE PURPOSES AND AT THE PLACES OF USE DESCRIBED IN THIS RIGHT.
6. USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 945 ACRES WITHIN THE PLACE OF DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.
7. COMBINED RIGHT NOS.: 34-00496A, 34-00692D, 34-02428, 34-07096A, 34-07096B, 34-07097B, 34-07223 AND 34-12416.
8. THIS RIGHT IS LIMITED TO THE IRRIGATION OF 79 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.
8. RIGHT NO. 34-07096A IS ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE.

Describe any other water rights used for the same purpose as described above:

To your knowledge has any portion of this water right undergone a period of five or more consecutive years of non-use? _____ If yes, describe:

Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice ☐ Warranty Deed ☐ Other _____

PART 2

TRANS NO 5660

A. DESCRIPTION OF RIGHT AS RECORDED:

Claim No. R34-07096A

STAGE: PERMIT LICENSE

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>
IRRIGATION	04/01 to <u>11/01</u> <u>10/31</u>	1.83 CFS <u>1.84 cfs</u>

SOURCE

GROUNDWATER

Priority: 01/31/1975

LOCATION OF POINT(S) OF DIVERSION:NWSENW, Sec. 17, Township 04N, Range 26E
BUTTE CountyPLACE OF USE:

IRRIGATION

				NE				NW				SW				SE						
				NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE			
T	R	S	:	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	SUM
03N	25E	2	:																			158.0
03N	25E	3	:	01-39	02-39																	78.0
04N	25E	34	:	39	38	40	40										40	40	40	40		317.0
04N	25E	35	:					38	38	40	40	20	40	39	20							275.0
																			TOTAL ACRES	828.0		

CONDITIONS/REMARKS:

- THIS RIGHT IS CONDITIONED UPON COMPLETION OF THE APPROPRIATION IN ACCORDANCE WITH THE STATUTORY PROCEDURE FOR APPROPRIATION OF WATER RIGHTS. THIS RIGHT REMAINS SUBJECT TO ALL CONDITIONS SET FORTH IN THE PERMIT UPON WHICH THIS RIGHT IS BASED, AND WILL BE SUBJECT TO ALL CONDITIONS SET FORTH IN THE LICENSE ISSUED BY IDWR UPON COMPLETION OF THE STATUTORY APPROPRIATION PROCESS.
- RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO SECTION 42-1425, IDAHO CODE.
- USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 11.55 CFS AND TO A TOTAL COMBINED ANNUAL DIVERSION VOLUME OF 4134.4 AF.
- COMBINED RIGHT NOS.: 34-02428, 34-07096B, 34-07097A, 34-07097B,

Claim No. R34-07096A

34-07223 AND 34-12416.

5. WATER DIVERTED UNDER THIS RIGHT IS EXCHANGED WITH WATER DIVERTED FROM THE BIG LOST RIVER UNDER RIGHT NO. 34-10037. WATER DIVERTED UNDER THIS RIGHT IS USED FOR THE PURPOSES AND AT THE PLACES OF USE DESCRIBED IN RIGHT NO. 34-10037, AND WATER DIVERTED FROM THE BIG LOST RIVER IS USED FOR THE PURPOSES AND AT THE PLACES OF USE DESCRIBED IN THIS RIGHT.
6. USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 945 ACRES WITHIN THE PLACE OF DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.
7. COMBINED RIGHT NOS.: 34-00496A, 34-00692D, 34-02428, 34-07096B, 34-07097A, 34-07097B, 34-07223 AND 34-12416.
8. THIS RIGHT IS LIMITED TO THE IRRIGATION OF 92 ACRES WITHIN THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.
8. RIGHT NO. 34-07097A IS ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE.

Describe any other water rights used for the same purpose as described above:

To your knowledge has any portion of this water right undergone a period of five or more consecutive years of non-use? _____ If yes, describe:

Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice ☐ Warranty Deed ☐ Other _____

B. CHANGES IN NATURE OF USE

1. New Nature of Use Amount Hours/days/year Period of Use
(cfs/ac-ft)

_____ to _____
_____ to _____

2. Quantity and quality of return flows and location of discharge:

3. Describe effects on other water uses resulting from the proposed change:

I hereby asset that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.

Subscribed and sworn to before me this 7th day of January, 2000.



(Signature of Applicant)

Notary Public

My Commission Expires 11/20/2004

FOR DEPARTMENT USE ONLY

Transfer contains 10 pages and 5 attachments

Received by HWT Date 1-10-2000 Protest filed by _____

Prelim. check by _____ Fee \$100.00

Receipted by HWT # E025547 Date 1-10-2000

Published in Arco Advertiser Copies of protest forwarded by _____

Pub. dates 2-24 & 3-2-00 Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for ☐ approval ☐ denial

_____ rec'd _____ by _____

Copy of transfer sent to lien holder _____

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

IN THE MATTER OF APPLICATION)
FOR TRANSFER 5659, 5661 AND 5660)
IN THE NAMES OF M. TODD PERKS AND)
MITCHELL D. SORENSEN RESPECTIVELY)

**PROPOSED MEMORANDUM
DECISION AND ORDER**

The sequence of events that resulted in the filing of applications for transfer 5659, 5660, and 5661 is unusual. The transfers reflect the elements of the settlement of a civil suit between Kirby A. Jensen and Sharon W. Jensen, husband and wife and Mitchell D. Sorensen and Elaine R. Sorensen, husband and wife. In this case, the matter was adjudicated in district court, and that decision was appealed to the Idaho Supreme Court. Ultimately, Supreme Court Justice, Byron J. Johnson, retired, agreed to personally mediate a settlement that would allow Sorensens to dismiss their appeal before the Supreme Court. The three referenced transfers are part of this settlement agreement. As part of this settlement M. Todd Perkes and his wife Norma Perkes were to take over Sorensens position in specified water exchange agreements with Kirby Jensen et ux. Under this agreement, water rights were to be exchanged between Perkes and Sorensen.

Applications for transfer, numbered 5659, 5660, and 5661 were received by the Department of Water Resourcee (IDWR) on January 10, 2000. After initial IDWR review, notice of the proposed changes was published in the Arco Advertiser on February 17 & March 2, 2000. A protest against the approval of all three applications was received from a group identifying itself as the Big Lost River Water Users Association. Of those signing the protest, only Larman D. Andersen and Joel Andersen appeared at the hearing. The protestants were not represented by counsel. Their objections to the changes is reflected as follows:

1. Water Right 34-07035(B) (T5659) proposes a well just north and west of Larman Andersen's supplemental well. Mr. Andersen believe that

pumping at this location would adversely affect the pumping level in his well.

2. Larman Andersen has a water right on a spring located near Arco. This spring has not produced sufficient water during the "last few years" to fill the Andersen water right. He believes that because the water from the new well will be used outside the "A-Line", this right would not be helped by the recharge from water diverted from the proposed well.
3. The use of water would affect all rights north of the "A-Line".
4. Joel Andersen has a supplemental well in Section 4, east of Mitchell Sorensen's property, and one-half mile south of the "Pump Orchard". This well is less than a quarter of a mile from the location where Sorensen's new well is proposed. The protestants also claim (although not a relevant issue) in this matter that, "Some of these wells have cease and desist orders on them. However, under the Higginson administration they were never enforced. Also the priority on wells was never enforced."

Evidence having been taken, the hearing officer, as a representative of the Director of the Department of Water Resources, proposes the following findings of fact, conclusions of law and order:

FINDINGS OF FACT

1. On January 5, 2000, M. Todd Perkes and Norma Perks, husband and wife, here-in-after Perkes, executed a Quitclaim Deed for Water Rights granting 4.98 cfs of right 34-07035 to Mitchell D. Sorensen and Elaine R. Sorensen, husband and wife, here-in-after Sorensen. Right 34-07035 was originally licensed for 5.62 cfs from ground water, and appurtenant to 561 acres located in the NE1/4 Section 1, Township 3 North, Range 25 East, and the W1/2 and the SE1/4, Section 25, Township 4 North, Range 25 East, B.M. The SRBA Director's report limits the use of this right to 417 acres within the described place of use in any single irrigation season. Based upon this agreement and split, Perkes would retain sufficient water from right 34-0735 (the "A" portion) to irrigate 47.5 acres

within the above described lands. Sorensen would have the right under portion "B" to irrigate 369.5 acres within an 828 acre tract, the description of which will be more specifically identified later in this decision.

2. The portion of water right 34-07035 deeded to Sorensen would be diverted from a new well to be drilled within the SE1/4SE1/4 Section 5, Township 4 North, Range 26 East, B.M. The change proposed in right 34-07035 is the subject of transfer application 5659.

3. On January 7, 2000, Sorensen transferred the ownership of the water rights listed below to Perkes.

4.

34 - 07096A	January 31, 1975	1.84 cfs	79 acres/yr
34 - 07097A	January 31, 1975	1.58 cfs	92 acres/yr
34 - 07223	April 16, 1979	1.58 cfs	80 acres/yr

The Perkes would have the right to annually irrigate 251 acres within their 561 acre described place of use with the rights received from the Sorensens. These three rights are the subject of transfer application 5660.

5. The rights transferred from the Sorensen to the Perks were appurtenant to 828 acres described as being within:

NW1/4	Sec 2 TWP 3N RGE 25E	158 acres
NE1/4	Sec 3 TWP 3N RGE 25E	78 acres
E1/2	Sec 34 TWP 4N RGE 25E	317 acres
W1/2	Sec 35 TWP 4N RGE 25 E	275 acres

Within this described area, right 34-07035, which was transferred to Sorensen could provide water to 369.5 acres or 44.62% of the total acreage. Water rights 34-07096A,

34-07097A and 34-07223, which were transferred from Sorensen to Perkes could supply water to 251 acres, or 30.31% of the total acreage.

The third transfer, 5661, proposes to add a point of diversion within the NE1/4 SE1/4NW1/4 Sec. 5 TWP 4N RGE 26E, B.M. Butte County for right 34-07035(A). And to add a point of diversion within the NE1/4NW1/4NW1/4 Sec 8 TWP 4N Rge 26 E B.M. Butte County for right 34-07122A. The change would make both wells points of diversion for either or both rights owned by Perkes. The Place of use of these two rights contains 561 acres, which would remain unchanged by the proposed transfer.

6. The changes specified in the mediated agreement require a change in the ownership of water rights, changes in points of diversion where rights are diverted, but do not change the total acreage irrigated by the combined rights. Sorensen will continue to irrigate 828 acres and Perkes will continue to irrigate 561 acres after the proposed changes have been made.

7. The protestants expressed concern that the new well proposed in application 5659 would interfere with their ground water rights. Joel Andersen has an existing supplemental well that will be approximately 1900 feet northeast proposed Sorensen well. Larman Andersen indicated that his supplemental well was about 4200 feet southeast of the proposed new well. Joel Andersen said that in 1992, (one of the driest years of record in eastern Idaho), he measured the water level in his well on April 8, 1992 at 26 ft below land serfice, on July 10, he measured the pumping level at 67 feet. At that time Joel Andersen had an additional 10 feet of casing added to his well. On August 12, he was unable to get adequate water to pressurize his system.

8. Dr. Charles Brockway, P.E. of Brockway Engineering was hired by the applicants as an expert to determine the impacts that other water users might expect as a result the changes required by the settlement agreement. Dr. Brockway located the wells of Perkes, Andersen and the proposed well of Sorensen as follows:

PROPOSED WELL'S DISTANCE FROM PROTESTANTS WELL

SUBJECT WELL	APPROXIMATE DISTANCE FROM THE JOEL ANDERSEN WELL
Perkes North Well	4500 feet
Perkes South Well	5300 feet
Sorensen Well	1900 feet

Based upon the aquifer characteristics that had been previously determined by a pump test conducted by the USGS, Dr. Brockway compared anticipated pumping drawdown effects on the wells of the protestants under the existing pumping scenario and then after implementation of the proposed changes. The results of these comparisons were submitted in Applicants Exhibit A. These results indicated that under the existing scenario, without the proposed Sorensen well, the Joel Andersen well is subject to a cumulative draw down in water level of about 8.27 feet after 210 days of continuous pumping. After the change the draw down, at the Joel Andersen well, assuming combined maximum pumping rates comparable to the pre-agreement rates, the protestants could anticipate, after 210 days of pumping, that the Joel Andersen supplemental well could expect to have the water in his well decline approximately one additional foot. Under this worst scenario and drought conditions the pumping level in the Joel Andersen well could not be expected to be greater than 90 feet. It is possible that under an extreme set of circumstances the Joel Andersen well might have to be deepened.

9. Idaho Code § 42-226 provides that, *while the doctrine of "first in time is first in right" is recognized, a reasonable exercise of this (ground water) right shall not block full economic development of underground water resources. Prior appropriators of underground water shall be protected in the maintenance of reasonable ground water*

pumping levels as may be established by the director of the department of water resources . . .

10. Water right owners are entitled to make changes in their water rights pursuant to state law if the changes do not result in an increased use of water, do not injure other water rights, and are in the public interest.

11. Applicant's Exhibit A – Map showing water right service areas.

Applicant's Exhibit B – Map showing well locations

Applicants Exhibit C – USGA Map showing aquifer test results and groundwater
Contours

Applicants Exhibit D – Brockway impact analysis

CONCLUSIONS OF LAW

1. M. Todd Perkes is the owner of water right 34-07035 and was entitled under Idaho Law to apply to change this right pursuant to §42-108 & §42-222, Idaho Code.

2. M. Todd Perkes has the right to apply to add a point of diversion to water rights 34- 07035(a) and 34-07122A as requested in application for transfer 5660.

3. Mitchell Sorensen is entitled under Idaho Law to apply to the Idaho Department of Water Resources to change the point of diversion, place of use, or nature of use of water rights 34-07096A, 34-07097A and 34-07223.

4. The applicants are entitled to apply to make changes in their water rights pursuant to state law.

5. The changes proposed in applications for transfer 5659, 5660 and 5661 are in the local public interest, will not injure other water rights, and will not result in an enlargement of the acreage irrigated under these rights.

ORDER

IT IS HEREBY ORDERED that applications for transfer nos. 5659, 5660 and 5661 are APPROVED subject to the following conditions:

1. The use of water under these rights shall be subject to the control of the watermaster of Water District 34.
2. A measuring device of a type approved by the department shall be installed at each point of diversion.

T 5660

PRELIMINARY ORDER

4

- 1

pumping at this location would adversely affect the pumping level in his well.

2. Larman Andersen has a water right on a spring located near Arco. This spring has not produced sufficient water during the "last few years" to fill the Andersen water right. He believes that because the water from the new well will be used outside the "A-Line", this right would not be helped by the recharge from water diverted from the proposed well.
3. The use of water would affect all rights north of the "A-Line".
4. Joel Andersen has a supplemental well in Section 4, east of Mitchell Sorensen's property, and one-half mile south of the "Pump Orchard". This well is less than a quarter of a mile from the location where Sorensen's new well is proposed. The protestants also claim (although not a relevant issue) in this matter that, "Some of these wells have cease and desist orders on them. However, under the Higginson administration they were never enforced. Also the priority on wells was never enforced."

Evidence having been taken, the hearing officer, as a representative of the Director of the Department of Water Resources, enters the following findings of fact, conclusions of law and preliminary order:

FINDINGS OF FACT

1. On January 5, 2000, M. Todd Perkes and Norma Perks, husband and wife, here-in-after Perkes, executed a Quitclaim Deed for Water Rights granting 4.98 cfs of right 34-07035 to Mitchell D. Sorensen and Elaine R. Sorensen, husband and wife, here-in-after Sorensen. Right 34-07035 was originally licensed for 5.62 cfs from ground water, and appurtenant to 561 acres located in the NE1/4 Section 1, Township 3 North, Range 25 East, and the W1/2 and the SE1/4, Section 25, Township 4 North, Range 25 East, B.M. The SRBA Director's report limits the use of this right to 417 acres within the described place of use in any single irrigation season. Based upon this agreement and split, Perkes would retain sufficient water from right 34-0735 (the "A" portion) to irrigate 47.5 acres

within the above described lands. Sorensen would have the right under portion "B" to irrigate 369.5 acres within an 828 acre tract, the description of which will be more specifically identified later in this decision.

2. The portion of water right 34-07035 deeded to Sorensen would be diverted from a new well to be drilled within the SE1/4SE1/4 Section 5, Township 4 North, Range 26 East, B.M. The change proposed in right 34-07035 is the subject of transfer application 5659.

3. On January 7, 2000, Sorensen transferred the ownership of the water rights listed below to Perkes.

4.

34 - 07096A	January 31, 1975	1.84 cfs	79 acres/yr
34 - 07097A	January 31, 1975	1.58 cfs	92 acres/yr
34 - 07223	April 16, 1979	1.58 cfs	80 acres/yr

The Perkes would have the right to annually irrigate 251 acres within their 561 acre described place of use with the rights received from the Sorensens. These three rights are the subject of transfer application 5660.

5. The rights transferred from the Sorensen to the Perks were appurtenant to 828 acres described as being within:

NW1/4	Sec 2 TWP 3N RGE 25E	158 acres
NE1/4	Sec 3 TWP 3N RGE 25E	78 acres
E1/2	Sec 34 TWP 4N RGE 25E	317 acres
W1/2	Sec 35 TWP 4N RGE 25 E	275 acres

Within this described area, right 34-07035, which was transferred to Sorensen could provide water to 369.5 acres or 44.62% of the total acreage. Water rights 34-07096A,

34-07097A and 34-07223, which were transferred from Sorensen to Perkes could supply water to 251 acres, or 30.31% of the total acreage.

The third transfer, 5661, proposes to add a point of diversion within the NE1/4 SE1/4NW1/4 Sec. 5 TWP 4N RGE 26E, B.M. Butte County for right 34-07035(A). And to add a point of diversion within the NE1/4NW1/4NW1/4 Sec 8 TWP 4N Rge 26 E B.M. Butte County for right 34-07122A. The change would make both wells points of diversion for either or both rights owned by Perkes. The Place of use of these two rights contains 561 acres, which would remain unchanged by the proposed transfer.

6. The changes specified in the mediated agreement require a change in the ownership of water rights, changes in points of diversion where rights are diverted, but do not change the total acreage irrigated by the combined rights. Sorensen will continue to irrigate 828 acres and Perkes will continue to irrigate 561 acres after the proposed changes have been made.

7. The protestants expressed concern that the new well proposed in application 5659 would interfere with their ground water rights. Joel Andersen has an existing supplemental well that will be approximately 1900 feet northeast proposed Sorensen well. Larman Andersen indicated that his supplemental well was about 4200 feet southeast of the proposed new well. Joel Andersen said that in 1992, (one of the driest years of record in eastern Idaho), he measured the water level in his well on April 8, 1992 at 26 ft below land surface, on July 10, he measured the pumping level at 67 feet. At that time Joel Andersen had an additional 10 feet of casing added to his well. On August 12, he was unable to get adequate water to pressurize his system.

8. Dr. Charles Brockway, P.E. of Brockway Engineering was hired by the applicants as an expert to determine the impacts that other water users might expect as a result the changes required by the settlement agreement. Dr. Brockway located the wells of Perkes, Andersen and the proposed well of Sorensen as follows:

SUBJECT WELL	APPROXIMATE DISTANCE FROM THE JOEL ANDERSEN WELL
Perkes North Well	4500 feet
Perkes South Well	5300 feet
Sorensen Well	1900 feet

Based upon the aquifer characteristics that had been previously determined by a pump test conducted by the USGS, Dr. Brockway compared anticipated pumping drawdown effects on the wells of the protestants under the existing pumping scenario and then after implementation of the proposed changes. The results of these comparisons were submitted in Applicants Exhibit A. These results indicated that under the existing scenario, without the proposed Sorensen well, the Joel Andersen well is subject to a cumulative draw down in water level of about 8.27 feet after 210 days of continuous pumping. After the change the draw down, at the Joel Andersen well, assuming combined maximum pumping rates comparable to the pre-agreement rates, the protestants could anticipate, after 210 days of pumping, that the Joel Andersen supplemental well could expect to have the water in his well decline approximately one additional foot. Under this worst scenario and drought conditions the pumping level in the Joel Andersen well could not be expected to be greater than 90 feet. It is possible that under an extreme set of circumstances the Joel Andersen well might have to be deepened.

9. Idaho Code § 42-226 provides that, *while the doctrine of "first in time is first in right" is recognized, a reasonable exercise of this (ground water) right shall not block full economic development of underground water resources. Prior appropriators of underground water shall be protected in the maintenance of reasonable ground water*

pumping levels as may be established by the director of the department of water resources . . .

10. Water right owners are entitled to make changes in their water rights pursuant to state law if the changes do not result in an increased use of water, do not injure other water rights, and are in the public interest.

11. Exhibits admitted as a part of the hearing record include the following:

- a.) Applicant's Exhibit A – Map showing water right service areas.
- b.) Applicant's Exhibit B – Map showing well locations
- c.) Applicant's Exhibit C – USGA Map showing aquifer test results and groundwater contours
- d.) Applicant's Exhibit D – Brockway impact analysis

CONCLUSIONS OF LAW

1. M. Todd Perkes is the owner of water right 34-07035 and was entitled under Idaho Law to apply to change this right pursuant to §42-108 & §42-222, Idaho Code.

2. M. Todd Perkes has the right to apply to add a point of diversion to water rights 34- 07035(A) and 34-07122A as requested in application for transfer 5660.

3. Mitchell Sorensen is entitled under Idaho Law to apply to the Idaho Department of Water Resources to change the point of diversion, place of use, or nature of use of water rights 34-07096A, 34-07097A and 34-07223.

4. The applicants are entitled to apply to make changes in their water rights pursuant to state law.

5. The changes proposed in applications for transfer 5659, 5660 and 5661 are in the local public interest, will not injure other water rights, and will not result in an enlargement under these rights.

ORDER

IT IS HEREBY ORDERED that Applications for Transfer 5659, 5660 and 5661 are APPROVED subject to the following conditions:

Transfer #5661

Conditions:

1. Water Right #34-07035A is limited to the irrigation of 47.5 acres within the place of use described above in a single irrigation season.
2. Water Right #34-07122A is limited to the irrigation of 561 acres within the place of use described above in a single irrigation season.
3. Rights #34-07035A and 34-07122A when combined shall not exceed a total diversion rate of 4.95 cfs, a total annual maximum diversion volume of 1963.5 af at the field headgate, and the irrigation of 561 acres.
4. The total instantaneous diversion of water from all points of diversion under Transfer #5661 shall not exceed 4.95 cfs, nor a total combined annual volume of 1963.5 af.
5. Approval of Transfer #5661 does not grant any right-of-way or easement for use of a delivery system owned by person(s) other than the right owner.
6. Use of water under this water right will be regulated by the watermaster of State Water District No. 34, Big Lost River.
7. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in the manner that will provide the watermaster suitable control of the diversion.
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.
10. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code

ORDER

IT IS HEREBY ORDERED that Applications for Transfer 5659, 5660 and 5661 are APPROVED subject to the following conditions:

Transfer #5660

Conditions:

1. Water Right #34-07223 is limited to the irrigation of 80 acres within the place of use described above in a single irrigation season.
2. Water Right #3407096A is limited to the irrigation of 92 acres within the place of use described above in a single irrigation season.
3. Water Right #34-07097A is limited to the irrigation of 79 acres within the place of use described above in a single irrigation season.
4. Rights #34-07096A, 34-07097A and 34-07223 when combined shall not exceed a total diversion rate of 5.00 cfs, a total annual maximum diversion volume of 878.5 af at the field headgate, and the irrigation of 251 acres.
5. The total instantaneous diversion of water from all points of diversion under Transfer #5660 shall not exceed 5.00 cfs, nor a total combined annual volume of 878.5 af.
6. Approval of Transfer #5660 does not grant any right-of-way or easement for use of a delivery system owned by person(s) other than the right owner.
7. Use of water under this water right will be regulated by the watermaster of State Water District No. 34, Big Lost River.
8. 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.
9. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
10. Failure of the right holder comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

ORDER

IT IS HEREBY ORDERED that Applications for Transfer 5659, 5660 and 5661 are APPROVED subject to the following conditions:

Transfer #5659

Conditions:

1. Right #34-07035B is limited to the irrigation of 369.5 acres within the place of use described as 828 acres in a single irrigation season.
2. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
3. Use of water under this right will be regulated by the watermaster of State Water District No. 34, Big Lost River.
4. 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.
5. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
6. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

DATED this th 6 day of June, 2000.

A handwritten signature in cursive script, appearing to read "Ronald D. Carlson", written over a horizontal line.

RONALD D CARLSON
Hearing Officer