

## Rushing, Emalee

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**From:** Kristin M. Moore [kmoore@rockymountainenvironmental.com]  
**Sent:** Wednesday, April 20, 2011 3:56 PM  
**To:** Rushing, Emalee  
**Subject:** RE: Assignment of Permit  
**Attachments:** IdahoanCorrespondence.pdf; IdahoanCorrespondence2.pdf

Emalee,

I sent Idahoan on another fruitless search for documents and thought I would attach their attorney's correspondence for you to see his responses. We would like to pursue the assignment route if you would kindly forward this information on to Shelley.

We recognize that you have to follow certain procedures and appreciate the efforts that are made to assist making these sorts of changes.

Thank you,

Kristin

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**From:** Rushing, Emalee [mailto:Emalee.Rushing@idwr.idaho.gov]  
**Sent:** Wednesday, March 23, 2011 2:13 PM  
**To:** Kristin M. Moore  
**Subject:** RE: Assignment of Permit

Kristin,

Do you have the exhibits that are referenced in the assignment? I have run it by John Homan, and he seemed to think it was a stretch.

One option would be to file the notice of change in water right ownership along with the deed that conveyed the property. We would hold the notice and process it at the time of licensing. I do see that proof of beneficial use has been filed, but I don't see any evidence that a field exam has been conducted. Once the exam has been conducted and we're ready to issue the license, the ownership change can be processed.

Let me know which route you'd like to pursue. If you want to pursue the assignment route, I'll run it by Shelley to see if it's ok to process (this was John Homan's suggestion).

Thank you,  
Emalee

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**From:** Kristin M. Moore [mailto:kmoore@rockymountainenvironmental.com]  
**Sent:** Wednesday, March 23, 2011 9:51 AM  
**To:** Rushing, Emalee  
**Subject:** RE: Assignment of Permit

Emalee,

In the confusion of the transfer of ownership of the company, it appears that many of the vital documents were lost. The attorney who drafted the documents says he no longer has access to those documents. No one appears to have them. The only document that they could access is the one that is attached. Is there any way that this document will work?

Thank you,

Kristin

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**From:** Rushing, Emalee [mailto:Emalee.Rushing@idwr.idaho.gov]

**Sent:** Tuesday, March 15, 2011 11:39 AM

**To:** Kristin M. Moore

**Cc:** Barg, Jonie

**Subject:** RE: Assignment of Permit

Kristin,

I believe we're looking for a document that refers to the personal property in general, not that permit 61-7575 needs to be specifically mentioned. Once you locate that document, please send a copy and we'll take a look at it to see if it's sufficient evidence for the assignment of permit.

Thank you,

Emalee

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**From:** Kristin M. Moore [mailto:kmoore@rockymountainenvironmental.com]

**Sent:** Monday, March 14, 2011 3:30 PM

**To:** Barg, Jonie; Rushing, Emalee

**Subject:** RE: Assignment of Permit

Jonie and Emalee,

I have been searching for a document that identifies the new owner of the permit 61-7575 owned by Idaho Fresh Pak. So far, we have not found any sound documentation. I have Idahoan searching for one last document that appears to convey all assets from the company except real property and contracts. If we find that this new document does not include the permit, what are our other options?

Thanks for your help!

Kristin

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**From:** Barg, Jonie [mailto:Jonie.Barg@idwr.idaho.gov]

**Sent:** Thursday, February 24, 2011 3:32 PM

**To:** kmoore@rockymountainenvironmental.com

**Subject:** FW: Assignment of Permit

Kristin,

I received a response from Emalee Rushing in the state office today, February 24, 2011. She had a chance to talk with John Homan in the state office, he indicated the best way to go about this is, there should be some documentation somewhere within Idaho Fresh Pack, before they dissolved, that designated where all their personal property would go and to whom; hopefully that documentation will cover this permit, if not please let me know and we will try to get some

other options. Please let me know if you have any questions or concerns. Thank you. I hope you have a fantastic Thursday afternoon. :) :) :)

*Jonie Barg*

Jonie Barg  
Technical Records Specialist  
Idaho Department of Water Resources  
900 N Skyline Ste A  
Idaho Falls, ID 83402  
Phone #: (208) 525-7161  
Fax #: (208) 525-7177  
Email: [jonie.barg@idwr.idaho.gov](mailto:jonie.barg@idwr.idaho.gov)

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**From:** Barg, Jonie  
**Sent:** Wednesday, February 23, 2011 1:46 PM  
**To:** Rushing, Emalee  
**Subject:** Assignment of Permit

Good Afternoon Emalee!! I received a phone call from Kristin Moore at Rocky Mountain Environmental about an Assignment of Permit, with questions on how to proceed with the assignment where the current owner is a dissolved company. According to Kristin in August of 2010 Idaho Fresh Pack dissolved (the documentation of dissolution indicates they dissolved in 2007, however the documentation was filed in 2010). Idaho Fresh Pack is the current owner of the permit they are trying to change the name on the permit; the permit will be changed to Idahoan Foods. The old secretary of Idaho Fresh Pack is now the president of Idahoan Foods, however Kristin and my concern is the same, how can they file the Assignment of Permit if the current owner of the permit is a dissolved company? Kristin indicated the reason this needs to be completed as soon as possible is Idahoan Foods needs to file an Amendment but cannot proceed until the ownership is changed. Thank you for your time. Please let me know if I can be of any assistance.

*Jonie Barg*

Jonie Barg  
Technical Records Specialist  
Idaho Department of Water Resources  
900 N Skyline Ste A  
Idaho Falls, ID 83402  
Phone #: (208) 525-7161  
Fax #: (208) 525-7177  
Email: [jonie.barg@idwr.idaho.gov](mailto:jonie.barg@idwr.idaho.gov)

## ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (this "Assignment") is effective as of this 5 day of JUNE, 2010, by and between IDAHO FRESH-PAK, INC., an Idaho corporation ("Assignor"), and UNITED II POTATO GROWERS OF IDAHO, INC., an Idaho agricultural cooperative ("Assignee").

### WITNESSETH

WHEREAS, pursuant to a Plan of Complete Liquidation and Dissolution adopted by Assignor, Assignor commenced a series of liquidating distributions for purposes of transferring all of its assets and liabilities to Assignee, the sole shareholder of Assignor; and

WHEREAS, all of the assets and liabilities of Assignor were transferred to Assignor in July, 2007 except for the real property, fixtures, leases and cogeneration contracts associated with its Rupert, Idaho and Glenns Ferry, Idaho facilities (the "Facilities") which were retained by Assignor pending the renegotiation of the cogeneration contracts associated with the Facilities; and

WHEREAS, Assignor now desires to convey the Facilities and assign the related contracts (including the cogeneration contracts) to Assignee; and

WHEREAS, Assignor is executing and delivering this instrument for the purpose of assigning to and vesting in Assignee all of its right, title and interest in and to the Facilities and related contracts and obligations, and Assignee is executing and delivering this instrument in order to confirm its acceptance of such assets and its assumption of Assignor's liabilities; and

WHEREAS, pursuant to an Asset Contribution Agreement, dated July 16, 2007, between Assignee and Idahoan Foods, LLC, a Delaware limited liability company (formerly known as North American Foods, LLC) ("Idahoan"), Assignee intended to transfer the Facilities and associated liabilities to Idahoan, immediately following the transfer of the Facilities hereunder; and,

WHEREAS, Idahoan has requested that Assignee hold the Facilities until such time as Idahoan directs Assignee to transfer the Facilities to Idahoan.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment. Assignor hereby grants, sells, conveys, assigns, transfers, sets over to, and vests in Assignee, its successors and permitted assigns, all of Assignor's right, title and interest, both legal and equitable, in and to the Facilities, including but not limited to the contracts identified on the attached Exhibit A ("Contracts"). Assignor will execute and deliver Warranty Deeds conveying title to the Facilities to Assignee in the form of Exhibit B-1 and B-2 attached hereto.

2. Assumption of Liabilities. Assignee hereby accepts the foregoing assignment of the Facilities and hereby covenants and agrees with Assignor to assume all liabilities and obligations of Assignor, and agrees to assume, keep, pay and perform all of Assignor's duties, responsibilities, liabilities and obligations under all obligations of Assignor (including but not limited to the Contracts) in accordance with and subject to all of the terms and conditions of such contracts.

3. Further Assurances. From time to time Assignor and Assignee agree to execute and deliver such other instruments and take such other action as may be reasonably required to more effectively convey, transfer to and vest in Assignee the interests transferred hereunder. The costs and expenses of either party in having such instruments prepared, reviewed, negotiated, revised, executed and delivered and having such actions reviewed and taken shall be borne exclusively by Assignee. The costs and expenses of either party in having other actions taken by such party shall be borne exclusively by Assignee.

4. Miscellaneous

(a) This Assignment shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and permitted assigns.

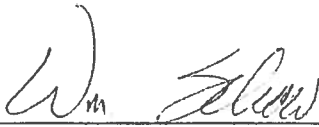
(b) This Assignment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

(c) This Assignment shall be governed by the laws of the State of Idaho.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as an instrument under seal on the day and year first set forth above.

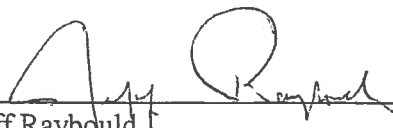
ASSIGNOR:

IDAHO FRESH-PAK, INC.

  
\_\_\_\_\_  
William Schow  
Chief Executive Officer

ASSIGNEE:

UNITED II POTATO GROWERS  
OF IDAHO, INC.

  
\_\_\_\_\_  
Jeff Raybould  
Chair of Board

**ACKNOWLEDGMENT, CONSENT AND AGREEMENT**


Idahoan Foods, LLC (formerly North American Foods, LLC) acknowledges and consents to the foregoing Assignment and Assumption Agreement. Idahoan further acknowledges its request that the transfer of the Facilities to Idahoan pursuant to the Asset Contribution Agreement between Assignee and Idahoan be delayed until such time as Idahoan directs Assignee to make such transfer.

IDAHOAN FOODS, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



Gordon I. Lewis

President & CEO

## EXHIBIT A

### CONTRACTS

1. Operations Agreement dated 7/17/2007 between Assignor and Idahoan.
  2. Contract Indemnification Agreement dated 7/17/2007 between Assignor and Idahoan.
  3. Lease Agreement dated 9/25/1995 between Magic Valley Foods, Inc., a predecessor in interest to Idahoan, and Rupert Cogeneration Partners, Ltd., a Colorado limited partnership.
  4. Lease Agreement dated 9/25/1995 between Magic West, Inc., a predecessor in interest to Idahoan, and Glenss Ferry Cogeneration Partners, Ltd., a Colorado limited partnership.
  5. Thermal Energy Service Agreement, dated 7/9/02 between Assignor and Glenss Ferry Cogeneration, Ltd.
  6. Thermal Energy Service Agreement, dated 6/25/02 between Assignor and Rupert Cogeneration Partners, Ltd.
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**From:** [Leo Herbert](#)  
**To:** [Kristin M. Moore](#)  
**Subject:** FW: IFP Water Stock Certificates - sent to Gary Winger  
**Date:** Thursday, March 31, 2011 11:10:04 AM  
**Attachments:** [image002.png](#)  
[IFP\\_Receipt.pdf](#)

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See what your boss thinks of this?

## Leo Herbert

Corporate Environmental Manager



Idahoan Foods, LLC  
208-754-8194  
[lherbert@idahoan.com](mailto:lherbert@idahoan.com)

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**From:** Wes Frey  
**Sent:** Thursday, March 31, 2011 11:04 AM  
**To:** Leo Herbert  
**Subject:** FW: IFP Water Stock Certificates - sent to Gary Winger

Does this help? See Paul's comment below.

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**From:** Noah, Paul [<mailto:pnoah@rdoffutt.com>]  
**Sent:** Thursday, March 31, 2011 10:37 AM  
**To:** Wes Frey  
**Subject:** FW: IFP Water Stock Certificates - sent to Gary Winger

Wes –

I have a meeting now but will call you after lunch. The merger b/w IFP and United II is a recorded document in the Idaho Sec. of State's office. Once a merger has been filed, by operation of law and by terms of plan and agreement of merger, the assets become assets of the entity that survives, in this case United II. I am still looking for a file stamped merger from Sec. of State but will follow up after meeting. Thanks.

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**From:** Gary Winger [<mailto:gwinger@RQN.COM>]  
**Sent:** Tuesday, August 07, 2007 12:51 PM  
**To:** John Jensen; RANDON WILSON; RON POELMAN; Noah, Paul  
**Cc:** Blake Bauman; Rod Roberts; Donna Freeman  
**Subject:** IFP Water Stock Certificates - sent to Gary Winger

John,

We delivered the stock certificates to Pam Matheson of your firm at the same time we exchanged signature pages. Attached please find a copy of the receipt.

Gary Winger

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**From:** John Jensen [mailto:JJensen@joneswaldo.com]  
**Sent:** Tuesday, August 07, 2007 11:02 AM  
**To:** Gary Winger  
**Cc:** Blake Bauman; Rod Roberts; Donna Freeman  
**Subject:** FW: IFP Water Stock Certificates - sent to Gary Winger

Gary,

We are trying to track down the stock certificates representing IFP's shares in various water companies. There are a few people out of the office here at Jones Waldo, so I haven't been able to confirm whether you sent them to us. Can you confirm that you sent them to us, that you still have them, or otherwise? If still you have the stock certificates, please confirm and send them back to Rod Roberts/Donna Freeman at IFP (now NAF).

Thanks,  
John

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**From:** Donna Freeman [mailto:dfreeman@idahoan.com]  
**Sent:** Tuesday, August 07, 2007 10:52 AM  
**To:** John Jensen  
**Cc:** 'Rod Roberts'  
**Subject:** IFP Water Stock Certificates - sent to Gary Winger

John,

If you would please send the originally signed stock powers and the secretary certificate, that would be very helpful.

Per the attached, I did send the original water certificates to Gary Winger at Ray Quinney & Nebeker - via UPS (1Z 846 061 01 5554 752 1) on 7/16. I do have photo copies here but as I mentioned earlier, they will need the original certificates to make the name change.

*~Donna*

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**From:** John Jensen [mailto:JJensen@joneswaldo.com]  
**Sent:** Tuesday, August 07, 2007 10:07 AM  
**To:** Donna Freeman  
**Subject:** RE: ING - water stock certificates

Donna,

I can send you the originally signed stock powers and a secretary certificate showing Jerry's authority to sign for IFP. IFP/NAF should have the original stock certificates in its possession. Please let me know if you have any further questions.

Thanks,  
John

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**From:** Donna Freeman [mailto:dfreeman@idahoan.com]  
**Sent:** Monday, August 06, 2007 4:49 PM

**To:** John Jensen  
**Cc:** 'Rod Roberts'  
**Subject:** FW: ING - water stock certificates

John,

In contacting the individual canal companies to request the certificates be reissued, the two I have spoken with personally - have stated we will need to return the original certificate(s) to the respective entity - in order to have new ones reissued. The original certificates will need to be signed on the back and accompanied by the stock power you have included, along with some type of legal document showing Jerry Wright's authority to sign on behalf of Idaho Fresh Pak. The only documentation I have from the (previous) Board or Secretary of State, still reflects Ryan Clement as the Pres. of IFP.

*~Donna*

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**From:** Rod Roberts [mailto:rroberts@idahoan.com]  
**Sent:** Monday, August 06, 2007 1:38 PM  
**To:** 'Donna Freeman'  
**Cc:** 'John Jensen'; 'Tyler Falk'; 'Noah, Paul'  
**Subject:** FW: ING - water stock certificates

Donna,  
Would you contact the canal companies and find out what we need to have new certificates issued in the name of NAF?  
Rod

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**From:** John Jensen [mailto:JJensen@joneswaldo.com]  
**Sent:** Monday, August 06, 2007 1:14 PM  
**To:** Rod Roberts  
**Cc:** Noah, Paul; Falk, Tyler  
**Subject:** ING - water stock certificates

Rod, et al.,

ING has requested the original stock certificates representing IFP's (now NAF's) interest in the following water rights:

1. 80 shares in The Great Feeder Canal Co., Ltd. (cert. # 2223)
2. 20 shares in The Great Feeder Canal Co., Ltd. (cert. # 2225)
3. 12.47 shares in North Rigby Irrigation and Canal Company, Inc. (cert. #152)
4. 8 shares in Parks and Lewisville Irrigation Company (cert. # 1952)
5. 120.75 shares in Long Island Irrigation Company (cert. # 2144)
6. 10 shares in Parks and Lewisville Irrigation Company (cert. # 1951)

Jerry Wright signed stock powers for IFP, transferring the above shares to NAF. Per ING's request, Jerry also endorsed stock powers in blank on behalf of NAF, which we have delivered to ING. Technically, I think that the certificates issued to IFP should now be cancelled and reissued in the name of NAF. Please discuss amongst yourselves and confirm with ING that this is what should be done. I have attached copies of the stock powers Jerry executed in behalf of IFP, transferring the shares to NAF. I believe that Jones Waldo has the originally signed stock powers. I will confirm this with our paralegal. We can deliver these stock powers to you in the event that the transfer agents of

the various water companies need them to reissue stock certificates to NAF.

Thanks,  
John

..

**John Jensen**  
*Attorney*

170 S. Main St., #1500     **Direct:** 801.534.7222  
Salt Lake City, UT 84101   **Bio**  
**Fax:** 801.328.0537  
**[www.joneswaldo.com](http://www.joneswaldo.com)**

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Any tax advice contained in this e-mail is not intended and may not be used to avoid penalties under U.S. federal tax laws, or to promote, market or recommend to another party any transaction or matter addressed herein.

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**RECEIPT**

The undersigned at the office of Jones Waldo Holbrook & McDonough hereby acknowledges receipt on July 26, 2007 of certain original Water Share Certificates listed on Exhibit A and certain original Title Certificates of Idaho Fresh-Pak, Inc. ("IFP") listed on Exhibit B from Ray Quinney & Nebeker, P.C. in connection with the Agreement and Plan of Merger entered into on March 22, 2007 and closed on July 17, 2007 by and between United II Potato Growers of Idaho, Inc., United II Sub, Inc., Idaho Fresh-Pak, Inc., and for certain limited purposes R.D. Offutt Company.

Delivered by:

Lisa L. Livsey  
Lisa L. Livsey  
Attorney

Received by:

Pamela J. Mathisen  
Pamela J. Mathisen  
Paralegal

EXHIBIT A  
List of Water Share Certificates

<b>Certificate Number</b>	<b>Company Name</b>	<b>Number of Shares</b>
2223	The Great Feeder Canal Co., Ltd.	80.0
2225	The Great Feeder Canal Co., Ltd.	20.0
2144	Long Island Irrigation Company	120.75
152	North Rigby Irrigation and Canal Company, Inc.	12 & 470/1000
1952	Parks & Lewisville Irrigation Company Inc.	8
1951	Parks & Lewisville Irrigation Company Inc.	10

EXHIBIT B  
List of Title Certificates

Vehicle # ID #	Title #	V.I.N.	Description
TK1	A 1520148	C5535Z141768	1965 Chevrolet
TK2	A 1572128	F60DRD-27,085	1968 Ford
TK3	D 401113	CME632V140675	1972 Chevrolet C60 Custom Deluxe
TK4	A 798006	CCE616V109224	1976 Chevrolet C60 Custom Deluxe
TK5	D 163043	TCE628V562190	1978 GMC Sierra 6000
TK6	C 900105	CCE628V129351	1978 Chevrolet C60 Custom Deluxe
TK7	D 617442	1HTCF2552DHA10506	1983 International Dump Truck
2T	A 92394177	18420G700N1101720	1992 5th Wheel Trailer
3	92622329	1GCEK14K7NE225527	1992 Chevrolet Silverado 4x4
TK8	004003095	1FU YDCXB2RH675887	1994 Freighthaul (Truck)
3T	009019975	1PT01JAH0V9007850	1997 Trailmobile (Trailer)
10	006016441	1GCEK14T9YE334729	2000 Chevrolet 1500 LS 4x4
9	006003059	1GCGK24R6YR109986	2000 Chevrolet 2500 LS 4x4
15	A 026000604	1GCEK14T12Z204119	2002 Chevrolet 4x4
13	025008733	1GCGK13U72F225805	2002 Chevrolet 4x4 (4 door)
14	026011591	1GCEK14T12Z207795	2002 Chevrolet Pickup
	039005811	ID011916	2003 Utility Trailer (yr assigned by inspector)
19	035012906	1GNET16S936185119	2003 Chevrolet Trailblazer
18	036014049	1FTRW08L13KC49274	2003 Ford F-150 4x4
1T	036010327	ID011128	2003 Utility Trailer
24	055007665	1GCEK14TX5E263245	2005 Chevrolet 2 door pickup
23	055007444	2GCEK13T251312294	2005 Chevrolet 4 door silver crew cab
22	055007475	1GCCS148558118826	2005 Chevrolet Colorado Pickup
	93611787	478TE1403PA508328	1993 Honda ATV TRX300
	97620505	478TE1507VA819191	1997 Honda ATV TRX300
	A97964834	478TE1506WA900135	1998 Honda ATV
	B96936610	1H2R04823KH010201	1989 FRUE VN TL
	A93405860	1UYVS2483JU960601	1988 UTIL RF TL
	C93312189	1UYVS2489EC011730	1984 UTIL RF TL
	D90975924	1TDR48028FA061952	1985 TIMP VN TL

**From:** [Leo Herbert](#)  
**To:** [Kristin M. Moore](#)  
**Subject:** Glens Ferry WR  
**Date:** Thursday, March 17, 2011 4:09:53 PM  
**Attachments:** [image001.png](#)

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We have not been able to find the referenced document.

United II was the sole shareholder of IFP up until last summer when IFP was dissolved and made a liquidating distribution of all of its assets to United II. This would include all permits, etc. I do not have access to those docs now but that is what is needed. Thanks.

Paul Noah ( Atty ) for United II

William Schow is the Chief Executive Officer of both the old IFP and the new U II companies. He will sign any documents.

## Leo Herbert

Corporate Environmental Manager



Idahoan Foods, LLC  
208-754-8194  
[lherbert@Idahoan.com](mailto:lherbert@Idahoan.com)