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AUG 22 2011

DEPARTMENT OF
WATER RESOURCES

1000 Riverwalk Drive, Suite 200
PO Box 50130
Idaho Falls, Idaho 83405



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August 19, 2011

Monica Van Bussum
Sr. Water Resource Agent
Coordinator, State Water Supply Bank
Idaho Department of Water Resources
PO Box 83720
Boise, Idaho 83720-0098

***RE: Additional Information Regarding Water Bank Application Made by
Telford Lands LLC in Basin 34.***

Dear Monica:

This letter is a follow up to our conversation from last week regarding water bank acres which we had proposed for acceptance into the water bank on behalf of Telford Lands LLC, but which you had some concerns regarding five consecutive years of non-use. As you know, Idaho Code § 42-223 sets forth statutory defenses to forfeiture. Subpart (4) of that statute provides that a water right is not lost or forfeited if the reason for its non-use is in order to comply with a groundwater management plan approved by the Director of the Idaho Department of Water Resources. Additionally, subpart (6) provides that a water right is not forfeited if the non-use results from circumstances over which the water right user had no control.

Beginning in 2004, and continuing to the end of 2005 in the Big Lost River Valley, calls were made by a number of water users that required individual farmers to submit mitigation plans. Attached to this letter are documents that relate to that situation, and I do note that Gary Spackman was involved in those procedures and it may be useful to visit with him regarding these circumstances in the Big Lost River Valley if you need more context. As you can see, on April 25, 2005 Mickelsen Properties LLC, which was the prior owner of the Telford property, received a letter outlining the provisions of a groundwater mitigation plan, along with an allocation of that pumping mitigation that needed to be provided. Steve Burrell from the Department wrote the letter. A few days later, Mitchell Sorensen, who was leasing the Mickelsen property at the time, submitted a notice to initiate delivery to the Basin 34 watermaster, which outlined a number of surface water rights for mitigation, including those owned by Mickelsen. As you correctly noted from our meeting last week, the Mickelsen property is authorized for the irrigation of 2,124 acres, some of which are irrigated with surface water. On May 10, 2005, Mr. Sorensen submitted a temporary change application to the Department of Water Resources to seek a change to a mitigation nature of use for a number of water rights, including Mickelsen water

Established in 1896

rights. On the bottom of the first page, you can see there is an indication of acres that are not irrigated to be offered up as mitigation. Six hundred eighty-five (685) acres of the Mickelsen property were identified as mitigation acreage. If this amount is subtracted from the 2124 acres that are authorized, this amount is well below the acreage that you found irrigated by reviewing the LANDSAT photos previously. In other words, we consider the water rights to have been fully used in 2005 when they were subject to the provisions of this mitigation plan. This is clearly within the provisions of Idaho Code § 42-223. The decision not to plant or irrigate acres that year was based upon the Department's clear indication that there would be mitigation required.

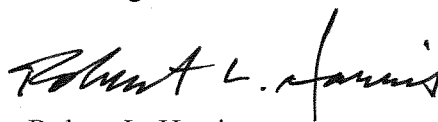
We have also included follow-up correspondence from Steve Burrell dated May 24, 2005, which was after the May 10, 2005 temporary transfer, demonstrating the seriousness of IDWR's intent to require mitigation.

My understanding is that there was some difficulty in implementing any mitigation in the valley based upon some public meetings attended by Mr. Spackman, and even though the temporary change application was not processed, which is evidenced by the attached letter sent by Nick Miller, on October 18, 2005, it is clearly part of a groundwater mitigation plan, and given the uncertainty of likely mitigation, at a minimum, the non-irrigation would be due to circumstances beyond the control of the water user.

Having been fully used in 2005, the forfeiture clock for the Mickelsen water rights would have started anew in 2006. The Water Bank documents were submitted in October 2009, after some difficulty in working with Aaron Marshall during that year to get the Water Bank documents filed, but the filing was nevertheless well within the five (5) year forfeiture window. With this information, it is clear that the acres are not at risk for forfeiture, and qualify under IDWR's water bank rules. The application should therefore be approved.

We appreciate your consideration of these documents. Please let us know if you have any questions. We look forward to hearing back from you.

Best Regards,

A handwritten signature in black ink, appearing to read "Robert L. Harris". The signature is fluid and cursive, with the first name "Robert" being the most prominent.

Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosure



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov.

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 25, 2005

MICKLESON PROPERTIES LLC
PO BOX 438
RIGBY ID 83442

Dear Ground Water User:

The records of the Idaho Department of Water Resources (IDWR) show that you hold a water right authorizing diversion of ground water in the Big Lost River Basin. In a special water district meeting on April 18, 2005, the water users of Water District 34, Big Lost River approved the adoption of a consolidated ground water mitigation plan (Consolidated Plan) to be administered by the Watermaster. The IDWR previously approved the general provisions of this plan by determining it adheres to Water District 34 Distribution Rule 50 - *Conjunctive Administration Of Ground And Surface Water* (IDAPA 37.03.12.050). The Consolidated Plan is made up of two plans developed by separate groups of water users. Because both plans are nearly identical, IDWR approved both plans and resolved differences between the two plans through a letter of March 18, 2005. This letter and the two plans are on the IDWR web site at: http://www.idwr.idaho.gov/water/districts/WD34_Big_Lost/wd34_Big_Lost_River.htm.

A resolution passed at the special water district meeting requires ground water users planning to pump this year to notify the Watermaster of their election to participate in the Consolidated Plan. If you are planning to pump ground water in 2005, you must notify the Watermaster on or before May 5, 2005 of your desire to participate in the Consolidated Plan. If a ground water user notifies the Watermaster of his/her intent to participate after this date, a late penalty of \$200, or 15% of the individual users mitigation burden, whichever is greater, will be imposed by the water district. Ground water users may "opt out" of the Consolidated Plan by submitting an individual mitigation plan to the IDWR Director before commencement of pumping this year. Requirements for individual mitigation plans are set out in the Rules for Conjunctive Management - IDAPA 37.03.11.

The participants in the Consolidated Plan must collectively dedicate 6,110 acre-feet of water for mitigation before May 15, 2005. If the participants fail to commit 6110 acre-feet of water, then each individual user is required to provide 13% of their pumping volume from last year for flow augmentation. Ground water users choosing to submit individual mitigation plans and not participate in the Consolidated Plan are required to supply 13% of last years pumping volume for mitigation water.

Your mitigation burden is derived based on your 2004 total pumping volume, and is shown below:

2004 pumping volume:	5028.17 acre feet
Per cent of district total	6.081% %
Burden for supplying your fraction of 6110 acre-feet:	371.54 acre feet
Burden for supplying 13% of 2004 pumping:	663.85 acre feet

You may satisfy your mitigation burden by contributing water from the following sources:

- Rotation Credit storage that is appurtenant to the same land that uses ground water. Rotation credit storage can only be used for mitigation for ground water applied to the same lands described by the surface water right rotated into storage.
- Natural flow by foregoing beneficial use. In most cases, foregone beneficial use must be represented by acreage not irrigated for the entire irrigation season. IDWR may consider other proposals that clearly demonstrate reduced crop production.
- Ground water pumped directly into the Big Lost River, or into canals or laterals with a wet connection to the Big Lost River.
- Mackay Reservoir storage water dedicated to the river "flush".
- Purchasing pool water comprised of excess mitigation volumes from other users.

If you plan to participate in the Consolidated Plan, you must notify the Watermaster of your intent to participate on or before May 5, 2005. You must also notify the Watermaster of the source and availability water to satisfy your mitigation burden by May 15, 2005. If you have questions, or would like to discuss your mitigation burden, please contact Bob Duke, Water District 34 Watermaster at 208-588-3137.

Sincerely,



Steve Burrell
Water Distribution Section

Notice to Initiate Delivery
April 29, 2005

Bob Duke, Watermaster
Water District #34
P. O. Box 53
Mackay, Idaho 83251

Bob Schaffer, Manager
Big Lost River Irrigation District
P. O. Box 205
Mackay, Idaho 83251

Dear Gentlemen;

Please be advised of the 2005 irrigation season delivery call for the following water rights pursuant to Water District 34 Distribution Rule 40.05 and the SRBA partial decrees.

<u>Right Number</u>	<u>Priority</u>	<u>Amount</u>	<u>Owner</u>
34-0692D	07/15/1884	1.20 cfs	Sorensen
34-0496A	06/01/1896	1.20 cfs	Sorensen
34-00618	09/01/1884	3.20 cfs	Mickelsen
34-13659	06/01/1889	0.97 cfs	Mickelsen
34-13661	06/01/1896	1.00 cfs	Mickelsen
34-00170	05/01/1886	1.20 cfs	PURanch
34-00556	05/01/1886	2.80 cfs	PURanch
34-10037	05/20/1884	4.52 cfs	Perkes
34-00093	05/20/1884	1.60 cfs	Perkes
34-00509B	06/01/1886	0.68 cfs	Perkes
34-00510B	05/01/1902	0.66 cfs	Perkes

This notice meets all requirements as contemplated and described in decree and rule. All assessments, toll charges, fees, etc. connected with the use of these water rights have been paid directly to the appropriate entity with this notice.

If any of the above listed water rights cannot be diverted and delivered in their respective priorities on May 1, 2005, it is requested these water supplies be rotated into credit pursuant to Rule 40.02. until such time the supply can be diverted and delivered.

Please notify your respective deputies and ditchriders of the delivery call. Thank you for your prompt response to this request.

Sincerely,



Mitchell D. Sorensen

STATE OF IDAHO DEPARTMENT OF WATER RESOURCES

TEMPORARY CHANGE APPLICATION - Part A (To change point of diversion, place of use or purpose of use)

Name of Applicants: Mitchell Sorensen, Mickelsen Farms LLC, Soelberg Farms, PU Ranch, Todd Perkes
Phone: 527-3271 or 221-3293 P.O. Address: 3871 West 2500 North City/State: Moore, Idaho Zip: 83255

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☒ Add diversion point(s) ☒ Change place of use
☒ Change purpose of use ☐ Other

2. Describe the proposed change(s) and the reason(s) thereof: The Applicants' individual mitigation burdens are (Sorensen 164 ac-ft, Mickelsen 411 ac-ft, Soelberg 41 ac-ft, PU Ranch 164 ac-ft, Perkes 164 ac-ft) totaling a combined mitigation burden of 974 ac-ft or 15.9% of the "6110 ac-ft Consolidated Basin Wide Plan". Applicants are proposing to change the necessary quantities of various water rights held by themselves and storage allocations issued to them as patrons of the Big Lost River Irrigation District from irrigation to mitigation to meet this mitigation burden requirement. This transfer of water supplies is contingent upon a valid request for mitigation pursuant to Water District 34 Distribution Rule 50.04. and the enforcement of regulating other groundwater users not participating in an approved mitigation plan.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, TO BE USED AS MITIGATION SUPPLIES

1. Right Number	Priority	Amount (cfs/ac-ft)	Owner	Nature of Use	Period of Use
34-0818	06/30/1880	Storage Allocation	BLRID	Mitigation	5/01 - 10/15 Mitigation Period
34-0811	06/30/1881	Storage Allocation	BLRID	Mitigation	5/01 - 10/15 Mitigation Period
34-0810	06/01/1888	Storage Allocation	BLRID	Mitigation	5/01 - 10/15 Mitigation Period
34-10935	06/30/1896	Storage Allocation	BLRID	Mitigation	5/01 - 10/15 Mitigation Period
34-0817B	03/01/1902	Storage Allocation	BLRID	Mitigation	5/01 - 10/15 Mitigation Period
34-10873	01/02/1905	Storage Allocation	BLRID	Mitigation	5/01 - 10/15 Mitigation Period
34-0012	02/07/1916	Storage Allocation	BLRID	Mitigation	1/01 - 12/31 Mitigation Period
34-2507	09/02/1959	Storage Allocation	BLRID	Mitigation	1/01 - 12/31 Mitigation Period
		142.6 ac-ft (see attached Storage Allocation cards issued to Sorensen/Perkes)			
34-0692D	07/15/1884	1.20 cfs	Sorensen	Mitigation	5/01 - 10/15 Mitigation Period
34-0496A	06/01/1896	1.20 cfs	Sorensen	Mitigation	5/01 - 10/15 Mitigation Period
34-0618	09/01/1884	3.20 cfs	Mickelsen	Mitigation	5/01 - 10/15 Mitigation Period
34-13659	06/01/1889	0.97 cfs	Mickelsen	Mitigation	5/01 - 10/15 Mitigation Period
34-13661	06/01/1896	1.00 cfs	Mickelsen	Mitigation	5/01 - 10/15 Mitigation Period
34-00170	05/01/1886	1.20 cfs	PU Ranch	Mitigation	5/01 - 10/15 Mitigation Period
34-00556	05/01/1886	2.80 cfs	PU Ranch	Mitigation	5/01 - 10/15 Mitigation Period
34-10037	03/20/1884	4.52 cfs	Perkes	Mitigation	5/01 - 10/15 Mitigation Period
34-00093	05/20/1884	1.60 cfs	Perkes	Mitigation	5/01 - 10/15 Mitigation Period
34-00509B	06/01/1886	0.68 cfs	Perkes	Mitigation	5/01 - 10/15 Mitigation Period
34-00510B	05/01/1902	0.66 cfs	Perkes	Mitigation	5/01 - 10/15 Mitigation Period
		19.03 cfs or 37.74 ac-ft per day from Natural Flow Rights			

2. Total amount of water being transferred: 974 ac-ft as a participant in the "6110 ac-ft Consolidated Basin Wide Plan" (142.6 ac-ft from storage allocation and 831.4 ac-ft from natural flows).

3. Source of water: Storage Allocation from the Mackay Reservoir and Natural Flow of the Big Lost River.

4. Point(s) of Diversion: Various points of diversion at or below the Mackay Reservoir.

5. Lands irrigated or place of use: Unknown, to be determined by priority calls.
Number of former irrigated acres not to be irrigated: 237 acres (see 6.c. for more details)
(831.4 ac-ft from natural flow divided by 3.5 ac-ft per acre = 237 required non-irrigated acres)
(142.6 ac-ft from storage allocation - no non-irrigated acres required)

ACRES NOT IRRIGATED WITHIN LEGAL DESCRIPTION BELOW

Twp. 3N	Rge. 25	Sec. 12	NW 35	NE 35	SW 35	SE 160	Acres 265
Twp. 3N	Rge. 26	Sec. 18	NW 80	NE 10	SW 10	SE	Acres 100
Twp. 4N	Rge. 25	Sec. 35	NW	NE 160	SW	SE 160	Acres 320
Twp. 4N	Rge. 25	Sec. 25	NW 160	NE 60	SW	SE	Acres 220
							Total Acres 905

} Mickelsen
(now Telford)
Acres
685 Acres
Total

6. General Information:

- a. Who owns the water right to be changed? The Applicants and the Big Lost River Irrigation District
- b. Describe the arrangement allowing use of the right. The Applicants have entered into farm lease agreements among themselves and applicants are also patrons of the Big Lost River Irrigation District who have received storage allocations.
- c. Describe the affect on the land now irrigated if the change is approved pursuant to this application: The 237 acres previously irrigated would not be irrigated this year until early fall for purposes of germinating alfalfa or winter wheat seeds used for next years production.
- d. Has the water right sought to be transferred been used this year? No
- e. Absent the changes, how would the right be used for the remainder of the year? These water supplies would be applied to the 237 acres and/or to other irrigated acres owned by the applicants.
- f. Describe other water rights used for the same purpose. Other valid water rights held by the applicants will be used to irrigate the remaining portion of their farmland. The proposed mitigation supplies will be made available to the Watermaster to augment the Big Lost River natural flow and will be used with other mitigation supplies to mitigate the effects of ground water pumpage in Basin 34.
- g. Remarks: Mitigation water supplies made available to the Watermaster will first come from storage allocations (142.6 ac-ft). The balance of mitigation supplies (831.4 ac-ft) will be provided from the listed natural flow water rights as they become available in their respective priorities until the applicants' collective mitigation requirements are satisfied. The remaining portions of the various listed water rights will be retained by the applicants for the irrigation of their farmland. These mitigation supplies may be used to augment the flows of the Big Lost River during the 1st and 2nd mitigation semesters as natural flow, rotation credits, or storage releases at the Watermaster's discretion. Please review this temporary change application carefully and allow the applicants to respond to any questions. Thank you.

I hereby assume all risk in accordance with Section 42-22A, Idaho Code, and assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentation made in this application may result in voiding its approval.


(Signature of applicant)

May 10, 2005
(Date)

TEMPORARY CHANGE APPLICATION – Part B
(To change point of diversion, place of use or purpose of use)

Name of Applicants: Marc Hansen and Constatine Kitsos, Juel and Steven Aikele, Jay V. and L. Vaughn Jensen

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☒ Add diversion point(s) ☒ Change place of use
☒ Change purpose of use ☐ Other

2. Describe the proposed change(s) and the reason(s) thereof: The Applicants' individual mitigation burdens are (Hansen/Kitsos 243.3 ac-ft, Aikele/Aikele 298.9 ac-ft, Jensen/Jensen 189.0 ac-ft) totaling a combined mitigation burden of 731.2ac-ft or 11.9% of the "6110 ac-ft Consolidated Basin Wide Plan". Applicants are proposing to change the necessary quantities of various water rights held by themselves and storage allocations issued to them as patrons of the Big Lost River Irrigation District from irrigation to mitigation to meet their individual mitigation burden requirements. This transfer of water supplies is contingent upon a valid request for mitigation pursuant to Water District 34 Distribution Rule 50.04. and the enforcement of regulating other groundwater users not participating in an approved mitigation plan.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, TO BE USED AS MITIGATION SUPPLIES

1.

Right Number	Priority	Amount (cfs/ac-ft)	Owner	Nature of Use	Period of Use
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(see Storage Allocation water rights described in Part A, section B.1.)

Individual Applicants water rights listings

34-00168G	34-00168G	06/01/1883	0.82 cfs	Hansen/Kitsos	Mitigation	5/01 - 10/15 Mitigation Period
34-10832	34-10832	05/20/1884	6.42 cfs 2.30	Hansen/Kitsos	Mitigation	5/01 - 10/15 Mitigation Period
	34-00315	03/27/1899	0.52 cfs .525	Hansen/Kitsos	Mitigation	5/01 - 10/15 Mitigation Period
	34-12371	04/22/1884	3.04 cfs	Hansen/Kitsos	Mitigation	5/01 - 10/15 Mitigation Period
	34-00317D	02/18/1885	0.86cfs	Hansen/Kitsos	Mitigation	5/01 - 10/15 Mitigation Period
	34-00360D	06/01/1887	0.60cfs	Hansen/Kitsos	Mitigation	5/01 - 10/15 Mitigation Period
	34-00381D	09/26/1894	0.42cfs	Hansen/Kitsos	Mitigation	5/01 - 10/15 Mitigation Period
	34-00680B	06/01/1896	1.26cfs	Hansen/Kitsos	Mitigation	5/01 - 10/15 Mitigation Period
	34-10447	08/01/1896	4.00cfs	Hansen/Kitsos	Mitigation	5/01 - 10/15 Mitigation Period
	34-00374C	04/28/1898	0.84cfs	Hansen/Kitsos	Mitigation	5/01 - 10/15 Mitigation Period
	34-00681A	08/01/1899	0.84cfs	Hansen/Kitsos	Mitigation	5/01 - 10/15 Mitigation Period
	34-12374	05/01/1905	1.88cfs	Hansen/Kitsos	Mitigation	5/01 - 10/15 Mitigation Period

21.5 cfs or 42.6 ac-ft per day from Natural Flow Rights
173.4 ac-ft from Hansen/Kitsos Storage Allocation (see attachments)

34-00032D	05/20/1884	0.51 cfs	Aikele/Aikele	Mitigation	5/01 - 10/15 Mitigation Period
34-00259B	05/20/1884	0.61 cfs	Aikele/Aikele	Mitigation	5/01 - 10/15 Mitigation Period
34-02417	05/29/1961	2.67 cfs	Aikele/Aikele	Mitigation	4/15 - 10/15 Mitigation Period

3.67 cfs or 7.5 ac-ft per day from Natural Flow and Groundwater Rights
0.00 ac-ft from Storage Allocation

Jensen/Jensen Mitigation 5/01 - 10/15 Mitigation Period
0.00 cfs or 0.0 ac-ft per day from Natural Flow Rights
210 ac-ft from Jensen Storage Allocation (see attachments)

2. Total amount of water being transferred: 731.2 ac-ft as participants in the "6110 Consolidated Basin Wide Plan". Please note the individual mitigation burden for each applicant in Part B items #A2, and #B. Each applicants is proposing to transfer only that quantity necessary to satisfy their respective individual mitigation burdens.
3. Source of water: Storage Allocation from the Mackay Reservoir and Natural Flow of the Big Lost River.
4. Point(s) of Diversion: Various points of diversion at or below the Mackay Reservoir.
5. Lands irrigated or place of use: Unknown, to be determined by priority calls.
Number of former irrigated acres not to be irrigated: 99 acres. (see 6.c. for more details)
(347.8 ac-ft from natural flow divided by 3.5 ac-ft per acre = 99 required non-irrigated acres)
(383.4 ac-ft from storage allocation - no non-irrigated acres required)

ACRES NOT IRRIGATED WITHIN LEGAL DESCRIPTION BELOW

Twp. 6N	Rge. 25	Sec. 17	NW	NE	SW 100	SE	Acres 100
Twp. 3N	Rge. 25	Sec. 01	NW	NE	SW 40	SE	Acres 40
Hansen/Kitsos - 25 required non-irrigated acres							Total Acres 140
Twp. 4N	Rge. 26	Sec. 31	NW 45	NE	SW 38	SE	Acres 83
Twp. 4N	Rge. 26	Sec. 30	NW	NE 55	SW	SE	Acres 55
Twp. 3N	Rge. 25	Sec. 13	NW	NE 40	SW	SE	Acres 40
Aikele/Aikele - 85 required non-irrigated acres							Total Acres 178
Twp. N	Rge.	Sec.	NW	NE	SW	SE	Acres 000
Jensen/Jensen - 0 required non-irrigated acres							Total Acres 000

6. General Information:
 - a. Who owns the water right to be changed? The Applicants and the Big Lost River Irrigation District
 - b. Describe the arrangement allowing use of the right. The Applicants own their respective water rights and in some instances are also patrons of the Big Lost River Irrigation District who have received storage allocations (see attached Storage Allocation Cards).
 - c. Describe the affect on the land now irrigated if the change is approved pursuant to this application: The 99 acres previously irrigated would not be irrigated this year.
 - d. Has the water right sought to be transferred been used this year? No
 - e. Absent the changes, how would the right be used for the remainder of the year? These water supplies would be applied to the 99 acres and/or to other irrigated acres owned by the applicants.

- f. Describe other water rights used for the same purpose. Other valid water rights held by the applicants will be used to irrigate the remaining portion of their farmland. The proposed mitigation supplies will be made available to the Watermaster to augment the Big Lost River natural flow and will be used with other mitigation supplies to mitigate the effects of ground water pumpage in Basin 34.
- g. Remarks: Mitigation water supplies made available to the Watermaster will first come from storage allocations (Hansen/Kitsos 173.4 ac-ft, Jensen/Jensen 210.0 ac-ft), second, from the natural flow water rights as they become available in their respective priorities listed in Part B (Hansen/Kitsos 69.9 ac-ft, Aikele/Aikele 298.9 ac-ft), and lastly if needed, from (Aikele/Aikele) ground water supplies exchanged with the natural flow rights listed in Part A of this application until the applicants' full individual mitigation requirements are satisfied. The remaining portions of the various listed water rights will be retained by the applicants for the irrigation of their farmland. These mitigation supplies may be used to augment the flows of the Big Lost River during the 1st and 2nd mitigation semesters as natural flow, rotation credits, or storage releases at the Watermaster's discretion.

I hereby assume all risk in accordance with Section 42-22A, Idaho Code, and assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentation made in this application may result in voiding its approval.

Man Hansen
(Signature of applicant)

5-10-05
(Date)

[Signature]
(Signature of applicant)

5-10-05
(Date)

Jerry V. Jensen
(Signature of applicant)

5-10-05
(Date)

[Signature]
FOR DEPARTMENT USE ONLY

Received by _____ Date _____ Fee _____

Receipted _____ # _____ Recommend: _____ approve _____ deny _____

Watermaster recommendation _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Temporary Change Application No. _____

And said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 2005.

For the Director _____



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 27, 2005

LOY PEHRSON
RT 1 BOX 48
DARLINGTON, ID 83255

LOGAN E. WILLIAMS, JR.
HC 86 BOX 4160
MACKAY, ID 83251

BOB DUKE
WATERMASTER, DISTRICT 34
P.O. BOX 53
MACKAY, ID 83251-0053

PRESTON K. BELL
RT. 1 BOX 58
DARLINGTON, ID 83231

ERIC AIKELE
3477 W. 2700 N.
MOORE, ID 83255

DARRELL MCDONALD
P.O. BOX 102
ARCO, ID 83213-0102

LARRY A. QUIST
RT. 1 BOX 203
ARCO, ID 83213

ROBERT D WADDOUPS
RT. 1 BOX 42
MOORE, ID 83255

LIN HINTZE
P.O. BOX 125
MACKAY, ID 83251

KEITH B HILL
STAR RT.
MACKAY, ID 83251

JAY V. JENSEN
3300 KING MT. RD.
MOORE, ID 83255

Dear Sirs:

In a letter dated March 18, 2005, the Idaho Department of Water Resources (IDWR) set a May 15, 2005 deadline for the Water District 34 water users to commit 6,110 acre-feet of mitigation water to be used for augmenting the river. To date, the Water District has submitted a spreadsheet listing each water user's names, each water user's mitigation burden, the proposed source of the water to satisfy the burden, and the amount of water anticipated from that source. According to information on the submitted spreadsheet, the total volume dedicated to mitigation is about 6,200 acre-feet from the identified sources. The spreadsheet does not provide sufficient detail about:

- (1) How mitigation water or augmentation flows will be made available,
- (2) How each ground water user's mitigation burden will be dedicated, and
- (3) The timing for release of the water during the first or second semester.

IDWR cannot formally approve the mitigation plan with the information that has been offered.

Prior to addressing specific remedies to fix the deficiencies in the spreadsheet information, the following standards will be employed:

- (1) The midpoint dividing the first and second semesters for delivery of augmentation water is July 23;
- (2) Because of recent spring rains, IDWR will now consider 1997 as a model year for determining deliverability of natural flow rights for the Big Lost River in 2005. Based on 1997 delivery records, the earliest priority water rights that cannot be delivered will be 1887 water rights and
- (3) Maximum credit granted to natural flow rights accepted for mitigation will be limited to the lesser of (i) the annual volume authorized for the water right (presumed to be 3.5 acre feet per acre, or (ii) the annual volume that would accrue to the right during the period of deliverability.

Water District 34 must submit the information requested in the following paragraphs (1) through (6), as applicable, about each water user's plan for using water to augment flows in the river. This information is the minimum detail required before IDWR can verify that 6,110 acre-feet have been acquired for mitigation.

- (1) List the water right number(s) to be used for mitigation for each user.
- (2) For each water right, explain how water will be supplied to satisfy the user's mitigation requirement:
 - (i) Water impounded by rotating a surface water right into Mackay Reservoir can only be used on the acres identified as a place of use by the water right rotated for credit. As a result, the water impounded by rotation of a natural flow water right can only be dedicated for mitigation for ground water diverted to, and beneficially used on the land identified as the place of use by the surface water right rotated into credit.
 - (ii) If a surface water right is offered for mitigation, the ground water user must idle acres irrigated by surface water diverted under the surface water right at a rate of one acre per 3.5 acre feet deliverable under the surface water right. The ground water user must cease diverting a flow rate from natural flow that will total the mitigation volume.
 - (iii) If a ground water right is offered for mitigation, the ground water user must idle acres irrigated by ground water diverted under the ground water right at a rate of one acre per 3.5 acre feet. Ground water equal to the mitigation volume must be pumped into the river, or into a live connection with the river.

- (iv) In lieu of completely idling irrigated acres, a ground water user may forego irrigating and harvesting hay or other crops for a partial season. The ground water user must clearly demonstrate a foregone beneficial use of water under a valid water right, establish the quantity of water that would have been used, and establish that the water that would have been used was physically left in the Big Lost River or diverted into the Big Lost River. IDWR will not consider credit for decreed water not being diverted because of lack of need during unusually wet periods.
- (3) If irrigated acres are to be idled in order to accomplish mitigation, then the location of all idled acres should be specified on standard maps or aerial photographs.
- (4) The volume of rotation credit water to be used in river augmentation must be shown, and should be based on the decreed flow rate times the number of days of projected rotation. Irrigation or Water District records of rotation storage accrual patterns from previous years should be used and submitted to justify the projected rotation days. Rotation credit volume should not exceed 3.5 acre-feet per acre when combined with the amount diverted for irrigation.
- (5) The volume or flow of water that will augment the river through idling acres or foregoing hay cuttings must be clearly shown. Volume estimates should be done with calculations based on 3.5 acre-feet per acre headgate requirement, as adjusted for projected priority cuts in the 2005 season. Using 1997 as the most recent comparable water year, 1887 is projected as the earliest priority cut during the entire season.
- (6) Describe the projected timing for the release of the mitigation water into the Big Lost River. The Water District 34 Water Distribution Rules require release of one-third of the mitigation water in the first semester and two-thirds of the mitigation water in the second semester. In particular, the plan must establish how two-thirds of the 6,110 acre-feet will be released during the second semester mitigation period from July 23 to October 15.
- (7) All water rights offered for mitigation must be transferred for mitigation unless otherwise recognized by IDWR.

Without more specific information about the proposed mitigation water as discussed above, IDWR cannot issue an administrative order recognizing that 6,110 acre-feet of water have been obtained. Absent this order, ground water users must provide 13% of their average pumping for the last two years as mitigation water or face complete curtailment of their ground water rights if no acceptable mitigation plan is provided and a water right for which a petition for delivery call has been filed is not deliverable.

Water District 34 Watermaster and Advisory Committee
May 24, 2005
Page 4

IDWR grants and additional fourteen (14) days from the date of this letter for the Water District to gather the information to confirm that the 6,110 acre-feet of water have been acquired. Because of the lateness of the season, no further extensions can be granted. We encourage the watermaster, the Advisory Committee and the District to continue to focus on mitigation and provide more detailed information regarding how water will be provided to augment river flows. Because of the wet spring, and a favorable change in water availability, other alternatives for providing direct mitigation may also be more inviting. We also suggest that the Water District consider plans to provide mitigation water directly to those water users who have made mitigation requests since the volume requirements for direct mitigation to the water users requesting mitigation is presently projected to be much less than 6,110 acre-feet.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Burrell", with a stylized, cursive script.

Steve Burrell

pc: Jim Gregory
Ray Rigby
Richard Reynolds – 2800 N 3233 West, Arco ID 83213
Mitchell Sorensen – 3871 W 2500 N, Moore ID 83255
IDWR Eastern Region Office – Idaho Falls
WD 34 2005 file



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

October 18, 2005

MITCHELL SORENSEN
3871 W 2500 N
MOORE, ID 83255

Re: Temporary Change Application Received May 13th, 2005

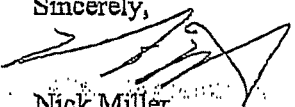
Mr. Sorensen,

The Department of Water Resources received a Temporary Change Application on May 13th, 2005, which listed you, along with Mickelsen Farms, LLC, Soelberg Farms, PU Ranch, and Todd Perkes as applicants. The purpose of the temporary transfer was to change the nature of use for a number of water rights to "Mitigation" in order that those rights could be used to provide water toward the applicants' mitigation burdens.

The Department did not process the transfer and is returning your application. A check for the refund of the \$50.00 application fee will be sent to you under separate cover.

Please call if you have questions.

Sincerely,



Nick Miller

Water Distribution Section

enclosures: Temporary Change Application – Received May 13th, 2005

cc: WD34 File

Mickelsen Farms, LLC –PO Box 438, Rigby ID 83442

Soelberg Farms – 1482 Three Fountains DR., Idaho Falls ID 83404

PU Ranch – RT 1 Box 447, Arco ID 83213

Todd Perkes – 2790 N 3325 W, Moore, ID 83255