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DEPT. OF WATER RESOURCES  
SOUTHERN REGION

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and Four Sisters Dairy, LLC*

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

IN THE MATTER OF APPLICATION FOR  
TRANSFER NO. 79380 (in the name of  
Thomas & Dorothy Leno)

**APPLICANT'S PETITION FOR  
RECONSIDERATION AND  
CLARIFICATION OF FINAL ORDER**

COME NOW, Applicant THOMAS LENO and Intervenor CEDAR RIDGE DAIRY LLC (hereinafter "Applicant"), by and through counsel of record, and pursuant to Idaho Code § 67-5246, Rules 740.02 and 770 of the Department's Rules of Procedure (IDAPA 37.01.01 *et seq.*), hereby files this petition for reconsideration and clarification of the Director's *Final Order Approving Transfer* ("Dairy #3 Order").

**PETITION FOR RECONSIDERATION & CLARIFICATION**

Along with the *Amended Preliminary Order*, the Hearing Officer issued a formal water right transfer form listing the water rights and their elements following the approved transfer. See Ex. A. The form allows the Applicant to review the water right elements (as changed), including all of the water right's conditions. Since the Director granted the Applicant's exceptions and restored the water right's proposed season of use (1/1 to 12/31) and priority date

**SUPPORT DATA**

IN FILE # 47-17589

(12/25/1970) in the *Final Order* (see page 3), the Applicant respectfully requests the Director to re-issue the transfer form with the corrected elements. The updated form will provide clarity and avoid any confusion with the water right form issued by the Hearing Officer.

Next, the Applicant requests the Director to correct the Summary ("Conclusion of Law #29" at page 15). Although the order previously indicates that the Director granted the Applicant's exceptions and restored the water right's proposed season of use (1/1 to 12/31) and priority date (12/25/1970) in the *Final Order* (see page 3), the Summary states just the opposite (see page 15), reverting back to the Hearing Officer's conclusions. The Applicant presumes the last three sentences in the Summary were mistakenly copied over from the Hearing Officer's *Amended Preliminary Order*. The Applicant requests the Director to remove the last three sentences in Conclusion of Law #29 to accurately reflect the findings in the *Final Order*.

### CONCLUSION

For the reasons set forth above the Applicant requests the Director to reconsider and/or clarify the *Final Order* by issuing the formal water right transfer form, including the water right description showing all of the final changes. Further, the Applicant requests the Director to correct Conclusion of Law #29 as noted above.

DATED this 21<sup>st</sup> day of October, 2015.

**BARKER ROSHOLT & SIMPSON LLP**

  
Travis L. Thompson

*Attorneys for Thomas Leno and Cedar Ridge Dairy,  
LLC, and Four Sisters Dairy, LLC*

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 21<sup>st</sup> day of October, 2015, I served the original *Applicant's Petition for Reconsideration and Clarification of Final Order* by hand delivery to IDWR Southern Regional Office, 650 Addison Ave. W., Suite 500, and true and correct copies by email and by depositing same in the United States mail, postage prepaid, addressed to the following:

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# Exhibit A

**STATE OF IDAHO  
DEPARTMENT OF WATER RESOURCES**

**AMENDED**

**TRANSFER OF WATER RIGHT  
TRANSFER NO. 79380**

**AMENDED**

This is to certify that: **THOMAS LENO**  
4236 N 1900 E  
BUHL, ID 83316

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

**Summary of Water Rights Before the Proposed Changes**

| <u>Water Right</u> | <u>Origin/Basis</u> | <u>Priority Date</u> | <u>Diversion Rate</u> | <u>Diversion Volume</u> | <u>Acre Limit</u> | <u>Total Acres</u> | <u>Source</u> |
|--------------------|---------------------|----------------------|-----------------------|-------------------------|-------------------|--------------------|---------------|
| 47-17589           | WR/DECREED          | 12/25/1970           | 1.210 cfs             | 307.5 af                | N/A               | 102.5              | GROUND WATER  |

**Associated Water Rights Also Included in the Transfer Approval (Conditions Updated)**

| <u>Water Right</u> | <u>Origin/Basis</u> | <u>Priority Date</u> | <u>Diversion Rate</u> | <u>Diversion Volume</u> | <u>Acre Limit</u> | <u>Total Acres</u> | <u>Source</u> |
|--------------------|---------------------|----------------------|-----------------------|-------------------------|-------------------|--------------------|---------------|
| 47-7287            | WR/DECREED          | 11/4/1974            | N/A                   | 24.8 af                 |                   | 50.9               | MULE CREEK    |
| 47-14285           | WR/DECREED          | 12/31/1969           | 2.450 cfs             | N/A                     |                   | 122.6              | MULE CREEK    |

**Purpose of Transfer (Changes Proposed)**

| <u>Current Number</u> | <u>Split</u> | <u>POD</u> | <u>POU</u> | <u>Add POD</u> | <u>Period of Use</u> | <u>Nature of Use</u> |
|-----------------------|--------------|------------|------------|----------------|----------------------|----------------------|
| 47-17589              | YES          | YES        | YES        | NO             | YES                  | YES                  |

**Summary Of Water Rights After the Approved Change**

| <u>Existing Right</u>  | <u>New No. (Changed Portion)</u> | <u>Transfer Rate</u> | <u>Transfer Volume</u> | <u>Acre Limit</u> | <u>Total Acres</u> | <u>New No. (remaining portion)</u> | <u>Remaining Rate</u> | <u>Remaining Volume</u> | <u>Remaining Acre Limit</u> | <u>Remaining Total Acres</u> |
|------------------------|----------------------------------|----------------------|------------------------|-------------------|--------------------|------------------------------------|-----------------------|-------------------------|-----------------------------|------------------------------|
| 47-17589               | 47-17622                         | 0.420 cfs            | 66.0 af                | N/A               | N/A                | 47-17589                           | 0.600 cfs             | 152.7 af                | N/A                         | 50.9                         |
| <b>COMBINED TOTALS</b> |                                  | <b>0.420 cfs</b>     | <b>66.0 af</b>         | <b>N/A</b>        | <b>N/A</b>         |                                    | <b>N/A</b>            | <b>N/A</b>              | <b>N/A</b>                  | <b>N/A</b>                   |

This water right(s) is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources. Detailed Water Right Description(s) attached.

Dated this 15<sup>th</sup> day of June, 2015.

  
for Chief, Water Allocation Bureau

Transfer No. 79380

**WATER RIGHT NO. 47-17589****As Modified by Transfer No. 79380**

In accordance with the approval of Transfer No. 79380, Water Right No. 47-17589 is now described as follows:

**Right Holder:** THOMAS LENO  
4236 N 1900 E  
BUHL, ID 83316

**Priority Date:** 12/25/1970

**Source:** GROUND WATER

**BENEFICIAL USE**  
IRRIGATION

**From** 04/01 to **To** 11/01

**Diversion Rate**  
0.600 cfs  
0.600 cfs

**Diversion Volume**  
152.7 af  
152.7 af

**LOCATION OF POINT(S) OF DIVERSION**

GROUND WATER NWSWSW Sec 20, Twp 16S Rge 16E TWIN FALLS County

**PLACE OF USE: IRRIGATION**

| Twp | Rng | Sec | NE |    |    |    | NW  |    |    |    | SW |    |      |      | SE |    |    |    | Totals |
|-----|-----|-----|----|----|----|----|-----|----|----|----|----|----|------|------|----|----|----|----|--------|
|     |     |     | NE | NW | SW | SE | NE  | NW | SW | SE | NE | NW | SW   | SE   | NE | NW | SW | SE |        |
| 16S | 16E | 20  |    |    |    |    |     |    |    |    |    |    | 29.6 | 12.0 |    |    |    |    | 41.6   |
| 16S | 16E | 29  |    |    |    |    | 9.3 |    |    |    |    |    |      |      |    |    |    |    | 9.3    |

POU Total Acres: 50.9

**CONDITIONS OF APPROVAL**

1. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.0 afa per acre at the field headgate for irrigation of the lands below.
2. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

Transfer No. 79380

**WATER RIGHT NO. 47-17622****As Modified by Transfer No. 79380**

In accordance with the approval of Transfer No. 79380, Water Right No. 47-17622 is now described as follows:

**Right Holder:** THOMAS LENO  
4236 N 1900 E  
BUHL, ID 83316

**Priority Date:** 12/25/1970

**Source:** GROUND WATER

**BENEFICIAL USE**

COMMERCIAL  
STOCKWATER

**From**

05/01  
05/01

**To**

to 09/30  
to 09/30

**Diversion Rate**

0.420 cfs  
0.420 cfs  
0.420 cfs

**Diversion Volume**

66.0 af  
66.0 af  
66.0 af

**LOCATION OF POINT(S) OF DIVERSION**

GROUND WATER SENE Sec 6 Twp 11S Rge 16E TWIN FALLS County  
GROUND WATER SENE Sec 6 Twp 11S Rge 16E TWIN FALLS County  
GROUND WATER L2 (NWNE) Sec 6 Twp 11S Rge 16E TWIN FALLS County

**PLACE OF USE: COMMERCIAL**

|     |     |     | NE |    |    |    | NW |    |    |    | SW |    |    |    | SE |    |    |    | Totals |
|-----|-----|-----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--------|
| Twp | Rng | Sec | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE |        |
| 11S | 16E | 6   | X  | X  | X  | X  |    |    |    |    |    |    |    |    |    |    |    |    | 0.0    |
|     |     |     | L1 | L2 |    |    |    |    |    |    |    |    |    |    |    |    |    |    |        |

**PLACE OF USE: STOCKWATER**

|     |     |     | NE |    |    |    | NW |    |    |    | SW |    |    |    | SE |    |    |    | Totals |
|-----|-----|-----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--------|
| Twp | Rng | Sec | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE | NE | NW | SW | SE |        |
| 11S | 16E | 6   | X  | X  | X  | X  |    |    |    |    |    |    |    |    |    |    |    |    | 0.0    |
|     |     |     | L1 | L2 |    |    |    |    |    |    |    |    |    |    |    |    |    |    |        |

**CONDITIONS OF APPROVAL**

1. Rights 47-2306B and 47-17622 when combined shall not exceed a total annual maximum diversion volume of 316 acre-feet. No more than 145 acre-feet of the 316 acre-feet may be diverted between October 1st and April 30th.

Transfer No. 79380

**WATER RIGHT NO. 47-17622**

**As Modified by Transfer No. 79380**

**CONDITIONS OF APPROVAL**

2. Prior to diversion of water under Transfer 79380, a totalizing measuring device of a type approved by the Department shall be installed and maintained on each of the wells authorized under water right 47-17622. The volume of water diverted from each well shall be measured and recorded monthly and reported annually to the Department. The static water levels of the wells shall be measured and recorded twice each year in April and October and reported annually to the Department.
3. For purposes of water right administration, the priority date of this right is advanced to the date of approval of Transfer 79380 and shall be junior to all existing water rights in use at the time of said approval.
4. Use of water under this approval shall comply with applicable water quality standards of the Division of Environmental Quality of the Idaho Department of Health and Welfare, and all applicable dairy operation standards of the Idaho Department of Agriculture. The dairy operation authorized under this approval shall comply with applicable city and county zoning and land use ordinances.
5. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
6. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
7. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
8. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

**WATER RIGHT NO. 47-7287****As Modified by Transfer No. 79380**

In accordance with the approval of Transfer No. 79380, Water Right No. 47-7287 is now described as follows:

**Right Holder:** THOMAS LENO  
4236 N 1900 E  
BUHL, ID 83316

**Priority Date:** 11/4/1974

**Source:** MULE CREEK

**Tributary:** SHOSHONE CREEK

**BENEFICIAL USE**

IRRIGATION FROM STORAGE  
IRRIGATION STORAGE

**From**

03/15  
01/01

**To**

to 11/15  
to 12/31

**Diversion Rate****Diversion Volume**

24.8 af  
24.8 af  
24.8 af

**LOCATION OF POINT(S) OF DIVERSION**

MULE CREEK

SESWSW

Sec 17 Twp 16S Rge 16E TWIN FALLS County

**PLACE OF USE: IRRIGATION FROM STORAGE**

|     |     |     | NE |    |    |    | NW  |    |    |    | SW |    |      |      | SE |    |    |    | Totals |
|-----|-----|-----|----|----|----|----|-----|----|----|----|----|----|------|------|----|----|----|----|--------|
| Twp | Rng | Sec | NE | NW | SW | SE | NE  | NW | SW | SE | NE | NW | SW   | SE   | NE | NW | SW | SE |        |
| 16S | 16E | 20  |    |    |    |    |     |    |    |    |    |    | 29.6 | 12.0 |    |    |    |    | 41.6   |
| 16S | 16E | 29  |    |    |    |    | 9.3 |    |    |    |    |    |      |      |    |    |    |    | 9.3    |

POU Total Acres: 50.9

**CONDITIONS OF APPROVAL**

1. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.
2. The approval of this transfer redefines all of the elements of this water right, and the new use of water authorized by this approval shall constitute the full extent of the right.

Transfer No. 79380

**WATER RIGHT NO. 47-14285****As Modified by Transfer No. 79380**

In accordance with the approval of Transfer No. 79380, Water Right No. 47-14285 is now described as follows:

**Right Holder:** THOMAS LENO  
4236 N 1900 E  
BUHL, ID 83316

**Priority Date:** 12/31/1969

**Source:** MULE CREEK

**Tributary:** SHOSHONE CREEK

**BENEFICIAL USE**  
IRRIGATION

**From** 04/01 **To** 10/31

**Diversion Rate**  
2.450 cfs  
2.450 cfs

**LOCATION OF POINT(S) OF DIVERSION**

MULE CREEK  
MULE CREEK  
MULE CREEK

SESWSW  
SESWSW  
NESWNW

Sec 17 Twp 16S Rge 16E TWIN FALLS County  
Sec 17 Twp 16S Rge 16E TWIN FALLS County (I)  
Sec 20 Twp 16S Rge 16E TWIN FALLS County (R)

**PLACE OF USE: IRRIGATION**

|     |     |     | NE |    |    |    | NW  |    |      |      | SW   |      |      |     | SE |    |    |    | Totals |
|-----|-----|-----|----|----|----|----|-----|----|------|------|------|------|------|-----|----|----|----|----|--------|
| Twp | Rng | Sec | NE | NW | SW | SE | NE  | NW | SW   | SE   | NE   | NW   | SW   | SE  | NE | NW | SW | SE |        |
| 16S | 16E | 20  |    |    |    |    |     |    |      |      |      |      | 29.6 | 6.0 |    |    |    |    | 35.6   |
| 16S | 16E | 29  |    |    |    |    | 7.0 |    | 20.0 | 14.0 | 12.0 | 34.0 |      |     |    |    |    |    | 87.0   |

POU Total Acres: 122.6

**CONDITIONS OF APPROVAL**

1. The approval of this transfer redefines all of the elements of this water right, and the new use of water authorized by this approval shall constitute the full extent of the right.
2. Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.
3. This right when combined with all other rights shall provide no more than 0.02 cfs per acre for irrigation of the place of use.
4. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

Transfer No. 79380