

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Luke H. Marchant

Holden, Kidwell, Hahn & Crapo

PO Box 50130

Idaho Falls, ID 83405

Instrument # 1471755

IDAHO FALLS, BONNEVILLE, IDAHO

4-26-2014 04:56:20 No. of Pages: 7

Recorded for : HOLDEN KIDWELL

RONALD LONGMORE

Fee: 28.00

Ex-Officio Recorder Deputy

Index to: AGREEMENT

(Space Above For Recorder's Use)

AGREEMENT REGARDING TRANSFER NO. 78657

THIS AGREEMENT made and entered into as of the 12th day of April, 2014, by and between Boehm Potato Farm, LLC, an Idaho limited liability company (hereinafter "Boehm"), the Applicant in the Matter of Application for Transfer No. 78657 (the "Transfer Application"), before the Idaho Department of Water Resources ("IDWR") and Cathy Peppers and Robert Picard, individuals, and Terry Tomberlin and Cheryl Tomberlin, husband and wife, who are all protestants to the Transfer Application (hereafter "Protestants"). These parties are hereinafter collectively referred to as the "Parties" (individually, a "Party").

RECITALS:

A. Boehm is the owner of a well located in the SW1/4 NE1/4 SE1/4 of Section 31, Township 2 North, Range 37 East, Boise Meridian (the "Boehm well"). The Boehm well is authorized to divert up to 1.43 cfs (520.0 acre-feet per annum) of water for irrigation purposes under Water Right No. 35-14269.

B. Water Right No. 35-14269 was transferred to its current place of use in 2012 under Transfer No. 77958. No protests were filed in opposition to Transfer No. 77958, and it was approved on June 28, 2012.

C. After the Boehm well was drilled in May of 2013, it was discovered that the well was drilled in the wrong section, approximately 2,000 feet to the northwest of where it should have been drilled under the conditions of Transfer No. 77958. To correct this error, Boehm filed the Transfer Application to correct the legal description for the Point of Diversion for Water Right No. 35-14269.

D. Subsequently, the Protestants filed formal protests with IDWR to the Transfer Application to protect their neighboring domestic wells from potential interference which may arise if the Transfer Application is approved by IDWR.

E. The Parties have elected to reach an agreement whereby the protests of Protestants may be resolved in order for Boehm to be allowed to correct the legal description for its point of diversion and use the well without the necessity of formal hearings before IDWR;

IN CONSIDERATION of the mutual terms, covenants and conditions of this Agreement, the Parties, intending to be legally bound hereby, agree as follows:

AGREEMENTS:

1. **Boehm Well Operation:** Boehm agrees that in the event the Transfer Application is approved, Boehm will operate the Boehm well in a manner that will not cause disruption—as this term is defined in Paragraph 4 herein—to Protestants’ use of Protestants’ domestic wells. In the event disruption occurs, Boehm agrees to indemnify Protestants in accordance with the terms set forth herein.

2. **Withdrawal of Protests:** Protestants agree that in exchange for the agreements provided herein, Protestants hereby withdraw their respective protests to the Transfer Application. After execution of this agreement, Boehm or its counsel will submit a copy to IDWR and request issuance of an approved transfer.

3. **Indemnification:** In consideration of the covenants made herein, Boehm hereby agrees to indemnify Protestants in the event use of the Boehm well causes a disruption—as that term is defined below—to Protestants’ respective domestic wells. Such indemnification includes payment of all expenses for deepening the affected Protestants’ well(s) or, if necessary, replacement of the affected Protestant’s well(s) (including a replacement pump and associated piping, plumbing and landscaping) as necessary to restore the affected Protestants’ adequate flow of water. Boehm’s indemnity obligations also include payment of \$100 per day, per affected well, while the affected Protestants are unable to use their domestic well(s). No indemnification actions shall be required of Boehm until after a determination has been made that the Boehm well is a substantial cause of the disruption through the process described in Paragraph 5 below. Boehm shall have no obligation to indemnify Protestants if the disruption of service to Protestants’ well is primarily the result of causes other than the operation of the Boehm well and the associated water right.

4. **Disruption:** A disruption to Protestants’ well(s) is when such well(s) are unable to produce an adequate flow of water over a twenty four hour period. “Adequate flow of water” as used in this Agreement is the flow of water typically supplied by a domestic water well, and equivalent in taste, purity, and safety to Protestants’ existing wells. In the event the Protestants believe that there is a disruption caused by the operation of the Boehm well, a determination of the cause of the disruption shall be made as described in Paragraph 5 below.

5. **Determination of Cause of Disruption:** In the event the Protestants believe that there is a disruption to their respective domestic wells caused by the operation of the Boehm well, Protestants shall notify Boehm in writing of the claimed disruption.

Within five (5) business days of Protestants’ written notice to Boehm of a claimed disruption, the Parties shall, at their shared cost and expense, engage a qualified, mutually agreed

upon, professional hydrologist to inspect the well(s) at issue and render an opinion as to the cause of the claimed disruption in accordance with the terms of this Agreement.

Within three (3) business days of receipt of the expert report of the shared hydrologist, and provided that the report is provided during the irrigation season, the Parties shall have the option, at their respective sole cost and expense, to engage a qualified professional hydrologist to inspect the well(s) at issue to render a second causation opinion. If no second opinion is rendered within twenty (20) days of exercise of the second opinion option, the conclusions of the first hydrologist shall govern the conduct of the Parties. If the initial, shared hydrologist's report is not provided during the irrigation season (between April 1st and October 31st), the Parties shall have until April 20th of the following year to submit a second opinion report should either of them solicit one.

In the event both hydrologists agree that the Boehm well is a substantial cause of the claimed disruption, Boehm shall undertake indemnification actions in accordance with the terms of this Agreement, with any financial payment obligations accruing retroactively to the date of the first, shared hydrologist's opinion. In the event the hydrologists disagree as to the cause of the claimed disruption, the hydrologists shall appoint a third qualified professional hydrologist to provide a third opinion as to the cause of the claimed disruption. In the event the third hydrologist determines that the Boehm well is a substantial cause of the disruption, Boehm shall undertake indemnification actions in accordance with the terms of this Agreement, with any financial payment obligations accruing retroactively to the date of the first, shared hydrologist's opinion. In the event that the third hydrologist determines that the Boehm well is not a substantial cause of the disruption, Boehm shall have no obligation to indemnify the affected Protestants. Each Party shall share the cost of hiring the third hydrologist.

6. **Notice:** Any notice required or desired to be given under this Agreement shall be in writing and shall become effective when personally served upon the Party to be given such notice, or within three (3) days of posting by certified or registered mail, return receipt requested. Until notified otherwise in writing, the addresses and other contact information for any such notices shall be:

Boehm:	1210 Pier View Drive, Idaho Falls, Idaho 83402
Picard/Peppers:	4458 S 58th W, Idaho Falls, Idaho 83402
Tomberlin:	4281 S 58th W, Idaho Falls, Idaho 83402

7. **Parties Fully Advised:** The Parties warrant and represent to one another that they have fully investigated to their satisfaction all facts surrounding the claims, controversies, and disputes between and among themselves, the adequacy of the consideration provided, and the legal effect of this Agreement Regarding Transfer No. 78657.

8. **Governing Law; Rights Cumulative:** This Agreement shall be governed by the laws of the State of Idaho. Further, all rights and remedies of the Parties herein enumerated shall be cumulative, and none shall exclude or bar any other remedies available to the Parties by contract, or at law or in equity.

9. **Successors and Assigns:** This Agreement binds and benefits the Parties and their respective successors, assigns, heirs and estates.

10. **Recording:** This Agreement shall run with, and be binding upon, the land and shall be recorded with the Bonneville County Recorder's Office upon its execution.

11. **Attorney Fees and Costs:** The Parties agree that each shall bear their own attorney's fees and costs incurred with relation to the Transfer Application. The Party substantially prevailing in any action to enforce the terms of this Agreement shall be entitled to an award of its attorney fees, costs, and expenses.

12. **Breach:** Each Party shall have the right to enforce this agreement in the event of a breach of this Agreement. Any action filed by the Parties to enforce the terms of this agreement shall be filed in the Seventh District Court for the State of Idaho, Bonneville County.

13. **Entire Agreement:** This Agreement memorializes the entire agreement of the Parties in all of its expressed terms.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement effective on the date set forth above.

[Signature pages follow]

"PROTESTANTS"

Cathy Peppers

Cathy Peppers

Robert Picard

Robert Picard

STATE OF IDAHO)
)ss.
County of Bonneville)

On this 10 day of April, in the year 2014, before me a notary public in and for said State, personally appeared CATHY PEPPERS, an individual, known or identified to me (or proved to me on the oath of Cathy Peppers to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



(seal)

Patricia Harris

Notary Public for Idaho

Residing at: Bozelle, ID

My commission expires: 10-15-2015

STATE OF IDAHO)
)ss.
County of Bonneville)

On this 10th day of April, in the year 2014, before me a notary public in and for said State, personally appeared ROBERT PICARD, an individual, known or identified to me (or proved to me on the oath of Robert Picard to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Susan H. Morris

Notary Public for Idaho

Residing at: Bozelle, ID

My commission expires: OCT, 23, 2015

"PROTESTANTS"

Terry Tomberlin
Terry Tomberlin

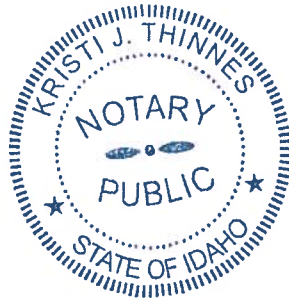
Cheryl Tomberlin
Cheryl Tomberlin

STATE OF IDAHO)
)ss.
County of Bonneville)

On this 10th day of April, in the year 2014, before me a notary public in and for said State, personally appeared TERRY TOMBERLIN AND CHERYL TOMBERLIN, husband and wife, known or identified to me (or proved to me on the oath of _____) to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(seal)



Kristi J. Thinner
Notary Public for Idaho
Residing at: Idaho Falls
My commission expires: 08/28/2016

Cox, Sharla

From: Luke Marchant [lmarchant@holdenlegal.com]
Sent: Thursday, May 01, 2014 9:24 AM
To: Cefalo, James
Cc: Cox, Sharla
Subject: Boehm Recorded Agreement
Attachments: Recorded Agreement.pdf

James,

Attached is a copy of the recorded agreement resolving the protests to Transfer No. 78657 for Boehm Potato. You should now be free to move forward with the Transfer approval.

If you have any questions, do not hesitate to contact me.

Thanks.



Luke H. Marchant

Holden, Kidwell, Hahn & Crapo, P.L.L.C.
1000 Riverwalk Drive, Suite 200
P.O. Box 50130
Idaho Falls, Idaho 83405
Phone: (208) 523-0620
Fax: (208) 523-9518
Email: lmarchant@holdenlegal.com

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