

RECEIVED
SEP 20 2017
WATER RESOURCES
WESTERN REGION

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

I/We, Purity Sweet Inc and Matthew Olivas President and Founder
(Applicant's Printed Name) (Applicant's Printed Name)

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

hereby withdraw our Application for Transfer No. 78340 of Water Right

No(s). 51-4037

Signed this 10 day of aug September, 20 17.

Purity Sweet Inc Matthew Olivas President and Founder
(Signature/Title of Applicant)

(Signature/Title of Applicant)

(Signature/Title of Applicant)

(Signature/Title of Applicant)



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

October 2, 2017

PURITY SWEET INC
315 E AVENUE H
JEROME ID 83338

Re: Withdrawal of Application for Transfer No. 78340

Dear Applicants:

The Department has received your recent withdrawal of the above referenced application. For your convenience a copy of the withdrawal and application are enclosed.

In addition, the transfer filing fee has been applied to your Application for Permit.

Please feel free to contact our office at 208-334-2190 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 dark ink, appearing to read 'Rachel Neely', is written over a horizontal line.

Rachel Neely
Administrative Assistant
Western Regional Office

Enclosures

MEMORANDUM

TO: Sascha Marston
FROM: Angela Grimm
DATE: 9/22/17
RE: W037843 Receipt Change Request

Emil F. Pike Jr., Attorney at Law, paid \$100.00 for a water right transfer application on 08/31/2009. The transfer application was withdrawn on 9/20/2017. The transfer applicant has requested the filing fee received 8/31/2009 be used towards processing of their water right permit application filed 9/20/2017.

Please change \$100.00 on receipt W037843 from PCA 62105 to PCA 62103 (from transfers fee account to permits fee account).

RECEIPT

Receipt no. W037843

Copy: Transfer No. 78340 and Purity Sweet Inc. Permit Appl. of 9/20/17 file

Receipt Details for ID W037843

Status	Adjustment Type	Version
		1

General Information:

Date Received 8/31/2009 1:38:00 PM	Date Deposited 8/31/2009 4:19:19 PM	Region WESTERN	Total Amount \$100.00	Payment Type Check
Payee: PIKE JR., EMIL F, ATTORNEY AT LAW				
0				

Account Information

Check Number 12985

Comment APPLICATION FOR TRANSFER FOR PURITY SWEET INC. (MATTHEW OLIVAS), 51-4037

Fee Details

Amount	Description	PCA	Fund	Fund Detail	Subsidiary	Object
\$100.00	TRANSFERS	62105	0229	21		1155



State of Idaho

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

September 7, 2017

COPY

PURITY SWEET INC
MATTHEW OLIVAS
315 E AVE H
JEROME ID 83338

Re: Water Permit Application Incomplete and Request for Withdrawal of Transfer No. 78340

Dear Mr. Olivas:

The Idaho Department of Water Resources (IDWR) received your water permit application on August 31, 2017. It is my understanding, this application was submitted in response to my letter dated August 7, 2017 regarding water right transfer application no. 78340. The water permit application cannot be accepted into the records of IDWR until application for transfer no. 78340 is withdrawn and the following items are amended on the water permit application:

- **Item no. 1 - Name or Address**

- The permit application states the applicant names as Matthew Olivas *or* Purity Sweet. The Idaho Secretary of State (IDSOS) business entity search indicates the applicant name may be Purity Sweet Inc. instead of Purity Sweet (enclosed is a copy of the search results for Purity Sweet from that website). If the applicant company name includes incorporated (inc.) please amend the permit application accordingly.
- When a permit application is filed in the name of a business entity, the names and addresses of its directors and officers is required. If the list of the members shown on the enclosed ISOS business entity search results is correct, please include a copy of this document (Annual Report Form).
- The address listed for Matthew Olivas on the IDSOS annual report form is 315 G Ave E rather than 315 E Ave H listed on the permit application. Please confirm the correct address.

- **Item no. 3 – Source and Tributary**

- Indicate the tributary to which water left un-diverted from Murphy Hot Springs flows into (Jarbidge River).

- **Item no. 4 – Point(s) of Diversion**

The proposed source is listed as "Murphy Hot Springs" on item no. 3 and a single point of diversion is described on item no. 4. Since the word spring is plural ("springs"), I am interpreting this to mean you propose to use the two springs I believe have been historically used, the "North Murphy Hot Spring" and the "South Murphy Hot Spring" as I believe they are referred to. If this is the case, please list both springs in item no. 4 table under source heading with their respective public land survey (PLS) legal descriptions. Springs must be described to the 10 acre-tract. Based on information available in historic water right files, both of the springs are located in T16S R09E Sec 24 SW NW NW in Owyhee County.

- **Item no. 6 - Total Quantity**
 - Please confirm the total rate proposed for diversion is 0.02 cfs by writing “0.02” into the first blank space of item no. 6.
- **Item no. 7 - Description of the Diverting Works**
 - Please fully describe the diversion works from the springs to the bottling plant.
- **Item no. 8 - Description of Proposed Use**
 - Please include information on this item or in the narrative (item no. 12) indicating how a rate of 0.02 cfs was determined to be the maximum rate of water for your bottling operation. The purpose of this is to confirm no additional rate of flow is needed for the beneficial use you wish to be/are accomplishing.
- **Item no. 9 - Place of Use**
 - The place of use must be described to the 40 acre-tract. Based on the property boundary record available, the place of use is entirely in T16S R09E Sec 24 NW NW. Please place of “C” for commercial use in the 6th box over from the “SEC” box confirming the NW NW 40 acre-tract as the place of use.
- **Item no. 11 – Ownership**
 - Please include the “Inc.” portion of the property owner entity name, Purity Sweet Inc.
- **Item no. 13 – Time**
 - Please include the amount of time in years (1, 2, 3, 4, or 5 years) it will take for completion of the diversion works and full beneficial use/application of the water for commercial purposes of bottling water. The year you select will be the time after which IDWR will request you submit a Statement of Completion of Proof of Beneficial Use confirming you are done developing the water permit.
- **Item no. 14 - The Map**
 - A map displaying the point(s) of diversion and place of use is required. I’ve enclosed a map showing the PLS description and 2015 aerial image of the area. Please draw and label the point(s) of diversion (POD) and place of use (POU).
- **The Signature and/or Title**
 - Please include your title (President) next to your signature for Purity Sweet Inc.
- **The Fee**
 - A filing fee of \$100.00 is required for the permit application (fee schedule enclosed). In my August 7, 2017 letter regarding water right transfer application no. 78340, I indicated that if the transfer application was withdrawn the filing fee received for that application may be used towards any permit application filed. By submitting a permit application to establish a new water right without a filing fee, I’m assuming you wish to withdraw transfer application no. 78340 and use the fee received for that filing (\$100.00 received on 8/31/2009 – receipt # W037843) towards the permit application filing. To do so, the enclosed Withdrawal of Application for Transfer of Water Right(s) must be signed and returned. Otherwise, an additional \$100.00 will be required for your permit application filing fee.

The original incomplete permit application is enclosed. Please make the necessary amendments to the original form and re-submit together with the transfer no. 78340 withdrawal form or payment of the fee within the next thirty (30) days. If the withdrawal form is not received in a timely manner, IDWR will issue a preliminary order rejecting transfer no. 78340 due to lack of response to previous information requests. If IDWR issues a preliminary order rejecting transfer no. 78340, a refund and/or use of the transfer filing fee will not be possible. This letter is an attempt to ensure that your permit

Purity Sweet Inc
Matthew Olivas
September 7, 2017
Page 3 of 3

application is complete in order to establish a priority date. You may receive future correspondence regarding more specific details of your permit application. IDWR forms and other information are available on the Internet at www.idwr.idaho.gov. Please consult the IDWR website or contact me at 208-334-2190 if you have any questions about the necessary information or fee.

Sincerely,

A handwritten signature in black ink, appearing to read "Angela M. Grimm". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Angela M. Grimm, P.G.
Water Rights Supervisor

Enclosure(s): Original Permit Application, IDSOS Annual Report Form for Purity Sweet Inc., Permit Application Map, Application for Permit Fee Schedule, and Withdrawal of Application for Transfer of Water Right(s) form

RECEIVED

AUG 31 2017

FORM 202 Rev. 09/16

STATE OF IDAHO

Ident. No. _____

RECEIVED

DEPARTMENT OF
WATER RESOURCES

DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

SEP 07 2017

WATER RESOURCES
WESTERN REGIONName of applicant(s) Purity Sweet Matthew Olivas Phone 208-404-6190Name connector (check one): ☐ and ☒ or ☐ and/orMailing address 315 E 1st Av H City JeromeState Idaho ZIP 83338 Email _____2. Name of representative, if any Matthew Olivas CEO Phone 208-404-6190Mailing address Same 315 E 1st Av H City JeromeState Idaho ZIP 83338 Email _____a. ☐ Send all correspondence for this application to the representative and not to the applicant OR☒ Send original correspondence to the applicant and copies to the representative.b. ☐ The representative may submit information for the applicant but is not authorized to sign for the applicant OR☒ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation.3. Source of water supply murph off Spring which is a tributary of _____

4. Location of point(s) of diversion:

Twp	Rge	Sec	Govt Lot	1/4	1/4	1/4	County	Source	Local name or tag #
16S	09E	24					adams co	murphy off Spring	murphy off Spring

5. Water will be used for the following purposes:

Amount 0.02 for Commercial purposes from 11-31 to 12-31 (both dates inclusive)
(cfs or acre-feet per year)Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year)Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year)Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year)

6. Total quantity to be appropriated is (a) _____ cubic feet per second (cfs) and/or (b) _____ acre-feet per year (af).

7. Proposed diverting works:

a. Describe type and size of devices used to divert water from the source. 3 inch PIPb. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet. If the reservoir will be filled more than once each year, describe the refill plan in item 12. For dams 10 feet or more in height AND having a storage capacity of 50 acre-feet or more, submit a separate Application for Construction or Enlargement of a New or Existing Dam. Application required? ☐ Yes ☐ No

c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.

d. Is ground water with a temperature of greater than 85°F being sought? ☐ Yes ☐ Noe. If well is already drilled, when? _____; drilling firm _____;
well was drilled for (well owner) _____; Drilling Permit No. _____

For Department Use

Received by Stef Date 8-31-17 Time 11:30AM Preliminary check by _____

Fee \$ _____ Received by _____ Receipt No. _____ Date _____

8. Description of proposed uses (if irrigation only, go to item 9):

- a. Hydropower; show total feet of head and proposed capacity in kW. _____
- b. Stockwatering; list number and kind of livestock. _____
- c. Municipal; must complete and attach the Municipal Water Right Application Checklist.
- d. Domestic; show number of households _____
- e. Other; describe fully. Commercial Bottling Bottled Water

9. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
10S	4E	24																	

Total number of acres to be irrigated: none

10. Describe any other water rights used for the same purposes as described above. Include water delivered by a municipality, canal company, or irrigation district. If this application is for domestic purposes, do you intend to use this water, water from another source, or both, to irrigate your lawn, garden, and/or landscaping? none

11. a. Who owns the property at the point of diversion? Auntie Sweet
- b. Who owns the land to be irrigated or place of use? Purity Sweet
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: Consent of Purity Sweet

12. Describe your proposal in narrative form, and provide additional explanation for any of the items above. Attach additional pages if necessary. _____

13. Time required for completion of works and application of water to proposed beneficial use is _____ years (minimum 1 year).

14. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½" x 11" map or maps clearly identifying the proposed point of diversion, place of use, section #, township & range. The map scale shall not be less than two (2) inches equal to one (1) mile.

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 rejection of the application or cancellation of an approval.

Purity Sweet
Signature of Applicant

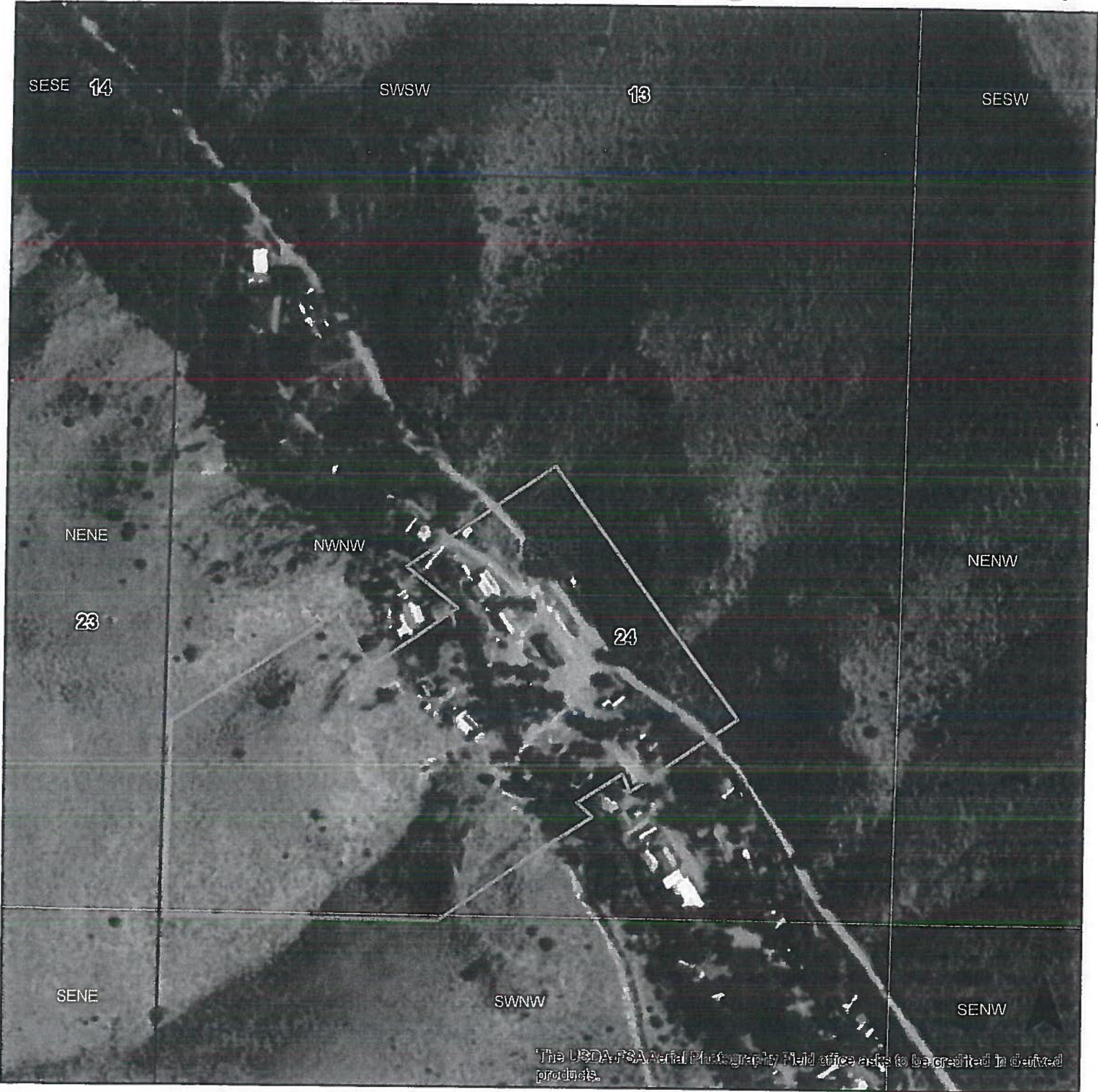
Purity Sweet Matthew Davis
Print Name (and title, if applicable)

Signature of Applicant

Print Name (and title, if applicable)

No. C 139811	Due no later than Jul 31, 2017 Annual Report Form		2. Registered Agent and Address (NO PO BOX)			
Return to: SECRETARY OF STATE 700 WEST JEFFERSON PO BOX 83720 BOISE, ID 83720-0080 NO FILING FEE IF RECEIVED BY DUE DATE	1. Mailing Address: Correct in this box if needed. PURITY SWEET, INC. BRENT DOZIER 4103 N MEADOW RIDGE CIR TWIN FALLS ID 83301		BRENT DOZIER 4103 N MEADOW RIDGE CIR TWIN FALLS ID 83301			
			3. <u>New</u> Registered Agent Signature:*			
4. Corporations: Enter Names and Business Addresses of President, Secretary, and Directors. Treasurer (optional).						
Office Held	Name	Street or PO Address	City	State	Country	Postal Code
SECRETARY	CECIL DOZIER	PO BOX 416	PAUL	ID	USA	83347
PRESIDENT	MATTHEW OLIVAS	315 G AVE. E	JEROME	ID	USA	83338
DIRECTOR	DANNY CRYSTAL	325 CENTER ST. E	KIMBERLY	ID	USA	83341
DIRECTOR	NANCY DOZIER	359 N 400 W	PAUL	ID	USA	83347
DIRECTOR	BRENT DOZIER	5701 W COMMONWEALTH PL	CHANDLER	AZ	USA	85226
5. Organized Under the Laws of: ID C 139811		6. Annual Report must be signed.* Signature: Brent Dozier Name (type or print): Brent Dozier Date: 07/23/2017 Title: director				
Processed 07/23/2017		* Electronically provided signatures are accepted as original signatures.				

Purity Sweet Inc or Matthew Olivas Permit Application Map



0 0.025 0.05 0.1 0.15 0.2 0.25 Miles

Legend

Purity Sweet Inc Property Boundary

Township/Range

Sections

QQ

Application for Permit Fee Schedule

Per Idaho Code § 42-221

The application fee is based on the proposed storage volume (acre-feet per year or AFY) or on the proposed diversion rate (cubic feet per second or CFS). For applications proposing both a diversion rate and a storage volume, determine each fee separately and pay the greater of the two.

Flow Rate (CFS)	Storage Volume (AFY)	Fee	Flow Rate (CFS)	Storage Volume (AFY)	Fee
0.00 to 0.20	0.0 to 20.0	\$100	11.01 to 12.00	1,100.1 to 1,200.0	\$690
0.21 to 1.00	20.1 to 100.0	\$250	12.01 to 13.00	1,200.1 to 1,300.0	\$730
1.01 to 2.00	100.1 to 200.0	\$290	13.01 to 14.00	1,300.1 to 1,400.0	\$770
2.01 to 3.00	200.1 to 300.0	\$330	14.01 to 15.00	1,400.1 to 1,500.0	\$810
3.01 to 4.00	300.1 to 400.0	\$370	15.01 to 16.00	1,500.1 to 1,600.0	\$850
4.01 to 5.00	400.1 to 500.0	\$410	16.01 to 17.00	1,600.1 to 1,700.0	\$890
5.01 to 6.00	500.1 to 600.0	\$450	17.01 to 18.00	1,700.1 to 1,800.0	\$930
6.01 to 7.00	600.1 to 700.0	\$490	18.01 to 19.00	1,800.1 to 1,900.0	\$970
7.01 to 8.00	700.1 to 800.0	\$530	19.01 to 20.00	1,900.1 to 2,000.0	\$1,010
8.01 to 9.00	800.1 to 900.0	\$570	20.01 to 100.00	2,000.1 to 10,000.0	*
9.01 to 10.00	900.1 to 1,000.0	\$610	100.01 to 500.00	10,000.1 to 50,000.0	**
10.01 to 11.00	1,000.1 to 1,100.0	\$650	500.01 & over	50,000.1 & over	***
* \$1,010.00 plus \$20.00 for each additional cfs or part thereof or 100 acre-feet or part thereof					
** \$2,610.00 plus \$10.00 for each additional cfs or part thereof or 100 acre-feet or part thereof					
*** \$6,610.00 plus \$2.00 for each additional cfs or part thereof or 100 acre-feet or part thereof					
Statutory Claim Fee Schedule			Amendment of Permit		
For Domestic Use		\$100	Flat Fee		\$100
For All Other Uses		\$1,000			
After June 30, 2025		\$1,500			
See separate fee schedule for Application for Transfer or Exchange.					

WITHDRAWAL
OF
APPLICATION FOR TRANSFER OF WATER RIGHT(S)

I/We, _____ 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. 78340 of Water Right

No(s). 51-4037 _____.

Signed this _____ day of _____, 20 _____.

(Signature/Title of Applicant)

(Signature/Title of Applicant)

(Signature/Title of Applicant)

(Signature/Title of Applicant)



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

August 7, 2017

PURITY SWEET INC
315 E AVE H
JEROME ID 83338

RE: Transfer Application No. 78340

Dear Mr. Olivas:

The Idaho Department of Water Resources (IDWR) is currently reviewing the above referenced transfer application proposing to redefine the nature of use of water right 51-4037 to authorize a commercial water bottling operation. The water bottling operation has been authorized for several years through Water Supply Bank lease and rental, but a more permanent water right authorization is needed if water bottling is proposed to continue. The transfer application was filed to request such authorization, but additional information is needed before full evaluation pursuant to Idaho Code §42-222 criteria can occur. Three previous requests for additional information were sent on 7/20/2011, 2/7/2013, and 6/5/2013. The response received was insufficient. Based on information submitted so far, the application would not be approved. This letter serves as one final request for additional information before a denial is ultimately issued.

Per Idaho Code §42-222, IDWR must evaluate several factors in consideration of a proposed change to an existing water right, one of which is enlargement of historic use. Review of enlargement may include evaluation of whether the historic consumptive use of a right will be increased by the proposed change. IDWR's previous requests centered largely on the need for additional information to assist in evaluation of this criteria. The amended transfer application dated 12/29/2011 included an affidavit of Michael Farnsworth stating the maximum annual consumptive volume (since December 2003) use of right 51-4037 was approximately two (2) acre feet. The following additional information is needed to evaluate enlargement:

- Additional explanation supporting the claim that the commercial uses currently authorized by water right 51-4037 (pool, baths, internal lodge use, and 1 trailer) result in two (2) acre feet of consumptive use. Historically, these uses have been recognized as mostly non-consumptive.
- Additional information identifying which of the currently authorized uses will cease or be reduced such that the new use of bottling water will not increase the total consumptive use for all uses to more than the two (2) acre feet historically used.

The requested additional information must be submitted to demonstrate the new use would not result in enlargement. Otherwise the application will be denied. Alternatively, you may withdraw the transfer application (form enclosed) and file an application for permit (form enclosed) to establish a new water right for the water bottling commercial use. If an application for permit is filed and the transfer application is withdrawn, the filing fee paid for the transfer may be used towards the filing fee for the application for permit.

Purity Sweet, Inc.

August 7, 2017

Page 2 of 2

The additional information requested or a withdrawal of transfer with a complete application for permit must be received within the next thirty (30) days. Without a timely reply, IDWR will issue a preliminary order to deny the transfer application. The application fee will not be refunded (or used for another filing) for a denied application.

IDWR forms and other information are available on the Internet at www.idwr.idaho.gov. Please contact me at 208-334-2190 if you have any questions. Thank you for your attention to this matter.

Regards,

A handwritten signature in black ink, appearing to read "Angela M. Grimm". The signature is fluid and cursive, with the first name "Angela" being more prominent.

Angela M. Grimm, P.G.

Water Rights Supervisor

Enclosure(s): Withdrawal of Application for Transfer of Water Right(s)
Application for Permit and Instructions

(Signature/Title of Applicant)

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT
To appropriate the public waters of the State of Idaho

Ident. No. _____

1. Name of applicant(s) _____ Phone _____
 Name connector (check one): ☐ and ☐ or ☐ and/or
 Mailing address _____ City _____
 State _____ ZIP _____ Email _____
2. Name of representative, if any _____ Phone _____
 Mailing address _____ City _____
 State _____ ZIP _____ Email _____
- a. ☐ Send all correspondence for this application to the representative and not to the applicant OR
☐ Send original correspondence to the applicant and copies to the representative.
- b. ☐ The representative may submit information for the applicant but is not authorized to sign for the applicant OR
☐ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation.
3. Source of water supply _____ which is a tributary of _____

4. Location of point(s) of diversion:

Twp	Rge	Sec	Govt Lot	1/4	1/4	1/4	County	Source	Local name or tag #

5. Water will be used for the following purposes:

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
 (cfs or acre-feet per year)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
 (cfs or acre-feet per year)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
 (cfs or acre-feet per year)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
 (cfs or acre-feet per year)

6. Total quantity to be appropriated is (a) _____ cubic feet per second (cfs) and/or (b) _____ acre-feet per year (af).

7. Proposed diverting works:

- a. Describe type and size of devices used to divert water from the source. _____
- b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet. If the reservoir will be filled more than once each year, describe the refill plan in item 12. For dams 10 feet or more in height AND having a storage capacity of 50 acre-feet or more, submit a separate Application for Construction or Enlargement of a New or Existing Dam. Application required? ☐ Yes ☐ No
- c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
- d. Is ground water with a temperature of greater than 85°F being sought? ☐ Yes ☐ No
- e. If well is already drilled, when? _____; drilling firm _____;
 well was drilled for (well owner) _____; Drilling Permit No. _____.

For Department Use

Received by _____ Date _____ Time _____ Preliminary check by _____
 Fee \$ _____ Receipt by _____ Receipt No. _____ Date _____

8. Description of proposed uses (if irrigation only, go to item 9):
- Hydropower; show total feet of head and proposed capacity in kW. _____
 - Stockwatering; list number and kind of livestock. _____
 - Municipal; must complete and attach the Municipal Water Right Application Checklist.
 - Domestic; show number of households _____
 - Other; describe fully. _____
9. Description of place of use:
- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
 - If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total number of acres to be irrigated: _____

10. Describe any other water rights used for the same purposes as described above. Include water delivered by a municipality, canal company, or irrigation district. If this application is for domestic purposes, do you intend to use this water, water from another source, or both, to irrigate your lawn, garden, and/or landscaping? _____
11. a. Who owns the property at the point of diversion? _____
- b. Who owns the land to be irrigated or place of use? _____
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: _____
12. Describe your proposal in narrative form, and provide additional explanation for any of the items above. Attach additional pages if necessary. _____
13. Time required for completion of works and application of water to proposed beneficial use is _____ years (minimum 1 year).
14. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½" x 11" map or maps clearly identifying the proposed point of diversion, place of use, section #, township & range. The map scale shall not be less than two (2) inches equal to one (1) mile.

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 rejection of the application or cancellation of an approval.

Signature of Applicant

Print Name (and title, if applicable)

Signature of Applicant

Print Name (and title, if applicable)

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

INSTRUCTIONS FOR FILING AN APPLICATION FOR PERMIT

All waters of Idaho, when flowing in their natural rivers, springs, lakes, and aquifers, are the property of the state. A right to divert and use Idaho water can be established only by obtaining a permit from the Department of Water Resources. To apply for a permit, prospective water users must complete the "Application for Permit" form and submit it to the Department of Water Resources with the required filing fee. The Department of Water Resources will review and process the application in accordance with applicable statutes and rules and either issue a permit or deny the application. The only water uses authorized to begin without a permit are: 1) use of ground water for single ownership homes, campgrounds, or stock watering up to 13,000 gallons per day, 2) other uses of ground water up to 2,500 gallons of water per day, 3) stockwater use where the animals drink directly from the water source, 4) extinguishing an existing fire, and 5) forest practices as defined in Idaho Code § 38-1303(1) and forest dust abatement up to 0.2 acre-feet per day.

COMPLETE THE APPLICATION FORM AS FOLLOWS:

1. Print the full name, mailing address, telephone number, and email address of each applicant. If more than one applicant, select the name connector.
2. Enter the full name, mailing address, telephone number, and email address of the applicant's representative, if any.
3. Identify the source of water supply and the major stream to which it is tributary.

EXAMPLES:

Source of water supply	<u>Trail Creek</u>	which is tributary to	<u>Snake River</u>
Source of water supply	<u>unnamed stream</u>	which is tributary to	<u>Grimes Creek</u>
Source of water supply	<u>ground water</u>	which is tributary to	<u>n/a</u>

4. Locate the point of diversion within each 40-acre tract and/or the U.S. Government Lot of the Public Land Survey System. Spring sources should be described to the nearest 10-acre tract. Identify the county where the point of diversion is located.

EXAMPLE:

Twp	Rge	Sec	Govt Lot	¼	¼	¼	County	Source	Local name or tag #
10S	14E	14	4	SW	NE	NW	Twin Falls	ground water	D0077250

Note: When both the government lot and the 10-acre or 40-acre tract are shown, the government lot is considered to be the principal legal description.

5. Estimate the rate of diversion in cubic feet per second (cfs) or the amount of storage in acre-feet (af) to be used for each purpose shown. Describe the intended use of the water and state the annual beginning and ending dates for the diversion of water. The maximum rate needed for each purpose should be requested. For instance, the normal maximum rate of diversion for irrigation is 0.02 cubic feet per second per acre. The customary diversion rate for watering range cattle is 0.00022 cubic feet per second per animal, rounded to the nearest hundredth of a cubic foot per second.

EXAMPLES:

Amount 6.4 for Irrigation purposes from Mar. 15 to Nov. 15 (both dates inclusive)
cubic feet per second

Amount 100 for Irrigation Storage purposes from Jan. 1 to Dec. 31 (both dates inclusive)
acre-feet per year

Amount 6.4 for Fish Propagation purposes from Jan. 1 to Dec. 31 (both dates inclusive)
cubic feet per second

Note: If the proposed use is fish propagation, heating, cooling, or power, or if the proposed flow rate exceeds 5.0 cfs, or if proposed irrigation exceeds 200 acres, additional information will be required. Contact a department office to determine the requirements.

6. State the total rate of diversion after accumulating flows for each use. The amount entered in Item #6 may be less than the total of the amounts listed in Item #5. However, it must be at least equal to the largest amount in line Item #5. The acre-foot amount need not be shown unless water will be stored.

EXAMPLE:

Total quantity to be appropriated is (a) 64 cubic feet per second (cfs) and/or (b) 100 acre-feet per year (af).

Note: If the project proposes storage of water and also a direct flow diversion, both the storage and direct flow components can be shown on the same form.

7. a. Describe the complete diversion system. List the pump, motor, ditch, pipeline or diversion structure sizes.
b. If applying to store water, complete this information. Depending on your proposal, a separate dam construction permit may be required. Please indicate "yes" or "no" in the space provided.
c. & d. If applying to divert water from a well, complete this information. A separate drilling permit will also be required for a new or reconstructed well.
e. If applying to develop a new use from an existing well, complete this information.
8. a. If applying for power generation, estimate both total head in feet and the anticipated installed power generation capacity in kilowatts. Include an affidavit of residency. Form No. 205/206 may be used.
b. If stockwater has been listed under Item #5, state the total number of each kind of livestock, i.e. horses, beef cattle, dairy cattle, etc.
c. If municipal water use is listed under Item #5, complete the Municipal Water Right Application Checklist and attach it to your application.
d. If domestic use is listed under Item #5, state the maximum number of households to be served. If more than one domestic unit is described and water is used for irrigation, identify acres that will be irrigated. List the acres under the irrigation use.
e. Describe any other uses not fully explained above.

EXAMPLE: If for industrial, fish propagation, etc., give details to support the amount of water requested.

9. Locate all water uses by writing in the townships, ranges and sections. Identify the uses within each 40-acre tract with the symbols shown on the table below. The number of acres to be irrigated in each 40-acre tract must be shown.

EXAMPLE:

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
10S	14E	21	40		4	4					4			40		40	40		172
		21	S		S	S	D				S			S					

Use Symbols:

Aesthetic – J
Domestic – D
Ground Water Recharge – E
Mining – X
Recreation – R

Commercial – C
Fire Protection – F
Heating – G
Municipal – M
Stockwater – S

Cooling – L
Fish Propagation – H
Industrial – I
Power – P
Wildlife – W

*Domestic may describe uses where the total use does not exceed 2,500 gal/day nor 0.04 cfs

10. Describe all other water rights used for the same purpose as sought in the application. If possible, identify the right with the number assigned by the Department of Water Resources.

11. a. Identify the landowner of record even if the land is being purchased, rented, or leased.
b. Follow the same instructions as above in Item #11a.
c. Explain the contract, lease, desert land entry, or other arrangement by which land not owned by applicant will be developed. If any federal lands must be accessed as part of the development, include with the application evidence that an application has been filed with the federal government for a right-of-way or special use permit. If developing water from a pond of less than five acres in surface area or from a spring wholly contained within a single land ownership and not flowing therefrom, submit evidence that the land owner consents to the proposed development.
12. The narrative should provide a detailed word-picture of your proposal. It should also relate any additional pertinent information that will be useful to the Department. For example, list unique features such as treatment of industrial waste, name of well drillers, number of raceways, or total weight of fish anticipated to be grown for a fish propagation filing. Attach additional pages, if necessary, to achieve sufficient detail.
13. Estimate the time required for completion of work and application of water to the proposed use. The minimum term of a permit is one year. A development period of up to five years may be requested. The Department will only grant, however, a development period equal to the time necessary to complete the project with due diligence.
14. The map must locate the point of diversion from the source of water and the location of the lands to be irrigated or the place where the water will be used. The map must also show townships, ranges, sections, and government lots. Important landmarks such as rivers, streams, roads and highways should be shown on the map. If the place of use is located in a recorded subdivision, submit a copy of that portion of the subdivision plat which contains the place of use lot. The map scale shall not be less than two (2) inches equal to one (1) mile. A copy of the U.S. Geological Survey map which identifies the point of diversion and place of use may be submitted for the map under Item #14. See example map.

SIGNATURE:

Sign the application exactly as the name appears in Item #1, unless the applicant is a corporation, municipality, partnership or other entity.

An application in more than one name must be signed by each applicant unless the names are joined "and/or".

If the applicant is a corporation, municipality, or partnership, the person signing the application must be an officer or elected official of the corporation or municipality and must show the position below the signature. The applicant must submit a list of corporate or partnership officers, directors and partners and corresponding addresses to the Department with the application.

If someone other than the applicant or a company officer signs the application, evidence must be included with the application that the person signing has authority to sign and holds a current "Power of Attorney" authorizing the action. (Power of Attorney forms are available from the Department upon request.)

Measurement Units

One cubic foot per second (cfs) = 448.8 gallons per minute or 50 miner's inches (Idaho)

One cubic foot per second flowing 24 hours = 1.9835 acre-feet

One acre-foot = the volume necessary to cover one acre to a depth of one foot (43,560 cubic feet)

One miner's inch = a continuous flow equal to 1/50 cubic feet per second or 0.02 cubic feet per second

APPLICATION FEE SCHEDULE (PER IDAHO CODE § 42-221)

The application fee is based on the proposed storage volume (acre-feet per year or AFY) or on the proposed diversion rate (cubic feet per second or CFS). For applications proposing both a diversion rate and a storage volume, determine each fee separately and pay the greater of the two.

Application fees (CFS = cubic feet per second; AF = acre-feet)

Flow Rate (CFS)	Storage Volume (AF)	Fee	Flow Rate (CFS)	Storage Volume (AF)	Fee
0.00 – 0.20	0.0 – 20.0	\$100.00	11.01 – 12.00	1,100.1 – 1,200.0	\$690.00
0.21 – 1.00	20.1 – 100.0	\$250.00	12.01 – 13.00	1,200.1 – 1,300.0	\$730.00
1.01 – 2.00	100.1 – 200.0	\$290.00	13.01 – 14.00	1,300.1 – 1,400.0	\$770.00
2.01 – 3.00	200.1 – 300.0	\$330.00	14.01 – 15.00	1,400.1 – 1,500.0	\$810.00
3.01 – 4.00	300.1 – 400.0	\$370.00	15.01 – 16.00	1,500.1 – 1,600.0	\$850.00
4.01 – 5.00	400.1 – 500.0	\$410.00	16.01 – 17.00	1,600.1 – 1,700.0	\$890.00
5.01 – 6.00	500.1 – 600.0	\$450.00	17.01 – 18.00	1,700.1 – 1,800.0	\$930.00
6.01 – 7.00	600.1 – 700.0	\$490.00	18.01 – 19.00	1,800.1 – 1,900.0	\$970.00
7.01 – 8.00	700.1 – 800.0	\$530.00	19.01 – 20.00	1,900.1 – 2,000.0	\$1,010.00
8.01 – 9.00	800.1 – 900.0	\$570.00	20.01 – 100.00	2,000.1 – 10,000.0	*
9.01 – 10.00	900.1 – 1,000.0	\$610.00	101.01 – 500.00	10,000.1 – 50,000.0	**
10.01 – 11.00	1,000.1 – 1,100.0	\$650.00	500.01 & over	50,000.1 & over	***

* \$1,010.00 plus \$20.00 for each additional 1.0 cfs or part thereof or 100 acre-feet or part thereof over the first 20 cfs or 2,000 acre-feet.

** \$2,610.00 plus \$10.00 for each additional 1.0 cfs or part thereof or 100 acre-feet or part thereof over the first 100 cfs or 10,000 acre-feet.

*** \$6,610.00 plus \$2.00 for each additional 1.0 cfs or part thereof or 100 acre-feet or part thereof over the first 500.0 cfs or 50,000 acre-feet.

Your application and fee may be submitted to one of the following offices:

Northern Region

Idaho Dept. of Water Resources
7600 N Mineral Dr, Suite 100
Coeur d'Alene, ID 83815-7763 Tel. – 762-2800
FAX – 762-2819

Eastern Region

Idaho Dept. of Water Resources
900 N Skyline Dr, Suite A
Idaho Falls, ID 83402-1718 Tel. – 525-7161
FAX – 525-7177

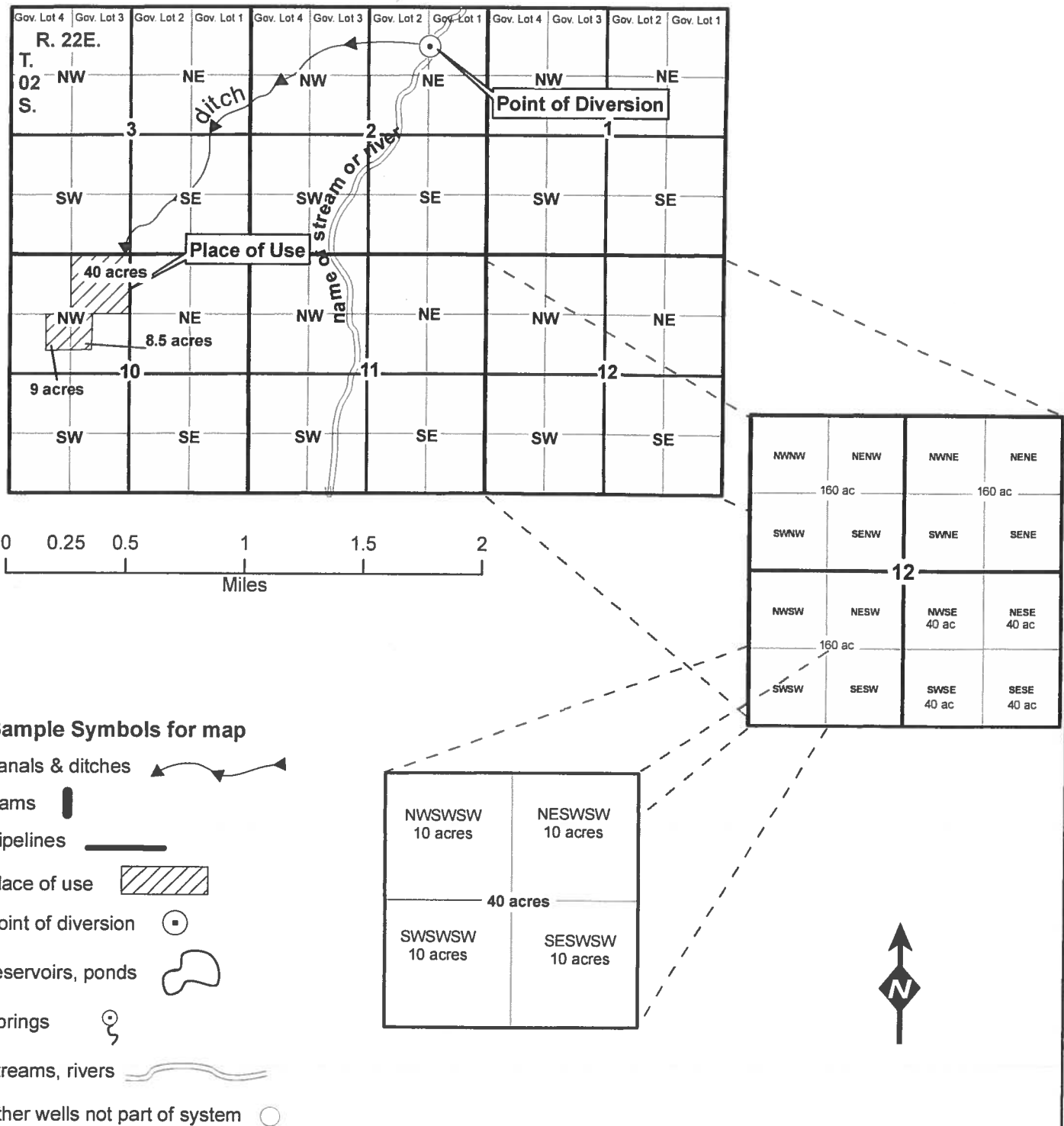
Southern Region

Idaho Dept. of Water Resources
650 Addison Ave W, Suite 500
Twin Falls, ID 83301-5858 Tel. – 736-3033
FAX – 736-3037

Western Region

Idaho Dept. of Water Resources
2735 Airport Way
Boise, ID 83705-5082 Tel. – 334-2190
FAX – 334-2348

Water Diversion and Delivery System Map Example



Example Map

Grimm, Angie

From: Grimm, Angie
Sent: Thursday, August 03, 2017 1:24 PM
To: Buyer, Remington
Cc: Keen, Shelley; Miller, Nick
Subject: RE: Purity Sweet
Attachments: ReqAddInfo_8_7_2017.docx; TransferNo78340SummaryPolicyCourseOfAction.docx

Remington,

Attached is a letter I propose to send (on Monday 8/7/17) to Purity Sweet, Inc. requesting additional information to continue evaluation of Transfer No. 78340. The transfer application and all correspondence regarding transfer processing to date are scanned and profiled (available through PCDocs now - via WR Info Search Workflow tomorrow) if you wish to review. I've also attached a document summarizing the transfer proposal, relevant statutes/policy memos/etc., policy interpretation, and proposed course of action regarding this transfer proposal. Since policy interpretation and processing of the transfer may have some effect on processing the Water Supply Bank rental application, I thought summarizing this information and providing it to you and Shelley Keen (cc'd in this email) would be of some value. Based on my understanding of the proposed change to the commercial use of the right, both in the transfer and through the rental, I do have some concern enlargement may occur if water bottling occurs without an equivalent reduction in use currently authorized by right 51-4037. This concern is the basis for the information request I propose to send out Monday. There may also be concerns with injury or other I.C. § 42-222 criteria to be evaluated prior to a transfer authorization, but I've focused my request on the apparent enlargement concern before completing evaluation of other factors as I see the enlargement concern as the most evident. Should the enlargement concern be addressed by the applicant, I anticipate publication of the transfer proposal with associated comment letters to interested parties, as well as a potential contested case process, will play a large part in consideration of the other criteria to be evaluated.

I hope these comments are helpful in your review of the rental. Please let me know if you have any questions on comments on my proposed course of action or any of the documents I've attached to this email.

Regards,
Angie

Angela M. Grimm, P.G.
Water Rights Supervisor
IDWR - Western Region
2735 Airport Way
Boise, ID 83705-5082
(208) 334-2190 phone
(208) 334-2348 fax

From: Buyer, Remington
Sent: Tuesday, July 25, 2017 4:14 PM
To: Grimm, Angie <Angie.Grimm@idwr.idaho.gov>
Cc: Miller, Nick <Nick.Miller@idwr.idaho.gov>
Subject: Purity Sweet

Angie,

Attached is a draft 2017 rental agreement, map and review memo for Purity Sweet Inc. Purity Sweet owns property (and appurtenant water right 51-4037) in Murphy Hot Springs, in Owyhee County. Historically, water was diverted from a spring for use in conjunction with a commercial venture (hot springs resort), however in the mid 1990s, the current owner began bottling spring water for sale and distribution. They applied for a permit (51- 7362: denied) and they followed that with a transfer (78340) for a portion of 51-4037 (assigned to you).

The lease and rental will conclude at the end of 2017 and I anticipate, if the transfer is not processed prior to next year, they will reapply for another five year lease/rental transaction. I don't foresee there being a reason for the Bank to not reconsider a future lease/rental of this water right, however we may advertise it to address local public interest concerns. In advance of the future rental (or review of Transfer 78340), I'm wondering if you (or other Western region staff) have any comments or recommendations for the 2017 rental?

Thanks!

Remington
287-4918



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

August 7, 2017

PURITY SWEET INC
315 E AVE H
JEROME ID 83338

DRAFT

RE: Transfer Application No. 78340

Dear Mr. Olivas:

The Idaho Department of Water Resources (IDWR) is currently reviewing the above referenced transfer application proposing to redefine the nature of use of water right 51-4037 to authorize a commercial water bottling operation. The water bottling operation has been authorized for several years through Water Supply Bank lease and rental, but a more permanent water right authorization is needed if water bottling is proposed to continue. The transfer application was filed to request such authorization, but additional information is needed before full evaluation pursuant to Idaho Code §42-222 criteria can occur. Three previous requests for additional information were sent on 7/20/2011, 2/7/2013, and 6/5/2013. The response received was insufficient. Based on information submitted so far, the application would not be approved. This letter serves as one final request for additional information before a denial is ultimately issued.

Per Idaho Code §42-222, IDWR must evaluate several factors in consideration of a proposed change to an existing water right, one of which is enlargement of historic use. Review of enlargement may include evaluation of whether the historic consumptive use of a right will be increased by the proposed change. IDWR's previous requests centered largely on the need for additional information to assist in evaluation of this criteria. The amended transfer application dated 12/29/2011 included an affidavit of Michael Farnsworth stating the maximum annual consumptive volume (since December 2003) use of right 51-4037 was approximately two (2) acre feet. The following additional information is needed to evaluate enlargement:

- Additional explanation supporting the claim that the commercial uses currently authorized by water right 51-4037 (pool, baths, internal lodge use, and 1 trailer) result in two (2) acre feet of consumptive use. Historically, these uses have been recognized as mostly non-consumptive.
- Additional information identifying which of the currently authorized uses will cease or be reduced such that the new use of bottling water will not increase the total consumptive use for all uses to more than the two (2) acre feet historically used.

The requested additional information must be submitted to demonstrate the new use would not result in enlargement. Otherwise the application will be denied. Alternatively, you may withdraw the transfer application (form enclosed) and file an application for permit (form enclosed) to establish a new water right for the water bottling commercial use. If an application for permit is filed and the transfer application is withdrawn, the filing fee paid for the transfer may be used towards the filing fee for the application for permit.

Purity Sweet, Inc.
August 7, 2017
Page 2 of 2

The additional information requested or a withdrawal of transfer with a complete application for permit must be received within the next thirty (30) days. Without a timely reply, IDWR will issue a preliminary order to deny the transfer application. The application fee will not be refunded (or used for another filing) for a denied application.

IDWR forms and other information are available on the Internet at www.idwr.idaho.gov. Please contact me at 208-334-2190 if you have any questions. Thank you for your attention to this matter.

Regards,

Angela M. Grimm, P.G.
Water Rights Supervisor

Enclosure(s): Withdrawal of Application for Transfer of Water Right(s)
Application for Permit and Instructions

Transfer No. 78340 - Purity Sweet, Inc.

Angie Grimm, IDWR – 8/3/2017

Proposal/Request and Brief History:

- Applicant requesting change to condition “Commercial use is for pool, baths, internal lodge use and 1 trailer.” on water right 51-4037 via Transfer No. 78340 originally filed 8/31/2009 (amended app received 12/29/2011).
- This condition on water right decree issued 12/11/2003.
- Applicant wants the right to recognize water bottling as an authorized commercial use. No additional diversion rate or other element on the face of the right is proposed for change – right currently authorizes 0.06 cfs for commercial use (no volume limit) – only proposed change is to the condition.
- Applicant provided an affidavit with the amended transfer application indicating 2 af of consumptive use in the past (since 2003), current (2011) consumptive use 0.12 af for water bottling, propose to increase to no more than 2 af total. Affidavit does not state how 2 af calculated/derived. Also, does not discuss continued use or non-use of currently authorized commercial uses (pool, baths, internal lodge use, or 1 trailer).
- SRBA field examination (3/3/1994) indicates right 51-4037 commercial uses considered non-consumptive.
- Transfer application has not been advertised.
- Applicant also has pending Water Supply Bank rental application for right 51-4037 to authorize water bottling (WSB authorizations for water bottling activity in place since 2009). Rental agreement to 12/31/2017 likely to be issued. If transfer or other permanent water right authorization not finalized by 12/31/2017, likely another lease/rental request for another 5 years from applicant.
- WSB and transfer filing resulted from enforcement action/activities stemming back to mid-1990s. Other users of springs and neighbors concerned with water bottling activities and disruption of pipes/distribution system (system provides water to at least one other user via right 51-10220).
- Previous permit application (no. 51-7362) filed for water bottling activities ultimately denied (final order issued 1/26/1998) without prejudice due to I.C. § 42-203A criteria (sufficiency of supply, injury, insufficient financial resources, and local public interest).

Relevant Statutes, Policy Memos, etc.:

- I.C. § 42-202B(1) defines consumptive use for purposes under I.C. § 42-222. States changes in consumptive use to not require a transfer pursuant to section 42-222, Idaho Code.
- I.C. § 42-222 states a nature of use change requires filing of an application (transfer).
- I.C. § 42-222 states consumptive use, as defined in I.C. § 42-202B, *may* be considered as a factor in determining whether a proposed change would constitute an enlargement.
- I.C. § 42-202A(9) states an irrigation right holder shall not be required to obtain an additional water right for the incidental use of the same water for hydropower generation.
- TP Memo No. 24 Section 1 When a Transfer is Required – Changes to Elements of a Water Right (pg 2) states conditions may limit or further define an element of the right and a transfer is required to alter such a condition. Example given one industrial use to

another; if a condition limits the *quantity* of water that can be consumptively used, change to a different more consumptive industrial use cannot be made unless enlargement is prevented.

- TP Memo No. 24 Section 2 When a Transfer is Not Required – Changes in Consumptive Use (pg 4) states consumptive use by itself is not an element of the right subject to transfer requirements unless a specific condition limits the *amount* of consumptive use.
- TP Memo No. 24 Section 2 When a Transfer is Not Required – Intensified Use of Water (pg 7) states a transfer is not required to increase production under a right unless the proposed change would also result in a change to the elements of the right as licensed or decreed.
- TP Memo No. 24 Section 3 Requirements for an Acceptable Application for Transfer (13) – Historic Beneficial Use (pg 14) – If transfer proposes nature of use change, the applicant must provide information documenting the historic extent of beneficial use.
- TP Memo No. 24 Section 5b. Enlargement of Use (2) – Beneficial Use (pg 28) – Transfer proposing to change the nature of use which change would not result in an equivalent reduction in beneficial use under the right will presume to enlarge the right. Example, hydropower cannot be added to an irrigation right (even though non-consumptive and no additional diversion of water proposed) unless irrigation use reduced by equivalent amount.
- TP Memo No. 24 Section 5b. Enlargement of Use (5) – Historic Beneficial Use (pg 29) – Transfer proposing nature of use change must not enlarge historic extent of beneficial use. Irrigation right examples provided (no non-irrigation right nature of use change examples given in this section of memo) include evaluation of historic consumptive use.
- 11/29/2006 Ltr to Chris Meyer from Karl Dreher regarding use of rights 29-2284 and 29-2301 (copy attached) – Response to question/issue #1 (pg 2) – “A change from one industrial use to another industrial use would not constitute a change in nature of use, unless specific conditions incorporated in the water right further limit the type of beneficial use under the right.”
- Water Law Handbook – Givens Pursley LLP publication 1/2/17 ver. – Section 3B(8) – Consumptive use quantity not an element (pg 26) – States early SRBA process required consumptive use be quantified for each right repealed in 1997. Mentions 2004 change to statute updated I.C. § 42-202B(1).
- Water Law Handbook – Givens Pursley LLP publication 1/2/17 ver. – Section 12E(4) – Changes in water consumption in same beneficial use do not require a transfer (pg 130) – States industrial user could modify processes, substantially decrease return flow, without seeking the Department’s approval. However, if element of right is changing via I.C. § 42-222 transfer process, consumptive use may not be enlarged.

Policy Interpretation:

- Right 51-4032 includes a condition specifically outlining the type of commercial use.
- This condition is considered to further define the nature of use of the right.
- A transfer is required to change the type of commercial use authorized to include water bottling.
- The transfer is considered a nature of use change despite the fact no changes to the elements on the face of the right (commercial use remains commercial use) are proposed.

- As a proposed nature of use change transfer, the Department *does* consider historic consumptive use in evaluation of enlargement.
- The applicant must provide historic consumptive use information and propose an equivalent reduction in existing authorized commercial use(s) to allow for the new commercial use (water bottling).

Proposed Course of Action:

- Request additional information from the applicant confirming method used to determine historic consumptive use claimed (2 af).
- Request additional information from the applicant confirming what currently authorized beneficial use(s) (pool, baths, internal lodge use and 1 trailer) consumptive use will be reduced to allow for the new beneficial use (water bottling) consumptive use to avoid enlargement/increase beyond historic use.
- Request applicant provide additional information to further transfer processing OR withdraw transfer and file new permit application.
- Inform the applicant if information cannot be provided within thirty (30) days, Department will issue preliminary order denying transfer application.



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

November 29, 2006

JAMES E. RISCII
Governor

KARL J. DREHER
Director

Mr. Christopher H. Meyer
Givens Pursley LLP
Suite 200
277 North 6th Street
P. O. Box 2720
Boise, ID 83701

COPY

VIA FACSIMILE TO (208) 388-1300 AND FIRST CLASS MAIL

Re: Water Right Nos. 29-02284 and 29-02301

Dear Chris:

This letter is provided in response to your letter dated November 9, 2006, regarding the above referenced water rights. In your letter, you requested written confirmation regarding the law governing the use of the above referenced water rights on behalf of your client, Southeast Idaho Energy, LLC (SIE).

As background, water right license no. 29-02284 was issued on May 12, 1952, to Westvaco Chemical Division Food Machinery & Chemical Corporation. A Report of Engineer prepared on April 16, 1952, documenting the extent of beneficial use indicated the purpose of use under the right as manufacturing and included the following remark: "This water is mainly used for cooling purposes and is reported as being returned to a drain unaltered qualitively [sic] unless it perhaps carries an additional trace of phosphorus. Water is returned to a drain which flows through the Simplot property then into a natural drain into the Portneuf River."

Water right license no. 29-02301 was issued on May 1, 1955, also to Westvaco Chemical Division Food Machinery & Chemical Corporation. A Report of Engineer prepared on April 16, 1953, documenting the extent of beneficial use indicated the purpose of use under the right as manufacturing and industrial.

As you noted in your letter, partial decrees were issued for both water rights in the Snake River Basin Adjudication (SRBA) on March 22, 2004. Water right no. 29-02284 was decreed for industrial use in the amount of 4.5 cfs and 3,257.9 acre-feet per year. Water right no. 29-02301 was decreed for industrial use in the amount of 4.00 cfs and 2,895.9 acre-feet per year.

Regarding the six issues for which you sought confirmation, the following addresses each issue in the order listed in your November 9 letter:

1. *The change from one type of manufacturing activity to another does not constitute a change in the nature of use, so long as both the old and new uses are "industrial." The fact that the prior specific industrial operation is described in the permit approvals and proofs of beneficial use does not change this. Accordingly, SIE would not be required to apply for a change (or transfer) of the water rights under Idaho Code § 42-222*

A change from one industrial use to another industrial use would not constitute a change in nature of use, unless specific conditions incorporated in the water right further limit the type of beneficial use under the right. Neither of the partial decrees for right no. 29-02284 or right no. 29-02301 includes any specific conditions limiting the industrial use under the rights. Without such conditions, a transfer is not required to change from one industrial use to another, provided that no element of the water right is changed.

2. *The water rights on their face do not specify any particular return flow or limit on consumptive use. Consequently, SIE (or its successor) would be allowed to modify the pattern of diversion and/or return flow (compared to the pattern in effect under FMC's operation) and could consume up to 100 percent of the authorized diversion in beneficial use of the water right. This would be true even if an element of the water right (other than the nature of use) were changed and the water rights were subjected to a transfer proceeding under Idaho Code § 42-222*

Since a transfer is not required to simply change from one industrial use to another industrial use under water rights no. 29-02284 and no. 29-02301, provided no element of either of the rights is changed, the current owner or any subsequent owner, including SIE, can divert and consume up to 100 percent of the authorized diversion rates under the rights for industrial purposes. However, in the event a change to any element of the rights is sought, which would require filing an application for a transfer, the transfer if approved could not allow enlargement or injury to any other existing rights. Therefore, while it is not appropriate to prejudge a future, hypothetical transfer, the extent of historic beneficial use under either of the rights could limit the right sought to be transferred to prevent enlargement or injury to other rights. However, the specific facts of an actual transfer would have to be considered to determine what limitations may be appropriate to prevent enlargement or injury.

3. *At this time, no change in any element of the water rights is contemplated. In the event, however, that it became necessary to add a new point of diversion or otherwise change some element of the water rights, we understand that the change would need to be approved by the Department pursuant to Idaho Code § 42-222*

This is a correct statement.

4. *In the event of such a change (not involving a change in the nature of use), the Department would not consider prior diversion patterns, return flow, consumptive use, or actual historical use or limit the water rights based on such considerations. Instead, the holder would be entitled to use the full diversion quantity on the face of the partial decree (so long as the nature of use is not changed).*

This is similar to issue 2 above, and the response is the same as for issue 2 above.

5. *Under no circumstance would the Department consider any allegation of partial or total forfeiture or abandonment based on non-use prior to the issuance of the partial decrees. (This is not intended to limit the authority of the Department to consider actual historic beneficial use in the event of a change in nature of use)*

The Department presumes that a right has not been forfeited within the five-year period after a partial decree has been issued for the right. The basis for this presumption is the SRBA District Court's *Order on Challenge (Consolidated Issues) of "Facility Volume" Issue and "Additional Evidence" Issue*, Subcase Nos. 36-02708, et al. (issued December 29, 1999). The court determined that forfeiture provisions are tolled for purposes of establishing forfeiture for claims pending in the adjudication. Although the Department presumes that a right has not been forfeited or abandoned within the five-year period after a partial decree is issued, the presumption is rebuttable and the issue could be raised if an application for transfer is protested.

6. *Likewise, no issue or allegation regarding any condition, error, or deficiency in connection with any prior transfer or other action of the Department predating the 2004 partial decrees would be entertained. In other words, there is no need for the purchaser to conduct due diligence on the water with respect to the history of the water right prior to the partial decree.*

The Department recognizes the partial decrees as the lawful determination of the validity and extent of the rights unless changed by a court having jurisdiction to alter the decrees.

Beyond these six issues, you correctly noted in your November 9 letter that since the FMC plant closed, water rights no. 29-02284 and no. 29-02301 "have been placed in the Idaho Water Supply Bank and have been leased to others on an annual lease" at least during the years 2002, 2005, and 2006. Such use of these rights is pursuant to a private lease between FMC Corp. and the American Falls - Aberdeen Ground Water District, Bingham Ground Water District, and the Bonneville-Jefferson Ground Water District. That lease automatically renews on April 15 each year unless terminated by either the lessor or lessee with at least a 90-day written notice in advance of termination.

I hope this response is helpful to you and your client. Please let me know if you have additional questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Karl J. Brecher', written over a horizontal line.

Karl J. Brecher
Director

c: Jeff Peppersack – IDWR
Phillip Rassier – Deputy Attorney General, IDWR
John Simpson – Barker, Rosholt & Simpson LLP