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January 9, 2017

VIA EMAIL AND REGULAR MAIL

Idaho Department of Water Resources
Attn: James Cefalo
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402-1718
james.cefalo@idwr.idaho.gov

RECEIVED
JAN 19 2017
Department of Water Resources
Eastern Region

RE: Response to Letter dated December 6, 2016 Regarding Global Ag Properties II USA LLC Applications for Transfer.

Dear James:

This letter is a response to your letter referenced above. I have been retained by Global Ag Properties II USA LLC (“Global Ag”) to review the portion of the letter concerning enlargement and to respond accordingly. I indicated that I would respond to your letter after the meeting I held with you and Blake Jordan on December 19, 2016.

The three transfers request amendments to Water Right No. 35-7168 (hereinafter, simply “35-7168”), which is a ground water right. As described in your letter, the farm identified as the place of use for 35-7168—the Shawver farm—also has associated with it an entitlement to water from the Peoples Canal and Irrigation Co. (“Peoples”) evidenced by ownership of shares in Peoples. You have indicated that in order to avoid enlargement, Global Ag will need to either (1) have Peoples’ water rights reduced by 225 acres; or (2) move 225 acres of Peoples’ water rights along with 35-7168 to the new place of use.

Concerning your two suggestions, it does not appear that Peoples would agree to reduce its water rights by 225 acres or agree to split off a 225-acre portion of its water rights to convey to Global Ag to move along with 35-7168. Peoples was copied on your letter and neither Global Ag nor its consultant, Brockway Engineering, has been contacted by Peoples indicating its willingness to pursue either option. Additionally, either suggestion would require Peoples to modify its property rights for the benefit of a single shareholder, which possibly violates certain aspects of corporate and business law, such as whether a corporation can divest itself of a portion of its property rights for the benefit of a single shareholder without a full corporate dissolution. And it is likely that such actions by Peoples would violate its articles or bylaws. Perhaps more importantly, as described in further detail below, we do not believe that either action is necessary to avoid an enlargement.

Based upon a review of water right documents associated with 35-7168, it was developed by Robert J. Shawver as evidenced by a license issued on January 31, 1980. The license described the water right elements that limit how the water right can be exercised. A partial decree in the SRBA was issued in February of 2002 confirmed the elements of 35-7168. Consideration of the **express** conditions of the partial decree of 35-7168 is the appropriate starting point for an enlargement analysis.

Conditions contained in a water right are recognized as part of the water right. For a water right permit, Idaho Code § 42-203A(5) allows the Director to “grant a permit upon conditions.” The perfected permit is then licensed pursuant to Idaho Code § 42-219 wherein the issued license must bear “the number of[] the permit under which the works from which such water is taken were constructed.” Such license therefore must incorporate any permit conditions and is part and parcel to all elements of the water right. As a result of including these conditions in a license, “[s]uch license **shall be binding upon the state** as to the right of such licensee to use the amount of water mentioned therein, and shall be prima facie evidence as to such right[.]” Idaho Code § 42-220 (emphasis added).

The binding effect of conditions in a water right license remains unchanged in the formal adjudication of a water right license. With claims submitted in an adjudication (such as the SRBA), the claim form requires inclusion of “conditions of the exercise of any water right included in any decree, license, approved transfer application or other document,” Idaho Code § 42-1409(j), the report of the director requires inclusion of the same conditions, Idaho Code § 42-1411(2)(j), and the final step of the adjudication process—issuance of the partial decree—is required to “contain or incorporate a statement of each element of a water right as stated in subsections (2) and (3) of section 42-1411, Idaho Code.” Idaho Code § 42-1412(6).

The legal effect of that partial decree is clear:

[A] decree entered in a general adjudication such as the SRBA is conclusive as to the nature and extent of the water right.

Rangen, Inc. v. Idaho Dep't of Water Res., 159 Idaho 798, 367 P.3d 193, 199 (2016).

To the extent there is a dispute over the elements of a decreed water right, “Idaho courts interpret water decrees using the same interpretation rules that apply to contracts.” *Id.* “When interpreting a [water right decree], this Court begins with the document’s language.” *Potlatch Educ. Ass’n v. Potlatch Sch. Dist. No. 285*, 148 Idaho 630, 633, 226 P.3d 1277, 1280 (2010). “The purpose of interpreting a [water right decree] is to determine the intent of the [decreeing court] at the time the [water right decree] was entered. In determining the intent of the [decreeing court],

this Court must view the [water right decree] as a whole.” *Pocatello Hosp., LLC v. Quail Ridge Med. Inv’r, LLC*, 156 Idaho 709, 720, 330 P.3d 1067, 1078 (2014).

35-7168 does not contain any reference to the Peoples’ water entitlement in its express conditions. Accordingly, there is no express condition making 35-7168 “supplemental” or “stacked” with the Peoples’ water entitlement. This is acknowledged on page 2 of your letter: “There are no conditions on water right 35-7168 requiring the right holder to divert surface water first or to limit diversion of ground water to supplemental use only.”

Without a supplemental condition limiting the nature of how it can be exercised, 35-7168 is a stand-alone ground water right. The plain language of the partial decree for 35-7168 should end the inquiry as to the nature of 35-7168—it is legally not supplemental nor stacked with the Peoples water.

With a stand-alone ground water right and a stand-alone entitlement to canal water, the Shawver farm therefore is appropriately characterized as having “dual” water rights available for irrigation of its acres—either with (1) 35-7168; or (2) the Peoples water entitlement. Therefore, the question of whether 35-7168 can be moved to another location is dependent on whether it has been historically beneficially used such that its use at another location will not introduce new impacts to the ESPA. Stated another way, the question should then simply turn to whether 35-7168 has been historically used and does not suffer from a possible forfeiture issue.

In terms of why historical beneficial use matters, Idaho law is clear that “[b]eneficial use is enmeshed in the nature of a water right,” *United States v. Pioneer Irr. Dist.*, 144 Idaho 106, 113, 157 P.3d 600, 607 (2007), and is “the basis, the measure and the limit” of a water right, *Id.* at 111, 157 P.3d at 605. “In Idaho it is ‘a well-settled rule of public policy that the right to the use of the public water of the state can only be claimed where it is applied to a beneficial use in the manner required by law.’” *Pioneer*, 144 Idaho at 110, 157 P.3d at 604 (quoting *Albrethsen v. Wood River Land Co.*, 40 Idaho 49, 60, 231 P. 418, 422 (1924)).

The Peoples’ water entitlement has not been used since 35-7168 was appropriated in 1971, and because 35-7168 is a stand-alone ground water right with an undisputed historical record of full beneficial use, it is fully eligible to be transferred consistent with Idaho law. As described in your letter, the historical beneficial use of water on the Shawver farm has been irrigation with ground water diverted under 35-7168: “The diversion records for WMIS #5000888 indicate that water right 35-7168 has been used as a primary right to irrigate the existing place of use.”

Therefore, in addition to not being legally supplemental or otherwise tied to the Peoples water, it is not “historically” a supplemental right either.

Despite the lack of a supplemental condition in 35-7168, and evidence of full beneficial use of 35-7168, which should end the enlargement inquiry, your letter states that this is “not the end of the enlargement inquiry.” Further, you explain that “unstacking the surface and ground water rights and irrigated 450 acres (when only 225 acres have been historically irrigated by these stacked rights) is an enlargement of use.” We disagree with this position for a number of reasons.

First, the enlargement inquiry is focused only on the water right proposed to be amended, not other associated water entitlements that are not tied by condition to the water right proposed to be amended. This is evident in the plain language of Idaho Code § 42-222(1) that the proposed change “does not constitute an enlargement in use of the original right.” (emphasis added). Thus, if what was being proposed was irrigation of more than 225 acres under 35-7168 only, that would be an enlargement because it would increase the irrigated acres thereby increasing consumptive use under 35-7168. See Idaho Code § 42-222(1) (“The director may consider consumptive use, as defined in section 42-202B, Idaho Code, as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right.”) (emphasis added).

The Idaho Supreme Court has also focused on the original water right only in its discussion of enlargement. It has explained that the term “enlargement” has “been used to refer to any increase in the beneficial use to which an existing water right has been applied, through water conservation and other means. An enlargement may include such events as an increase in the number of acres irrigated, an increase in the rate of diversion or duration of diversion.” *Fremont-Madison Irrigation Dist. v. Idaho Ground Water Appropriators, Inc.*, 129 Idaho 454, 458, 926 P.2d 1301, 1305 (1996).

Therefore, use of other water rights—such as Peoples’ water—to irrigate the Shawver farm is not a relevant matter when considering possible enlargement concerns with the transfer of 35-7168. It does not matter that Mr. Shawver wisely retained his Peoples shares and has continued to pay assessments on those shares to retain an entitlement to that water as an alternative water source in the event use of the surface water became necessary.

Second, it appears that you are inserting an “implied condition” into 35-7168 which converts it from a stand-alone ground water right into a supplemental water right. This is not in accord with the plain language of the partial decree for 35-7168, which, as described above, is the correct standard to follow when interpreting a partial decree.

Additionally, to the extent it is believed by the Department that a supplemental condition should have been included with 35-7168, such a position should have been asserted in the SRBA. Inferring conditions for 35-7168 is a collateral attack on the partial decree for 35-7168. In *Rangen, Inc. v. Idaho Dep’t of Water Res.*, 159 Idaho 798, 367 P.3d 193, (2016), Rangen made

just such an assertion regarding interpretation of its point of diversion location, and the Idaho Supreme Court addressed it as follows:

On review, the district court concluded that if Rangen disagreed with how its water rights were recommended and ultimately decreed, it had an opportunity and responsibility to voice its concerns in the appropriate forum—the SRBA. The district court reasoned that this was necessary because the SRBA is a forum where all parties to the adjudication would have been afforded appropriate notice of Rangen's arguments and been given the opportunity to respond.

One purpose of the SRBA is “to establish ... a uniform description for surface water rights, ground water rights and water rights which include storage.” I.C. § 42-1427. “Conjunctive management of ground water and surface water rights is one of the main reasons for the commencement of the Snake River Basin Adjudication.” *A & B Irrigation Dist. v. Idaho Conservation League*, 131 Idaho 411, 422, 958 P.2d 568, 579 (1997) (quoting 1994 Interim Leg. Comm. Rep. on the Snake River Basin Adjudication 36-37 (1994)). The quoted Committee Report continued: “The SRBA should determine the ultimate source of the ground and surface water rights being adjudicated. This legal determination must be made in the SRBA ... If the SRBA proceeds and these issues are not addressed, a major objective for the adjudication will not have been served.” *Id.* Further, as the district court in the present case held, allowing a party to contest a partial decree outside of the SRBA would undermine any certainty or finality of the partial decree.

Rangen argues that it is disputing the Director's interpretation of the partial decrees rather than the partial decrees themselves. But this is a distinction without a difference. Any interpretation of Rangen's partial decrees that is inconsistent with their plain language would necessarily impact the certainty and finality of SRBA judgments and, therefore, requests for such interpretations needed to be made in the SRBA itself.

The district court found that Rangen's argument was based on the idea that the decrees do not accurately reflect its historical beneficial use. The court held that this argument was an impermissible collateral attack on the decrees. This Court agrees and affirms the district court's holding that Rangen's partial decrees entitle it to divert only that water emanating from the Martin-Curren Tunnel and only within the decreed ten-acre tract. If Rangen wanted its water rights to be interpreted differently, it should have timely asserted that in the SRBA.

Rangen, Inc. v. Idaho Dep't of Water Res., 159 Idaho 798, 367 P.3d 193, 201 (2016) (emphasis added).

Third, as described above, the historical beneficial use of 35-7168 will continue as it has historically and will not increase—225 acres have been irrigated with ground water for over 40 years under 35-7168 and that same irrigation will continue, at a different location, but with no increase in consumptive use under 35-7168.

Fourth, consider a situation where 35-7168 was the only water entitlement associated with the Shawver property. There would be no question with enlargement if it was moved. And this would be the case even if, subsequent to a transfer of 35-7168, Global Ag acquired Peoples shares in order to irrigate the Shawver farm. Enlargement of 35-7168 would not even be considered in this situation. The Peoples water would be viewed as a separate source of water. The analysis should be the same no matter when the Peoples shares became associated with the Shawver property.¹ To find otherwise exalts form over substance. Further, under the position asserted in your letter, a ground water right and a surface water right used on separate properties could be associated with the same land for a short time period, and that association could forever combine them, even though the rights were historically used on separate properties.

Fifth, the position asserted in your letter regarding enlargement appears to be inconsistent with past Department practice and articulated policy in certain contested cases. The following is a discussion of four examples. The referenced exhibits in the discussion below are attached to this letter.

(1) Harry Bokma Water Right 36-2508

In 2011 Harry Bokma submitted two transfer applications to IDWR. One transfer was to provide stock and commercial water to a dairy. The second transfer would rearrange the remaining portion of the irrigation water right. Upon reviewing the transfer, IDWR requested a meeting to discuss the transfer. During the meeting, the issue of primary or supplemental was the main concern of IDWR due to the current location of canal shares from North Side Canal Company on the farm. It was decided at that meeting that the two transfers would be withdrawn and that Mr. Bokma would lease or move the North Side Canal Shares off of the ground water rights POU. The ground water and surface water had not been applied to the same acres during the same irrigation season.

¹ This should be the case unless, of course, there was a supplemental condition described on 35-7168.

The two transfers were withdrawn from IDWR and the North Side Canal shares were leased off of the ground water POU. Irrigation occurred in the ground water POU with only ground ground water during the 2011 irrigation season.

Two new transfers were submitted to IDWR in the fall of 2011 and subsequently approved by IDWR. The Transfer 77656 Memorandum prepared by William Mills (January 26, 2012) summarizes the canal shares were moved off of the ground water POU which allowed the transfer to be approved. A condition was placed on the irrigation water right to indicate that it could become supplemental at a future date unless the shares were permanently moved off of the irrigation POU.

No enlargement of water right 36-2508 was determined by IDWR at the time off approval of the two transfers and water right 36-2508 is considered a primary ground water right. (See Exhibit A for Bokma Transfer Documents).

(2) Bruce Bulcher Water Right 47-2521 and 47-2531

The Bulcher family pumped ground water from 47-2521 with a 1948 priority date and 47-2531 with a 1950 priority date for their 226.5 acres of farm ground. In 1985 and 1986 they purchased 239.97 shares from the Twin Falls Canal Company and ceased using ground water rights 47-2521 and 47-2531. The Department recommendation and SRBA partial decree followed the license and historical documents, which supported that these two ground water rights are primary water sources and are not supplemental. However, IDWR added an explanatory comment that these two water rights were combined with Twin Falls Canal Company water. The comment was incorrectly applied onto these water rights.

In August of 2014, Bruce Bulcher submitted transfer applications to move the primary ground water to a new POU. There was an initial concern by IDWR that 47-2521 and 47-2531 were supplemental ground water rights and could not be transferred off of the current POU without the Twin Falls Canal Company shares.

Through historical records from the Twin Falls Canal Company and an affidavit from Bruce Bulcher, IDWR concluded that the wells had not been used for several years and that forfeiture or enlargement of water rights would not occur by approving the transfers. The transfers were approved February 2015. (See Exhibit B for Bulcher Transfer Documents).

(3) Final Order Approving Application for Transfer 79560

In September 2014, North Snake Ground Water District, Magic Valley Ground Water District, and Southwest Irrigation District, through council with IGWA filed with IDWR an application for Transfer 79560. Notice of protest was filed by Rangen Inc. A hearing was held on on in December 2014.

The transfer was part of the Fourth Mitigation Plan proposed for the Magic Springs Project. The transfer proposed changing a portion of the POU of water right 36-7072 from the SeaPac fish hatchery at Magic Springs to the Rangen fish hatchery on Billingsley Creek. The application proposed to use 10.0 cfs of water right 36-7072 and pipe the water from Magic Springs to the head of Billingsley Creek to be used by the Rangen fish hatchery. The water delivered to the Rangen facility would remain in Billingsley Creek after leaving the Rangen fish hatchery.

IGWA's expert acknowledged that "water delivered to the Rangen facility pursuant to the Application could, after leaving the Rangen facility, be consumptively used by other Billingsley Creek water users or evaporate from Billingsley Creek." However, IGWA's expert concluded that "the transfer does not present risk to the minimum flows called for in the Swan Falls Agreement" because "ongoing IGWA mitigation activities substantially exceed the potential consumption of water added to Billingsley Creek from the Magic Springs transfer." Model analysis utilizing ESPAM 2.1 was used to verify effects of the proposed transfer.

Rangen argued that the proposed transfer "constitutes" an enlargement in use of the original right, in violation of the criteria of Idaho Code §42-222. Rangen's expert asserts the proposed transfer results in an enlargement of water right no. 36-7072 because the application included mitigation in addition to fish propagation as a nature of use. Rangen's expert also notes that water right no. 36-7072 authorizes the non-consumptive use of fish propagation and asserts that, because downstream irrigators will divert any additional flow added to Billingsley Creek from Magic Springs, the transfer "will result in expansion of historical consumptive use from water right no 36-7072."

Frank Erwin, Watermaster for Water District 36A, testified regarding the complexity of water distribution in Water District 36A and explained that, given the complexity along with insufficient measuring devices and gauging station and the possibility of diversions by downstream irrigators, it would be very difficult task to actually track the water."

IGWA's expert asserted that the proposed transfer would not result in enlargement because "enlargement is determined by the use made by the appropriator and not what becomes of discharged water after beneficial use is complete." IGWA's expert also asserted that adequate mitigation is occurring through benefits of IGWA and Southwest Irrigation District's past aquifer enhancement activities to the Snake River. These enhancement activities were analyzed using

ESPAM 2.1.

The Director concluded that approval of the transfer will not result in enlargement of water right 36-7072. (See Exhibit C for Rangen Amended Final Order Approving Application for Transfer)

(4) Northern Agriculture II LLC 35-7789, 35-14056 and 35-14058

Ground water irrigation rights 35-7789, 35-14056 and 35-14058 were leased to the Idaho Water Supply Bank in 2013 in their entirety. The water rights were subsequently rented by Lance Funk for the 2013, 2014, 2015 and 2016 irrigation season.

In April of 2015, Water Supply Bank staff wrote Northern Agriculture a letter over a concern of a possible NOV at that place of use of the leased water rights because the POU should be completely idle until the lease expires or the water rights are released from the Water Supply Bank. The letter included a map that clearly showed that irrigation had occurred during the 2013 and 2014 irrigation season.

Brockway Engineering emailed a response explaining that the ground water pumps had been pulled from the wells, the wells have been disconnected from the mainlines, all electrical connections to the wells have been severed, large ponds had been constructed and booster pumps now pulled Aberdeen Springfield Canal water from the ponds to the fields.

Additionally, invoices regarding the construction, material and mainlines designs, pump curves and photographs of the surface water irrigation system were provided to the Department.

In May of 2015, a Memo was written by the Water Supply Bank staff indicating that the Water Compliance Bureau of IDWR was satisfied that no enlargement had occurred.

The leased water rights remained under contract with the Idaho Water Supply Bank. The ground water POU of 35-7789, 35-14056 and 35-14058 remains idle from ground water application. (See Exhibit D Northern Agriculture II LLC Water Supply Bank Lease and Possible NOV Documents)

In summary, the Bokma transfer was approved because the Department allowed canal shares to be moved off of the ground water irrigation POU. Irrigation by ground water was documented. The transfer approved and the canal shares were moved back to their original location. The Department determined that no enlargement had occurred and the transfer was approved.

The Bulcher transfer was approved because the Department had verified that historically ground water and surface water canal shares had never been used on the property during the same irrigation season. It was documented that the ground water was a primary water source even though the ground water right had not been utilized for many years. The primary canal water and the primary ground water rights were in fact dual sources of irrigation on the same property. The Department determined that no enlargement had occurred or would occur and the transfers were approved.

The Rangen transfer allowed a non-consumptive water right to be beneficially used at the Rangen fish hatchery. The additional 10.0 cfs of water being added to Billingsley Creek will be used for irrigation purposes by downstream irrigators before the 10.0 cfs can discharge into the Snake River. IGWA's expert stated that, "enlargement is determined by the use made by the appropriator and not what becomes of discharged water after beneficial use is complete." Mitigation for the transfer was analyzed by ESPAM 2.1 and no additional mitigation was required by the model analysis. The Department determined that no enlargement would occur and the transfer was approved.

The Northern Agriculture II LLC lease and rental was scrutinized by the Department because the primary ground water was no longer used on the property but irrigation continued on the property by utilizing canal shares from the Aberdeen Springfield Canal Company. Documentation was provided showing that the primary ground water and the primary surface water had never been used on the property during the same irrigation season. The Department determined that no enlargement had occurred or would occur and the lease and rental applications were processed.

These examples clearly identify that the Department recognizes that dual primary water rights can be applied to the same property if documentation can clearly show that the primary dual water rights have not been applied during the same irrigation season. Thus, it is not considered an enlargement of the water rights to move one of the dual source water rights off of the property.

The Director of IDWR agreed with the statement that, "enlargement is determined by the use made by the appropriator and not what becomes of discharged water after beneficial use is complete." Which implies that a primary ground water right with a documented historical use can be transferred off of a given parcel to a new parcel. As long as that primary water right is utilized within its decreed beneficial use and limits, no enlargement will occur.

The Director of IDWR also agreed with the mitigation analysis performed utilizing ESPAM 2.1. The same model was used to analyze the Global Ag Properties LL USA LLC transfer

transfer and no mitigation is required for the transfer.

Sixth, limiting 35-7168 to something less than what it is—a primary ground water right—infringes upon Global Ag's property right, the result of which is a taking of this right to which Global Ag would have an inverse condemnation claim or a regulatory taking claim against the State of Idaho.

Finally, and briefly, you mentioned in our meeting that I should review the case of *Barron v. Idaho Department of Water Resources*, 135 Idaho 414, 18 P.3d 219 (2001) which was an appeal of a non-protested transfer that the Department denied because of enlargement concerns. It is difficult to know from the limited discussion of the record in the case precisely the relationship of the water rights at issue, but what is clear is that the transfer at issue in *Barron* was the transfer of a surface water right (37-2801B) and not a ground water right. Also, *Barron* did not provide information when requested by the Department concerning the historical use of 37-2801B of an associated ground water right (37-7295). Additionally, it also appears that 37-2801B was eventually disallowed in the SRBA because it was forfeited for non-use, and the ground water right—37-7295—was decreed as a primary ground water right.

In the context of Global Ag, we would encourage the Department to conduct a similar forfeiture analysis. In *Barron*, the ground water right was apparently the only water entitlement that was exercised, while the surface right was not. The ground water right was not forfeited because it was used, but the surface water right—as an individually-owned water right—was subject to forfeiture and actually was forfeited.

With Global Ag, the same use pattern is present—the ground water was been historically used, but the surface water was not. However, there is one very important distinction with Global Ag's situation, and that is that the surface water is not individually owned, rather, it is owned by Peoples and non-use by a shareholder of its water entitlement in a canal company is a statutory exception to forfeiture in Idaho. See Idaho Code § 42-223(7); See also *Aberdeen-Springfield Canal Co. v. Peiper*, 133 Idaho 82, 982 P.2d 917 (1999). Because the Peoples water was not forfeited, it remains available for Global Ag to irrigate the Shawver farm once 35-7168 is moved off of the property.

We invite you to reconsider the position on enlargement asserted in your letter in light of the above and respond in writing so that we can fully understand the Department's position.

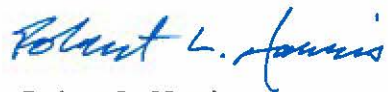
Also, we understand that despite your concerns, as we discussed in our December meeting, you intend to move forward with the advertisement of the Global Ag transfer for 35-7168.

James Cefalo
January 9, 2017
Page 12 of 12

Therefore, in addition to our request to respond to the contents of this letter, we request that you move forward with the processing of the transfers, and if any protests are received on them, we can address the enlargement issues at that time.

Thank you for your consideration of this letter. If you wish to discuss the matter by phone, please do not hesitate to call me.

Best Regards,



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Exhibit A

Bokma Transfer Documents



BROCKWAY
ENGINEERING
P.L.L.C.

Hydraulics

Hydrology

Water Resources

RECEIVED

JUL 19 2011

**DEPT. OF WATER RESOURCES
SOUTHERN REGION**

July 18, 2011

**Allen Merritt
Idaho Department of Water Resources
1341 Fillmore St., Suite 200
Twin Falls, ID 83301-3380**

Re: Application for Transfer – Harry Bokma

Dear Mr. Merritt,

Attached is the water right transfer application in the name of the Harry Bokma. Water right 36-2508 was decreed on December 7, 2001 as irrigation water used to irrigate 73 acres in T.07S R.14E SEC. 20 NWSW and NESW, Gooding County, ID.

Harry Bokma bought the 80 acres that the ground water right 36-2508 is decreed to in September 1999. At the time of purchase of the property, a dairy facility had been established in the NWSW of Section 20. Water for the dairy has been provided for by 36-8662 and 36-10166.

In March 2006 Mr. Bokma bought an additional 160 acres located at T.07S R.14E Sec. 20 SWSW, SESW, NWSE, and SWSE. A small pivot in the Sec 20 NESW (see 2004 and 2006 aerial photos) was combined with the newly purchased land to make a full pivot in Sec 20 SESW and NESW and Sec 20 NWSE and SWSE.

After the purchase of the 160 acres in the spring of 2006, a small pivot was moved from Sec 20 NESW to Sec 20 SWSW (see attached Freedom Irrigation INC Invoices, 4/17/2006). The 36 acres of irrigation ground water of 36-2508 assigned to T07SR14E Sec 20 NWSW was used in the 2006 growing season and are currently being used for the small pivot and the stationary hand lines in the corners of the small pivot. This action prevented a forfeiture issue of these 36 acres of water due to the decree date of this right of 12/7/2001. The 25.0 shares of North Side Canal Water in the NESW of Section 20 have been removed to insure that all irrigation water under 36-2508 remains primary.

Mr. Bokma would like to create an 84.3 acres permissible place of use that covers portions of the SW $\frac{1}{4}$ of Sec 20. Irrigation with ground water within the PPU will be limited to 73.0 acres. The proposed place of use (POU) and PPU are shown in the attached 2009 aerial map.

CHARLES E.
BROCKWAY,
Ph.D., P.E.

CHARLES G.
BROCKWAY,
Ph.D., P.E.

2016 NORTH
WASHINGTON
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BROCKWAY
ENGINEERING
P.L.L.C.

Hydraulics

Hydrology

Water Resources

The point of diversion, period of use, beneficial use, and ownership for 37-2508 will not change due to this transfer. Therefore, it is requested that this transfer not be advertised.

Please copy our office on all correspondence regarding these water rights. Thank you for your assistance and clarification on this matter and if you have questions or comments, please don't hesitate to call.

Sincerely,

Greg Sullivan E.I.T.

Cc: Harry Bokma

Enc: Transfer Applications, Limited Power of Attorney, Aerial Map, Freedom Irrigation, INC
Invoice, Purchase Agreement for 160 Acres, Mortgage Statement, Application for
Seasonal Transfer of Water, Brockway Engineering Check # 10178 for \$580.00

CHARLES E.
BROCKWAY,
PH.D., P.E.

CHARLES G.
BROCKWAY,
PH.D., P.E.

2016 NORTH
WASHINGTON
STREET • SUITE 4

TWIN FALLS,
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MEMORANDUM

Date: July 25, 2011
To: Transfer 77409 File
From: William Mills
Re: Evaluation of Sufficiency of Information Submitted

Application proposes using a 1.46 cfs ground water right, 36-2508, for irrigation of 73.0 acres on an 84.3 acre permissive place of use. 11.3 acres will be irrigated with North Side Canal Company water shares. A condition was added indicating this right may become supplemental at a future date unless evidence can be presented that indicates an appropriate number of canal shares have been removed from the NESW1/4 of Section 20, T07S, R14E. The POU is within the ESPA boundaries, but a ground water model analysis is not required as there is no change in point of diversion. Place of use is located 2.4 to 2.9 miles east and 0.8 to 1.3 miles south of the intersection of Main St. and Hwy 30 in Hagerman. Since the application only modifies the place of use, and since there is no change in the point of diversion, the transfer was processed, and can be approved, without advertising.

- **Authority to File:**
IDWR records indicate ownership of all lands involved in the transfer. IDWR records also indicate the applicant is the current owner of the right involved with the transfer.
- **Water Right Validity:**
Water right 36-2508 was decreed in the SRBA 1/27/2001. Recent aerial and satellite photography indicate the property involved with this transfer appears irrigated.
- **Injury to Other Water Rights:**
None anticipated.
- **Enlargement of Use:**
None anticipated.
- **Local Public Interest:**
No issues anticipated.
- **Beneficial Use/Conservation of Water Resources:**
Proposed uses are recognized as beneficial uses of water.

Review of the application finds there is no clear inconsistency with criteria set forth in Section 42-222 Idaho Code preventing processing of this application.

MEMORANDUM

Date: January 26, 2012
To: Transfer 77656 File
From: William Mills
Re: Evaluation of Sufficiency of Information Submitted

Application proposes changing a 0.27 cfs portion, 36-16921, of a 1.46 cfs groundwater irrigation right, 36-2508, to stockwater and commercial use associated with an existing dairy operation located on adjacent property. Two existing wells at the dairy site will serve as the points of diversion. A 0.180 cfs water right, 36-8662, is currently providing water to the dairy from the wells at the dairy site, and the owner intends to lease this right to the water bank after approval of this transfer. This will provide the dairy with a more senior water right than it currently has. Another right, 36-10166, also provides 0.04 cfs stockwater to the dairy site.

Change in nature of use analysis utilizing precipitation deficit data from the University of Idaho ET website for frequent cuttings of alfalfa at the Bliss station estimated consumptive use of applied irrigation water to be approximately 1105 mm (3.63 acre feet), resulting in a transfer volume of 49.4 acre feet.

The POU is within the ESPA boundaries, but a ground water model analysis is not required as the new points of diversion are within the same cell as the original well locations.

Right 36-2508 was a primary right in 2009 when canal shares were rearranged on the farm in a manner that could make it supplemental to North Side Canal Company water shares. North Side Canal Company water shares were moved onto 30 acres in the NESW and 40 acres in the SESW of Section 20, T07S, R14E. In 2011, 25 shares in the NESW were leased, leaving 5 shares in the QQ. The same year, transfer #77409 was processed to create an 84.3 acre permissible place of use for this right. As canal shares were still present in the NESW, a condition was placed on the right to indicate it could become supplemental at a future date within the NESW, unless evidence can be presented to demonstrate canal shares have been permanently removed. This transfer is approvable as this right is still primary (because 5 years have not elapsed since the shares were moved onto the NESW QQ), but the condition will be modified to include the SESW as there is potential overlap between canal shares and this water right on 5.7 acres in this QQ.

A combined limit condition for stockwater use on the dairy was previously placed on water right 36-8662. This condition limited 36-8662 and 36-10166 to a maximum diversion volume of 36 af. These rights were brought into this transfer as they are associated rights on the dairy and the combined limits will now reflect the addition of 36-16921, limiting the three rights to a maximum diversion rate of 85.4 acre feet.

The irrigated ground and the dairy site are located approximately 2.4 to 2.9 miles east and 0.8 to 1.3 miles south of the intersection of Main St. and Hwy 30 in Hagerman.

- **Authority to File:**
IDWR records indicate ownership of all lands involved in the transfer. IDWR records also indicate the applicant is the current owner of the right involved with the transfer.

- **Water Right Validity:**
Water right 36-2508 was decreed in the SRBA 1/27/2001. Recent aerial and satellite photography indicate the property involved with this transfer appears irrigated.
- **Injury to Other Water Rights:**
None anticipated.
- **Enlargement of Use:**
None anticipated. Basing the change in nature of use conversion on precipitation deficit values actually results in a decrease in the overall allowable diversion volume.
- **Local Public Interest:**
No issues anticipated.
- **Beneficial Use/Conservation of Water Resources:**
Proposed uses are recognized as beneficial uses of water.

Review of the application finds there is no clear inconsistency with criteria set forth in Section 42-222 Idaho Code preventing processing of this application.

MEMORANDUM

To: Water Right File No(s). 36-16920
From: Monica Van Bussum
Date: April 1, 2012
Re: Review of Application to Lease a Water Right to the State Water Supply Bank

PURPOSE/NARRATIVE: On March 20, 2012, we received an application to lease part of 36-16920 to the Water Supply Bank for five years.

AUTHORITY TO FILE: The applications were signed by the right holders.

WATER RIGHT VALIDITY: 2011 imagery indicates the 16.2 acres offered to the Bank were irrigated.

INJURY TO OTHER WATER RIGHTS: No injury is apparent.

ENLARGEMENT OF USE: No enlargement is evident through the lease alone. Proper rental review should protect against enlargement.

There has been some discussion among Greg Sullivan (consultant for the applicants), Cindy Yenter (watermaster) and myself about whether these acres are primary or supplemental. We all agree they are primary.

Transfer 77409, in 2011, modified the POU and asserted primacy of certain acres under right no. 36-2508, which was accomplished when applicant showed that North Side Canal Company (NSCC) shares were removed for 2011 in the NESW, which was to be part of the new POU where canal shares once resided. Applicant also re-arranged the balance of his canal shares to other acres not overlapping the new POU.

Transfer 77656, later in 2011, then took 13.6 primary acres under 36-2508 and put them in the dairy as 36-16921. The PPU created under 77409 was not changed but actual irrigation was shown as reduced in NESW by the 206 condition map. The WSB application now seeks to take the 12.6 remaining acres in NESW from 36-16920. These should still be considered primary. See the memo for Transfer 77656 for additional information.

LOCAL PUBLIC INTEREST:

Review staff has no information to suggest this application is inconsistent with the local public interest.

BENEFICIAL USE/CONSERVATION OF WATER RESOURCES:

The lease appears consistent with conservation of water resources in Idaho.

DEPARTMENT STAFF OR WATERMASTER COMMENTS:

See attached watermaster comment.

State of Idaho
Department of Water Resources

RECOMMENDATION OF WATERMASTER

Application No: WSB lease
Water Right No: 36-16920
Applicant Name: Bokma

Watermaster's Recommendation:

- a) ☒ I do not oppose approval of this application
- b) ☐ I do not oppose approval of this application if it is conditioned as follows:
- c) ☐ I oppose approval of this application(s) for the following reasons:
- d) ☐ Additional comment:

Acres in NESW Sec 20 should still be considered primary acres pursuant to actions documented in transfer 77409. Conditional approval should not be necessary for rental of the right.

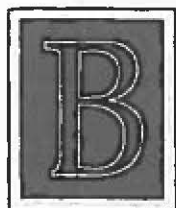
Dated: April 9, 2012

Water District 130

sent electronically
Cindy J Yenter, Watermaster

Exhibit B

Bulcher Transfer Documents



BROCKWAY
ENGINEERING
P.L.L.C.

Hydraulics

Hydrology

Water Resources

COPY

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SEP 03 2014

DEPT OF WATER RESOURCES
SOUTHERN REGION

August 29, 2014

Allen Merrill
Idaho Department of Water Resources
650 Addison Ave. West, Suite 500
Twin Falls, Idaho 83301-5858

Re: Transfer Applications for Bruce Bulcher
Project No. 1248-01-2013

Dear Allen,

Enclosed with this letter are three applications for transfer of water rights. I will discuss each water right transfer and how these applications are interrelated.

Bruce Bulcher came into our office last winter to inquire about options regarding his groundwater right (47-2521) that he no longer uses or needs. This groundwater was licensed for irrigation of 146.5 acres with 2 cfs and has a priority date of 10/25/1948. The Bulcher's also have another groundwater right (47-2531) with a priority date of 8/19/1950 to irrigate 80 acres with 0.7 cfs. Combined, these rights authorized irrigation of 226.5 acres. These rights were originally licensed as primary water source and not combined with any other source.

The Bulcher family decided that pumping groundwater for irrigation was economically prohibitive and they secured 239.97 shares of Twin Falls Canal Company in 1985 and 1986 to replace the irrigation water source on the farm. The groundwater rights were used to irrigate the rest of the 360-acre farm, not as supplement water to the TFCC shares.

Both groundwater rights were partially decreed in the SRBA on 6/10/2010. The IDWR recommendation and SRBA partial decree followed the license and historical documents, which supported that these groundwater rights are primary water sources and are not supplementary to TFCC water. However, following the partial decree, IDWR added an explanatory comment that these rights were combined with TFCC water (Condition S20). It appears that this comment was incorrectly applied to these groundwater rights, as these groundwater rights were developed as primary rights and then replaced by TFCC water. According to Mr. Bulcher, these groundwater rights were never used in combination with TFCC.

CHARLES E.
BROCKWAY,
PH.D., P.E.

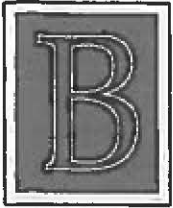
CHARLES G.
BROCKWAY,
PH.D., P.E.

2016 NORTH
WASHINGTON
STREET • SUITE 4

TWIN FALLS,
IDAHO 83301

208•736•8543

FAX: 736•8506



BROCKWAY
ENGINEERING
P.L.L.C.

Hydraulics

Hydrology

Water Resources

COPY

Mr. Bulcher has provided power records from 2009 through 2013 to illustrate that these rights have not been used in combination with TFCC water. The average groundwater diversion volume was calculated at under 50 acre-feet per year. Therefore these groundwater rights were not used in combination with TFCC water and they should be treated as primary groundwater rights. We respectfully request that condition S20 be removed from water right 47-2521 and 47-2531 to reflect the original license, water right recommendation, and SRBA partial decree. Since that these rights were partially decreed on 6/10/2010, Mr. Bulcher has until 6/10/2015 before the State can consider these rights forfeited.

With the establishment that these groundwater rights are primary, Mr. Bulcher proposes the following transfers:

1. Transfer water right 47-2531 to create a PPU of the Bulcher property with the current irrigated POU within the PPU as the SESW and SWSE of Section 18 T11S R19E. This POU is 80-acres and this right will be limited to 80-acres within the PPU boundary. TFCC water will not be used on the same 80-acres of ground.
2. Transfer water right 47-2521 to the Funk Farms. The POU of the water right will be within a defined PPU boundary of 1451-acres, but this water right will be limited to 146.5-acres as identified.
 - a. Part of the new POU includes areas that have water rights owned by Shaunna and Danford Crane. Mr. and Mrs. Crane have also included a transfer to move 57.5-acres of groundwater rights from their current place of use to make room for the new Bulcher water rights.

CHARLES E.
BROCKWAY,
PH.D., P.E.

CHARLES G.
BROCKWAY,
PH.D., P.E.

2016 NORTH
WASHINGTON
STREET • SUITE 4

TWIN FALLS,
IDAHO 83301

208•736•8543

FAX: 736•8506

Once these transfers are assigned to an agent, I would request the opportunity to walk through these transfers with the agent to clarify any points of confusion.

Sincerely,

G. Erick Powell, Ph.D., P.E.

enclosed

cc: Bruce Bulcher
Darrell Funk

MEMORANDUM

Date: December 9, 2014
To: Transfer 79579 File
From: Bill Mills
Re: Evaluation of Sufficiency of Information Submitted

Application for transfer proposes moving a 2.0 cfs ground water right for the irrigation of 146.5 acres at a proposed place of use (POU) on an existing farm, with water diverted from four existing wells. The proposed POU and the four wells are located approximately 4.7 to 6.0 miles south and 0.7 miles east to 0.9 miles west of Murtaugh. Current place of use is located approximately 1.1 to 1.6 miles south and 5.4 to 5.9 miles west of Murtaugh.

This transfer will move water right 47-2521 into basin 45 and the right will be renumbered to 45-14464 in the transfer process.

This right was claimed in the SRBA, and due to evidence that canal water was used on the POU, a supplemental condition was placed on the recommendation and subsequent decreed right. The applicant has maintained that this right was not used in conjunction with canal shares and that the wells were abandoned when canal shares were used at the place of use. An affidavit was provided by the applicant that explains the timeline and how the ground water use was phased out while canal shares were acquired. After reviewing this proposed transfer with administrative staff, it was decided that the affidavit, a communication documentation (dated 4/14/1995) from the claim file and documentation provided by Twin Falls Canal Company, appear to provide sufficient evidence to support the applicants claim of the intent to not use canal shares and ground water together. The transfer also seeks to move this water right to property without canal shares. As such, I have removed supplemental condition S20 from the water right.

Two separate parties, the Cranes and Mr. Funk, separately own portions of the land where the new POU will be established. Mr. Funk has provided a contract of agreement, indicating he will purchase the water right after the transfer is approved. The Cranes have provided a letter of consent to allow part of the transferred right to be used on their property. The Cranes have also filed a companion transfer, #79580, that is seeking to split four water rights and move the split portions to a separate property also owned by Mr. Funk. Transfer #79580 will reduce the current place of use at the Crane property and Transfer #79579 will place part of water right 45-14464 on grounds vacated after approval of transfer #79580. Those actions will prevent any overlap between water right 45-14464 and other water rights owned by the Cranes.

Overlap analysis indicates there will be no ground water rights appurtenant to the proposed POU (after approval of transfer #79580). There is a potential 19.4 acre overlap in the proposed POU with two Dry Creek surface water rights, 45-487C (3.2 cfs; 662 acre limit; 683 acre PPU) and 45-488A (0.59 cfs; 662

acre limit; 683 acre PPU) in the NWSE and SWSE of Sec. 36, Twp 11S, Rge 19E. A combined limit condition was placed on this water right limiting the combined acres of all three rights to 789.1, and a condition stating that if surface water and ground water are combined in the area of potential overlap, ground water use will be supplemental to surface water use. The POU is in both The Twin Falls Canal Company and Southwest Irrigation District service areas. Proposed PODs also provide irrigation ground water under water rights 45-2317; 45-2318; 45-2319; 45-2290; 45-2292; 45-4142 and 45-10100, which are used to irrigate in an adjacent 898 acre permissible place of use (PPU). All points of diversion (POD) are within the Artesian City Critical Ground Water Area and Water District 140. Watermaster comments will be solicited.

- **Authority to File:** Applicant is listed as the current owner of the water right being transferred. The ownership of the water right will be changed after transfer approval and all parties involved with the establishment of the new POU have provided documentation indicating they consent to the changes proposed in the transfer.
- **Water Right Validity:** Water right 47-2521 was decreed in the SRBA on 6/1/2010. Recent aerial and satellite imagery indicate the properties associated with these rights appear to be irrigated.
- **Injury to Other Water Rights:**
None anticipated.
- **Enlargement of Use:**
None anticipated.
- **Local Public Interest:**
No issues anticipated.
- **Beneficial Use/Conservation of Water Resources:**
Proposed use is recognized as a beneficial use of water.
- **Effect on the Economy of the Local Area:**
None Anticipated.
- **Effect on Agricultural Base of the Local Economy:**
None Anticipated.

Review of the application finds there is no clear inconsistency with criteria set forth in Section 42-222 Idaho Code preventing processing

RECEIVED

OCT 23 2014

DEPT OF WATER RESOURCES
SOUTHERN REGION

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF THE WATER RIGHT
NOS. 47-2521 AND 47-2531

) COMMENTS AND
) EVIDENCE OF
) BRUCE BULCHER

COMES NOW, Bruce Bulcher, and provides the following comments and evidence in this matter:

1. I have lived in the Kimberly, Idaho area for most of my life. I was born Twin Falls on 5/23/1944. With the exception of a few years in college, military service, and working in Boise, I have lived in the immediate area.
2. I have a complete working knowledge of the water delivery system and the associate water problems on the farm because I grew up working the system and have been around the facilities since 1944 through the present. I became a managing member of our family farm in the mid-1980s when my Uncle decided to retire.
3. My father, Louis Bulcher, and uncle, Harold Bulcher, originally purchased 160 acres with groundwater right 47-2521 in December 1951. This land was owned by a Mr. Fortner, who originally applied for and developed the water right. There were two wells that served this property, and the groundwater right was the only water source.
4. My family purchased the 80-acres appurtenant to water right 47-2531 from the Stanger Family in 1959. The groundwater right was the only water source that irrigated this ground. In 1959, we had a total of 240-acres with the the Fortner 160-acres combined with the Stanger 80-acres.
5. Water right nos. 47-2521 and 47-2531 were permitted and licensed in the 1940s and 1950s. Both rights were licensed as primary groundwater rights. TFCC was not used in combination with these rights. This is clearly outlined in the water right licenses for both rights.
6. In the 1980s, the main well for the Fortner 160-acres would surge and begin to pump air. To preserved the well equipment, it forced us to shut the well off for periods of time. The groundwater also was high in alkalinity and would cause stress and damage to the plants, especially the beans.
7. My father and uncle decided to acquire Twin Falls Canal Company shares to replace the groundwater and eliminate the water problems associated with the well. We first acquired shares of the canal company in 1986. We continued to acquire shares of TFCC when they were available in an effort to obtain sufficient shares to convert from groundwater to TFCC.
8. To convert the irrigation system from groundwater to canal water required a substantial capital investment, so we did not convert our irrigation system until we had sufficient TFCC shares to completely convert the 240-acres. In 1987, we had acquired 240-share of TFCC, and we converted our irrigation system from groundwater to surface water. We completely disconnected the wells from the irrigation system and delivered only TFCC water. The TFCC water then irrigated 240-acres that used to be irrigated by groundwater rights 47-2521 and 47-2531.

9. The Savage family had 120-acres of ground next to our farm that they wanted to sell. This ground was historically irrigated by TFCC, but the Savages wanted to sell it without water. We purchased 40-acres from the Savages in 1987 and the other 80-acres in 1988. That gave us a total of 360-acres of ground. Initially we did not irrigate the Savage ground when we purchased it.
10. We acquired another 40-shares of TFCC water in 1990, which gave us 280-shares. We began to irrigate 280-acres with TFCC. We also began to resume use of water right 47-2531 on the remaining 80-acres without water, which would allow us a full irrigation supply on 360-acres.
11. In 1995, I went to the Department of Water Resources to try to explain our efforts to convert from groundwater to surface water and to make the appropriate claims in the SRBA, considering several things had changed since my father first made the claim in 1988. We spoke to Jeanie Robertson about the TFCC and the groundwater rights. We explained to Ms. Robertson how and when the surface water was acquired and not used until it replaced the groundwater rights. And how we recently began to use water right 47-2531 to irrigate the 80-acres of the Savage property that we did not have TFCC share for. Ms. Robertson adjusted the claim on both water rights to reflect our conversation. We assumed that IDWR would make the appropriate changes to the claim, as we discussed.
12. The SRBA partial decree was issued in 2010. The partial decree did not include language that the groundwater rights were now stacked with the TFCC water. We assumed that the partial decree would reflect the water rights moving forward.
13. After the partial decree was issued, IDWR placed a condition on both of our groundwater rights that the groundwater rights were supplemental to the TFCC shares. This was done without our consent or knowledge.
14. We have never used the water rights 47-2521 and 47-2531 in combination with TFCC water. The farm has been irrigated with surface water on 280-acres and ground water on 80-acres since 1990.
15. Since we have not used the groundwater right 47-2521, we decided that we would sell the right to someone who could use the groundwater. Once we decided to sell the right, it came to our attention that IDWR placed a combination statement on this right that it can now only be used in combination with TFCC water. This is contrary to the water right license, contrary to our explanation to Ms. Robertson in 1995, and contrary to how the system has been operating since we converted from groundwater to surface water.

DATED this 17th day of October, 20 14.

Bruce Bulcher
Bruce Bulcher

State of Idaho)
) S.S.
County of Twin Falls)

On this 17th day of October, in the year of 2014, before me, a Notary

Public, personally appeared Bruce Louis Bulcher, proved to me on
The basis of satisfactory evidence to be the person(s) whose name(s) is (are)
subscribed to the within instrument, and acknowledged that he (she) (they)
executed the same.

S
E
A
L



Sheila D. Daniels

Notary Public
In and for said State and County

8/6/19
My Commission Expires on

6/9/94

COMMUNICATION DOCUMENTATION

Claim No. A47-02521.

This form is to be used to document public record information requests regarding any SRBA claim or claims. The form may also be used to document IDWR communications requesting information regarding any SRBA claim or claims when the request is not made in writing or the claim verification report is not readily available to document the request. This form is to be filed in all relevant claim files or a central office file.

IDWR Employee/Agent JEANIE M ROBERTSON

DATE
April 14, 1995 3:35pm

CUSTOMER
Harold and Bruce Bulcher

SUBJECT: New Claim

Harold was in last week and wanted to amend A47-02521, changing the P/U from the original license, as he claimed, to show how the system was actually used. He and his nephew, Bruce, came back in today and explained their system. They own 360 acres and have 280 canal shares (appurtenant to the NE quarter, the north half of the SE quarter, and the SESE quarter.) They bought the property in April of 1987 and put in the current system, which co-mingles the water in ponds and ditches. The wells in the NE quarter have been abandoned and they only use the well in the SWNESE. They stated the well pumps approximately 50". They decided to leave A47-02521 as claimed and file on the unclaimed well for A47-02531, but claiming the P/U in the SESW and the SWSE (instead of the NESE and NWSE as originally licensed). It would appear to be an Accomplished Transfer based on the dates as stated. It also appears the sytem is a PPU.

I gave Bruce an O/C form for A47-02521 as he bought his father's (Louis) interest.

[Licenses 47-02504 and 47-02506 were originally appurtenant to these 80 acres (SESW, SWSE) but are no longer.]

NOV 28 1996

SOUTHWEST IRRIGATION DISTRICT

Box 668
Burley, ID 83318
(208) 878-8382

RECEIVED
MAR 23 2015
DEPT OF WATER RESOURCES
SOUTHERN REGION

Directors: Randy Brown 308-7711
Craig Searle 312-1595
David Pickett 300-3401

March 19, 2015

Allen Merritt
IDWR Southern Region
650 Addition Ave. W., Ste. 500
Twin Falls, ID 83301-2348

RE: Bulcher - Funk Transfer Nos. ~~70579~~ and ~~7980~~

Dear Allen:

Recent protests and mitigation activities by Southwest Irrigation District (SWID) substantiate the fact that SWID is desperately attempting to change the declining water levels within their District and the Critical Ground Water areas.

You recently approved Transfer Nos. ~~70579~~ and ~~7980~~. The transfer included approximately 146 acres from Mr. and Mrs. Bulcher to Darrell Funk. The ability of the Bulchers' well to supply the entire farm with water diminished greatly over time. In fact, the Bulchers purchased Twin Falls Canal Shares to make up for the deficiency.

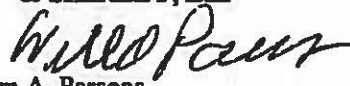
Since no discharge measurements of the well had ever been made, proof of use of the right was a calculation of the volume of water pumped. The calculation determined the well pumped an average of 50 acre feet per year for the past several years. As you well know, the IDWR average volume applied by ground water to irrigation land is 2 feet per acre. Fifty acre feet per year would irrigate 25 acres. The entire 146 acres has been irrigated in the past. Therefore, it is evident that surface water has been applied to the remaining 121 acres. However, you agreed to allow transfer of the entire 146 acres.

Non-use of a right, not included within a conservation program, especially subordinated by surface water rights, limits the transferrable portion of the right to the average volume pumped. Yet you allowed transfer of the entire 146 acres. SWID views this transfer as an expansion, breaking out 121 acres to be irrigated by ground water that has not been utilized in the past.

Please reconsider this transfer at the direction of the Directors.

Very truly yours,

PARSONS, SMITH, STONE, LOVELAND
& SHIRLEY, LLP


William A. Parsons

WAP/sw

cc: Randy Brown, Craig Searle & David Pickett



State of Idaho
DEPARTMENT OF WATER RESOURCES

Southern Region • 650 Addison Ave West, Suite 500 • Twin Falls, Idaho 83301
Phone: (208) 736-3033 • FAX: (208) 736-3037 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER

GARY SPACKMAN

March 25, 2015

Southwest Irrigation District
PO Box 668
Burley, ID 83318

RE: Bulcher Transfer No. 79579

Dear Bill,

Our office received your letter dated March 19, 2015 regarding Transfer No. 79579 approved on February 25, 2015, of ground water right 47-2521 from the Bulcher property to Funk. As you may know the transfer was advertised December 18th and 25th, 2014, with the last day of protest on January 5th, 2015. This transfer was not protested and the Watermaster of WD140 did not have any comment.

Since the opportunity to participate in this process as a protestant or party has passed the Department will not reconsider approval of the transfer.

Please note that the issues you raised in your letter were considered during our review. We found that right 47-2521 was originally licensed as a primary right and understood that over a period of time the Bulcher's had obtained TFCC shares which ultimately replaced the ground water use. We relied on records of the TFCC and the affidavit of Bruce Bulcher to develop a timeline of well use. We concluded that although the wells had not been used for several years that forfeiture or partial forfeiture of the water right had not occurred.

We understand that Southwest Irrigation District continues to do positive things to address declining water levels in the area. We welcome Southwest Irrigation District's participation in future transfer applications as a protestant if such future applications are believed to cause injury.

If you have further questions please free to contact this office.

Respectfully,

Allen Merritt, PE
Southern Region Manager

CC: Shelley Keen, Jeff Peppersack, James Cefalo - IDWR

Exhibit C

Rangen Amended Final Order Approving Application for Transfer

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

IN THE MATTER OF APPLICATION)	
FOR TRANSFER NO. 79560 IN THE NAME)	
OF NORTH SNAKE GROUND WATER DIST.,)	AMENDED FINAL ORDER
MAGIC VALLEY GROUND WATER DIST.,)	APPROVING APPLICATION
AND SOUTHWEST IRRIGATION DIST.)	FOR TRANSFER

BACKGROUND

On January 29, 2014, the Director ("Director") of the Idaho Department of Water Resources ("Department") issued the *Final Order Regarding Rangen, Inc.'s Petition for Delivery Call; Curtailing Ground Water Rights Junior to July 13, 1962* ("Curtailment Order").¹ The Curtailment Order recognizes that holders of junior-priority ground water rights may avoid curtailment if they participate in a mitigation plan which provides "simulated steady state benefits of 9.1 cfs to Curren Tunnel [sometimes referred to as the "Martin-Curren Tunnel"] or direct flow of 9.1 cfs to Rangen." Ex. 1018 at 42.² The Curtailment Order explains that mitigation provided by direct flow to Rangen, Inc. ("Rangen") "may be phased-in over not more than a five-year period pursuant to Rule 40 of the CM Rules as follows: 3.4 cfs the first year, 5.2 cfs the second year, 6.0 cfs the third year, 6.6 cfs the fourth year, and 9.1 cfs the fifth year." *Id.*³

On August 27, 2014, the Idaho Ground Water Appropriators, Inc. ("IGWA") filed *IGWA's Fourth Mitigation Plan and Request for Expedited Hearing* ("Fourth Mitigation Plan") "to provide additional ways of satisfying the mitigation obligation imposed by the [Curtailment Order] and

¹ The Curtailment Order was appealed in *Rangen, Inc., v. IDWR*, Twin Falls County Case No. CV-2014-1338. Judge Wildman issued his *Memorandum Decision and Order on Petitions for Judicial Review* ("Decision") on October 24, 2014, which affirmed the Director on a number of issues, but held the Director erred by applying a trim line to reduce the zone of curtailment. *Decision* at 28. The Decision has been appealed to the Idaho Supreme Court, Docket No. 42772-2015.

² Exhibits in the 1000s referenced in this order are from the administrative record in CM-MP-2014-006. At the commencement of the hearing in this matter, the parties stipulated to admission of the entire record in CM-MP-2014-006. All other exhibits referenced herein were admitted at the hearing.

³ The term "CM Rules" refers to Idaho's *Rules for Conjunctive Management of Surface and Ground Water Resources*, IDAPA 37.03.11.

thereby prevent curtailment of junior-priority groundwater use.”⁴ Ex. 1000 at 2. The Fourth Mitigation Plan proposed the “Magic Springs Project.” Ex. 1000 at 3. The Magic Springs Project is comprised of multiple components including approval of a transfer application to change the place of use of a portion of water right no. 36-7072 from the SeaPac fish hatchery at Magic Springs to the Rangen fish hatchery on Billingsley Creek. *Id.* at 3-4. The Director held a hearing for the Fourth Mitigation Plan on October 8, 2014, at the Department’s State office in Boise, Idaho. The Director issued the *Order Approving IGWA’s Fourth Mitigation Plan* (“Fourth Mitigation Plan Order”) on October 29, 2014.⁵

On September 12, 2014, North Snake Ground Water District, Magic Valley Ground Water District, and Southwest Irrigation District filed with the Department, through counsel for IGWA, Application for Transfer No. 79560 (“Application”). Ex. 4000. Notice of the Application was published beginning October 2, 2014. Rangen filed a *Notice of Protest by Rangen, Inc. to Water Right Transfer Application No. 79560* (“Protest”).⁶ The Director held a hearing on December 18, 2014, at the Idaho Department of Environmental Quality office in Twin Falls, Idaho. The parties offered testimony, expert reports, and other documents into the administrative record.

On January 27, 2015, the Director issued a *Notice of Taking Official Notice of Staff Memorandum* (“Notice”). The Notice explained that, after the hearing, the Director asked Department staff to review and analyze technical information contained in expert reports submitted in this matter, expert testimony offered at the hearing, and data and information in possession of the Department. The Director also asked staff to prepare a memorandum regarding the Application. *Notice* at 1-2. In response to the request, Department staff prepared and submitted a memorandum, a copy of which was attached to the Notice.⁷ The Director informed the parties that official notice would be taken of facts and material contained in the staff memorandum and granted the parties two weeks to contest and rebut the facts or material officially noticed. *Id.* at 2. On February 10,

⁴ To date, IGWA has submitted five mitigation plans to address mitigation obligations imposed by the Curtailment Order. On May 16, 2014, the Director approved some mitigation credit for certain components of IGWA’s first mitigation plan. See *Amended Order Approving in Part and Rejecting in Part IGWA’s Mitigation Plan; Order Lifting Stay Issued February 21, 2014; Amended Curtailment Order* (CM-MP-2014-001). While the Director approved IGWA’s second mitigation plan on June 20, 2014, in the *Order Approving IGWA’s Second Mitigation Plan; Order Lifting Stay Issued April 28, 2014; Second Amended Curtailment Order* (CM-MP-2014-003), IGWA subsequently withdrew the plan. On December 18, 2014, IGWA filed *IGWA’s Fifth Mitigation Plan and Request for Hearing* (CM-MP-2014-008). A status conference was held for IGWA’s third mitigation plan (CM-MP-2014-005) on March 17, 2015, at the Department’s state office in Boise, Idaho.

⁵ The Fourth Mitigation Plan Order was not admitted as an exhibit at the transfer hearing. However, that order is part of the Department’s administrative record and will be referenced herein.

⁶ The Protest was not admitted as an exhibit at the transfer hearing. However, the Protest is part of the Department’s administrative record and will be referenced herein.

⁷ By mistake, the staff memorandum attached to the Notice did not contain Table 1 and Table 2. Counsel for the Department emailed Table 1 and Table 2 to the parties on February 9, 2015, explaining the tables were intended to be incorporated into the staff memorandum. The staff memorandum attached to this order as Attachment A contains Table 1 and Table 2.

2015, Rangen submitted *Rangen, Inc.'s Expert Report in Response to Staff Memorandum* ("Expert Response") and *Rangen, Inc.'s Response to Staff Memorandum*.

After carefully considering all of the evidence in the administrative record, the Director finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Water right no. 36-7072 bears a priority date of September 5, 1969, and authorizes the diversion of 148.2 cfs of water from Thousand Springs for fish propagation purposes. Ex. 1001 at 21-22.⁸ "[A]ll water diverted under water right no. 36-7072 flows from the SeaPac fish hatchery to the Snake River over a distance of less than one mile." Ex. 4002 at 5.

2. The Application proposes to change the place of use of 10 cfs of water right no. 36-7072 from the SeaPac fish hatchery at Magic Springs to the Rangen fish hatchery located in the SWNE and SENE of Section 31, T07S, R14E and the SWNW of Section 32, T07S, R14E and to reflect "Fish Propagation/Mitig" as a nature of use. Ex. 4000 at 2-5. The Application does not propose any change in the point of diversion for water right no. 36-7072.

3. IGWA proposes that, if the Application is approved, up to 10 cfs of water right no. 36-7072 "will be delivered from Magic Springs to the Rangen hatchery per engineering details submitted in the Fourth Mitigation Plan, CM-MP-2014-006." Ex. 4002 at 4. These engineering details were admitted as Exhibit 1009 in CM-MP-2014-006 and were described in detail, along with conditions of approval, in the Fourth Mitigation Plan Order. In short, "spring water discharged from the [Eastern Snake Plain Aquifer] at Magic Springs [will] be pumped via buried pipeline approximately 2.5 miles to Rangen's place of use near the head of Billingsley Creek." Ex. 4000 at 14.

4. Water delivered to Rangen pursuant to the proposed transfer will be discharged into Billingsley Creek after leaving the Rangen fish hatchery. *Protest* at 2; Ex. 4002 at 5; Tr. at p. 11.

5. Expert witness reports and testimony presented at the hearing discuss potential impacts resulting from evaporation of water conveyed through Billingsley Creek pursuant to the proposed transfer, and from consumptive use by irrigators who divert from Billingsley Creek.

6. IGWA's expert reports estimate that, if 10 cfs of water from Magic Springs is conveyed to the Snake River via Billingsley Creek, approximately 0.039 cfs will be lost to evaporation prior to reaching the Snake River. Ex. 4002 at 11; Ex. 4003 at 15. Rangen's expert report criticizes the assumptions used by IGWA's expert in calculating evaporation from Billingsley Creek, but acknowledges "[t]he magnitude of additional evaporation is small and will be small, however it is calculated." Ex. 5019 at 7.

⁸ SeaPac also owns water right no. 36-8356 for fish propagation at Magic Springs which authorizes the diversion of 45 cfs from springs with a priority date of May 9, 1988. Rights 36-7072 and 36-8356 combined shall not exceed a total diversion rate of 148.2 cfs.

7. Neither IGWA nor Rangen attempted to quantify the percentage of the 10 cfs lost to consumptive use by water users once water leaves the Rangen facility. Frank Erwin, Watermaster for Water District 36A, testified regarding the complexity of water distribution in Water District 36A and explained that, given the complexity along with insufficient measuring devices and gauging stations and the possibility of diversions by downstream irrigators, it would “be a very difficult task to actually track that water.” Tr. p. 21-35.

8. IGWA’s expert acknowledged that “[w]ater delivered to the Rangen facility pursuant to the Application could, after leaving the Rangen facility, be consumptively used by other Billingsley Creek water users or evaporate from Billingsley Creek.” Ex. 4002 at 5. IGWA’s expert explained that, “[i]f this occurred at a time when minimum stream flows at the Murphy Gage are violated, it could contribute to enforcement of the Swan Falls Agreement, which may include curtailment of other water rights.” Ex. 4002 at 5. However, IGWA’s expert concluded that “the transfer does not present risk to the minimum flows called for in the Swan Falls agreement” because “ongoing IGWA mitigation activities substantially exceed the potential consumption of water added to Billingsley Creek from the Magic Springs transfer.” Ex. 4003 at 14. IGWA’s expert also concluded “it would be reasonable to include in the approval of the Application a condition that requires mitigation be provided sufficient to offset depletion of water right 36-7072 in the event of a violation of the Swan Falls minimums.” *Id.* at 5.

9. IGWA’s expert compiled results from ESPAM2.1 model runs performed by the Department in support of the order approving IGWA’s first mitigation plan. Ex. 4003 at 13-17. Those model runs simulated aquifer enhancement activities (conversions, voluntary “dry-ups” through the Conservation Reserve Enhanced Program (“CREP”), voluntary curtailment, and recharge) performed by IGWA and Southwest Irrigation District between 2005 and 2013, with the assumption that 2013 conversions, CREP, and voluntary curtailment were continued in future years. Ex. 1020 at 8. IGWA’s expert presented the total model-predicted benefit of the mitigation accruing to springs tributary to the Snake River between Kimberly and King Hill. Ex. 4003 at 17. IGWA’s expert reported an average benefit of 48.6 cfs between April 2014 and March 2015, and an average benefit of 58.1 cfs between April 2018 and March 2019. *Id.*

10. The Department also compiled results of the ESPAM2.1 model runs of IGWA and Southwest Irrigation District’s aquifer enhancement activities. *See Attachment A* at 2. The Department’s results are slightly different from those reported by IGWA’s expert in Ex. 4003 at 17. *See Attachment A* at 2. The Department’s analysis concludes the average model-predicted benefit to springs tributary to the Snake River between Kimberly and King Hill is 48.5 cfs between April 2014 and March 2015, and 67.5 cfs at steady state. *Id.* at 3. These values are projections based on continuation of 2013 aquifer enhancement activities by IGWA and Southwest Irrigation District. *Id.*

11. On December 3, 2014, the Fifth Judicial District Court, in and for the County of Twin Falls, issued its *Memorandum Decision and Order on Petition for Judicial Review* (“Memorandum Decision”) in CV-2014-2446. The court held the Department cannot recognize mitigation credit for future aquifer enhancement activities without sufficient contingency provisions to protect the senior water user in the event the assumed future aquifer enhancement activities do

not occur. *Memorandum Decision* at 6-10. Because of this decision, the memorandum prepared by staff also evaluated the aquifer enhancement activities of IGWA and Southwest Irrigation District without assuming a continuation of 2013 aquifer enhancement activities into 2014.⁹ Specifically, the Department performed “an ESPAM2.1 simulation of 2005 through 2013 aquifer enhancement activities . . . to determine the minimum benefit provided by documented past activities” assuming no such activities occurred in 2014 and future years. *Attachment A* at 4. The simulation determined “[t]he model-predicted benefit to springs tributary to the Snake River between Kimberly and King Hill is 40.6 cfs between April 2014 and March 2015.” *Id.*

12. Neither IGWA’s nor Rangen’s experts attempted to quantify the portion of the model-predicted benefit from IGWA and Southwest Irrigation District’s aquifer enhancement activities that would actually reach the Snake River. In contrast, the Department analyzed data and information in possession of the Department to evaluate whether at least 10 cfs of the model-predicted benefits from IGWA and Southwest Irrigation District’s past aquifer enhancement activities would reach the Snake River.

13. Baseflow represented by general head boundaries in ESPAM2.1 is subsurface discharge to the Snake River and can be assumed to be unavailable to surface water users. *Attachment A* at 3. The Department’s modeled simulation of documented past aquifer enhancement activities through 2013 predicts an increase in baseflow between April 2014 and March 2015 of 2.4 cfs. *Id.* at Table 2.

14. “Increases in spring discharge have the potential to be intercepted by surface water users before discharging to the Snake River. If the increase in spring discharge is diverted for a consumptive use, such as irrigation, only a portion of the increase in discharge will reach the Snake River.” *Attachment A* at 3. Many of the fifty spring reaches represented in ESPAM2.1 include springs diverted for irrigation use. *Id.* Some spring cells without irrigation use are predicted by ESPAM2.1 to benefit significantly from IGWA and Southwest Irrigation District’s past aquifer enhancement activities. For example, “[t]he Box Canyon reach consists of two model cells without spring diversions for irrigation use.” *Id.* “The Devil’s Washbowl and Devil’s Corral spring cells also do not contain springs diverted for irrigation use.” *Id.*

15. “The average model-predicted benefit [of documented past aquifer enhancement activities] to the Box Canyon reach, the Devil’s Washbowl and Devil’s Corral spring cells, and the baseflow represented by general head boundaries is 11.1 cfs between April 2014 and March 2015.” *Attachment A* at 4.¹⁰ “Additional water is also expected to accrue to the Snake River from increases in spring discharge at spring cells with irrigation use, but cannot be quantified without a detailed analysis of irrigation demand and water availability at each spring source.” *Id.* at 3. The portion of the average model-predicted benefit of documented past aquifer enhancement activities that can be

⁹ Documentation of 2014 IGWA and Southwest Irrigation District aquifer enhancement activities is not available as of the date of this order. *Attachment A* at 4.

¹⁰ The Department also performed a steady-state analysis assuming the continuation of 2013 aquifer enhancement activities. This results in a model-predicted increase of 18.3 cfs at steady state. *Attachment A* at 3. Amended Final Order Approving Application for Transfer, Page 5

expected to reach the Snake River between April 2014 and March 2015 is between 11.1 cfs and 40.6 cfs. *Id.* at 4.

16. Even without including estimated benefits from 2014 and future activities, the benefits of IGWA and Southwest Irrigation District's past aquifer enhancement activities to the Snake River between Kimberly and King Hill are predicted to exceed the potential impact of the proposed transfer on flow in the Snake River between April 2014 and March 2015. *Id.* at 4-5.

CONCLUSIONS OF LAW

1. Idaho Code § 42-222 sets forth the criteria used to evaluate transfer applications:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter.

2. The applicant bears the burden of proof for all of the factors listed in Section 42-222.

Injury to Other Water Rights

3. Rangen argues that "[o]ther water rights will be injured by the transfer." *Protest* at 2. Rangen's expert asserts that, "[i]f a decrease in Snake River flow results in a violation of the 3900 or 5600 cfs minimum flow at Murphy as outlined in the Swan Falls Trust Water agreement, then other irrigation water right holders in the Magic Springs/Murphy gauge reach could be negatively impacted." Ex. 5015 at 4.

4. While the only evidence regarding injury is speculative suggesting a potential for injury to water users that may be curtailed in the event of a violation of the Swan Falls minimums, as noted above, IGWA's expert concluded "it would be reasonable to include in the approval of the Application a condition that requires mitigation be provided sufficient to offset depletion of water right 36-7072 in the event of a violation of the Swan Falls minimums." Ex. 4003 at 5.

5. The Department's analysis demonstrates that benefits of IGWA and Southwest Irrigation District's past aquifer enhancement activities to the Snake River between Kimberly and King Hill are predicted to exceed 10 cfs between April 2014 and March 2015. *Attachment A* at 4-5.¹¹

6. As a condition of approval, IGWA and Southwest Irrigation District will be required to continue into the future aquifer enhancement activities sufficient to offset any depletion of flow in the Snake River between Kimberly and King Hill due to the transfer. Prior to the start of each irrigation season, IGWA must submit documentation of the rate of flow to be diverted from Magic Springs for the upcoming year and documentation of past aquifer enhancement activities to establish sufficient mitigation for the upcoming year.

Enlargement in Use of the Original Right

7. Rangen argues the proposed transfer "constitutes" an enlargement in use of the original right, in violation of the criteria of Idaho Code § 42-222. *Protest* at 2. Rangen's expert asserts the proposed transfer results in an enlargement of water right no. 36-7072 because the application included mitigation in addition to fish propagation as a nature of use. Ex. 5015 at 5. Rangen's expert also notes that water right no. 36-7072 authorizes the non-consumptive use of fish propagation and asserts that, because downstream irrigators will divert any additional flow added to Billingsley Creek from Magic Springs, the transfer "will result in expansion of historical consumptive use from water right no. 36-7072." Ex. 5015 at 5. IGWA's expert asserts the proposed transfer will not result in an enlargement because "[e]nlargement is determined by the use made by the appropriator and not what becomes of discharged water after beneficial use is complete." Ex. 4003 at 5.

8. The Director concludes IGWA has sufficiently demonstrated that approval of the proposed transfer will not result in enlargement of water right no. 36-7072. Water right no. 36-7072 authorizes the diversion of water for fish propagation purposes. Ex. 1001 at 21-22. The application proposes to change the nature of use of water right no. 36-7072 to "Fish Propagation/Mitig." Ex. 4000 at 3. Because the reason for the proposed transfer is to mitigate material injury to Rangen, the nature of use will be described in the transfer documents as "Mitigation."¹² The Application's proposed change in nature of use does not alter that water right

¹¹ Rangen argues that, as part of this transfer proceeding, IGWA must mitigate for all the impacts of ground water pumping junior to July 13, 1962, on flow in the Snake River. *See Expert Response* at 6-8. The impact at issue in this transfer proceeding is the impact on flow in the Snake River resulting from the transfer of 10 cfs of water from Magic Springs to Rangen, not the impacts of all ground water pumping junior to July 13, 1962, on flow in the Snake River. Rangen also appears to assert the proposed transfer will have some negative impact on non-consumptive water rights at Box Canyon and Devil's Corral. *See id.* at 9. But the proposed transfer will have no depletive impact on flow available for those water rights. Instead, the Box Canyon reach and Devil's Corral spring cell benefit significantly from the aquifer enhancement activities of IGWA and Southwest Irrigation District.

¹² The application for transfer proposes diversion and delivery of water to satisfy a mitigation obligation to benefit a separate water user. Mitigation by diversion and delivery of water is distinguishable from mitigation by nonuse of water under a valid water right as contemplated by Idaho Code § 42-223(10). While not necessary in this order, the Department may issue additional guidance in the future explaining how the different types of mitigation will be described in the Department's records.

no. 36-7072 will be used for non-consumptive fish propagation purposes, but only reflects that water delivered to Rangen pursuant to the transfer will help satisfy mitigation obligations imposed by the Curtailment Order. The proposal to change the nature of use of water right no. 36-7072 from "Fish Propagation" to "Mitigation" does not constitute an "enlargement in use of the original right" as prohibited by Idaho Code § 42-222. Rangen's argument regarding expansion of historical consumptive use is mooted by the condition of approval requiring IGWA and Southwest Irrigation District to continue into the future aquifer enhancement activities sufficient to offset any depletion of flow in the Snake River between Kimberly and King Hill due to the transfer.¹³

Conservation of Water Resources

9. Rangen asserts "[t]he transfer is not consistent with the conservation of water resources within the state, in violation of the criteria of I.C. § 42-222." *Protest* at 2. Rangen provided no evidence to support this blanket assertion.

10. IGWA's expert report and testimony assert the proposed transfer is consistent with the conservation of water resources within Idaho because water right no. 36-7072 is currently used for the beneficial use of fish propagation in the state and will continue to be used for fish propagation within Idaho and not wasted if the transfer is approved. Ex. 4002 at 6; Tr. p. 79-80. The Director agrees. The proposed transfer is consistent with the conservation of water resources within the state of Idaho.

Local Public Interest

11. Local public interest is defined as "the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource." Idaho Code § 42-202B(3).

12. Rangen asserts "[t]he transfer is not in the local public interest as defined in section 42-202B, Idaho Code, in violation of the criteria of I.C. § 42-222." *Protest* at 2. Rangen also asserts "[t]he transfer will be detrimental to fish and wildlife, fish rearing and spawning habitat, fish passage, waterfowl habitat, and aesthetic beauty and therefore is not in the best interest of the general public of the state of Idaho." *Protest* at 2. Rangen offered no evidence to support these assertions.

¹³ Rangen's expert also argues "[t]he proposed use of water right 37-7072 in the manner proposed in Transfer 79560 will result in additional consumptive use under this water right and is therefore in violation of the [Eastern Snake River Plain] moratorium." Ex. 5019 at 6. 29. However, the referenced moratorium clearly states that it does not apply to the transfer of existing water rights. Ex. 5007 at 5. Even if the moratorium did apply to the Application, the moratorium states the Director may approve relevant applications proposing consumptive use of water if "[t]he Director determines that the development and use of the water pursuant to an application will have no effect on prior surface and ground water rights because of . . . mitigation provided by the applicant to offset injury to other rights." *Id.* at 4-5. Because as a condition of approval IGWA and Southwest Irrigation District must continue into the future aquifer enhancement activities sufficient to offset any depletion of flow in the Snake River between Kimberly and King Hill due to the transfer, the referenced moratorium would not be violated.

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13. IGWA's expert argued the proposed transfer is in the local public interest because "Rangen will benefit from a significant increase in water available for fish production . . . and . . . [a]dditional flow in Billingsley Creek is expected to improve conditions for fish and wildlife." Ex. 4002 at 6. IGWA's expert also argued the proposed transfer is in the local public interest because "[improved] economic conditions at Rangen and increased flows in Billingsley Creek will benefit the people in the Hagerman area." *Id.* IGWA's expert testified that "the mitigation aspect of this to allow the groundwater pumpers to continue their beneficial uses of water is very much in the local public interest to keep the economy of the area more intact." Tr. p. 80.

14. The proposed transfer will deliver mitigation water to Rangen as required by the Curtailment Order and will contribute additional flow to Billingsley Creek. IGWA and Southwest Irrigation District will be required to continue into the future aquifer enhancement activities sufficient to offset any depletion of flow in the Snake River between Kimberly and King Hill due to the transfer. There is no evidence in the record to support Rangen's contention that the proposed transfer will be detrimental to fish and wildlife, fish rearing and spawning habitat, fish passage, waterfowl habitat, and aesthetic beauty. There is no evidence establishing that people in the area directly affected by the proposed transfer will suffer any negative impacts. The proposed transfer is in the local public interest.

Local Economy

15. Rangen does not argue that the proposed transfer "will adversely affect the local economy" in violation of Idaho Code § 42-222 or assert that fish propagation and mitigation are not beneficial uses.

16. IGWA's expert argues the proposed transfer will not adversely affect the local economy because instead "[t]he transfer will have significant benefits to the local economy. Additional water provided to Rangen allows the facility to improve its economic output. In addition, the proposed transfer provides mitigation needed to prevent the curtailment of ground water rights." Ex. 4002 at 7. The Director agrees. The proposed transfer will not adversely affect the local economy and fish propagation and mitigation are established beneficial uses of water in Idaho in accordance with the criteria set forth in Idaho Code § 42-222.

Summary

17. IGWA satisfied its burden of proof for the review of criteria set forth in Idaho Code § 42-222. The proposed transfer will not result in injury to other water rights or an enlargement in use of the original right, is consistent with the conservation of water resources within the state of Idaho, is in the local public interest as defined in Idaho Code § 42-202B, and will not adversely affect the local economy.

ORDER

IT IS HEREBY ORDERED that Application for Transfer No. 79560 in the name of North Snake Ground Water District, Magic Valley Ground Water District, and Southwest Irrigation District is **APPROVED**.

IT IS FURTHER ORDRED that, as a condition of approval, IGWA and Southwest Irrigation District will continue into the future aquifer enhancement activities equal to the rate of flow to be diverted from Magic Springs due to the transfer. Prior to the start of each irrigation season, IGWA must submit documentation to the State Office of the Department stating: (a) the rate of flow to be diverted from Magic Springs for the upcoming year (April 1 through March 31), and (b) past aquifer enhancement activities to sufficiently mitigate for water diverted from Magic Springs the upcoming year. For example, if 8 cfs will be diverted from Magic Springs pursuant to the transfer, IGWA and Southwest Irrigation District must submit documentation establishing mitigation from aquifer enhancement activities of 8 cfs to the Snake River between Kimberly and King Hill. If IGWA fails to document sufficient mitigation through aquifer enhancement activities as required, diversions from Magic Springs will not be authorized pursuant to this transfer for the year in which documentation is lacking.

Dated this 18th day of March 2015.



Gary Spackman
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of March 2015, true and correct copies of the document described below was served on the parties by placing a copy of the same with the United States Postal Service, postage prepaid and properly addressed to the following:

Document Served: Amended Final Order Approving Application for Transfer and Explanatory Information to Accompany a Final Order

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ATTACHMENT A

MEMO

State of Idaho

Department of Water Resources

322 E Front Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700

Date: January 27, 2015

To: Gary Spackman, P.E., Director

From: Jennifer Sukow, P.E., P.G., Hydrology Section

Subject: Technical review of expert witness reports and testimony in the matter of
application for transfer no. 79560 (proposed Magic Springs to Rangen
pipeline)

This memorandum was prepared in response to your request for a technical review of expert witness reports and testimony from Sophia Sigstedt and Charles E. Brockway in the matter of application for transfer no. 79560 in the name of North Snake Groundwater District, Magic Valley Groundwater District, and Southwest Irrigation District. Ms. Sigstedt testified on behalf of the applicants. Dr. Brockway testified on behalf of protestant, Rangen, Inc. My review focused specifically on potential impacts to flow in the Snake River resulting from changing the place of use for fish propagation from the Magic Springs Hatchery to the Rangen Hatchery, and proposed mitigation of such impacts. The Magic Springs Hatchery discharges directly into the Snake River, while the Rangen Hatchery discharges into Billingsley Creek, a tributary to the Snake River. Expert witness reports and testimony discuss potential impacts resulting from evaporation of water conveyed through Billingsley Creek, and from consumptive use by irrigators who divert from Billingsley Creek.

Ms. Sigstedt estimated if 10 cfs of water from Magic Springs is conveyed to the Snake River via Billingsley Creek, approximately 0.039 cfs would be lost to evaporation prior to reaching the Snake River. Ms. Sigstedt also compiled results from ESPAM2.1 model runs performed by the Idaho Department of Water Resources (IDWR) in support of the order approving the groundwater user's first mitigation plan. The model runs simulated aquifer enhancement activities (conversions, CREP, voluntary curtailment, and recharge) performed by the Idaho Groundwater Water Appropriators, Inc. (IGWA) and Southwest Irrigation District (SWID) between 2005 and 2013, with the assumption that 2013 conversions, CREP, and voluntary curtailment were continued in future years. Ms.

Sigstedt presented the total model-predicted benefit of the mitigation accruing to springs tributary to the Snake River between Kimberly and King Hill. Ms. Sigstedt reported an average benefit of 48.6 cfs between April 2014 and March 2015, and an average benefit of 58.1 cfs between April 2018 and March 2019, and noted that these values greatly exceed her estimate of evaporation in Billingsley Creek.

Dr. Brockway criticizes the assumptions used by Ms. Sigstedt in calculating evaporation from Billingsley Creek, but acknowledges the magnitude of additional evaporation in Billingsley Creek will be small however it is calculated. Dr. Brockway argues that if an additional 10 cfs is discharged from the Rangen Hatchery into Billingsley Creek, the water will be diverted by downstream users in Water District 36A for both consumptive and non-consumptive uses, further reducing the portion of the 10 cfs which will reach the Snake River.

It does not appear that either expert witness attempted to quantify the percentage of the 10 cfs that would be lost to consumptive use by downstream water users. Because of the complexity of water distribution in Water District 36A, it is difficult to determine what percentage of the 10 cfs will reach the Snake River during the irrigation season if diversion and consumptive use by downstream water users are not prevented. Some water will discharge to the Snake River as either surface or subsurface flow, and the impact to the Snake River will be less than 10 cfs. A very conservative approach would be to assume a maximum impact of 10 cfs. A less conservative approach would be to assume a reasonable value for efficiency of the delivery and irrigation systems to estimate an impact.

I compiled the results of the ESPAM2.1 model runs of the IGWA and SWID aquifer enhancement activities in Table 1. My results are similar, but slightly different from Ms. Sigstedt's Table 3 from her December 12, 2014 report. The differences appear to be in her compilation of the results for general head boundaries and Class C springs. Ms. Sigstedt's Table 3 reports a constant value of 3.49 cfs for the general head boundaries for all five years. This value should vary with time. My analysis indicates this value varies from 2.91 cfs in Year 1 to 3.43 cfs in Year 5. It appears Ms. Sigstedt calculated the model-predicted average value for the time period between April 2019 and March 2020 and applied this value to the previous five years in her Table 3. I was not able to determine how Ms. Sigstedt arrived at the values reported in Table 3 for the benefit to Class C springs. Given that the values are higher in Year 3 than in Years 4 and 5, it appears she may have used model results from the 2005-2013 timeframe rather than results from the 2014-2019 timeframe, possibly in combination with summing an incorrect group of spring cells.

Dr. Brockway criticized Ms. Sigstedt for including the impacts of SWID aquifer enhancement activities in her analysis. Because SWID is one of the transfer applicants, the inclusion of their mitigation activities seems appropriate. My analysis includes the SWID mitigation activities and indicates the average model-predicted benefit to springs tributary to the Snake River between Kimberly and King Hill is 48.5 cfs between April 2014 and March 2015, and 67.5 cfs at steady state (Table 1). These values are projections based on continuation of 2013 aquifer enhancement activities by IGWA and SWID, and are expected to change after each annual post-audit of IGWA and SWID mitigation activities.

Baseflow represented by general head boundaries is subsurface discharge to the Snake River and can be assumed to be unavailable to surface water users. Baseflow comprises only 2.9 cfs of the model-predicted increase in discharge between April 2014 and March 2015, and only 3.9 cfs at steady state (Table 1). Increases in spring discharge have the potential to be intercepted by surface water users before discharging to the Snake River. If the increase in spring discharge is diverted for a consumptive use, such as irrigation, only a portion of the increase in discharge will reach the Snake River. Based on IDWR water right shapefiles, many of the 50 spring reaches represented in ESPAM2.1 include springs diverted for irrigation use (Figure 1), but there are several spring cells that do not contain springs diverted for irrigation use.

A few of the spring cells without irrigation use are predicted by ESPAM2.1 to benefit significantly from the IGWA and SWID aquifer enhancement activities. The Box Canyon reach consists of two model cells without spring diversions for irrigation use. The Devil's Washbowl and Devil's Corral spring cells also do not contain springs diverted for irrigation use. The sum of model-predicted benefits to the Box Canyon reach, the Devil's Washbowl and Devil's Corral spring cells, and the baseflow represented by general head boundaries is 13.5 between April 2014 and March 2015, and 18.3 cfs at steady state (Table 1), and exceeds the maximum potential impact of 10 cfs resulting from the proposed transfer. Additional water is also expected to accrue to the Snake River from increases in discharge at spring cells with irrigation use, but cannot be quantified without a detailed analysis of irrigation demand and water availability at each spring source. If continued at locations and volumes similar to 2013 activities, the benefits of the IGWA and SWID aquifer enhancement activities to the Snake River between Kimberly and King Hill are predicted to exceed the potential impact of the proposed transfer on flow in the Snake River.

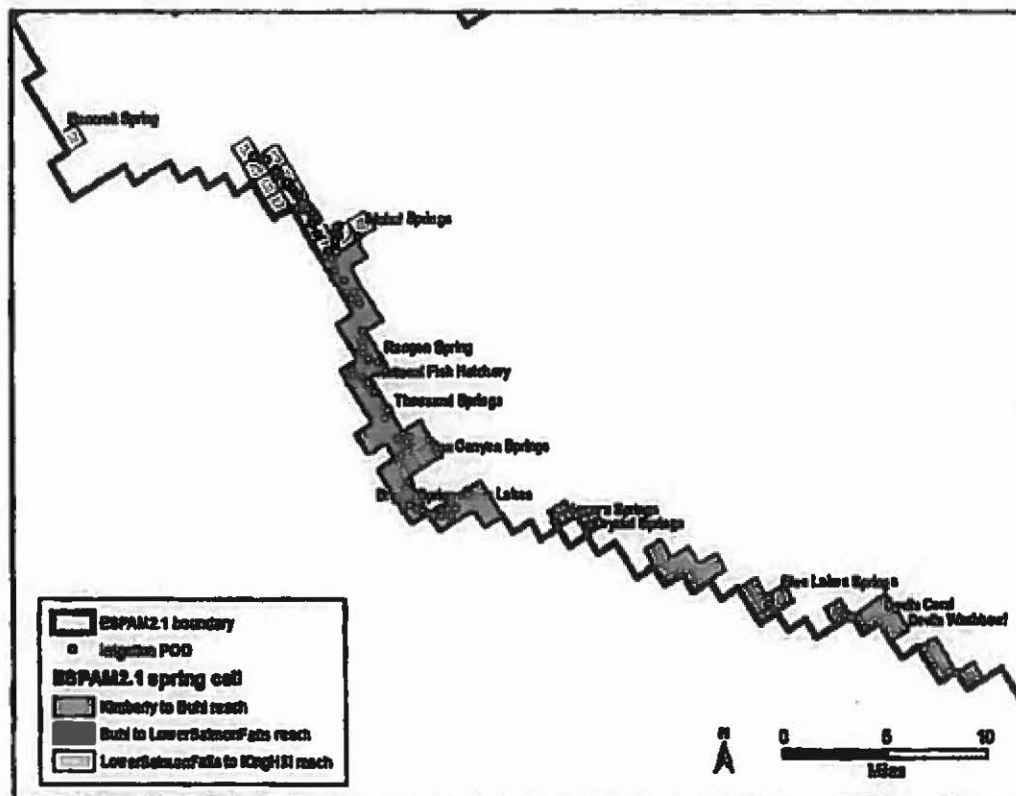


Figure 1. ESPAM2.1 spring cells and irrigation points of diversion.

Because documentation of 2014 IGWA and SWID aquifer enhancement activities was not available as of the date of this memorandum, an ESPAM2.1 simulation of 2005 through 2013 aquifer enhancement activities was performed to determine the minimum benefit provided by documented past activities. The model simulation assumes no aquifer enhancement activities occurred in 2014 and future years¹. The average model-predicted benefit to springs tributary to the Snake River between Kimberly and King Hill is 40.6 cfs between April 2014 and March 2015 (Table 2). The average model-predicted benefit to the Box Canyon reach, the Devil's Washbowl and Devil's Corral spring cells, and the baseflow represented by general head boundaries is 11.1 cfs between April 2014 and March 2015 (Table 2). Even without including estimated benefits from 2014 activities that have not yet been fully documented, the benefits of past IGWA and

¹ Model files for the simulation of 2005-2013 aquifer enhancement activities with no future activities are contained on the CD accompanying this memorandum.

SWID aquifer enhancement activities to the Snake River between Kimberly and King Hill are predicted to exceed the potential impact of the proposed transfer on flow in the Snake River in the short term. Because the benefits of past aquifer enhancement activities decrease with time, long term mitigation of the potential impact of the proposed transfer will be dependent on future aquifer enhancement activities.

Table 1. Predicted impact of 2005-2013 aquifer enhancement activities, with 2013 activities assumed to continue into future years

ESPAMZ.1 reach	Year 1 (4/2014- 3/2015)	Year 2 (4/2015- 3/2016)	Year 3 (4/2016- 3/2017)	Year 4 (4/2017- 3/2018)	Year 5 (4/2018- 3/2019)	Steady state
ASH REX	0.1	0.1	0.2	0.2	0.3	1.3
HEBE SHEL	1.0	1.2	1.5	1.7	1.9	3.9
SHELAN/SUKF	4.8	5.8	6.4	7.1	7.6	11.7
NRBLKFMGN	16.6	19.6	22.1	24.9	26.1	89.3
0070030	0.0	0.0	0.0	0.0	0.0	0.0
0059029	0.0	0.0	0.0	0.0	0.0	0.0
0068029	0.0	0.0	0.0	0.0	0.0	0.0
DEVILW	1.3	1.4	1.4	1.5	1.5	1.7
DEVILC	1.7	1.8	1.8	1.9	1.9	2.1
0065027	0.1	0.1	0.1	0.1	0.1	0.1
0064026	0.1	0.1	0.1	0.1	0.1	0.1
BLUELK	3.7	4.0	4.1	4.3	4.4	4.9
0062023	0.0	0.0	0.0	0.0	0.0	0.0
0061023	0.0	0.0	0.0	0.0	0.0	0.0
0059022	0.0	0.0	0.0	0.0	0.0	0.0
0059021	0.0	0.0	0.0	0.0	0.0	0.0
ELISON	0.0	0.0	0.0	0.0	0.0	0.0
0058020	0.0	0.0	0.0	0.0	0.0	0.0
0057020	0.0	0.0	0.0	0.0	0.0	0.0
CRYSTAL	9.2	9.7	6.0	6.2	6.4	7.4
NIAGARA	8.6	3.8	4.0	4.2	4.3	5.0
0051014	0.0	0.0	0.0	0.0	0.0	0.0
0050014	0.0	0.0	0.0	0.0	0.0	0.0
CLEARLK	4.6	5.0	5.2	5.4	5.6	6.3
BRIGGS	0.1	0.1	0.1	0.1	0.2	0.2
BANBURY	0.4	0.4	0.4	0.4	0.4	0.5
0047011	0.0	0.0	0.0	0.0	0.0	0.0
BOX	7.6	8.2	8.5	9.0	9.3	10.7
SAND	2.0	2.2	2.3	2.4	2.5	2.9
0043011	0.0	0.0	0.0	0.0	0.0	0.0
0045012	0.0	0.0	0.0	0.0	0.0	0.0
THOUSAND	5.4	5.8	6.1	6.3	6.5	7.5
MTLFSHH	1.2	1.3	1.4	1.4	1.5	1.7
TUCKER	0.1	0.1	0.1	0.1	0.1	0.2
RANGEN	1.9	2.1	2.2	2.3	2.3	2.7
THREESP	1.4	1.5	1.6	1.6	1.7	2.0
0040013	0.0	0.0	0.0	0.0	0.0	0.0
0040014	0.1	0.1	0.1	0.1	0.1	0.1
BIGSP	0.7	0.8	0.9	0.9	0.9	1.1
0038014	0.1	0.1	0.1	0.1	0.1	0.1
0037014	0.0	0.0	0.0	0.0	0.0	0.0
BIRCH	0.0	0.0	0.0	0.0	0.0	0.0
0036014	0.0	0.0	0.0	0.0	0.0	0.0
MAJAO	3.9	4.2	4.3	4.7	4.8	5.6
0035014	0.0	0.0	0.0	0.0	0.0	0.0
0034014	0.1	0.1	0.1	0.1	0.2	0.2
0033013	0.0	0.0	0.0	0.0	0.0	0.0
0033014	0.0	0.0	0.1	0.1	0.1	0.1
0032013	0.0	0.0	0.0	0.0	0.0	0.0
0032014	0.0	0.0	0.0	0.0	0.0	0.0
0031013	0.0	0.0	0.0	0.0	0.0	0.0
0031014	0.0	0.0	0.0	0.0	0.0	0.0
0030013	0.0	0.0	0.0	0.0	0.0	0.0
BANCROFT	0.0	0.0	0.0	0.0	0.0	0.0
Kimberly to Buhl springs	15.8	16.9	17.7	18.4	18.9	21.5
Buhl to Lower Salmon Falls springs	25.6	27.6	29.1	30.4	31.3	36.2
Lower Salmon Falls to King Hill springs	4.2	4.5	4.8	5.0	5.1	6.0
Kimberly to Buhl baseflow	1.8	2.0	2.1	2.2	2.2	2.5
Buhl to Lower Salmon Falls baseflow	0.7	0.7	0.8	0.8	0.8	0.9
Lower Salmon Falls to King Hill baseflow	0.3	0.3	0.3	0.4	0.4	0.4
Total baseflow	2.9	3.1	3.2	3.3	3.4	3.9
Total Kimberly to King Hill	48.5	52.1	54.8	57.1	58.8	67.5
Sum of Box Canyon, Devil's Washbowl, Devil's Corral, and baseflow	13.5	14.4	15.1	15.7	16.1	18.3

Table 2. Predicted impact of 2005-2013 aquifer enhancement activities, with no future activities

ESPAM2.1 reach	Year 1 (4/2014- 3/2015)	Year 2 (4/2015- 3/2016)	Year 3 (4/2016- 3/2017)	Year 4 (4/2017- 3/2018)	Year 5 (4/2018- 3/2019)
ASH, REX	0.1	0.1	0.2	0.2	0.2
HEISE, SHEL	1.0	1.2	1.3	1.3	1.2
SHELN, RBLXF	4.7	5.1	4.9	4.5	4.0
NRLXFMAIN	16.3	17.3	16.6	15.1	13.3
D070030	0.0	0.0	0.0	0.0	0.0
D068029	0.0	0.0	0.0	0.0	0.0
D068029	0.0	0.0	0.0	0.0	0.0
DEVILW	1.0	0.7	0.5	0.4	0.3
DEVILC	1.4	1.0	0.7	0.5	0.4
D043027	0.1	0.1	0.1	0.0	0.0
D064026	0.1	0.1	0.0	0.0	0.0
BLUELK	3.2	2.3	1.0	1.3	1.0
D062023	0.0	0.0	0.0	0.0	0.0
D061023	0.0	0.0	0.0	0.0	0.0
D059022	0.0	0.0	0.0	0.0	0.0
D059021	0.0	0.0	0.0	0.0	0.0
ELISON	0.0	0.0	0.0	0.0	0.0
D058020	0.0	0.0	0.0	0.0	0.0
D057020	0.0	0.0	0.0	0.0	0.0
CRYSTAL	4.5	1.5	2.8	2.2	1.7
NIAGARA	1.0	2.4	1.9	1.5	1.2
D051014	0.0	0.0	0.0	0.0	0.0
D050014	0.0	0.0	0.0	0.0	0.0
CLEARLK	3.8	3.1	2.4	1.9	1.5
BRIGGS	0.1	0.1	0.1	0.1	0.0
BANBURY	0.3	0.2	0.2	0.1	0.1
D047011	0.0	0.0	0.0	0.0	0.0
BOX	6.3	5.0	4.0	3.1	2.3
SAND	1.7	1.3	1.1	0.8	0.7
D045011	0.0	0.0	0.0	0.0	0.0
D045012	0.0	0.0	0.0	0.0	0.0
THOUSAND	4.4	3.5	2.8	2.2	1.7
NTLFSHH	1.0	0.8	0.6	0.5	0.4
TUCKER	0.1	0.1	0.1	0.0	0.0
RANGEN	1.6	1.2	1.0	0.8	0.6
THREESP	1.1	0.9	0.7	0.6	0.4
D040013	0.0	0.0	0.0	0.0	0.0
D040014	0.1	0.1	0.0	0.0	0.0
BIGSP	0.6	0.5	0.4	0.3	0.2
D038014	0.1	0.1	0.1	0.0	0.0
D037014	0.0	0.0	0.0	0.0	0.0
BIRCH	0.0	0.0	0.0	0.0	0.0
D036014	0.0	0.0	0.0	0.0	0.0
MALAD	3.3	2.6	2.1	1.7	1.3
D035014	0.0	0.0	0.0	0.0	0.0
D034014	0.1	0.1	0.1	0.1	0.0
D033013	0.0	0.0	0.0	0.0	0.0
D033014	0.0	0.0	0.0	0.0	0.0
D032013	0.0	0.0	0.0	0.0	0.0
D032014	0.0	0.0	0.0	0.0	0.0
D031013	0.0	0.0	0.0	0.0	0.0
D031014	0.0	0.0	0.0	0.0	0.0
D030013	0.0	0.0	0.0	0.0	0.0
BANCROFT	0.0	0.0	0.0	0.0	0.0
Kimberly to Buhl springs	13.3	10.3	7.9	6.1	4.7
Buhl to Lower Salmon Falls springs	21.4	17.1	13.6	10.7	8.4
Lower Salmon Falls to King Hill springs	3.5	2.9	2.3	1.8	1.5
Kimberly to Buhl baseflow	1.6	1.2	0.9	0.6	0.5
Buhl to Lower Salmon Falls baseflow	0.6	0.4	0.4	0.3	0.2
Lower Salmon Falls to King Hill baseflow	0.3	0.2	0.2	0.1	0.1
Total baseflow	2.4	1.8	1.4	1.1	0.8
Total Kimberly to King Hill	40.6	32.1	25.2	19.6	15.4
Sum of Box Canyon, Devil's Washbowl, Devil's Corral, and baseflow	11.1	8.6	6.6	5.1	4.0

EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

- (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.
- (2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.
- (3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.
- (4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the service date of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.
- (5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
 - (a) The petition for reconsideration is disposed of; or
 - (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.
- (6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.
- (7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.
- (8) The provisions of this section do not preclude an agency from taking immediate

action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days: a) of the service date of the final order, b) the service date of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

Exhibit D

Northern Agriculture II LLC Water Supply Bank Lease and Possible NOV Documents



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

April 20, 2015

NORTHERN AGRICULTURE II LLC
301 E MAIN ST
TURLOCK CA 95380

RE: WATER SUPPLY BANK LEASE STATUS FOR WATER RIGHT NO(S). 35-7789, 35-14056,
AND 35-14058

Dear Lessor:

On March 8, 2013, at your request the Department of Water Resources ("Department") executed lease contracts that accepted water rights 35-7789, 35-14056, and 35-14058 into the Water Supply Bank ("Bank"). The lease contracts contained terms such as:

- The lease contracts would expire on 12/31/2016
- Rights were accepted into the Bank in their entirety
- The Lessor may not use the right without approval of the Department even if the right is not rented from the bank.
- Failure of the Lessor to comply with the conditions of acceptance is cause for the Director to rescind acceptance of the lease.

In accordance with your lease contract, the place of use for the leased water rights should be completely idled until the lease expires or the water rights are released from the Bank.

A map that illustrates the place of use for the above referenced water rights has been enclosed for your reference. The map depicts LandSat Infrared Imagery for 2014. The map indicates the place of use of the leased acres was irrigated during the 2014 irrigation season.

Please explain how you were able to irrigate the place of use for your leased water rights in 2014. Also, note that your leases don't expire until the end of 2016 and any irrigation activity at the leased water rights place of use is not authorized unless the leases are released from the Bank. Please provide a response within ten (10) days. If an acceptable explanation for your activity in 2014 or if a response isn't received within 10 days, this potential enlargement of your water rights will be referred to the Compliance Bureau for further investigation and your lease contract(s) may be rescinded.

If you have any questions, please contact me at (208) 287-4944.

Sincerely,

Cherie Palmer
Water Rights Supervisor

Enclosure: Lease Application(s)

SUPPORT DATA

IN FILE # 35-7789

C: Greg Sullivan-Brockway Engineering PLLC
Rob Whitney-IDWR, Compliance Bureau

Palmer, Cherie

From: Greg Sullivan [greg.sullivan@brockwayeng.com]
Sent: Thursday, April 23, 2015 5:08 PM
To: Palmer, Cherie
Cc: lance@lancefunkfarms.com; Whitney, Rob
Subject: RE: WSB Rental for Lance Funk
Attachments: Funk Invoices and Plans.pdf; IMG_3092 (2).JPG; IMG_3093 (2).JPG; IMG_3094 (2).JPG

Cherie,

I called and talked with Lance Funk and Jaxon Higgs about these two PODs. Jaxon had indicated that the last actual measurement done on the system when it was running was in 2009. All other data that has been recorded is based on power readings from the electrical boxes.

Lance explained to me that the two wells have been disconnected from the irrigation mainlines and that the electrical connection has been disconnected. It is not physically possible for these two wells to function at this time. Lance did say that the same electric box that was used for the two wells is now used for the booster pumps from the pond. That would explain why the power output for WMIS well 600693 held steady for 2011, 2012 and 2013 but then jumped in 2014. The booster pumps are providing water to two large full pivots, a small pivot and two half pivots.

I have attached pictures of the pond when it was constructed. I have also include invoices and drawings for the pond system. Lance is willing to have any IDWR employee or water master inspect the system.

Below is the site visit note from JD Higgs (not Jaxon Higgs, I believe he is Jaxon's cousin) concerning this system.

Please move forward on processing the rental application for this year. Please call or email me if you have any additional questions. I will be out of the office most of the day on Friday.

Greg Sullivan
Brockway Engineering
2016 North Washington Stree, Suite 4
Twin Falls, Idaho 83301

[illegible]

Greg,

Cherie

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2015.0.5941 / Virus Database: 4334/9587 - Release Date: 04/20/15

Home: (208) 397-4302 • Mobile: (208) 680-1194

**Excavating • Trench
Sewers • Construction.**

007726

DATE 3-31-14

TO *Prince Funk Farm's*
ADDRESS *Po Box 310*
CITY *Imperial Falls Id 83211*

P.O. # work on pond Wynn place

Hr.	#29	Track HOF	1260
Hr.	#27	unloader	382
Hr.	#18	Transport	85
Hr.	#12	Transport	110
	2-1-14		
Hr.	#29	Track HOF	1710
Hr.	#27	unloader	722
	2-2-14		
Hr.	#29	Track HOF	1800
Hr.	#27	unloader	722
	2-3-14		
Hr.	#12	Transport	110
		Total	6602
			50

Payment in full is due 30 days from date of service. In the event payment is not made when due, an annual percentage rate of 21% will be assessed until paid.



Double M Ag & Irrigation Inc.
522 Lincoln
American Falls, ID 83211

3" ~~castic~~

.75 ft

2,700 ft

Estimate

Date	Estimate #
3/21/2014	234
Rep	DR

Zimmatic
STRENGTH TO GROW ON
SPUDNIK
HARVESTING SUCCESS!

Name / Address
Lance Funk Farms P O Box 310 American Falls, ID 83211

Project

Qty	Item	Description	U/M	Price	Total
3,200	IR PVC PIPE	** NEW POND SYSTEM NORTH **		12.42	39,744.00
1	IR MAINLINE	FT. 15" 125 # PIP GASKETED PVC PIPE		255.00	255.00
		EA. 15" BOLT STYLE STARTER COUPLING			
		Item Subtotal			39,999.00
		PUMP STATION SUMP. AND WATERMASTERS **			
40	IR PVC PIPE	FT. 24" 100 # PVC PIPE		28.75	1,150.00
20	IR MAINLINE	FT. 48" CMP GALVANIZED PIPE SUMP		46.38	927.60
2	IR MAINLINE	EA. 24" BOLT STYLE STARTER COUPLING		675.00	1,350.00
2	IR MAINLINE	EA. 36" WATER MASTER WITH FILTERS AND HARD WARE		1,540.00	3,080.00
1	IR MAINLINE	EA. MISS MATERIALS		100.00	100.00
2	IR MAINLINE	EA. 12" X 20" CONE		220.00	440.00
1	IR MAINLINE	EA. WELDING, LABOR, PAINTING, AND BACKHOE WORK		3,725.00	3,725.00
		Item Subtotal			10,772.60
		** PUMP TIE IN **			
20	IR MAINLINE	FT. 16" .188 WALL STEEL PIPE			0.00
1	IR MAINLINE	EA. 2000 GPM GALVANIZED FILTERS. WITH GALVANIZED TIE IN WYEE ASSY.			0.00
1	F083-00-10	10 3/4" X 1/2" IPS PLATE FLANGE		29,4865	29.49
1	F083-81-10	10" FLANGE GASKET		4,8365	4.84
1	CONE1012	10X12 3/16" SHORT CONE		24,4375	24.44
				Total	

Double M Ag & Irrigation Inc.

Signature _____

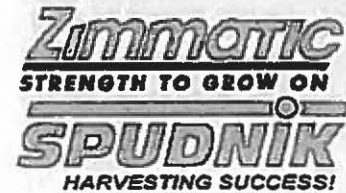
Phone #	Fax #
(208) 226-2555	(208) 709-2556



Double M Ag & Irrigation Inc.
522 Lincoln
American Falls, ID 83211

Estimate

Date	Estimate #
3/21/2014	234
Rep	DR



Name / Address
Lance Funk Farms P O Box 310 American Falls, ID 83211

Project

Qty	Item	Description	U/M	Price	Total
1	CHEMWELDON	CHEM AIR VENT ASSY COMPLETE WITH WELD ON, GASKET, & DRAIN ASSY.		222.2155	222.22
2	IR MAINLINE	EA. 16" X 1" FLANGE		126.00	252.00
2	IR MAINLINE	EA. 16" X 1/2" FLANGE		77.00	154.00
1	IR MAINLINE	EA. 16" WAFER CHECK VALVE		1,529.00	1,529.00
4	IR MAINLINE	EA. 16" RING GASKET		11.00	44.00
2	BCPLG3001/2	EA. 3' HALF STEEL COUPLER		20.5275	41.06
1	3185-3	SURGE PLUG 3' GHEEN MPT		132.634	132.63
1	GNIP300X4	EA. 3' X 4' GALV NIPPLE		16.0225	16.02
1	P004963	EA. AIR VENT MANIFOLD 3' X 3-2'		235.00	235.00
4	2AV	EA. 2' AIR VENT		17.867	71.47
1	GNIP200X4	EA. 2' X 4' GALV NIPPLE		4.2925	4.29
1	IR MAINLINE	EA. 15" BOLT STYLE STARTER COUPLING		255.00	255.00
1	BCPLG125	EA. 1 1/4' STEEL COUPLER		4.76	4.76
1	BCPLG075	EA. 3/4' STEEL COUPLER		2.72	2.72
1	GPLUG075	EA. 3/4' GALV MALL PLUG		1.19	1.19
1	GPLUG125	EA. 1-1/4' GALV MALL PLUG		2.1675	2.17
1	470	SILVER ALUM PAINT GAL [1/2 GALLON]		32.05	32.05
1	IR MAINLINE	EA. WELDING, LABOR, BOOM TRUCK, AND PAINTING			0.00
		Item Subtotal			3,058.35
		** SPECIAL WYE TEE **			0.00
1	YTEE12	EA. Y TEE PLAIN 12'		859.7155	859.72
1	IR MAINLINE	EA. 15" BOLT STYLE STARTER COUPLING		255.00	255.00
				Total	

Double M Ag & Irrigation Inc.

Signature _____

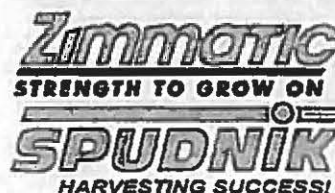
Phone #	Fax #
(208) 226-2555	(208) 709-2556



Double M Ag & Irrigation Inc.
522 Lincoln
American Falls, ID 83211

Estimate

Date	Estimate #
3/21/2014	234
Rep	DR



Name / Address

Lance Funk Farms
P O Box 310
American Falls, ID 83211

Project

Qty	Item	Description	U/M	Price	Total
2	IPSSC12	EA. 12" IPS EPOXY STARTER COUPLER		57.902	115.80
2	CONE1214	EA. 12" X 14" .187 WALL CONE		83.929	167.86
2	CONE1416	EA. 14" X 16" 10GA SHORT CONE		56.10	112.20
1	IR MAINLINE	EA. WELDING, LABOR, AND TAR COATING		682.00	682.00
		Item Subtotal			2,192.58
		Idaho Sales Tax		6.00%	1.92
				Total	\$56,024.45

Double M Ag & Irrigation Inc.

Signature _____

Phone #

(208) 226-2555

Fax #

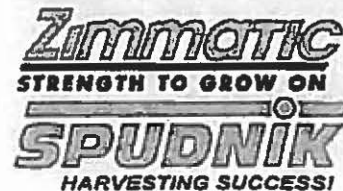
(208) 709-2556



Double M Ag & Irrigation Inc.
522 Lincoln
American Falls, ID 83211

Estimate

Date	Estimate #
3/21/2014	235
Rep	DR



Name / Address
Lance Funk Farms PO Box 310 American Falls, ID 83211

Project

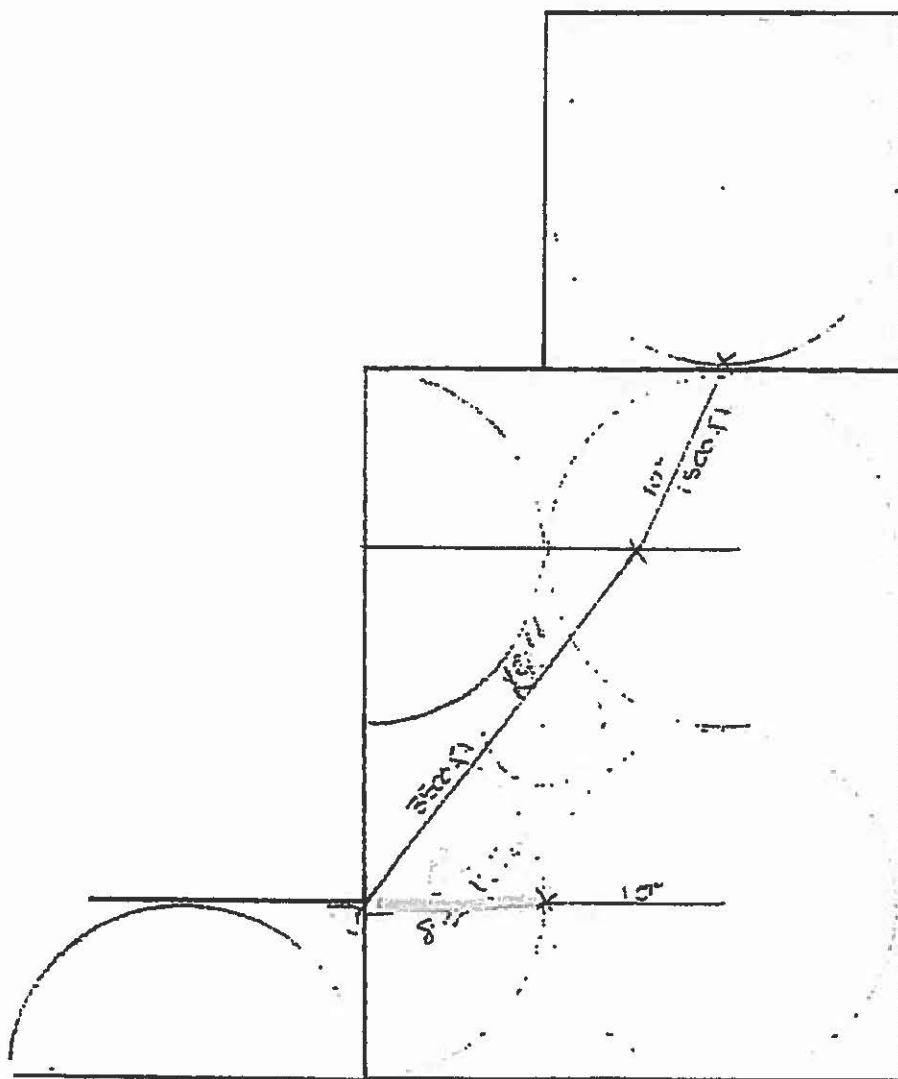
Qty	Item	Description	U/M	Price	Total
1,320	IPS8X125#	*** NEW POND SYSTEM SOUTH ** FT. 8' IPS 125# GASKETED PVC PIPE PR FT		3.97	5,240.40
20	IR MAINLINE	*** PUMP SUMP WITH WATER MASTER ** FT. 48" CMP		50.38	1,007.60
2	IR MAINLINE	EA. 15" BOLT STYLE STARTER COUPLING			0.00
100	IR PVC PIPE	FT. 15" 125 # PIP PVC PIPE		12.42	1,242.00
		Idaho Sales Tax		6.00%	0.00
				Total	\$7,490.00

Double M Ag & Irrigation Inc.

Signature _____

Phone #	Fax #
(208) 226-2555	(208) 709-2556

— This Design 100' p ~~1500~~ hp
150 hp



Lane Funk
Scale 1" = 330 ft

WYNN FARMS PROJECT

8100'	500 MCM USE ALUMINUM \$2.25	\$	18,225.00
2700'	4/0 USE ALUMINUM \$1.04		2,808.00
	CUT CHARGE		160.00
1400'	12-3 CONTROL WIRE \$.70		980.00
1	SIZE 5 SQ D PANEL		3,187.50
1	SIZE 4 SQ D PANEL		1312.50
2	350-400 PHASE FAILURES \$150.00		300.00
2	T10400 TIME DELAYS \$137.50		275.00
2	120 VOLT 25 AMP RELAYS \$40.00		80.00
2	3-POLE FUSE BLOCKS \$10.18		20.36
6	KTK 5 AMP MIDGIT FUSES \$11.30		67.80
1	HOFFMAN GUTTER 12 X 12 X 48		326.61
30'	DEEP SLOTTED UNISTRUT \$2.25		67.50
16	SPRING-NUTS \$.88		14.08
1	HOFFMAN WALLMOUNT ENCLOSURE		544.85
4	3" 36 RAD 90 PVC ELBOWS \$27.17		92.68
4	3" EXPANSION COUPLERS \$26.74		106.96
30'	3' SCH 80 PVC CONDUIT \$3.30		99.00
10	3" TERMINAL ADAPTORS \$2.14		21.40
10	3" STEEL LOCK-NUTS \$1.65		16.50
10	3" 105 BUSHINGS \$1.11		11.10
4	3" CONDUIT COUPLINGS \$1.74		6.96
1	CAN CEMENT		4.11
6	K2A36U2N 600 MCM LUGS \$29.19		175.14
3	ROLLS CODING TAPE - BLUE, ORANGE, YELLOW		16.30
6	K2A36U DUAL LUGS		68.64

TOTAL **\$ 28,987.99**

1	100 H.P. PUMP 2100 GPM	\$	9,649.00
1	150 H.P. PUMP 2600 GPM		<u>11,890.00</u>
	TOTAL		21,539.00
1	100 H.P. PUMP MOTOR	\$	6,526.25
1	150 H.P. PUMP MOTOR		<u>9,593.75</u>
	TOTAL	\$	16,120.00

WIRE FROM PANELS TO MOTORS100 H.P.

#20 2/0 FEEDERS

\$2.97

#6 GROUND

\$.96

2" CONDUIT

} 14.00 A FOOT

2	2" SEALTITE FLEX CONNECTOR	\$39.03	70.06
10'	2" SEALTITE FLEX CONNECTOR	\$ 6.15	61.50
	2" PVC CONNECTOR ELBOWS + L.B.		47.00

150 H.P.

4/0 FEEDERS

\$4.86

#6 GROUND

\$.96

2 ½" CONDUIT

\$

} 19.50 A FOOT

10	2 ½" SEALTITE FLEX CONNECTOR	\$194.37	388.74
	2 ½" SEALTITE FLEX CONNECTOR	\$10.09	100.90
	2 ½" CONNECTOR ELBOWS L.B.		108.00

LABOR AND BOOM TRUCK \$ 6,250.00

45'	500 MCM COPPER	\$11.50	\$ 517.50
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03-17-'14 15:39 FROM-Layne Pumps, INC

1-288-423-5137

T-709 P0004/0004 F-662

Company: Layne Pumps, Inc.
 Name: Tawna Root
 Date: 3/17/2014

Dyke's Electric
 Attn: CBF

**FAIRBANKS NIJHUIS**

Size: 13H.3 (3 stage)

Type: VERT. TURBINE
 Synchron speed: 1800 rpm

Curve:
 Specific Speeds:

Dimensions:

Vertical Turbine:

Speed: 1770 rpm
 Dia: 8.375 in

Impeller:
 Ns: —
 Nss: —

Suction: 13 in
 Discharge: 10 in

Bowl size: 12.9 in
 Max lateral: 0.6 in
 Thrust K factor: 12 lb/ft

Flow: 2100 US gpm

Head: 174 ft

Water
 Density: 62.3 lb/ft³
 Viscosity: 0.9946 cP
 NPSHa: —

Temperature: 88 °F
 Vapor pressure: 0.3391 psi a
 Atm pressure: 14.7 psi a

Standard: NEMA
 Enclosure: TEFC

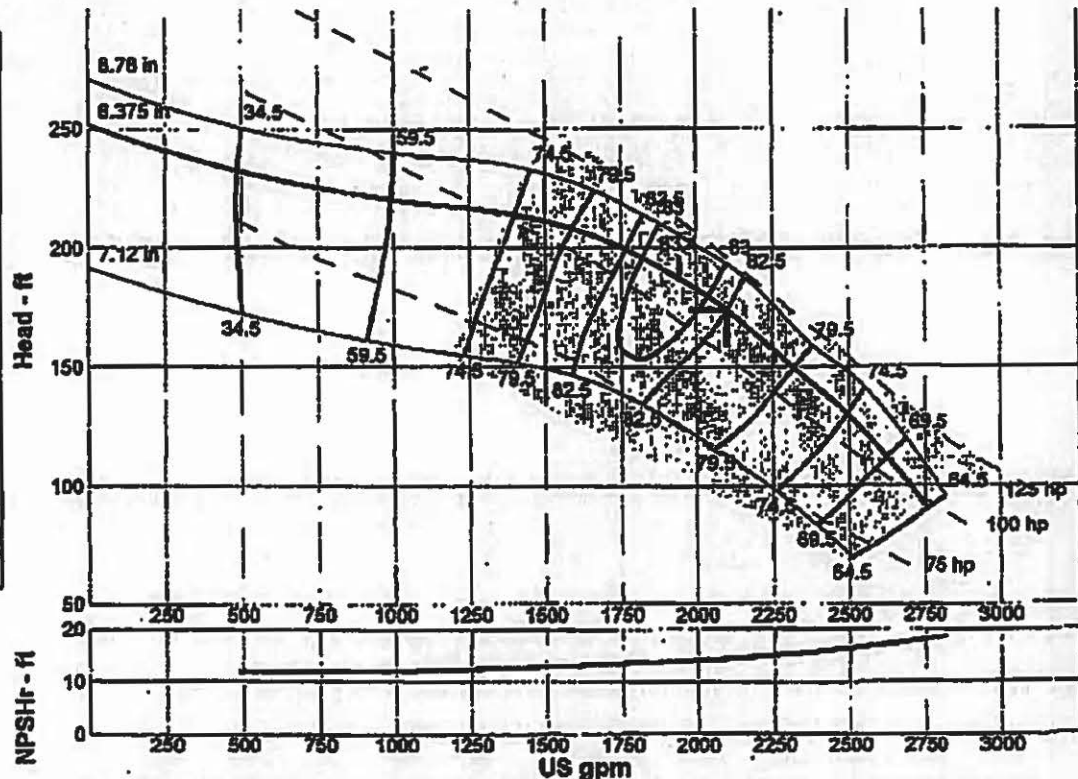
Size: 125 hp
 Speed: 1800
 Frame: 444T

Sizing criteria: Max Power on Design Curve

Temperature: 150 °F
 Pressure: 380 psi g
 Sphere size: 1 in

Power: 344 hp
 Eye area: —

Design Data	
Flow:	2100 US gpm
Head:	174 ft
Eff:	82.5%
Power:	112 hp
NPSHr:	14.4 ft
Performance Data	
Shutoff head:	252 ft
Shutoff dP:	109 psi
Min flow:	—
3EP:	83.4% @ 1945 US gpm
4OL power:	112 hp @ 2089 US gpm
Limits	
Max power:	124 hp @ 2158 US gpm



Curve efficiencies are typical. For guaranteed values, contact Fairbanks Morse or your local distributor. Las eficiencias en curvas son típicas. Para valores garantizados contacte a Fairbanks Morse o a su distribuidor local.

Flow US gpm	Speed rpm	Head ft	Efficiency %	Power hp	NPSHr ft
2520	1770	127	73.5	110	18.5
2100	1770	174	82.6	112	14.4
1680	1770	204	81	107	13.2
1280	1770	216	69.4	98.6	12.4
840	1770	224	62.1	89.7	12

13,538.00

3-17-'14 15:38 FROM-Layne Pumps, INC

1-208-423-5137

T-709 P0001/0004 F-662



LAYNE PUMPS
3797 N 3400 E Twin Falls, ID 833
Phone: 208-733-3284
Fax: 208-423-5137

ORDER NO. _____

**PUMP ESTIMATE
AND ORDER**

DATE 3/17 2014

DEALER

CUSTOMER

*Syke's Electric
Otter Creek*

Route _____ Date Desired _____

PUMPING CONDITIONS

Inside Dia. of Well _____
Depth of Well _____
Static Water Level _____
Drawdown _____

Lift in Well _____
Lift Above 8.5 Lbs. 197
Column Friction _____
Total Dyan. Head 197

Capacity 3300 GPM
Speed of Pump 1770 RPM
HP Required 223 hhp @ 80.6%
Allowable Shaft HP _____

Number	DESCRIPTION	LIST PRICE	NET PRICE
	HP MOTOR _____ Phase _____ Volt _____ Make _____ RPM _____ { With } Fatchet _____ { Without }		
1	<u>12x20</u> HEAD <u>12</u> Outlet <u>Water Lub.</u> <u>4qt</u> OILER _____ Volt Solenoid <u>Oil Lub.</u>		
1	<u>10'0"</u> "DISCHARGE NIPPLE { TDE } SETTING OF <u>12</u> x <u>2 1/2</u> x <u>1 1/16</u> In _____ Length		
1	<u>15</u> "BOWLS <u>H</u> Type <u>3</u> Stage { Open } Ports { Bronze } Wear Rings Cast Iron { Impellers { Oversize } Shaft Fitted _____ X _____ X Standard } YOE TDE		
1	<u>15</u> "SUCTION { YOE } "STRAINER { Screen } { Screwed } { Welded } { Backset } Cone		
	LABOR _____		

Company: Layne Pumps, Inc.

Dyke's Electric

Name: Tawna Root

Attn: Cliff

Date: 3/17/2014



FAIRBANKS NIJHUIS

Size: 15H.2+ (3 stage)

Type: VERT. TURBINE

Synch speed: 1800 rpm

Curves:

Specific Speeds:

Dimensions:

Vertical Turbine:

Speed: 1770 rpm

Dia: 8.3125 in

Impeller:

Ns: —

Nss: —

Suction: 14.75 in

Discharge: 12 in

Bowl size: 16 in

Max lateral: 0.86 in

Thrust K factor: 14.5 lb/ft

Flow: 3300 US gpm

Head: 197 ft

Water

Density: 62.3 lb/ft³

Viscosity: 0.9946 cP

NPSHr: —

Temperature: 68 °F

Vapor pressure: 0.3391 psi a

Atm pressure: 14.7 psi a

Standard: NEMA

Enclosure: TEFC

Size: 250 hp

Speed: 1800

Frame: 447T

Sizing criteria: Max Power on Design Curve

Temperature: 150 °F

Pressure: 476 psi g

Sphere size: 1.31 in

Power: 522 hp

Eye area: —

Flow: 3300 US gpm

Head: 197 ft

Eff: 80.6%

Power: 203 hp

NPSHr: 25.4 ft

Shutoff head: 354 ft

Shutoff dP: 153 psi

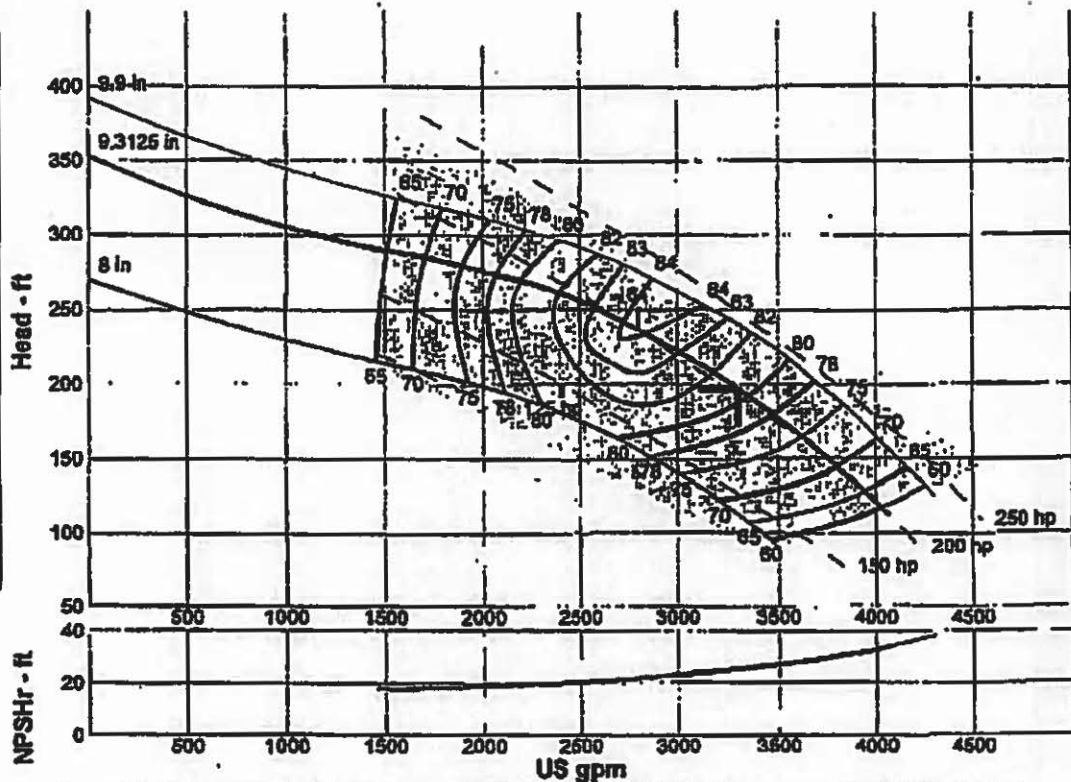
Min flow: —

BEP: 84% @ 2802 US gpm

NOL power:
204 hp @ 3181 US gpm

Max power:

244 hp @ 3555 US gpm



Curve efficiencies are typical. For guaranteed values, contact Fairbanks Morse or your local distributor. Las eficiencias en curvas son típicas. Para valores garantizados contacte a Fairbanks Morse o a su distribuidor local.

Flow US gpm	Speed rpm	Head ft	Efficiency %	Power hp	NPSHr ft
3980	1770	128	84.1	197	32.2
3300	1770	197	80.6	203	25.4
2840	1770	248	83.4	198	21
1980	1770	277	78.5	181	18.8
1320	1770	—	—	—	—

DYKES POLELINE ELECTRIC

3028 Poleline Rd.
Pocatello, ID 83201

Invoice

Date	Invoice #
6/26/2014	59495

Bill To
REDMAN, JIM FARMLAND MANAGMENT 301 E MAIN ST TURLOCK, CA 95380

P.O. No.	Terms	Project
	Net 30	

Quantity	Description	Rate	Amount
	WYNN PROJECT		
1	100 PUMP 2100 GPM & 150 PUMP 2100 GPM	21,539.00	21,539.00
1	100 PUMP MOTOR & 150 PUMP MOTOR	16,120.00	16,120.00
	WIRE FOR PANEL TO MOTOR ON 100 HP MOTOR	949.60	949.60
	WIRE FOR PANEL TO MOTOR ON 150 HP MOTOR	1,191.18	1,191.18
	AS PER LIST FROM PROJECT	36,431.34	36,431.34
OFFICE COPY		Total	\$76,231.12





MEMO

TO: Water Right 35-7789, 35-14056, and 35-14058
FROM: Cherie Palmer
DATE: May 7, 2015
RE: Lease Status and Findings

On April 20, 2015, I sent a letter to the lessor regarding water rights 35-7789, 35-14056, and 35-14058. The purpose of the letter was to confirm that the lessor had been conforming with the lease contract.

On April 23, 2015, Brockway Eng. responded by email. Lance Funk is leasing that land and installed equipment in order to get Aberdeen Springfield Canal Co. water delivered to the POU in question.

I spoke with Rob Whitney and asked if he was satisfied that no enlargement occurred last year. He is satisfied with the response Brockway Eng. provided.

The Bank will continue to process a rental for water rights 35-14056 and 35-14058.