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JAN 15 2013

DEPARTMENT OF
WATER RESOURCES

BEFORE THE DEPARTMENT OF WATER SOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION) **MEMORANDUM IN SUPPORT OF**
FOR TRANSER NO. 77610 IN THE) **MOTION TO SCHEDULE ORAL**
NAME OF PARKINSON FARMS) **ARGUMENTS BEFORE THE**
DIRECTOR

Kirby A. Jensen, representing himself, hereby respectfully offers this
Memorandum in Support of the Motion to Schedule Oral Arguments before the Director,
regarding Application for Transfer No. 77610.

In his Final Order dated August 7th, 1990, then director Keith Higginson
recognized the “unusual water system” properly described by the name Big Lost River
Basin.

In his Findings and Conclusions, item #2, he states:

“The name, “Big Lost River” properly describes this unusual water system.
During the course of its travel from the mountain watershed to the place of discharge
onto the Snake Plain the water of the river sinks then rises again at several locations. The
result is a closely interconnected surface and ground water system within the basin. These
surface and ground waters are, for the most part, one single water source. Diversion and
consumptive use of the water, whether from a surface diversion or from a well, decreases
the total water supply available and can have an effect on other uses of the resource.”

Further, in his Findings and Conclusions, item #5, he states, in part:

“These wells intercept part of the total water supply of the basin and, except as
hereafter noted, have an impact on the quantity of water available to those diverting
surface water from the Big Lost River and its tributaries. There is only a finite quantity of
water within the system and any increase in consumptive use of surface or ground water

at one location results in a decrease in water supply available for use at another location either inside or outside the basin at some later time.”

As recognized by then director Higginson, there is only a finite quantity of water within the system and any increase of use at one location results in a decrease in water supply available for use at another location.

As recognized by hearing officer Cefalo in his Findings of Facts, the new point of diversion is approximately 8 miles north (upgradient) of the original points of diversion.

It would seem then that those water users between the new point of diversion and the original points of diversion would then experience a decrease in water supply available for their use, thus causing injury to other water users.

Article XV of the Idaho Constitution, Section 4, states in part: “whenever such waters so dedicated shall have once been sold, rented or distributed to any person who has settled upon or improved land for agricultural purposes with the view of receiving the benefit of such water under such dedication, such person, his heirs, executors, administrators, successors or assigns, shall not thereafter, without his consent, be deprived of the annual use of the same” There are several individuals who have water rights that have points of diversion from creeks, springs and sloughs, which are down gradient of this application’s new point of diversion and up gradient of the original point of diversion. For over twenty (20) years, these creeks, springs and sloughs, have had little if any water available for use by those having water rights there from.

The following are three examples of the above, of which I am aware:

1. Reva Walker: She is a longtime resident of this valley and lives on a farm about 3 miles south of the “Island Wells”. She has water rights with decreed point of diversion of Spring Creek. Spring Creek runs through her property and has been dry for many years. Thus she has been deprived of her stock water right during the winter months for many years as well. Other farmers above and below her property have been destroying the inactive stream bank
2. Joel Andersen: Joel is a fourth generation farmer in the valley and has a pasture south of Arco which is supplied water from a spring north and east of his property. The spring has been unable to produce water enough to fill his

right for many years and others have been destroying the inactive stream bank.

3. James (Jim) Rindfleisch: Jim is the manager of Big Lost River Irrigation District and owns property south of Arco. His earliest water right is 1880. Even though this is one of the earliest water rights in the valley, he has been frustrated in his efforts to have it delivered for many years. He also has a water right diverted from the Farris Slough. The Farris Slough has also been dry for most of the last several years and he has been denied that water as well.

There seems to be a preponderance of evidence that the diversions from irrigation wells in basin 34 is for the most part, out of control.

Following are several examples:

1. The Affidavit of Charles B. Isom regarding two wells in the same area as the new point of diversion for this transfer. In this affidavit, he states that the change in point of diversion has been practiced since 1982. The application for transfer of that water was applied for in 2012, some thirty years later. Idaho Code 42-222 specifically states, "Any person...who shall desire to change the point of diversion...shall first make application to the department of water resources for approval of such change. It would appear that this change in point of diversion has been in violation of 42-222 for some thirty years.
2. The Approved Application for transfer No. 7037, dated March 17th, 1986. Wherein the Hearing Office states: "At this hearing ;the protestants argued that the additional well would result in the diversion of more water than originally permitted and that the water rights of others in the area, both ground water and surface water, would be adversely affected by the proposed change". (Note: It would seem their concerns were justified after reading the Affidavit of Charles B. Isom.) The Hearing Officer also states: "Available data indicate a relatively unrestricted interchange between surface and groundwater". Then later he states: "The department may approve the amendment with certain conditions in order to prevent the diversion and use of more water than originally permitted and to prevent injury to other water users". Then he orders that: "Flow meters of a type

approved by the Department of Water Resources shall be installed and maintained on each diversion to assure that the total pumping rate does not exceed 12.00 cubic feet per second at any time". After reading the Affidavit of Charles B. Isom, it would seem that this condition was ineffective in "assuring that the total pumping rate does not exceed 12.00 cubic feet per second at any one time".

3. Roger Totten, the current water master for basin 34, is aware that very few wells are monitored on a daily basis. Even though they are currently to be measured at least every three years, very few are. Roger has also been frustrated in his attempts to control wells he is aware of that are diverting more water than they are licensed for.
4. In June of 2007, then water master Bob Shaffer, sent letters to three individuals regarding over diversion of their respective wells. Of the three, only one took action to correct the situation, which resulted in a transfer of another water right to that well, but no reduction of production. In July, a month later, Bob Shaffer wrote a letter to Nick Miller at IDWR in which he states, "I would like to turn Isom and Jensen over to IDWR for further action." As of the 2012 irrigation season, it is my understanding that they were still pumping full throttle. However the Isom well has been sold to Telford Lands, which did apply for a water bank transfer and has a pending transfer application.

At the hearing for this transfer, No. 77610, the hydrologists discussed well tests done the previous year, which happened to be a good water year and the adjacent wells showed little negative response. However an examination of the records of previous years shows that the production from the wells varies widely from season to season and within some seasons.

In his Preliminary Order Approving Transfer No. 77610, Mr. Cefalo states, "The pending transfer application is not a new appropriation and is therefore not barred by the 1993 Amended Moratorium Order." Yet in the conditions of the approved transfer, he advances the priority date to 2012 for the transferred water when pumped from the new point of diversion. That would seem to indicate that he recognizes, in part, that it is equivalent to a new appropriation. Even though advancing the priority date gives the

perception of protection to senior water right holders, as stated earlier in this memorandum, previous conditions on other transfers have been ineffective.

Further, in discussions with Nick Miller, of IDWR, he has indicated there are no reasonable pumping levels established in basin 34, and there is presently no protocol relating to procedures to follow in establishing them.

In a memo from Steve Baker to Norm Young regarding ground water and surface water in the lower Lost River Valley, dated July 14, 1989, Steve makes the following comment:

“As stated in the memo to Glen, the flow of ground water near the mouth of the valley is complex. Relatively steep hydraulic gradients are indicated by the significant differences in water table elevations in the valley with those that occur in the plain immediately to the south. If it is assumed that horizontal flow predominant in the aquifer near Darlington, then the water table drops 1100 feet over 17 miles as it merges with the Snake River Plain aquifer system, .4 miles south of Arco.”

As previously pointed out, creeks, springs and sloughs in the mouth of the valley are no longer producing water to satisfy water rights diverted from them. Parkinson has indicated that his wells in the mouth of the valley are no longer producing their full water right. It would seem that approving transfers that allow more water to be intercepted before it reaches the lower valley would just exacerbate the problem of declining water levels.

In summary, it would seem inconceivable for anyone to get more water out of this water system without causing someone else to get less. However my assessment of this situation may be in error.

Therefore, I respectfully submit this Memorandum in Support of the Motion to Schedule Oral Arguments before the Director.

Thank you for your consideration of this matter.

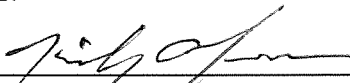
A handwritten signature in black ink, appearing to read 'Kirby A. Jensen', is written over a horizontal line.

Kirby A. Jensen

January 11th, 2013

CERTIFICATE OF MAILING

I certify that on this 11th day of January, 2013, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies prepaid and addressed as follows:


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1. Original to:

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