

2

Rev. 0/1

DEPARTMENT OF WATER RESOURCES

RECEIVED

STATE OF IDAHO

Transfer No. 80193

JUN 12 2015

WATER RESOURCES
WESTERN REGION

MINIMUM REQUIREMENTS CHECKLIST
TO BE SUBMITTED WITH APPLICATION FOR TRANSFER

An application for transfer must be prepared in accordance with the minimum requirements listed below to be acceptable for processing by the Department. Incomplete applications will be returned. The instructions, fee schedule, Part 2A reports and additional Part 2B forms are available from any Department office or on the Department's website at www.idwr.idaho.gov.

Name of Applicant(s) Big Sky Dairy

Check whether each item below is *attached* (Yes) or *not applicable* (N/A) for the proposed transfer.

Yes N/A * Means the item is always required and must be included with the application.

- ☒ * Completed Application for Transfer of Water Right form, Part 1.
- ☒ * Signature of applicant(s) or applicant's authorized representative on Application for Transfer Part 1. Include evidence of authority labeled Attachment #3 (see below) if signed by representative.
- ☒ * Application for Transfer Part 2A. Attach a [Part 2A](#) report describing each water right in the transfer as currently recorded.
- ☒ Complete and attach an Application for Transfer [Part 2B](#) for each water right for which only a portion is proposed to be changed through this transfer application.
- ☒ * Application for Transfer Part 3A is always required (see Attachment #7a below); Parts 3B and 3C must be completed for transfer applications proposing to change the nature of use of the water right(s) or proposing changes to supplemental right(s).
- ☒ * Correct fee submitted with transfer application form. ([Fee schedule](#) is on website and instructions for application for transfer.)

Attachments to Application - Label each attachment with the corresponding number shown below as Attachment #1-10.

- ☐ ☒ #1 If the applicant is a business, partnership, organization, or association, and not currently registered in the State of Idaho as a business entity, attach documentation identifying officers authorized to sign or act on behalf of right holder. (See Part 1.)
- ☐ ☒ #2a Water Right ownership documentation if Dept. records do not show the applicant as the current water right owner. **
- ☐ ☒ #2b If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s).** ** Additional fee(s) required for water right ownership changes; see fee schedule.
- ☐ ☒ #3 Documentation of authority to make the change if the applicant is not the water right owner.
- ☐ ☒ #4 Power of Attorney or documentation providing authority to sign or act on the applicant's behalf. (See Part 1.)
- ☐ ☒ #5 If the transfer application proposes to change the point of diversion for a water right affecting the Eastern Snake Plain Aquifer (ESPA), attach the results of an ESPA analysis and a detailed mitigation plan to offset any depletions to hydraulically connected reaches of the Snake River. ESPA transfer spreadsheet and model grid labeled cells are available on the Department's website at www.idwr.idaho.gov/WaterManagement/WaterRights/WaterRightTransfers/resources.htm.
- ☐ ☒ #6 Notarized statement of agreement or a statement on official letterhead signed by an authorized representative from each lien holder or other entity with financial interest in the water right(s) or land affected by the proposed transfer. (See Part 1.5.c.)
- ☒ * #7a Attach a map identifying the proposed point(s) of diversion, place(s) of use, and water diversion and distribution system details as described on the application. Include legal description labels. If only a portion of the right is proposed to be changed, identify the current location of the part of the existing right(s) proposed to be changed. (See Part 3A.)
- ☒ #7b If the transfer application proposes to change the place or purpose of use of an irrigation right attach a Geographic Information System (GIS) shape file, or an aerial photo or other image clearly delineating the location and extent of existing acres and changes to the place of use. If some or all of any right is leased to the Water Supply Bank, you must also show the the specific location and/or acres to be idled at the new, proposed place of use to satisfy lease requirements.

W043182 (PSS) Filed - June 12, 2015

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

- ☐ ☒ #8a If the transfer application proposes to change the nature of use or period of use for one or more rights, provide documentation describing the extent of historic beneficial use for the water rights proposed to be transferred and document how enlargement will be avoided. (See Part 3B.) Additional fee required for proposed changes to nature of use; see [fee schedule](#).
- ☐ ☒ #8b If the transfer application proposes to change the place of use of a supplemental irrigation right, provide documentation regarding the historic use of the supplemental right(s) and availability or reliability of the primary right(s) being supplemented, both before and after the proposed change. (See Part 3C.)
- ☐ ☒ #9 Water Supply Bank information for all rights proposed for transfer and currently leased to the Bank. ([Attachment WSB](#)) ☒ #10

Page 1 of Transfer No. 80193

Other. Please describe:

PART 1

Name of Applicant(s) Big Sky Dairy Phone (208) 934-9072

Mailing address P.O. Box 407 Jerome, ID 83338 Email _____

- ☐ If applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign or act on behalf of the applicant. Label it **Attachment #1**.
- ☐ Attach water right ownership documentation if Department records do not show the transfer applicant as the current water right owner. Label it **Attachment #2a**.
- ☐ If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s). Label it **Attachment #2b**.
- ☐ Attach documentation of authority to make the proposed change if the applicant is not the water right owner. Label it **Attachment #3**.

Provide contact information below if a consultant, attorney, or any other person is representing the applicant in this transfer process.

☐ No Representative

Name of Representative TSK Interprise LLC / Jason C. Helms, P.E. Phone (208) 308-2109 320-0897

Mailing address 6755 N. Albert Lane Idaho Falls, ID 83401 Email jasoncivil@alumni.nd.edu

- ☐ Send all correspondence for this application to the representative and not to the applicant.
OR
- ☒ Send original correspondence to the applicant and copies to the representative.
- ☐ The representative may submit information for the applicant but is not authorized to sign for the applicant.
OR
- ☐ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation providing authority to sign for the applicant and label it **Attachment #4**.

I hereby assert that no one will be injured by the proposed changes and that the proposed changes do not constitute an enlargement in use of the original right(s). The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.

James Somerset
Signature of Applicant or Authorized Representative

James Somerset, Controller 6-9-15
Print Name and Title if applicable Date

Signature of Applicant or Authorized Representative

Print Name and Title if applicable

Date

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

JAN 21 2016

WATER RESOURCES
WESTERN REGION

AMENDED

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued

B. DESCRIPTION OF RIGHTS AFTER THE REQUESTED CHANGES. IF THE RIGHTS ARE BEING SPLIT, DESCRIBE PORTIONS TO BE CHANGED AS THEY WOULD APPEAR AFTER THE REQUESTED CHANGES.

1.	Right Number	Amount (cfs/ac-ft)	Nature of Use	Period of Use	Source & Tributary
All or Part ☐ ☒	51-7014	2.89 / 928	Irrigation	04/01 to 10/31	Ground Water
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	
☐ ☐				to	

Total authorized under rights 2.89 cfs and/or 928 acre-feet.

2. Total amount of water proposed to be transferred or changed 2.89 cubic feet per second and/or 928 acre-feet per year.

3. Point(s) of Diversion:

- ☐ No changes to point(s) of diversion are proposed - the following chart is therefore not completed. (Proceed to #4.)
- ☐ Attach Eastern Snake Plain Aquifer analysis if this transfer proposes to change a point of diversion affecting the ESPA. Label it Attachment #5.

New ?	Lot	¼	¼	¼	Sec	Twp	Rge	County	Source	Local name or tag #
n		SE	SE	SW	29	09S	12E	Owyhee	Ground Water	Well #1

4. Place of use: (If irrigation, identify with number of acres irrigated per ¼ ¼ tract.)

- ☐ No changes to place of use are proposed - the following chart is therefore not completed. (Proceed to #5.)

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
09S	12E	29											40						40
		30															0	40	40
		31	40			40													80
		32					40	40	40	40									160
Total Acres (for irrigation use)																			320ppu

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT

A. PURPOSE OF TRANSFER

- ☐ 1. Change point of diversion
☐ Change nature of use
☐ Change permissible place of use
- ☒ Add diversion point(s)
☐ Change period of use
- ☒ Change place of use
☒ Other Create _____

2. Describe your proposal in narrative form, including a detailed description of non-irrigation uses to justify amounts transferred (i.e. number of stock, etc.), and provide additional explanation of any other items on the application. Attach additional pages if necessary and label it **Part 1A.2**.

This application seeks to create a permissible place of use to allow flexible water management on the subject

property. Total irrigation will be limited to the extent of the water rights shown in part 1 in a single irrigation season.

Page 2

PART 1 Continued

B. DESCRIPTION OF RIGHTS AFTER THE REQUESTED CHANGES. IF THE RIGHTS ARE BEING SPLIT, DESCRIBE PORTIONS TO BE CHANGED AS THEY WOULD APPEAR AFTER THE REQUESTED CHANGES.

1.	Right Number	Amount (cfs/ac-ft)	Nature of Use	Period of Use	Source & Tributary
All or Part ☐ ☒	51-7014	2.89 / 928	Irrigation	04/01 to 10/31	Ground Water
☐ ☐	_____	_____	_____	_____ to _____	_____
☐ ☐	_____	_____	_____	_____ to _____	_____
☐ ☐	_____	_____	_____	_____ to _____	_____
☐ ☐	_____	_____	_____	_____ to _____	_____
☐ ☐	_____	_____	_____	_____ to _____	_____
☐ ☐	_____	_____	_____	_____ to _____	_____
☐ ☐	_____	_____	_____	_____ to _____	_____
☐ ☐	_____	_____	_____	_____ to _____	_____

Total authorized under rights 2.89 cfs and/or 928 acre-feet.

2. Total amount of water proposed to be transferred or changed 2.89 cubic feet per second and/or 928 acre-feet per year.

3. Point(s) of Diversion:

- ☐ No changes to point(s) of diversion are proposed - the following chart is therefore not completed. (Proceed to #4.)
☐ Attach Eastern Snake Plain Aquifer analysis if this transfer proposes to change a point of diversion affecting the **ESPA**.
 Label it Attachment #5.

New ?	Lot	¼	¼	¼	Sec	Twp	Rge	County	Source	Local name or tag #
n		SE	SE	SW	29	09S	12E	Owyhee	Ground Water	Well #1

* superseded by amended Pg. 3 on 1-21-2016

[illegible]

☐ No changes to place of use are proposed - the following chart is therefore not completed. (Proceed to #5.)

Page 3

4

STATE OF IDAHO

APPLICATION FOR TRANSFER OF WATER RIGHT

DEPARTMENT OF WATER RESOURCES

PART 1 Continued

5. General Information:

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

Existing diversion system with existing meters and flow measurement methods.

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

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

- c. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?

If yes, ☐ attach a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes on official letterhead signed by an authorized representative. Label it **Attachment #6**. List the name of the entity and type of lien:

It is the applicant's responsibility to provide notice to lien holder, trustee, mortgagor, or contract holder of the proposed changes that may impact or change the value of the water rights or affected real property. Any misrepresentation of legal encumbrance on this application may result in rejection of the application or cancellation of an approval.

- d. Are any of the water rights proposed for transfer currently leased to the Water Supply Bank?

If yes, ☐ complete Attachment WSB.

- e. Describe the effect on the land now irrigated if the place or purpose of use is changed pursuant to this transfer:

Department will be notified of any changes to irrigation configuration within the proposed permissible place of

use prior to the beginning of the irrigation season.

- f. Describe the use of any other water right(s) for the same purpose or land, or the same diversion system as right(s) proposed to be transferred at both the existing and proposed point(s) of diversion and place(s) use: none

EXCEEDED. THE USE OF WATER BEFORE APRIL 1 AND AFTER OCTOBER 31 UNDER THIS REMARK IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.

2. C18 THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 421412(6), IDAHO CODE.

Decreed Date: 12/1/2000

Rev. 0/1

**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

**APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2**

A. DESCRIPTION OF RIGHT(S) AS RECORDED

For each water right listed in Part 1B.1 of the application, attach a **Part 2A** report obtained from any Department office or from the Department's website @ www.idwr.idaho.gov, Water Right Transfers, Step 1. Insert Part 2A reports into the application following Part 1.

B. IF ONLY A PORTION OF THE RIGHT IS PROPOSED TO BE CHANGED, DESCRIBE THE PORTION BEING CHANGED AS IT APPEARS BEFORE THE REQUESTED CHANGES

- ☒ Complete and attach one copy of Part 2B for each right for which only a portion is proposed to be changed. If the entire right is proposed to be changed, Part 2B is not applicable. Additional copies of the **Part 2B** form can be obtained from any Department office or from the Department's website @ www.idwr.idaho.gov, Water Right Transfers, Step 3, or Water Right Forms, Changes in Use. Insert completed Part 2B forms into the application following Part 2A of the same water right.

Right Number: 51-7014

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

Yes No

- ☐ ☐ ☐ ☒ undergone a period of five or more consecutive years of non-use,
☐ ☐ ☐ ☒ currently leased to the Water Supply Bank,
☐ ☐ ☐ ☒ currently used in a mitigation plan limiting the use of water under the right, or
☐ ☐ ☐ ☒ currently enrolled in a Federal set-aside program limiting the use of water under the rights?

If yes, describe:

Page 4

Page _____ of _____

IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A

Current Water Right No.: 51-7014

Current Owner: BIG SKY DAIRY

Priority Date: 2/19/1968

Origin: Water Right

Status: Active

Basis: Decreed

Source

Tributary

GROUND WATER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>
IRRIGATION	4/01 to 10/31	
	<u>Total Diversion</u>	

Diversion Rate

Annual Volume

3.99 CFS

1280 AF

3.99 CFS

1280 AF

SE1/4SW1/4

Sec. 29, Twp 09S, Rge 12E B.M.

Location of Point(s) of Diversion

GROUND WATER

OWYHEE County

Place of Use

IRRIGATION Within OWYHEE County

T09S R12E S29	SWSW	40.00	T09S R12E S30	SESE	40.00
T09S R12E S31	NENE	40.00	T09S R12E S31	SENE	40.00
T09S R12E S32	NENW	40.00	T09S R12E S32	NWNW	40.00
T09S R12E S32	SWNW	40.00	T09S R12E S32	SENW	40.00
Total Acres: 320					

Total Acres: 320

Conditions of Approval:

1. THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS EARLY AS MARCH 15 AND MAY CONTINUE TO AS LATE AS NOVEMBER 15, PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT

2. Lands irrigated or place of use: (If irrigation, identify with number of acres irrigated per 1/4 1/4 tract.)

Page 5

8

B. CHANGES IN NATURE OF USE (Water Balance)

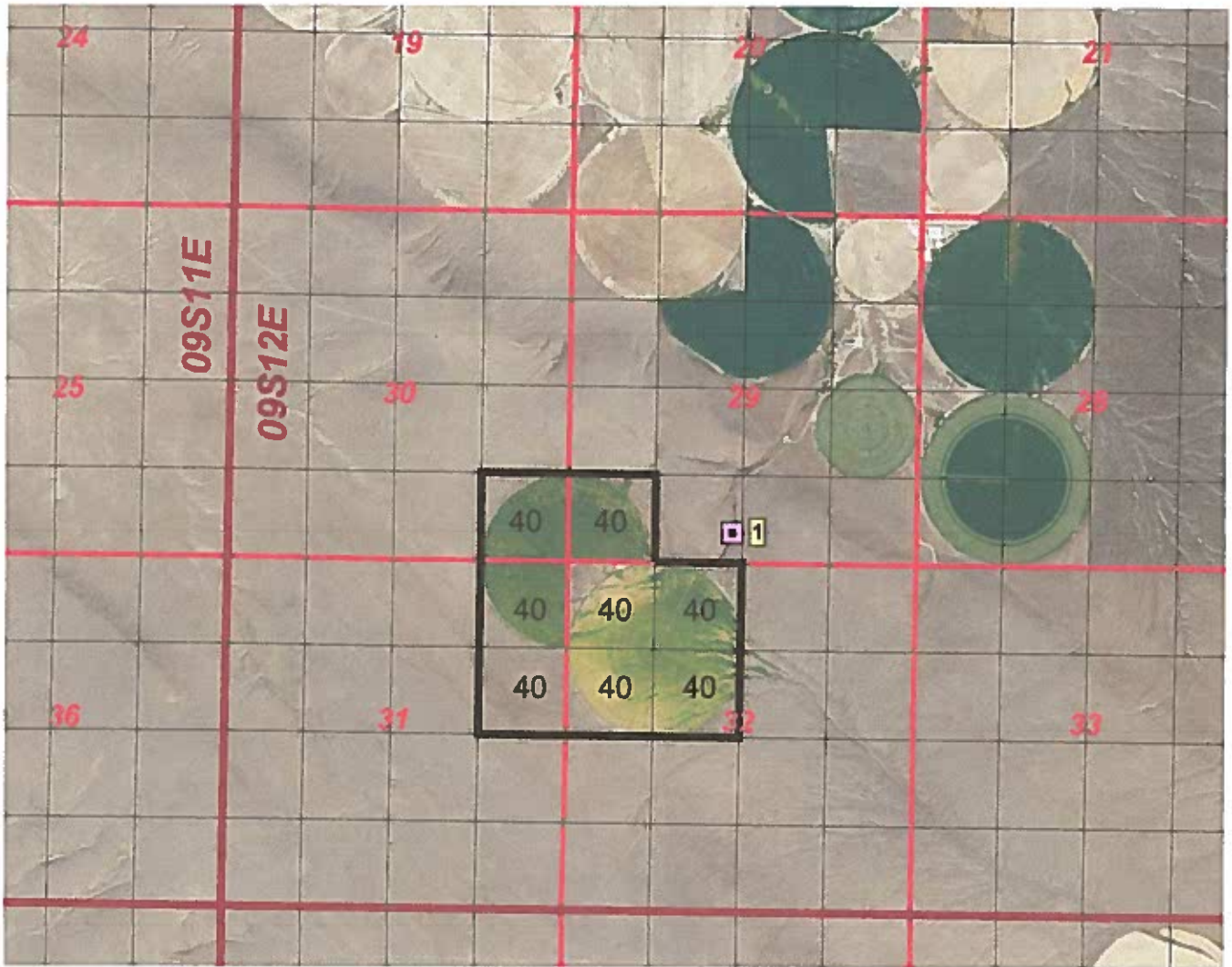
- ### C. PLACE OF USE CHANGES TO SUPPLEMENTAL IRRIGATION RIGHTS

-
- This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

A

Received by BS 12 Date 6/12/15 2 Preliminary check by PK Date 9-10-2015
Fee paid \$ 660.00 Date 6/12/15 Received by BS Receipt # W043182
Add'l fee paid _____ Date _____ Received by _____ Receipt # _____

Check all that apply: Attachment WSB ☐ (copy sent to state office) Lessor Designation form ☐ W-9 ☐ (originals to state office)



JCH - 6/9/2015

2013 NAIP Aerial Photo

0.25 0 0.25 0.5 0.75 1 Miles



- Big Sky Dairy
- Proposed Authorized Points of Diversion
 - Proposed Permissible Place of Use
 - Township & Range
 - Sections
 - 40s



**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A**

Current Water Right No.: 51-7014

Current Owner: BIG SKY DAIRY

Priority Date: 2/19/1968

Origin: Water Right

Status: Active

Basis:	Decreed
---------------	----------------

Source

Tributary

GROUND WATER

<u>Beneficial Use</u>	<u>From To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	4/01 to 10/31	3.99 CFS	1280 AF
	<u>Total Diversion</u>	3.99 CFS	1280 AF

Location of Point(s) of Diversion

GROUND WATER SE1/4SW1/4 Sec. 29, Twp 09S, Rge 12E B M
OWYHEE County

Place of Use

IRRIGATION Within OWYHEE County

T09S R12E S29	SWSW	40 00	T09S R12E S30	SESE	40 00
T09S R12E S31	NENE	40 00	T09S R12E S31	SENE	40 00
T09S R12E S32	NENW	40 00	T09S R12E S32	NWNW	40 00
T09S R12E S32	SWNW	40 00	T09S R12E S32	SENW	40 00

Total Acres: 320

Conditions of Approval:

1. C18 THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.
2. THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS EARLY AS MARCH 15 AND MAY CONTINUE TO AS LATE AS NOVEMBER 15, PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE OF WATER BEFORE APRIL 1 AND AFTER OCTOBER 31 UNDER THIS REMARK IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.

Decreed Date: 12/1/2000



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

March 10, 2016

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

BIG SKY DAIRY
PO BOX 407
JEROME ID 83338

Re: Transfer No: 80193
Water Right No(s): 51-7014

Transfer Approval Notice

Dear Water Right Holder <and other Interested Persons>:

The Department of Water Resources has issued the enclosed approved Transfer of Water Right(s). Please be sure to thoroughly review the conditions of approval and remarks listed on the approval document.

The Transfer of Water Right(s) is a PRELIMINARY ORDER issued by the Department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless the APPLICANT petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

ANY PERSON aggrieved by any decision, determination, order or action of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Department and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

If the transfer approval includes a condition requiring measuring and recording devices, such devices shall comply with specifications established by the Department. Detailed specifications are available on the Department's home page on the Internet, or you can request a copy by contacting any office of the Department. Please be sure to thoroughly review the specifications to avoid unnecessary costs for reinstallation or modification due to non-conforming or improperly installed devices.

Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at (208)334-2190.

Sincerely,

 Rachel Neely for.

Nick Miller

Western Regional Manager

Enclosure

CC:

TSK ENTERPRISES LLC
C/O JASON HELMS
5755 N ALBERT LANE
IDAHO FALLS ID 83401

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2016 I mailed a true and correct copy, postage prepaid, of the foregoing TRANSFER APPROVAL to the person(s) listed below:

**Re: Transfer No.: 80193
Water Right No(s): 51-7014**

**BIG SKY DAIRY
PO BOX 407
JEROME ID 83338**

**TSK ENTERPRISES LLC
C/O JASON HELMS
5755 N ALBERT LANE
IDAHO FALLS ID 83401**



**Rachel Neely
Administrative Assistant**

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **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 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

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.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case 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 of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

Kelly, Patrick

From: Jason Helms [jasoncivil@alumni.nd.edu]
Sent: Thursday, January 21, 2016 12:26 PM
To: Gary Funderburg; Kelly, Patrick
Subject: Re: FW: BIG SKY DAIRIES TRANSFER
Attachments: bigsky_TRANSFER80193_pou_correction.pdf

Hi Gary, Patrick,

You are correct, the SWSE of section 30 should not be included and the total permissible place of use is correct at 320 acres as shown on the map.

Please find attached corrected pou page.

Thanks,

Jason C. Helms, P.E.

JCH Engineering & Consulting, PLLC
(208) 308-2109

On Wed, Jan 20, 2016 at 3:59 PM, Gary Funderburg <tskenterprise@cableone.net> wrote:

Jasson, Please review the Questions from Patric and let him know if you made a error or you intended to leave that 40 Acre Track out? Let us know.

Thank You

Gary Funderburg

From: Kelly, Patrick [mailto:Patrick.Kelly@idwr.idaho.gov]
Sent: Tuesday, January 5, 2016 2:47 PM
To: Gary Funderburg <tskenterprise@cableone.net>
Subject: RE: BIG SKY DAIRIES TRANSFER

Hello Gary,

The transfer application was reviewed and returned to me with a few comments. I need to clarify with you the POU description on Page 3 Part 4 of transfer application 80193 (see attached). This section identifies 40 acres of Permissible Place of Use to be added in the SWSE QQ of Section 30. The Total Acres describes a 320 PPU, however all of the sections sum to 360 acres. The map attached to the transfer does not include the SW SE QQ, which leads me to believe this 40 was included in error. Can you confirm this? Other than that, the rest appears to be edits on my end and ready to move forward towards an approval.

Thanks Gary, give me a call with any questions.

Patrick

From: Gary Funderburg [<mailto:tskenterprise@cableone.net>]
Sent: Tuesday, January 05, 2016 10:04 AM
To: Kelly, Patrick
Subject: BIG SKY DAIRIES TRANSFER

Patrick, Has this transfer been sent for approval?

Gary L. Funderburg
TSK Enterprises LLC
[208-320-0897](tel:208-320-0897)



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

September 16, 2015

BIG SKY DAIRY
PO BOX 407
JEROME ID 83338

COPY

RE: Additional Information Request for Transfer 80192 & 80193

Dear Applicant,

On June 12, 2015, you filed an Application for Transfer of Water Right to create a Permissible Place of Use for irrigation in Owyhee County. Item #6 of the Minimum Requirements Checklist was marked "No" requiring a notarized statement of agreement or a statement on official letterhead signed by an authorized representative from each lien holder or other entity with financial interest in the water rights. Records of Big Sky Dairy water rights show that Metropolitan Life Insurance Company filed a Notice of Security Interest in March of 2013 to expire 12/10/2027.

Part 1 B.3. of Transfer Application 80192 identifies ten different wells but labels "well 5" twice. The map submitted with the application indicates there are 10 wells on the system labeled #2-#11. The labeling of wells 5-10 is believed to be an error and would not require clarification. The legal description of these wells however indicates all are within Section 29 and does not match the map or active POD descriptions on record. Please revise this section and return the application for further processing.

Please submit the requested information for the application to be processed. You may seek additional time to provide the information by making a written request to interrupt processing for up to six months. The application will be voided without a timely written reply within the next thirty (30) days. Refunds are not issued for voided applications.

IDWR forms and other information are available on the Internet at www.idwr.idaho.gov. Please contact me at 208-334-2190 if you need more information. Thank you for your attention to these matters.

Respectfully,

Patrick Kelly
Water Resource Agent

Enclosure(s): Copy of Part 1.B.3. , Notice of Security Interest

MEMORANDUM

TO: Transfer No. 80192 & 80193
FROM: Patrick Kelly
DATE: September 8, 2015
RE: Evaluation of Application

The transfer proposes to create a permissible place of use for all of the dairies irrigation rights. Individual rights currently represent areas prior to pivot installation. The transfer will clear confusion when looking at aerial photography and identifying beneficial use covered by licensed water rights.

Representative for the dairy is Jason Helms of TSK Enterprises at 6755 N Albert Lane, Idaho Falls, ID 83401, 208-308-2109 or 208-320-0897.

Summary of Information Submitted

Authority to File:

The Application for Transfer of Water Right (Application) was received on June 12, 2015. Big Sky Dairy is the current water right owner of water rights listed on transfer application. Land ownership records list the dairy as current owners of the proposed place of use.

Water Right Validity:

Many of the rights in the transfer were decreed in 2013 and 2015. Other rights decreed in 2000 presumed to be valid since beneficial use has been established by dairy operations since that date, not subject to forfeiture.

Injury to Other Water Rights:

The POD's are within trust water and Blue Gulch Critical Ground Water Management Area boundaries. This transfer should not adversely impact water users within the region since no additional water apart from historical use is being proposed. Land use in the immediate vicinity is limited to pivot irrigation. Injury to other water rights is not apparent.

Enlargement of Use:

A change in the amount of water being used is not the purpose of the transfer, rather than the identification of where beneficial use is occurring.. No enlargement should occur.

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 application proposes beneficial use consistent with conservation of water resources in Idaho.

The application is consistent with criteria of I. C. § 42-222 and should be processed.

Additional Information/Analysis

Transfer application 80192 POD description identifies ten different wells but labels "well 5" twice. The map submitted with the application indicates there are 10 wells on the system labeled #2-#11. The labeling of wells 5-10 is believed to be an error and would not require additional information. The legal description of these wells however indicates all within Section 29 and does not match the map. Additional information will be requested to correct Part 1 B.3. of the transfer application.

Applicants selected "No" on #6 of the Minimum Requirements Checklist which requires a notarized statement of agreement by an authorized representative from a lien holder or other entity with financial interest in the water rights. Part 1.5.c. of Transfer application 80192 was left blank indicating that no interest or lien is pertinent to the Dairies water rights are in place. Information pulled from the water right back file shows that Metropolitan Life Insurance Company has a security interest on all of Big Sky Dairy water rights until 12/10/2027. Additional information will be required of the applicant to provide documentation that the interested party is notified of such a transfer.

Transfer application 80193 Part B.4. identifies 40 acres within the SW SE QQ to be included in the PPU. However the sum of each section totals 360 acres. The Total Acres on this section states a 320 acre PPU, and the map Attachment 7a does not include the SWSE QQ. Clarification of this error has been sent to the applicant to correct the transfer application.

Discussion

Tim Luke's research of expansion rights in the Blue Gulch CGWMA's brought Big Sky Dairy irrigation to attention for further review. Preliminary review by Angie Grimm found that POU shape files for specific water rights were incorrect or missing. Historical use of the water rights suggests that beneficial use was decreed prior to the installation of pivots. Changes to the dairies irrigation place of use were made without the authorization or process of the Department. Transfer 80192 & 80193 was filed to accurately describe the place of use for irrigation purposes on Big Sky Dairy ground.

Initial review by Angie Grimm of Big Sky Dairy irrigation rights found nine water rights that describe three systems. See Angie Grimm's 12-11-2014 memo for a description of each system. It appears through combined use limits that the water rights are divided into three groups. My review of the water rights confirms what Angie describes as a total of 2,178 acres of irrigation. The transfer application 80192 describes a total of 24.05 cfs and 7,458 AF, which is an accurate sum when considering combined use limits. Transfer 80192 will describe one large PPU for wells #2-#11. A second transfer (80193) is being filed concurrently for the remainder of split right 51-7014 to describe well #1 which will irrigate the furthest SE pivots.

Transfer application 80193 indicates that the purpose of transfer is to add diversion point(s) and change/create a POU. Based on information submitted, the application should have been marked to change point of diversion instead of add diversion point(s).

The permissible place of use for Transfer 80192 will describe the larger group of pivots totaling an area of 2,222 acres. 57-7014 is being split to give additional diversion rate and volume to the larger PPU. Transfer 80193 will describe a 320 acre PPU for the larger split of 57-7014. The two

transfers of all rights into two PPU's suggest that wells #2-#11 are connected and that two irrigation systems are in place.

Combined use limits on individual rights were used to describe the PPU combined use. No volume limits were included on the water rights prior to the transfer application. The limit of 24.05 cfs is a result of $1.62 + 21.33 + 1.1$ combined use limits. The 1,946 acre limit is measured by adding split rights and combined use limits of $278 + 1,580 + 88$ acres.

POU overlap review found no additional irrigation water rights associated with Big Sky Dairy property. Conditions on the license indicate water rights that share the same POD. No additional overlap information is presented in the transfer or on backfile.

Descriptions of POD's were identified down to the 10 acre PLSS legal description. Based on Department policy, this description is reserved for spring sources. Data entry will only be completed to the 40 acre tract to provide maximum flexibility should the dairy need to replace a well in the future.

Transfer application 80192 pg. 3 identified a POU down to the tenth of an acre. Department standards describe acres down to the tenth of an acre when the total acres within the QQ are less than ten. For this reason, these QQ's containing tenths of an acre were rounded to the nearest whole number.

Transfer 80192 identified water right 51-7038 to be included in the transfer. This is a ground water right within the dairies irrigated operations and should be included since it is associated with other water rights of the transfer. The transfer application however did not include an Attachment 2A for this right.

Decreed records were migrated prior to processing of transfer application.

Water Right 51-10046 had condition K02 when Attachment 2A was printed. Craig Saxton left a database comment on 7/30/2015 that he updated the record to reflect amended partial decree issued 6/17/2015. Condition K02 was removed since K04 was already in place. Condition C11 not included as this is an expansion right.

Summary

Assuming protests are not filed and/or other information does not contradict the above analysis, the application can be approved as reflected by the draft approval.

RECEIVED

JUN 12 2015

WATER RESOURCES
WESTERN REGION

TSK ENTERPRISES

***255 BLUE LAKES BLVD NTH, PMB 617
TWIN FALLS, IDAHO 83301
CEL 208 320-0897***

June 10, 2015

**IDAHO DEPT. OF WATER RES.
2735 AIRPORT WAY
BOISE, IDAHO 83705-5082**

Re: Water rights TRANSFER for Big Sky Dairy

Att: Patric Kelly

Enclosed you will find two signed applications for Transfer along with the proper filing fee for Big Sky Dairy's. This property is called Blue Ridge Farms.

When the transfer are approved that we receive a copy

If you need further assistance, please feel free to contact me or Jason Helms, P.E.

Gary L. Funderburg
TSK ENTERPRISES LLC

Enc. (2) Checks
(2) Transfer Applications

Kelly, Patrick

From: Gary Funderburg [tskenterprise@cableone.net]
Sent: Saturday, May 09, 2015 9:37 AM
To: Kelly, Patrick
Cc: 'Jason Helms'
Subject: RE: Big Sky Dairy

Patric,

Jason Helms P.E., Will be contacting you in relation to Big Sky Dairys problem at the Blue Ridge Farms and will be working with you for TSK ENTERPRISES LLC. If you need something you may contact me @ 208 320-0897 or by my email. Thank You Mr. Funderburg
TSK ENTERPRISES LLC

From: Kelly, Patrick [<mailto:Patrick.Kelly@idwr.idaho.gov>]
Sent: Wednesday, May 6, 2015 10:31 AM
To: tskenterprise@cableone.net
Subject: Big Sky Dairy

Mr. Thunderburn,

There are 3 different systems authorized by ground water rights:

1. WR#: 51-2185, 51-2186, 51-2189, 51-7018, 51-7030, 51-51-7038
2. WR#: 51-2188, expansion right 51-10046
3. WR#: 51-7014

You may view details of these water rights on [our webpage here](#). You can view the details of each water right and even create a map of the current place of use from the website. Review the information and we can move forward with a transfer application.

Patrick Kelly

Water Resource Agent

Idaho Department of Water Resources

2735 Airport Way

Boise, Idaho 83705

p: 208.334.2190

f: 208.334.2348

patrick.kelly@idwr.idaho.gov