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NOV 28 2012

DEPARTMENT OF
WATER RESOURCES

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO IN THE MATTER OF APPLICATION|
FOR TRANSFER NO. 72435

At the status hearing on Nov. 20 2012 IDWR Director Spackman stated that according to his research a new NMP would not be required to authorize this transfer. We disagree with this and Mr. Spackman agreed to give us an opportunity to prove our stance. As we have researched this we cannot find any information that supports Mr. Spackman's stance on this and would like to know what research he has done, whom he has contacted and what he has read that would lead him to conclude that a new NMP would not be required. We would like the chance to review and comment on this information as we find that we cannot dispute his findings of fact without the facts that he used to come to his conclusion of law.

While we agree with Mr. Spackman in that the substance of the water transfer is the most important part of a water transfer, we do not agree with the fact they are not requiring Big Sky farms and their lawyers to follow IDWR procedures. Along with all issues discussed at the status hearing they are just now filing the papers to transfer the water application from Big Sky Farms to South View Dairies. Four years after the sale. This can be in no way considered timely and was just done to undermine IDWR and the Protestants. If the department will note that on Attachment #2a of the Assignment of Application for Transfer it says "Please note these Documents were sent to Dean and Eden Dimond filed by Rob Williams dated October 15, 2008." Yet the notice of Change of owner ship was filed February 20, 2008. This was more than 8 MONTHS after the sale and required notification time. This DID affect our protest and could have changed the outcome of the permitting process. There are important pieces of information that the Protestants needed to know such as we are now able to see that South View Dairies are NOT the sole water right holder for water right #36-2373. There are approximately 10 acres of ground that both Big Sky Farms and now South View Dairy have been renting from Fred Stewart. Mr.

Stewart testified against this CAFO at the county hearing thus proving that he was not in favor of transferring water, in a well in which has a vested interest, into the CAFOs water right.

One of the most basic requirements of IDWR is to show ownership of ALL the water rights that will be affected. When Big Sky Farms applied for the water transfer the department wanted to know if this water right was affected by a lien. Big Sky farms answered yes and the application was accompanied with a letter from the lien holder. Now that South View Dairies owns it, it is affected by a lien with a different mortgage company. IDWR requires a letter from the current lien holder. This is not in the application rendering the application incomplete and legally impossible for IDWR to approve.

At the Status hearing South View tried to mislead the department when they testified that they only sought to have two homes on the CAFO site. Don McFarland testified that there would be housing for at least 12 workers and on page one of the application they say they want water for three homes. On page 6 of the application referring to water right 36-15056, Mr. McFarland answered the question "To your knowledge, has any portion of the water right undergone a period of 5 or more consecutive years of non-use?" he answered NO even though there was a huge amount of evidence showing that it had been more than 15 years since ANY of the stock water rights were used! As part of a complete application South View will need to provide proof that these stock water rights have been used (such as power records). This will be impossible as they have not been used!

In addition, there are five MAJOR problems with trying to transfer the Big Sky Farms Nutrient Management Plans to South View Dairies.

1. NMP's are plans that are written in cooperation with the producer. (Big Sky farms was the producer that created the present NMP, not South View Dairies)
2. NMP's are owner specific and all owned property is to be included in the plan (South

View did not buy all the Big Sky property used in the NMP)

3. South View is currently using the proposed facilities ground to dispose of wastes from other sources. (This disposal has to be accounted for in a yet undisclosed NMP)
4. There has been a MAJOR change to the irrigation system on the farm proposed for waste disposal. (Full information on this below)
5. Protestants have the right to review and comment on this new NMP before IDWR considers approval of this transfer.

The following introduction is taken verbatim from the ISDA Guideline to prepare your Nutrient Management Plan. It clearly states that the plan is written in cooperation with the producer. It is impossible for a plan to be written in cooperation with the producer when the current producer didn't help write the plan. A new producer would require a new plan to meet this definition.

INTRODUCTION

The purpose of a nutrient management plan is to meet agricultural production goals and to certify that manure and nutrients are properly managed to minimize adverse impact to surface or groundwater. Plans are written in cooperation with the producer to:

- 1) Assure proper containment of animal manure and process waste water.
- 2) Assess resource concerns which exist on the property.
- 3) Budget nutrient sources to optimize crop water and nutrient needs. Nutrient sources include commercial fertilizers, animal manure, mineralization of previous crop residues, and irrigation water.
- 4) Assess irrigation water management to minimize movement of nutrients beyond the root zone or with runoff.

Land application of manure at agronomic rates, along with irrigation scheduling, is the most effective way to obtain maximum nutrient benefits from manure

CERTIFIED NUTRIENT MANAGEMENT PLAN REQUIREMENTS

The following is a list of requirements for nutrient management plans for Idaho dairy producers.

OWNER FACILITY INFORMATION

-  Name of facility
-  Owner/Operator of facility
-  Address of facility
-  Phone number of owner/operator
-  Legal description of facility (include all owned land used for application of waste):

Name of facility: Section Township Range

Name of facility: Section Township Range

Upon the sale of Big Sky property to South View Dairies four of the five requirements for the NMP plan changed. Most notable was the Legal description of all owned land used for application. South View Dairy did NOT buy all of the land that Big Sky Farms owned and listed for waste applications. Big Sky farms retained ownership of over several HUNDERD acres of land listed in the NMP as owned. This is as much of a change to a NMP as adding cow numbers would be! In addition Big Sky Farms listed Gott Farms as a source to export manure. This is a HUGE component of a NMP as well. Their new NMP plan will have to identify if they can have a working relationship with Gotts or if they will have to find another place to export manure. This will require a MAJOR change to the NMP. In addition to not owning all the land identified by the Big Sky Farms NMP, South View Dairy may own other property that may be used for waste application. South View Dairies also owns other Waste producing facilities. They have been applying waste from their other facilities on the ground proposed for waste application from the new facility. As new owners they need to submit a new plan that incorporates the waste needs of all their facilities and owned ground. This is a MAJOR change from the NMP that Big Sky

Farms submitted with the application. As described below South View Dairies will need to submit a NMP to include all the information required below and omit the information Big Sky Submitted on land not sold to South View. Again this is a MAJOR Change from the submitted plan

SITE MAPS

Two site maps are required in a certified nutrient management plan – the Facility Site Plan and the Land Application Site Plan. See Figure 1 for example Facility Site Plans, and Figure 2 for example Land Application Site Plans.

Facility Site Plan

Required items on the map:

Livestock:

-  Milk barn
-  Livestock housing and corrals
-  Waste structures
-  Lagoon(s)
-  Separator(s)
-  Solid storage
-  Liquid manure pump station
-  Liquid manure pipelines
-  Feed storage

Hydrologic Features:

-  Drain ditches
-  Springs
-  Seeps
-  Runoff flow direction
-  Runoff containment
-  Waterways (streams, rivers, creeks)
-  Ponds

-  Lakes
-  Wetlands

Other Features:

-  Residences
-  Property lines
-  Wells
-  North arrow
-  Rock outcrops
-  Sink holes
-  Fences
-  Berms
-  Potable water pipelines

 Land Application Site Plan

Required items on the map:

-  Dairy location
-  Labeled fields with name and acreage
-  Labeled roads and other landmarks

Hydrologic Features:

-  Injection well
-  Residential wells
-  Drain ditches
-  Tile drain outlets
-  Springs
-  Seeps
-  Runoff flow direction
-  Groundwater flow direction
-  Berms
-  Runoff containment
-  Waterways (streams, rivers, creeks)
-  Ponds

-  Lakes
-  Wetlands

Irrigation Features:

-  Wells
-  Canals/laterals
-  Pump station
-  Pipeline
-  Sediment pond
-  Buffer strip
-  Chemigation system

Other Features:

-  Residences
-  Property lines
-  Wells
-  North arrow
-  Rock outcrops
-  Sink holes
-  Fences
-  Berms

IRRIGATION INFORMATION

Irrigation water management is very important in nutrient management. If irrigation water is over-applied what the crop uses, there is potential for runoff and/or leaching of nutrients. If irrigation water is under-applied, the crop will not have optimal growth conditions. Crop irrigation water requirements changes through the growing season depending on climate conditions and crop evapotranspiration rate. Proper irrigation water

management responds to these crop demands.

Information your Nutrient Management Planner will need:

 *Wheel lines/handlines (per field, per crop)*

Field name: Acres:

Crop:

Nozzle flow rate: _____ (gpm) OR Nozzle diameter: _____ (in) Pump pressure: _____ (psi)

Number of nozzles: _____

Number of days to completely irrigate field: _____

Down time per day: _____ (hrs) Days between irrigation: _____

System application efficiency: _____ (%) Estimated runoff: _____ (%)

 *Pivot (per field, per crop)*

Field name: Acres:

System flow rate: _____ (gpm)

Pivot lateral length: _____ (ft) System application efficiency: _____ (%)

Time to complete one cycle: _____ (hrs) Estimated runoff: _____ (%)

Days between irrigation: _____

 *Surface*

Since the sale of the Big Sky property South View Dairies have installed a new pivot irrigation system. They converted this from mostly a hand line/wheel line system. Managing water for a pivot system is a lot different from water management from wheel lines and hand lines. As noted above this Irrigation water management is very important in nutrient management. With the MAJOR change to the irrigation system it will now require a MAJOR change to the NMP that was submitted by Big Sky Farms.

As we researched this it has become apparent that the IDWR process for allowing an application to transfer to another party was intended for a case where a buyer buys a complete operation where management practices and facilities stay substantially the same.

This is NOT the case in this transfer as they did not buy all the ground owned and affected by Big Sky, the lien holder changed, (there is no Lien holder acknowledgement in the application) their management practices changed (pivot over hand lines for example) and their water use requests have changed (wanting to house only 2 employees instead of 10-12 on the facility).

We have also noticed that there are no agency letters in the application as required by IDWR such as DEQ, EPA, North Side Canal Company and the National Park Service. South View's practices of burning their waste plastic from their silage piles needs to be either authorized by the appropriate agency or they have to be stopped by the appropriate agency since this practice is nothing more than a violation of the Clean Air Act. IDWR required us to get letters from affected agencies when we sought a water transfer and they cannot arbitrarily apply different standards to South View. If IDWR asserts that all that is left for this transfer to be complete is an approval from ISDA, it abrogates its responsibilities and duties under the law. There was talk at the Status hearing about if South View Dairies will be required to have a NPDES permit from the EPA. We think they do they feel they don't. This question needs to be answered by the EPA in the comment letter IDWR requires them to obtain. Our assertions and/or allegations require full and complete responses as those responses are part of the legal process.

CONCLUSION

With the sale of the Big Sky Farms to South View dairy, in order to meet the requirement of ISDA and IDWR, they will have to submit a new NMP to include: all the waste being produced at all their waste producing sources. IDWR will need a copy of the NMP that is allowing them to use the proposed facilities ground for waste disposal. They will also need to show IDWR how they plan to handle this waste if the proposed CAFO is built. They will have to include all of their owned ground. They will have to omit all of the ground Big Sky farms claimed as owned ground, and they will have to submit a

management plan for the NEW irrigation system. This is a NEW NMP plan and cannot be consider a normal evolving of Big Sky Farms Plan. IDWR cannot accept a NMP that is out dated and no longer meets ISDA requirements for a NMP. There is no way the end use of the water from this transfer can be in the public interest if they cannot show a current plan to handle all the waste if this new use is approved. IDWR has to establish a venue for the Protestants to review and comment on this new NMP. Additionally, all of the other points of contention MUST be addressed and responded to by IDWR since those responses may become evidence for appeal and possible judicial review.

We respectfully request IDWR accept these facts and require South View to create this new NMP and provide copies to Protestants and create a venue for commenting on/debating the merits of this new NMP. We also respectfully ask for the department to fully review this case and deny Big Sky Farms application based the fact that it will create an enlargement of the existing water right and current use of water and the End use will not be in the public's interest.



11-25-12

Dean and Eden Dimond

Gibson, Deborah

From: Dimonds [edendimond@bridgemail.com]
Sent: Wednesday, November 28, 2012 10:57 AM
To: Gibson, Deborah
Subject: Re:

I Dean Dimond mailed a copy of my request for a new NMP plan to IDWR on 11/27/2012. I mailed a copy to Rob Williams Office on 11/28/2012

----- Original Message -----

From: Gibson, Deborah
To: Dimonds
Sent: Wednesday, November 28, 2012 10:53 AM
Subject: RE:

Yes. Thanks!

From: Dimonds [mailto:edendimond@bridgemail.com]
Sent: Wednesday, November 28, 2012 10:53 AM
To: Gibson, Deborah
Subject: