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

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

IN THE MATTER OF APPLICATION FOR
TRANSFER NOS. 79357, 79380, & 79384
(in the name of Thomas & Dorothy Leno);
79466 (in the name of Four Sisters Dairy,
LLC)

**APPLICANTS' RESPONSES TO
PROTESTANT PAM RITTER'S FIRST
DISCOVERY REQUESTS**

TO: PAM RITTER

THOMAS LENO, CEDAR RIDGE DAIRY, LLC, and FOUR SISTER DAIRY LLC, (the
"Applicants"), by and through their undersigned attorneys of record, submits these responses to
Protestant Pam Ritter's First Discovery Requests.

GENERAL OBJECTIONS

1. The Applicants object to the discovery requests, and to the definitions and
instructions, to the extent they purport to require discovery responses beyond that required under
the Idaho Department of Water Resources' Rules of Procedure and the Idaho Rules of Civil
Procedure. These responses are provided in accordance with the Idaho Department of Water
Resources' Rules of Procedure and any applicable provisions of Idaho Rules of Civil Procedure
irrespective of any definitions and instructions that accompanied the discovery requests.

RESPONSES TO PROTESTANT DISCOVERY REQUESTS (RITTER)

2. These responses are made subject to all objections as to competence, relevance, materiality, and admissibility. These responses are subject to all objections that would require the exclusion of any statement, material, or information herein provided if such requests were asked of, or any statement, material, or information provided or made by a witness present and testifying in Court. All such objections are reserved and may interpose at the time of the hearing.

3. The Applicants specifically object to these discovery requests to the extent they seek information protected by the attorney-client privilege, the accountant-client privilege, the work product doctrine, and the rules governing discovery related to experts as set forth in I.R.C.P. 26(b)(4). This objection is intended to apply to each of the discovery requests that seeks such information and will not be repeated specifically for each request for which it applies. The Applicants, to the extent possible, construed each request as requesting only information and/or documents not subject to any applicable protection.

4. No incidental or implied admissions are intended. The fact that the Applicants have responded to any discovery request or part thereof should not be taken as an admission that the Applicants accept that the discovery request or the response or objection thereto constitute admissible evidence. Similarly, the fact that the Applicants have responded to all or part of a request is not intended to, and shall not be construed to be a waiver by the Applicants of all or part of any objection to other requests. The Applicants' answers to any discovery request herein do not constitute a waiver of their right to object to any future additional, or supplemental, discovery request regarding the same or similar matters.

5. Each of these objections is incorporated into the response to each of the discovery requests as though set forth verbatim therein.

6. Applicants reserve the right to supplement these responses pursuant to the Idaho Rules of Civil Procedure.

DEFINITIONS

1. The term "Dairy #2" refers to the dairy and place of use identified in application for transfer #79357.

2. The term "Dairy #3" refers to the dairy and place of use identified in applications for transfer #79380 and #79466.

INTERROGATORIES

INTERROGATORY NO. 1. With what degree of certainty can the Applicants say that Leno's well and the applicant's dairies south of Filer use the same aquifer? Provide all data that supports this position.

RESPONSE TO INTERROGATORY NO. 1:

Objection, the phrases "what degree of certainty," "applicant's dairies south of Filer, and "the same aquifer" are overly broad, vague, and undefined. Notwithstanding this objection, the following documents, which are publicly available to the Protestant, support the fact that groundwater located at the point of diversion for water right #47-17589 is hydraulically connected to the groundwater located at the new proposed points of diversion and places of use for each transfer.

Preliminary Report on Ground Water in the Salmon Falls Area, Twin Falls County Idaho (USGS Circular 436, Washington 1960, K.H. Fowler)

Water Resources – Reconnaissance Series Report 48 (Water-Resources Appraisal of the Snake River Basin in Nevada) (USGS, July 1960, Donald O. Moore & Thomas E. Eakin)

Water Resources of the Salmon Ralls Creek Basin Idaho-Nevada (USGS Water-Supply Paper 1879-D, Washington 1969, E.G. Crosthwaite)

Water Resources of the Twin Falls Tract, Twin Falls County, Idaho (Idaho Dept. of Water Administration, Bulletin No. 22, July 1971, Dale R. Ralston and Norman C. Young)

Draft Investigations Groundwater Supply for Salmon Falls Division (USBR, May 1979, Gordon I. Haskett and Loren D. Hampton)

Development of a Transient Ground-Water Model for the Twin Falls Area, Idaho (Idaho Water Resources Research Institute, University of Idaho, June 1998, Donna M. Cosgrove et al.)

Basin-Wide Issue No. 5, Connected Sources General Provision (Conjunctive Management), Memorandum Decision and Order of Partial Decree, Snake River Basin Adjudication Court (Twin Falls County Dist. Ct., Fifth Jud. Dist., Case No. 39576, Subcase No. 91-00005, February 27, 2002)

Partial Decree Pursuant to I.R.C.P. 54(b) for General Provisions in Basin 47, Snake River Basin Adjudication Court (Twin Falls County Dist. Ct., Fifth Jud. Dist., Case No. 39576, Feb. 4, 2014).

Partial Decree #47-7106 Snake River Basin Adjudication Court (Twin Falls County Dist. Ct., Fifth Jud. Dist., Case No. 39576, June 1, 2010).

Further analysis is ongoing and supporting data, studies and other documentation will be provided in a final expert report to be submitted consistent with the hearing officer's scheduling order. Applicants reserve the right to supplement this answer as provided under the Idaho Rules of Civil Procedure.

INTERROGATORY NO. 2. Even if they do use the same aquifer, with what degree of certainty can the Applicants say that the water flows from Leno's well to the dairies south of Filer? Provide all data that supports this position.

RESPONSE TO INTERROGATORY NO. 2:

See Response to Interrogatory No. 1.

INTERROGATORY NO. 3. Identify each Idaho water right the dairies' Applicant owns or has an interest in.

RESPONSE TO INTERROGATORY NO. 3:

Objection, the request is overly broad and irrelevant. Notwithstanding this objection, see the following list of water rights that are appurtenant to the places of use identified in the respective applications for transfer.

47-4369, 47-16797, 47-16799, 47-16801, 47-7431B, 47-7519B, 47-2306B, 47-4369, 47-2225, 47-7431A, 47-7519A, 47-2220 and 47-2306A.

Salmon River Canal Company water rights 47-10, 47-13, 47-17 and 47-23A.

INTERROGATORY NO. 4. If the Applicants contend that any or all of these Applications for Transfer, if approved, do not injure water right(s), describe the basis for this belief, and identify each fact and document that supports, contradicts, or in any material way pertains to it.

The Applicants submit that applications for transfer #79357, 79380, 79384, and 79466 will not result injury to any other water rights, including the domestic well of the Protestant. The results of well pump tests conducted by Brockway Engineering in October 2014 are attached. Further modeling and analysis of expected drawdown is ongoing and will be provided in a final expert report to be submitted consistent with the hearing officer's scheduling order. Applicants reserve the right to supplement this answer as provided under the Idaho Rules of Civil Procedure.

RESPONSE TO INTERROGATORY NO. 5:

INTERROGATORY NO. 6. Describe how the Applicants have met the conditions of approval for water right #47-2306(A) and 47-2306(B), and provide the information that supports that the conditions have been met including monthly volume of water measurements and twice annual (April and October) static water measurements.

Objection, any conditions of approval regarding past transfers related to water rights #47-2306A and #47-2306B are not at issue or relevant to these proceedings. Further, the former conditions on the water rights have been removed and superseded by partial decrees entered by the Snake River Basin Adjudication District Court. Notwithstanding this objection, water measurements have been submitted to IDWR and publicly available for the Protestant to review. Measurements for 2012, 2013, and 2014 are also attached.

RESPONSES TO PROTESTANT DISCOVERY REQUESTS (RITTER)

RESPONSE TO INTERROGATORY NO. 7.

Objection, the term “dairy wells” is overly broad, vague, and undefined. In addition the Applicants object to the request to the extent it seeks specific details regarding implementation of the Nutrient Management Plans approved by the Idaho State Department of Agriculture. Such plans are proprietary trade secrets protected from disclosure pursuant to Idaho law. *See* I.C. § 37-606. The Applicant will only provide such plans pursuant to a confidentiality agreement executed by the Protestant. Notwithstanding this objection, attached hereto is a copy of the August 12, 2013 letter from the Idaho State Department of Agriculture (with confidential information redacted) approving the Nutrient Management Plan for Dairies #2 and #3 subject to the applications for transfer. Further, notwithstanding this objection, see the attached schematic regarding the current dairy wells and plumbing system, as well as well driller’s logs concerning the wells at each place of use for transfers #79357, #79380, and #79466.

INTERROGATORY NO. 8. When were the current dairy wells installed and by whom and to what depth; include the original and current static water levels.

RESPONSE TO INTERROGATORY NO. 8.

Objection, the term “dairy wells” is overly broad, vague, and undefined. Notwithstanding this objection, the wells on Dairy #2 were drilled between August 30, 1999 and September 1, 1999 by Eaton Drilling & Pump Service, Inc. At the time of drilling static water levels for the two wells were identified as 220 and 244 feet. The wells on Dairy #3 were drilled between April 19, 1999 and May 1, 1999 by Eaton Drilling & Pump Service, Inc. At the time of drilling static water levels for the two wells were identified as 262 feet.

INTERROGATORY NO. 9. Identify and describe what the dairy Applicant considers a reasonable pumping level or lift, and why that level is considered reasonable for each well on the existing dairies.

RESPONSE TO INTERROGATORY NO. 9.

Objection, relevance. What the Applicants consider to be a “reasonable pumping rate, level, or lift” for the Applicants’ “existing wells” has no relevance to the pending applications for transfer. Notwithstanding this objection, the Applicants have not performed any analysis or investigations to determine a reasonable pumping level for each well at the dairies identified in the proposed places of use.

INTERROGATORY NO. 10. What are the measuring and reporting requirements for these current subject dairy wells (including any magnetic monitoring meters), and who conducts the required monitoring and how often?

RESPONSE TO INTERROGATORY NO. 10.

Objection, the phrase "these current subject dairy wells" is overly broad, vague, and undefined. Notwithstanding this objection, and to the extent the request addresses the existing wells referenced in Response to Interrogatory No. 7, there are no "measuring and reporting requirements" imposed by any water district or the Idaho Department of Water Resources at this time. As for the requirements for the commercial/stockwater rights at Dairy #2, see Transfer No. 5052 on file with IDWR. The Applicants have magnetic flow meters on all existing wells used at the dairies identified in the applications for transfer. The Applicants perform monthly readings and have provided an annual summary of their measurements to IDWR. Ryan Visser has supervised the monitoring and reporting the past two years.

INTERROGATORY NO. 11. What is the history of inspections and problems (such as the ability to draw the amount of water in the current water right, and any deepening, and any state and/or federal non-compliance issues or violations) on these current subject dairy wells?

RESPONSE TO INTERROGATORY NO. 11.

Objection, relevance, and the phrase "history of inspections and problems . . . on these current subject dairy wells" is overly broad, vague, and undefined. Notwithstanding these objections, the Applicants deepened the wells on Dairy #2 in April 2002 and one well on Dairy #3 in February 2005. Further, the Applicants have performed general maintenance on the wells as needed.

INTERROGATORY NO. 12. Do any of these dairies involved in these proposed transfers currently have misters, and/or have any of these dairies previously used misters, and if the misters were discontinued, explain the reasons.

RESPONSE TO INTERROGATORY NO. 12.

Dairy #3, the place of use identified in application for transfer no. 79380 and 79466, had misters installed sometime in the past. They were discontinued because the design and water supply was inadequate to cool the livestock as desired. Currently, both dairies have mister systems installed but they cannot be used due to insufficient water supply.

INTERROGATORY NO. 13. How much water would be required to mist the cows on these current subject dairies, and how many days of the year would such misting be used?

RESPONSE TO INTERROGATORY NO. 13.

Objection, the phrase "would be required to mist the cows" is overly broad, vague, and undefined. Notwithstanding this objection, the Applicants submit the quantities (diversion rate and acre-feet) identified on the applications for transfer are necessary for the purposes of use identified, including for but not limited to water and cool livestock, operate the milk parlors, and washing trucks and equipment. Specific details regarding calculations for the misters, including the number of days expected that misting will occur, are included in the attached documents.

INTERROGATORY NO. 14. What would be the dimensions of the "cone of depression" drawdown (immediate impact zone) of the proposed irrigation well and the additional water proposed to be extracted on the two existing dairies? Provide any information the applicant possesses regarding knowledge on neighboring wells to the proposed transfer locations including any neighboring wells that have had issues with being able to obtain water from their wells.

RESPONSE TO INTERROGATORY NO. 14.

Objection, the terms "neighboring wells" are overly broad, vague, and undefined. Notwithstanding this objection, information concerning expected drawdowns and the cone of depression will be provided in a final expert report to be submitted pursuant to the hearing officer's scheduling order. Further, available information concerning the Protestants' wells is provided in the attached discovery responses received by the Applicants.

INTERROGATORY NO. 15. If the Applicants contend that the applications for transfer do not violate Idaho Code 42-222(1) or any other section of the Idaho Code, describe each basis for this belief and identify each fact and each document that supports, contradicts, or in any material way pertains to it.

RESPONSE TO INTERROGATORY NO. 15.

Objection, the term "any other section of the Idaho Code" is overly broad, vague, and undefined. With respect to the portion of the request regarding I.C. § 42-222(1), the Applicants submit the transfers meet the statutory criteria. *See also*, Responses to Interrogatories #4-5, 18, and Responses to Requests for Production #1, 5-6.

INTERROGATORY NO. 16. Provide the cow numbers (current and allowed) and the Nutrient Management Plans for these current subject dairies; and what binding assurance will the dairy Applicant provide that there would be no herd expansion for the current owners and/or future owners and/or a reshuffling of the current owners/operators/managers?

RESPONSE TO INTERROGATORY NO. 16.

Objection, the term "cow numbers" is overly broad, vague, and undefined. Notwithstanding this objection, information concerning the Confined Animal Feeding Operation (CAFO) permits issued by Twin Falls County are provided in the attached letters (Dairy #3, June 13, 2008 Letter; Dairy #2, June 17, 1997 Letter). Further, the Applicants object to the request for the Nutrient Management Plans approved by the Idaho State Department of Agriculture. Such plans are trade secrets protected from disclosure pursuant to Idaho law. *See* I.C. § 37-606. The Applicant will only provide such plans pursuant to a confidentiality agreement executed by the Protestant. Notwithstanding this objection, attached hereto is a copy of the August 12, 2013 letter from the Idaho State Department of Agriculture (with confidential information redacted) approving the Nutrient Management Plan for Dairies #2 and #3 subject to the applications for transfer.

INTERROGATORY NO. 17. State the name and address of each person the Applicants intend to call as a lay witness at the Hearing in this matter, and for each such person describe the substance of the facts and opinions and documents upon which the opinion and testimony are based.

RESPONSE TO INTERROGATORY NO. 17.

Ryan Visser – Member, Cedar Ridge Dairy LLC
41 Northridge Way
Jerome, Idaho 83338

Mr. Visser will provide facts and testimony regarding the operation of the two dairy facilities, and how water will be used pursuant to the applications for transfers. Mr. Visser will provide testimony about the existing wells, water levels, and their operation. Mr. Visser will also provide information on water used for stockwater and commercial use at the dairies, including how water will be used for misters to cool livestock and the benefits of such water use for the dairy operations. Documents in support of this testimony include the applications for transfer and other information attached to these responses.

Applicants further reserve the right to call any witnesses called by other parties.

INTERROGATORY NO. 18. Identify each person that the Applicants intend to call as an expert witness at the Hearing in this matter, by stating the name and address of each such witness and including for each such witness, as provided in Idaho Rules of Civil Procedure 26(b) (4) (A) (i), a complete statement of all opinions to be expressed and the basis and reasons therefore, the data or other information considered by the witness in forming the opinions, any exhibits to be used as a summary of or support for the opinions, and the qualifications of each such witness.

RESPONSE TO INTERROGATORY NO. 18.

Greg Sullivan, M.S.
Brockway Engineering PLLC
2016 North Washington Street, Suite 4
Twin Falls, Idaho 83301

Mr. Sullivan will provide testimony on the transfer applications and calculations contained therein. Mr. Sullivan will also provide opinions on groundwater hydrology, the criteria related to Idaho Code § 42-222, and expected groundwater drawdown and the impacts resulting from each transfer. Mr. Sullivan will further provide opinions and testimony on an in-depth analysis of each transfer and the expected effects that the transfer will have on local domestic wells. The basis and reasons for Mr. Sullivan's opinions, as well as exhibits to be used in summary and support of those opinions will be provided pursuant to the hearing officer's scheduling order through a final expert report and at hearing.

Charles E. Brockway, Sr., Ph.D., P.E.
Brockway Engineering PLLC
2016 North Washington Street, Suite 4
Twin Falls, Idaho 83301

Dr. Brockway will provide testimony on the transfer applications and calculations contained therein. Dr. Brockway will also provide opinions on groundwater hydrology, the criteria related to Idaho Code § 42-222, and expected groundwater drawdown and the impacts resulting from each transfer. Dr. Brockway will further provide opinions and testimony on an in-depth analysis of each transfer and the expected effects that the transfer will have on local domestic wells. The basis and reasons for Dr. Brockway's opinions, as well as exhibits to be used in summary and support of those opinions will be provided pursuant to the hearing officer's scheduling order through a final expert report and at hearing.

Current curriculum vitae for Mr. Sullivan and Dr. Brockway are attached hereto.

INTERROGATORY NO. 19. Identify and describe each exhibit that the Applicants intend to introduce or utilize at the Hearing.

RESPONSE TO INTERROGATORY NO. 19.

Applicants are still in the process of developing a final exhibit list to be used at hearing. Documents attached to these responses may be used. This response will be supplemented as needed.

INTERROGATORY NO. 20. Identify each and every person with whom the Applicants consulted in preparing the answers to these interrogatories.

RESPONSE TO INTERROGATORY NO. 20.

Objection, the request is overly broad, vague, and undefined. Further, the request seeks information protected by the attorney client and attorney work-product doctrine. Notwithstanding this objection, the Applicants consulted Ryan Visser, Hank Hafliger, Jr., Greg Sullivan, Travis Thompson, and Paul Arrington in answering these interrogatories.

INTERROGATORY NO. 21. Explain how the dairy Applicant chose the duty/use of water in the transfer applications and calculations that support that conclusion.

RESPONSE TO INTERROGATORY NO. 21.

Objection, the phrase "duty/use of water" is overly broad, vague, and undefined. Notwithstanding the objection, the associated quantity of water available for consumptive use was evaluated and calculated as set forth in the May 19, 2014 letter from Greg Sullivan to Corey Skinner (IDWR) attached to the applications for transfer filed with IDWR. In addition,

information responsive to this request will be further described in the expert report to be filed pursuant to the hearing officer's schedule.

INTERROGATORY NO. 22. Identify how the existing water rights and the water rights proposed for transfer, if approved, would be put to beneficial use including estimated water use calculations and including the application of groundwater and/or wastewater to fields.

RESPONSE TO INTERROGATORY NO. 22.

See Responses to Interrogatory Nos. 13 and 21.

INTERROGATORY NO. 23. Identify the person(s) providing the answers to the above interrogatories.

RESPONSE TO INTERROGATORY NO. 23.

Ryan Visser, Hank Hafliger, Jr., Greg Sullivan, and Travis L. Thompson

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce all documents, exhibits, and/or other items of tangible evidence you expect to introduce or use, or may use, at the hearing in this matter. If such documents, exhibits, and/or other items of tangible evidence have been produced in response to any of these Discovery Requests, please identify the documents, exhibits, and/or other items of tangible evidence which you expect to introduce or use, or may use, at the hearing in this matter but please do not produce any of it more than once.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Objection, this request is vague, overly broad, unduly burdensome, and seeks information protected by the attorney-client and attorney work-product doctrine. Without waiving these objections, see responses to Interrogatories 1 – 23, as well as the documents attached in response to these requests. Applicants reserve the right to supplement this response as necessary before hearing.

REQUEST FOR PRODUCTION NO. 2: To the extent not produced in response to Request for Production No. 1, please produce all documents on which you relied, or which you identified, in responding to these Discovery Requests, or that in any way relate to or support your responses to these Discovery Requests.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Objection, this request is vague, overly broad, unduly burdensome, and seeks information protected by the attorney-client and attorney work-product doctrine. Without waiving these objections, see responses to Interrogatories 1 – 23, as well as the documents attached in response

to these requests. Applicants reserve the right to supplement this response as necessary before hearing.

REQUEST FOR PRODUCTION NO. 3: Please produce all documents related to your well and ground water right, including drilling records, ground water level measurements, and water use records.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Objection, this request is vague, overly broad, unduly burdensome, and seeks information protected by the attorney-client and attorney work-product doctrine. Without waiving these objections, see the documents attached in response to these requests. Applicants reserve the right to supplement this response as necessary before hearing.

REQUEST FOR PRODUCTION NO. 4: Please produce all documents related to your pump in the well referenced in Request for Production No. 3.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Objection, this request is vague, overly broad, unduly burdensome, and seeks information protected by the attorney-client and attorney work-product doctrine. Without waiving these objections, see the documents attached in response to these requests. Applicants reserve the right to supplement this response as necessary before hearing.

REQUEST FOR PRODUCTION NO. 5: Please produce any and all technical reports, analysis, or other documents that supports your Applications for Transfer Nos. 79357, 79380, 79384, and 79466.

RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

See documents referenced in Response to Interrogatory No. 1. Further, the Applicants will submit a final expert report in support of the referenced transfer applications in compliance with the Hearing Officer's scheduling order.

REQUEST FOR PRODUCTION NO. 6: Please produce any documents relied upon by your experts, or any consultant contacted in relation to the Applications for Transfer Nos. 79357, 79380, 79384, and 79466, including for any opinion rendered by him/her related to the applications.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

Objection, the Applicants will submit a final expert report in support of the referenced transfer applications in compliance with the Hearing Officer's scheduling order. Notwithstanding this objection, see Responses to Interrogatories #1, 4-5, 14-15; and attached documents.

Dated this 9th day of February, 2015.

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson

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

VERIFICATION

STATE OF IDAHO)
) ss
County of Twin Falls)

RYAN VISSER, being first duly sworn upon oath, deposes and states that he has read the foregoing document and the answers and responses contained therein are true and accurate to the best of his knowledge, information and belief.

Dated this 9th day of February, 2015


RYAN VISSER

SUBSCRIBED AND SWORN TO before me this 9th day of February, 2015.




NOTARY PUBLIC FOR IDAHO
Residing at: Twin Falls
Commission Expires 4/3/18