

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION)	
FOR TRANSFER NO. 73785 IN THE)	PRELIMINARY ORDER
NAME OF KEVIN & ELIZABETH)	REJECTING APPLICATION
DUESMAN)	
_____)	

FINDINGS OF FACT

1. On November 25, 2005, Kevin and Elizabeth Duesman filed an application for transfer with the Idaho Department of Water Resources (IDWR).
2. The application was held without processing due to adjudication work required of IDWR.
3. Processing of the application began in early 2008. On March 18, 2008, IDWR sent the applicants a letter requesting additional information regarding injury and mitigation issues in order to continue processing the application. A thirty (30) day deadline for the applicants to respond was identified in the letter. The letter specified the application would be rejected without a timely response.
4. On April 18, 2008, IDWR extended the deadline to July 15, 2008.
5. IDWR vacated the deadline on July 7, 2008, due to ongoing efforts by the applicants to provide an acceptable mitigation plan for the application to be processed.
6. The applicants provided a mitigation plan on December 30, 2009. On the same date, IDWR rejected the plan and provided another sixty (60) days for the applicants to submit an approvable mitigation plan. The letter specified the application would be rejected without a timely response.
7. On March 4, 2010, IDWR extended the deadline to September 15, 2010.
8. On September 20, 2010, IDWR extended the deadline to December 1, 2010. This final extension of the deadline also stated the application would be rejected without a timely response.
9. The applicants have not submitted an approvable mitigation plan for their application.

CONCLUSIONS OF LAW

1. Section 42-204, Idaho Code, and the Rules and Regulations of IDWR state that if an applicant does not submit the requested information to IDWR within the allotted time frame, IDWR may reject the application.
2. The requested information was not provided within the allotted time frame. The application should be rejected.

3. The application can be re-filed when the required information can be provided.

ORDER

IT IS HEREBY ORDERED that Application for Transfer No. 73785 in the name of Kevin and Elizabeth Duesman is REJECTED.

Dated this 23rd day of December, 2010

for 

John Westra
Manager, Western Regional Office

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of December, 2010 I mailed a true and correct copy of the foregoing Preliminary Order to the person(s) listed below:



Denise Buffington
Administrative Assistant

KEVIN & ELIZABETH DUESMAN
3555 E BARBER DR
BOISE ID 83716

SCOTT KING
SPF WATER ENGINEERING LLC
300 E MALLARD DR STE 350
BOISE ID 83706

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 73785APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1Name of Applicant KEVIN and ELIZABETH DUESMAN Phone (208) 343-3714Post Office address 3555 E. BARBER DR BOISE, IDAHO 83716

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☒ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. Describe the reason for the proposed changes Applicant has purchased water right and proposes moving right to applicant's land for irrigation use.

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Right Number TBD* Priority Feb 7, 1969 Amount (cfs/ac-ft) 0.05 cfs / 13.5 ac-ft Nature of Use irrigation Period of Use April 1 to Nov 1
*portion of 63-7194 _____ to _____
*Now 63-32399 _____ to _____

2. Total amount of water being transferred 0.05 cubic feet per second and/or 13.5 acre-feet per annum.3. Source of water GROUND WATER tributary to _____

4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec	Twp	Rge	County	Local name for diversion
	SE	NW	SE	19	03N	03E	ADA	

5. Lands irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
03N	03E	19														3			3

RECEIVED

NOV 25 2005

WATER RESOURCES
WESTERN REGION

REJECTED

Total Acres 3

6. General Information:

a. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?
 _____ Yes X No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

The land will be dried and no longer irrigated.

Proposed water bearing zone from 25 to 75 feet. See well log 56073, drilling permit 63-94-W0620 000, which appears to describe the primary well.

This is to certify that I have examined Application for Transfer of Water Rights No. _____

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

Witness my hand this _____ day of _____, 20_____

For the Director

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

**APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2**

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right as evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. 63-7194 issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. Check appropriate box below:

☐ Tax Notice ☒ Warranty Deed ☐ Other _____

3. Source of water GROUNDWATER tributary to _____

4. Date or priority FEB 7, 1969

5. Water is used for the following purposes:

amount 2.38 cfs/642 ac-ft for IRRIGATION purposes from APR 1 to NOV 1
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 2.38 cubic feet per second and/or 642 acre-feet per annum.

7. Point(s) of Diversion:

Lot	¼	¼	¼	Sec	Twp	Rge	County	Local name for diversion
		SW	NE	21	1N	1W	Ada	

8. Lands irrigated or place of use:

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
1N	1W	21	38*	31.5*	33*	40*													142.5

* Acreage distribution based on SRBA recommendation for 63-7194

Total Acres 142.5

9. Describe any other water rights used for the same purpose as described above none

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

NO

If yes, describe

(If the entire right is to be changed by the applicant, omit part B and C.)

1. amount 0.05 cfs / 13.5 ac-ft for IRRIGATION purposes from APR 1 to NOV 1
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

2. Point(s) of Diversion:

[illegible]

3. Lands irrigated or place of use:

[illegible]

Total Acres	3
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C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT *(omit if there is no change)*

1. amount 2.33 cfs / 628.5 ac-ft for IRRIGATION purposes from APR 1 to NOV 1
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

- 2. Point(s) of Diversion:**

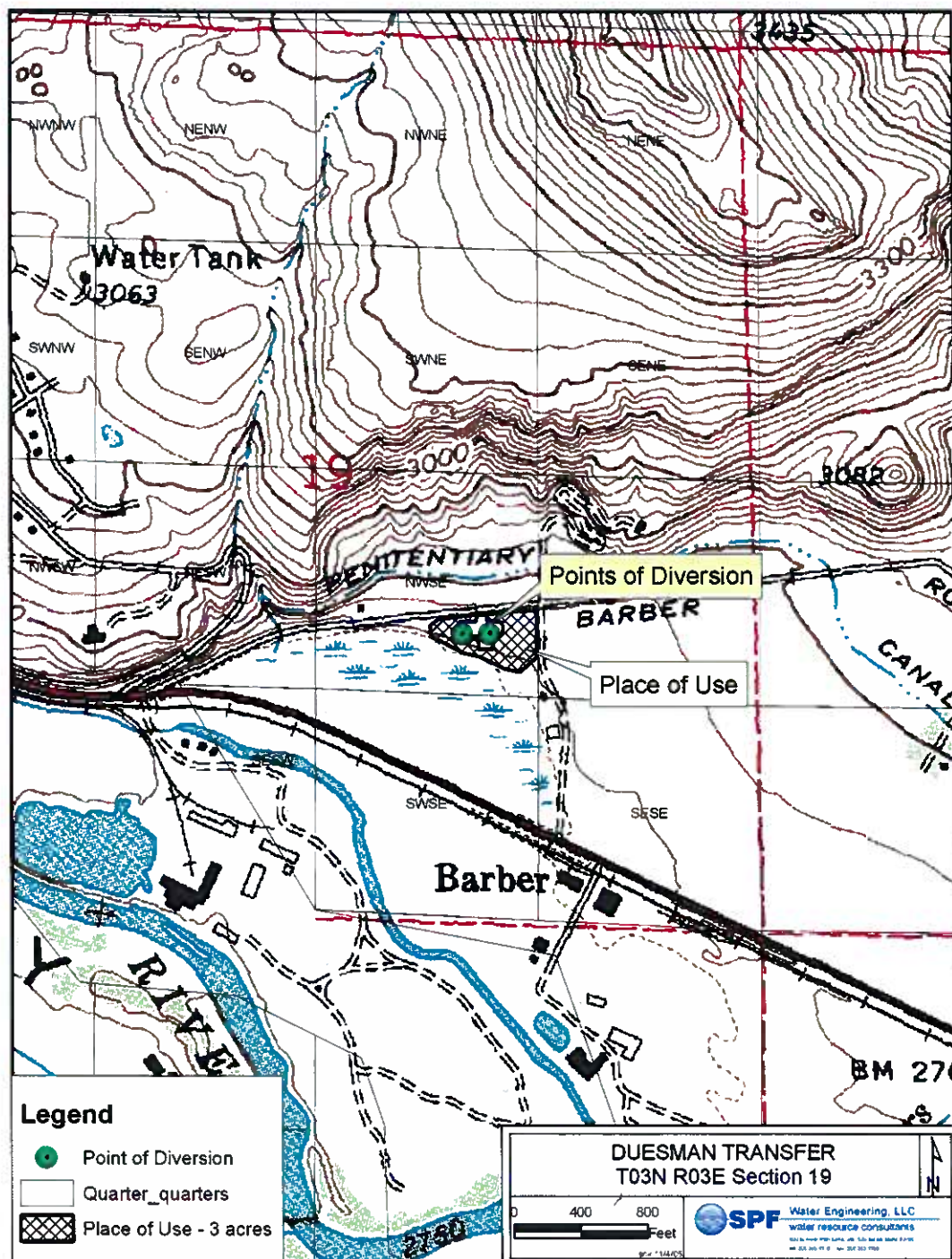
[illegible]

3. Lands irrigated or place of use:

[illegible]

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESAPPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

- A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for the rights described in part 1. Clearly depict the land by section, township and range number.



PART 3**B. CHANGES IN NATURE OF USE**

1.

<u>New Nature of Use</u>	<u>Amount(cfs/af-ft)</u>	<u>Hours/days/year</u>	<u>Period of Use</u>
_____	_____	_____	_____ to _____
_____	_____	_____	_____ to _____

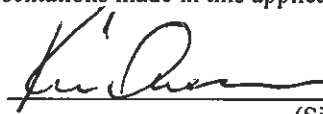
2. Quantity and quality of return flows and location of discharge: _____

3. Describe effects on other water uses resulting from the proposed change:

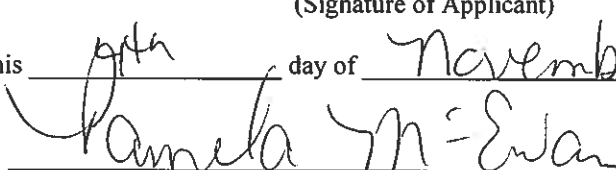
I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.





 (Signature of Applicant)

Subscribed and sworn to before me this 9th day of November, 2005.


 (Notary Public)

My commission expires 3/30/11

FOR DEPARTMENT USE ONLY

Transfer contains 6 pages and 2 attachments

Received by DB Date 11-25-05 Protest filed by _____

Prelim. Check by CB Fee \$100-

Received by DB W033631 Date 11-25-05

Published in _____ Copies of protest forwarded by _____

Pub. Dates _____ Hearing held by _____ Date _____

Watermaster recommendations requested on _____ Recommended for ☐ approval ☐ denial

_____ received _____ by _____

Copy of transfer sent to lien holder _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

RECEIVED

NOV 25 2005

WATER RESOURCES
WESTERN REGION

Please print or type. Attach pages with additional information. Instructions are included at the end of this form.
 Incomplete forms will be returned.

1. Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided (under the "split" heading), if the change in ownership is limited to a portion of a water right in which case division of the existing water right or adjudication claim record will be required.

Water Right No(s).	Adjudication Claim No(s).	Split	Water Right No(s).	Adjudication Claim No(s).	Split
63-7194	63-7194	X			

2. The following **REQUIRED** information must be submitted with this form:

- A. The appropriate **FILING FEE**. See instructions for fee amounts.
- B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.
- C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):
PLAT OF PROPERTY or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are usually attached to your deed or on file with the county).

OR

If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **PLAT OF PROPERTY** or **SURVEY MAP**.

3. Name and Address of Former Owner/Claimant(s) Mellin Properties, LP
4500 North Tumbleweed, Boise, ID 83713
4. New Owner/Claimant(s) Kevin & Elizabeth Duesman
 Name Connector (Check one): [] and, [] or, [] and/or
- New Mailing Address 3555 E. Barber Dr.
- City, State and ZIP Code Boise, Idaho 83716
- New Telephone Number (208) 343-3714
5. Date you acquired the property November 18, 2005

ATTACHMENT A

DESCRIPTION OF YOUR PORTION OF WATER RIGHT
 (If the right(s) will not be split, skip this area and proceed to item 7)

Water Right and/or Adjudication Claim Number _____

Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Irrigation	_____	_____
Stock	_____	_____
Domestic	_____	_____
Other _____	_____	_____
Total	_____	_____

ADA COUNTY CONSOLIDATED PROPERTY TAX BILL

ADA COUNTY TREASURER -- TAX COLLECTOR FOR TAXING DISTRICTS OF ADA COUNTY

P.O. BOX 2368, BOISE, ID 83701 PH. #(208) 287-6800

REAL PROPERTY TAX BILL**LEGAL DESCRIPTION:**NE4
SEC 21 1N 1W**DELINQUENT TAXES**PHONE (208)
287-6600 FOR
AMOUNT
INCLUDING
CURRENT LATE
CHARGES AND
INTEREST.

YEAR

PARCEL NUMBER

5222110000

TAX YEAR

CODE AREA

BILL NUMBER

2004

205

863494

Mortgage Company Requesting Your Tax Bill:

PROPERTY ADDRESS: W KUNA CAVE RD

This is a listing of the total amount you pay each taxing district, including bonds, overrides, and certifications if applicable. Please individual taxing districts with questions regarding taxes.

% Levy Change	Name of Taxing District	Taxing District Phone Number	Taxing District Total Levy Amount	Tax Amount By Taxing District
-5.63	SCHOOL DIST. 136J	495-1141	.0039495	319.13
3.59	SCHOOL #136J BOND	495-1141	.0027359	221.06
2.13	ADA COUNTY	267-7300	.0028597	231.05
-0.99	KUNA FIRE	922-1144	.0009967	80.52
-11.55	KUNA FIRE BOND	922-1144	.0001483	11.93
2.08	ADA COUNTY HIGHWA	387-6120	.0010324	83.42
0.21	EMERGENCY MEDICAL	287-2950	.0001227	9.92
6.23	PEST EXTERMINATION	888 2316	.0001107	8.94
Total			.011955882	966.04

fax # 393-4156

LESS PRE-ADJUSTMENTS**TOTAL PROPERTY TAX BILLED**

966.04

LESS PRE-PAYMENTS**LESS CIRCUIT BREAKER (SENIOR CITIZEN) EXEMPTION****LESS ADDITIONAL PAYMENTS**

966.04

ADJUSTMENTS - CHARGES**TOTAL TAXES DUE**

0.00

CURRENT YEAR PROPERTY TAX	PRIOR YEAR PROPERTY TAX	CURRENT YEAR TAXABLE VALUE	PRIOR YEAR TAXABLE VALUE	ASSESSED VALUE	HOMEOWNERS EXEMPTION
966.04	949.84	80,800	78,900	80,800	0

MELLIN PROPERTIES LIMITED PARTNERSHIP
4500 N TUMBLEWEED LN
BOISE ID 83713-2500**DUE DATE:** Dec 20, 2004

Ralph Mellin
 ADA COUNTY REGISTER
 11111111111111111111

RECORDED - INDEXED BY

FEE \$3.00 DEPT. 16

101125945

2001 NOV 30 PM 4:55

QUITCLAIM DEED

For Value Received the MELLIN FAMILY LIMITED PARTNERSHIP hereby conveys, releases, remises and forever quit claims unto the MELLIN PROPERTIES LIMITED PARTNERSHIP whose address is: 4500 North Tumbleweed Lane, Boise, Idaho 83713-2500, the following described premises situated in Ada County, Idaho:

The NE 1/4 of Section 21, Township 1 North, Range 1 West, Boise Meridian, Ada County, Idaho, together with all and singular the tenements, hereditaments, improvements, easements and appurtenances there unto belonging or in any ways appertaining, including all water and water rights, ditches and ditch rights owned or used in connection or appealing on the land, and subject to such rights, easements, covenants, restrictions and zoning regulations as appear of record or based upon the premises.

DATED this 30 day of November, 2001.

Ralph Mellin
 Ralph Mellin, General Partner
 Mellin Family Limited Partnership

STATE OF Idaho)
)ss.
 County of Ada)

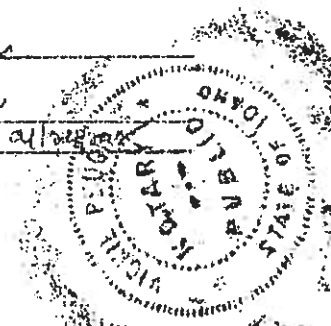
On this 30 day of November 2001 before me, the undersigned, a Notary Public in and for said State, personally appeared RALPH MELLIN, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

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

Victor Leaph
 NOTARY PUBLIC

Residence: 602 E. Idaho

My Commission Expires: 11/30/04



63-7194 SPLIT ANALYSIS

snk 5/5/2005

After Transfer

ACRES	% OF RT	CFS	ACRE-FT	OWNERSHIP
3	2%	0.050	13.5	Duesman
139.5	98%	2.330	628.5	Mellin
0	0%	-	-	
142.5	100%	2.380	642.0	TOTAL

WATER RIGHT ELEMENTS

CFS	2.38
ACRES	142.5
ACRE-FEET	642
CFS/ACRE	0.0167
AF/ACRE	4.51

**SPF** Water Engineering, LLC
water resource consultants



CONTRACT FOR SALE OF A WATER RIGHT

THIS CONTRACT FOR SALE OF A WATER RIGHT ("Agreement") is made by and between MELLIN PROPERTIES LIMITED PARTNERSHIP ("Seller"), an Idaho limited partnership, and KEVIN AND ELIZABETH DUESMAN ("Buyer"), husband and wife. Buyer and Seller may be referred to hereinafter as a "Party" or collectively as "Parties."

RECITALS

A. Seller owns a ground water right ("Water Right"), represented by license number 63-7194 in the records of the Idaho Department of Water Resources ("IDWR"), appropriated and used for irrigation purposes with a February 7, 1969 priority date. A copy of the Water Right license is attached hereto as Exhibit A. The Water Right authorizes a diversion rate of 2.38 cubic feet per second (cfs) and 642 acre-feet per year (afa). The Water Right is appurtenant to and has been beneficially used to irrigate 142.5 acres on Seller's property, also identified under the Water Right as the authorized place of use.

B. Seller desires to sell and Buyer desires to buy a portion of the Water Right that is appurtenant to 3.0 acres of the irrigated lands within the Water Right's authorized place of use, identified by Seller pursuant to Section 1.1 below.

COVENANTS

NOW THEREFORE, in consideration of the recitals, the mutual covenants, representations and warranties contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Property Purchased. Seller hereby agrees to sell to Buyer, and Buyer agrees to buy from Seller, on the terms and conditions herein specified, a portion of Water Right #63-7194 appurtenant to 3.0 acres within the Water Right's authorized place of use described as follows (hereinafter referred to as the "Purchased Right"):

<u>Quantity:</u>	<u>Acres / Place of Use:</u>
(.05 cfs / 13.5 afa)	3.0 acres (SWNE Section 21, Township 1 North, Range 1 West, Ada County, Idaho)

2. Property Retained. Seller expressly reserves and retains, and is not conveying any part of the remaining portion of Water Right #63-7194 that will remain appurtenant to the 139.5 acres within the Water Right's authorized place of use owned by Seller, described as follows:

<u>Quantity:</u>	<u>Acres / Place of Use:</u>
(2.33 cfs / 628.5 afa)	139.5 acres (NENE, NWNE, SWNE, SENE, Section 21, Township 1 North, Range 1 West, Ada County, Idaho)

CONTRACT FOR SALE OF A WATER RIGHT

Page 1 of 8

Buyer's Initials: ED KD
Seller's Initials: MD SM

ATTACHMENT B

3. Purchase Price. The Purchase Price for the relevant portion of Water Right #63-7194 identified above (.05 cfs / 13.5 afa / 3.0 acres) shall be _____ dollars (\$ _____), payable upon Closing in current, certified funds. The Parties acknowledge that the Purchase Price may be deposited directly with an escrow agent or a qualified Section 1031 Exchange Intermediary.

4. Closing.

a. Closing Date. Within thirty days (30) from the execution of this Agreement, the Parties shall conclude and finalize the purchase and sale of the Purchased Right ("Closing"). The Closing shall take place at the office of Barker Rosholt & Simpson LLP, located at 205 North 10th St., Boise, Idaho, or at such other escrow agent designated by Buyer in writing ("Closing Agent") on a date mutually convenient for Buyer and Seller. Buyer and Seller shall work expeditiously to conclude the Closing.

b. Documents to be Delivered at Closing. Buyer and Seller shall execute (with acknowledgement, if needed) and deposit into escrow with Closing Agent all instruments, documents and the Purchase Price (\$ _____ in current, certified funds) necessary to complete the purchase and sale in accordance with this Agreement, or reasonably requested by the Closing Agent. The documents that Seller shall deliver to Buyer at Closing shall include, but not be limited to: (i) a Water Right Grant Deed in the form of the specimen attached to this Agreement as Exhibit B; (ii) a Notice of Change of Ownership confirming Buyer's ownership of the Purchased Right and the assignment of the appropriate portion of the Snake River Basin Adjudication Claim for the Purchased Right, and (iii) any other documents reasonably requested to confirm the conveyance of the Purchased Right.

c. Actions of Closing Agent. The Closing Agent shall close the transaction as soon as it has received all instruments, documents and monies necessary to complete the purchase and sale of the Purchased Right in accordance with this Agreement. Upon Closing, the Closing Agent shall record the Water Right Grant Deed, disburse the funds owing to Seller, and provide all instruments and documents to the Party entitled thereto.

d. Fees and Costs of Closing. The cost of the Closing Agent's Closing fees and recording relating to the transaction contemplated herein shall be equally divided between Seller and Buyer. All other expenses not specifically referenced in this Agreement and incurred by Seller or Buyer with respect to this transaction shall be borne and paid exclusively by the Party incurring the same, without reimbursement.

e. Section 1031 Exchange. Seller and Buyer acknowledge that either Party may wish to structure this transaction as a tax deferred exchange of like-kind property within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended. Each Party agrees to reasonably cooperate with the other Party to effect such an exchange; provided, however, that (i) the cooperating Party shall not be required to acquire or take title to any exchange property, (ii) the cooperating Party shall not be required to incur any cost, expense or liability whatsoever in connection with the exchange, including, without

Buyer's Initials: CB

Seller's Initials: GR

limitation, any obligation for the payment of any escrow, title, brokerage or other costs incurred with respect to the exchange, (iii) no substitution of the effectuating Party shall release said Party from any of its obligations, warranties or representations set forth in this Agreement, or from liability for any prior or subsequent default under this Agreement by the effectuating Party, its successors or assigns, which obligations shall continue as the obligations of a principal and not of a surety or guarantor, (iv) the effectuating Party shall be responsible for preparing all additional agreements, documents and escrow instructions (collectively, the "Exchange Documents") required by the exchange, at its sole cost and expense, and (v) the effectuating Party shall be responsible for making all determinations as to the legal sufficiency, tax considerations and other considerations relating to the proposed exchange, the Exchange Documents and the transactions contemplated thereby, and the cooperating Party shall in no event be responsible for, or in any way be deemed to warrant or represent any tax or other consequences of the exchange transaction arising by reason of the cooperating Party's performance of the acts required hereby.

5. Transfer And/Or Placement of Purchased Right in State Water Supply Bank.

a. Application to IDWR. It is understood and agreed, by and between the Parties, that following Closing Buyer may file an application for transfer with IDWR, or place the Purchased Right in the State Water Supply Bank. The application for transfer may entail a change to the place of use, nature of use, time of use, and point and means of diversion as Buyer determines; in the alternative, it may entail an application for a new water right permit in which the retirement or other approved use of the Purchased Right will be used for mitigation, or a similar purpose. Alternatively, Buyer may place the Purchased Right in the State Water Supply Bank.

b. Cooperation with Transfer / Water Bank Efforts. At Buyer's request, Seller shall cooperate with Buyer in Buyer's pursuit of any transfer application or placement of the Purchased Right in the State Water Supply Bank, and shall provide Buyer with any information that Seller has concerning the Water Right that Buyer may reasonably request in pursuit of either the transfer or use of the Water Bank. All matters pertaining to said transfer or placement of the Purchased Right in the Water Bank, including preparation of any application and all costs associated with those proceedings, shall be the responsibility of Buyer. Buyer shall reimburse Seller for any attorney or consultant fees Seller incurs as a result of responding to such requests; however, Seller shall be entitled to receive such reimbursement only if Seller provides written demand for it within thirty (30) days after such expenses are billed to Seller from such attorney or consultant. Buyer shall pay such fees within thirty (30) days after receiving a timely demand.

6. Protection of Purchased Right / 2005 Irrigation Season and Thereafter. Seller is authorized to continue to use the Purchased Right on the Water Right's authorized place of use for irrigation purposes during the 2005 irrigation season or any time thereafter until the Closing occurs.

Buyer's Initials: ED KD
Seller's Initials: DM

7. Seller's Representations and Warranties. Seller hereby represents and warrants to Buyer, as of the effective date of this Agreement and again as of the Closing for the Purchased Right, as follows:

- a. Authority. Seller owns the Purchased Right in fee simple. Seller has the full legal right, power and authority to enter into and perform this Agreement.
- b. Good Title. Seller has good and marketable title to the Purchased Right, and Seller shall remove, or cause to be removed, all liens, claims, or encumbrances, whether of record or not, upon or affecting the Purchased Right on or before closing.
- c. Appurtenance. The Purchased Right is appurtenant to and has been beneficially used as the sole water source to irrigate the authorized place of use on Seller's property.
- d. Not Forfeited. To the best of Seller's knowledge, the Purchased Right has not been forfeited or abandoned in whole or in part, has been placed to continual beneficial use on the Seller's property, and has never been subject to a continuous five-year period of non-use except as such non-use may have occurred while the Purchased Right was in an appropriate water bank, claimed in the Snake River Basin Adjudication, or the appurtenant place of use was enrolled in a government annual grain base or long-term crop land set-aside program, or such non-use may have occurred by reason of any other applicable defense set forth in Idaho Code § 42-223 that protected the Purchased Right from forfeiture.
- e. Snake River Basin Adjudication Status. The Seller filed a water right claim for the Purchased Right in the Snake River Basin Adjudication (SRBA), but makes no representations or warranties regarding the outcome of that proceeding as it might affect the Purchased Right. A review of IDWR's electronic records presently reveals that IDWR will recommend to the SRBA District Court that the Water Right should be decreed as claimed by Seller. See Exhibit C. IDWR's formal recommendation of the Water Right, however, may change when it is ultimately forwarded to the Court.
- f. Broker. Seller has not engaged or dealt with any broker or finder in connection with the sale of the Purchased Right.
- g. No Other Warranty. Seller makes no other guarantees or warranties as to the Purchased Right, its yield upon transfer, or its transferability. Seller further disclaims any warranty as to the Purchased Right's availability in times of shortage, including any curtailment that may be ordered by IDWR to satisfy other senior ground or surface water rights.

8. Buyer's Representations and Warranties. Buyer hereby represents and warrants to Seller that Buyer has the legal power, right and authority to enter into this Agreement and to perform Buyer's obligations hereunder and has not engaged any broker or finder in connection with the purchase of the Purchased Right.

Buyer's Initials: WD AD
Seller's Initials: CR

9. Termination / Remedies

- a. IDWR's Failure to Approve Transfer. Buyer assumes all risk associated with IDWR's failure to approve Buyer's transfer application and/or application to place the Purchased Right in the Water Bank.
- b. Buyer's Termination for Default. Buyer may terminate this Agreement for material default by Seller. In the event of such default, Buyer shall provide a written demand to Seller and provide Seller with thirty (30) days to cure. If Seller fails to cure, Buyer may terminate this Agreement upon written notice to Seller.
- c. Buyer's Remedy on Default. If Seller breaches this Agreement, Buyer's remedy for Seller's default shall be limited to: 1) _____ the total Purchase Price which equals _____.
- d. Seller's Termination for Default. Seller may terminate this Agreement for material default by Buyer. In the event of such default, Seller shall provide a written demand to Buyer and provide Buyer with thirty (30) days to cure.
- e. Seller's Remedy on Default. If Buyer breaches this Agreement, Seller's remedy for Buyer's default shall be limited to: 1) _____ of the total Purchase Price which equals _____).

10. Attorneys' Fees. In any suit, action or appeal therefrom, to enforce this Agreement or any term or provision hereof, or to interpret this Agreement, the prevailing Party shall be entitled to recover all its costs reasonably incurred therein (and on appeal), including reasonable attorneys' fees.

11. Notices. Any notice under this Agreement shall be in writing and be delivered in person, by U.S. Mail, by private courier, or by facsimile. Notice shall be provided to the following:

Seller

AM *PT* *DM*
Ralph Mellin, Gen PT
c/o Mellin Properties L.P.
4500 North Tumbleweed
Boise, Idaho 83713
Telephone: (208) 322-7500

Seller's Attorney

Travis L. Thompson
Barker Rosholt & Simpson LLP
P.O. Box 485
Twin Falls, Idaho 83303-0485

Buyer

Kevin & Elizabeth Duesman
3555 E. Barber Dr.
Boise, Idaho 83716
Telephone: (208) 343-3714

Buyer's Representative

Scott King
SPF Water Engineering LLC
600 East River Park Lane, Ste. 105
Boise, Idaho 83706

CONTRACT FOR SALE OF A WATER RIGHT

Page 5 of 8

Buyer's Initials: *ED*
Seller's Initials: *DM*

Telephone: (208) 733-0700
Facsimile: (208) 735-2444

Telephone: (208) 383-4140
Facsimile: (208) 383-4156

12. Entire Agreement. This is the entire agreement of Buyer and Seller with respect to matters covered hereby and supercedes all prior agreements between them, written or oral. This Agreement may be modified only in writing, signed by Buyer and Seller.

13. Counterparts. This Agreement may be executed in any number of counterparts for the convenience of the Parties, all of which, when taken together and after execution by all Parties hereto, shall constitute one and the same Agreement.

14. Idaho Law. This agreement shall be governed by the laws of the State of Idaho.

15. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof.

16. Successors. This Agreement is for the benefit only of the Parties hereto and shall inure to the benefit of and bind the heirs, personal representatives, successors and assigns of the Parties hereto.

17. Effective Date. The Effective Date of this Agreement shall be the date on which both Buyer and Seller executed this Agreement, if executed on the same day, or the later date, if executed on different days.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement.

DATED this 18 day of November, 2005

SELLER:

Mellin Properties Limited Partnership

Ralph Mellin

Ralph Mellin, General Partner

STATE OF IDAHO)

County of Ada) ss.

On this 15th day of November, 2005, before me, a Notary Public for said County and State, personally appeared Ralph Mellin, known or identified to me, to be a general partner of Mellin Properties Limited Partnership, the limited partnership that executed the foregoing instrument or the person who executed the instrument on

CONTRACT FOR SALE OF A WATER RIGHT

Page 6 of 8

Buyer's Initials: EB KD
Seller's Initials: RM

behalf of said limited partnership, and acknowledged to me that such limited partnership 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.

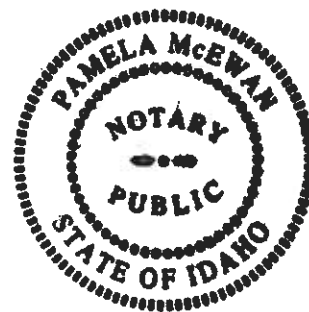
Pamela McEwan

NOTARY PUBLIC FOR IDAHO

Residing at: Boise ID

My commission expires: 3/30/11

DATED this 15th day of November, 2005



BUYER:

Kevin Duesman
Kevin Duesman

Idaho
STATE OF Idaho
County of Ada

)
) ss.
)

On this 15 day of November, 2005, before me, a Notary Public for said County and State, personally appeared Kevin Duesman, known or identified to me, to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/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.

Pamela McEwan

NOTARY PUBLIC FOR SPT water engineering

Residing at: Boise ID

My commission expires: 3/30/11



CONTRACT FOR SALE OF A WATER RIGHT

Page 7 of 8

Buyer's Initials: ED
Seller's Initials: SM

BUYER:

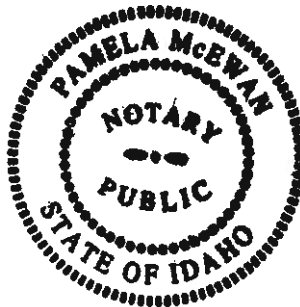
Elizabeth Duesman
Elizabeth Duesman

STATE OF Idaho)
County of Ada) ss.

On this 15th day of November, 2005, before me, a Notary Public for said County and State, personally appeared Elizabeth Duesman known or identified to me, to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/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.

Pamela McEwan
NOTARY PUBLIC FOR SPF water engineering
Residing at: Boise ID
My commission expires: 3/30/11



CONTRACT FOR SALE OF A WATER RIGHT

Page 8 of 8

Buyer's Initials: ED
Seller's Initials: BM

B-8

EXHIBIT "A"

State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

License of Water Right No. 63-7194 Priority Feb. 7, 1969 Amount 2.38 cfs

THIS IS TO CERTIFY, that RALPH MELLIN
of Kuna, Idaho, has complied with the terms and conditions of Permit
No. 63-7194 issued pursuant to Application for Permit dated February 7, 1969,
and has submitted proof to the Department of Water Resources on July 30, 1975,
that he has applied water to a beneficial use; an examination by the Department indicates that the works have a
capacity for the diversion of 2.38 cfs of water from a ground water source,
tributary to _____, and that the permit holder has applied to a beneficial use and
established a right to use water as follows:

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
<u>Irrigation</u>	from <u>April 1</u> to <u>Nov. 1</u>	at <u>2.38</u> cfs and	<u>642</u> acre feet or
	from _____	_____ cfs and	<u>4.5</u> af per acre
	from _____ to _____	at _____ cfs and	_____
	(both dates inclusive)		

Subject, however, to the condition that no more than 2.38 cfs of water be diverted at any one time, and
that the amount of water so diverted and to which such right is entitled and apportioned as for the purpose
aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed
642 acre feet per year, said waters to be diverted within the SW 1/4 NE 1/4 of Sec. 21,
Twp. 1 N, Rge. 1 W, B. M. in the County of Ada

Description and location of place of use:

Twp.	Range	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
1 N	1 W	21	38	38	38	38													142.5

Total number of acres irrigated 142.5

A measuring device of a type approved by the Department shall be permanently
maintained as part of the diverting works.

NOTE: Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho
Code, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

The right to the use of the water hereby confirmed is restricted and appurtenant to the lands or place of use
herein described, as provided by the laws of Idaho.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 15 day of
November, 19 76

Director

GRANT DEED

THIS INDENTURE, made this 18th day of November, 2005, between Mellin Properties Limited Partnership, of 4500 North Tumbleweed, Boise, Idaho 83713 ("Grantor"), and Kevin & Elizabeth Duesman, whose address is 3555 E. Barber Dr., Boise, Idaho 83716 ("Grantee").

WITNESSETH:

The Grantor for and in consideration of _____ dollars (\$) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain and sell, convey and confirm unto the Grantee, and to the successors and assigns of Grantee forever, the right, title and interest in and to the following portion of Water Right #63-7194:

Quantity: 0.05 cubic feet per second / 13.5 acre feet per year

Acres: 3.0 acres (SWNE Section 21, Township 1 North, Range 1 West, Ada County, Idaho)

TO HAVE AND TO HOLD, all and singular the above-mentioned and described portion of Water Right #63-7194, unto the Grantee and to the successors and assigns of Grantee forever.

IN WITNESS WHEREOF, the Grantor has executed this Deed the day and year first above written.

MELLIN PROPERTIES L.P.

By: Ralph Mellin
Its: General Partner

GRANT DEED

STATE OF IDAHO)
County of Adair) ss.

On this _____ day of _____, 2005, before me, a Notary Public for said County and State, personally appeared Ralph Mellin, known or identified to me, to be a general partner of Mellin Properties Limited Partnership, the limited partnership that executed the foregoing instrument or the person who executed the instrument on behalf of said limited partnership, and acknowledged to me that such limited partnership 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.

Pamela McEwan
NOTARY PUBLIC FOR IDAHO

Residing at: Boise ID

My commission expires: 3/30/11

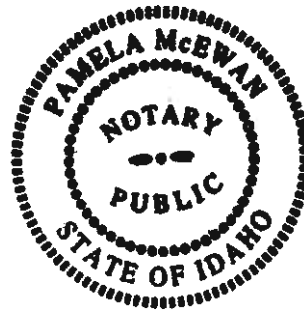


EXHIBIT "C"

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommended Right Report

02/04/2005

WATER RIGHT NO. 63-7194

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	MELLIN PROPERTIES LIMITED PARTNERSHIP 4500 N TUMBLWEED BOISE, ID 83713 (208)322-7500

Original Owner	RALPH MELLIN 4500 N TUMBLEWEED BOISE, ID 83713-2500 (208)322-7500
----------------	--

Original Owner	MARION SCHMELZEL RT 1 NEW PLYMOUTH, ID 83655
----------------	--

Priority Date: 02/07/1969
Basis: License
Status: Active

<u>Source</u>	<u>Tributary</u>
GROUND WATER	

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	4/01	11/01	2.38 CFS	642 AFA
Total Diversion			2.38 CFS	

Location of Point(s) of Diversion:

GROUND WATER SWNE Sec. 21 Township 01N Range 01W ADA County

Place(s) of use:

Place of Use Legal Description: IRRIGATION ADA County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
01N	01W	21		NENE	38		NWNE	31.5		SWNE	33		SENE	40

Total Acres: 142.5

Conditions of Approval:

- This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree, Section 42-1412(6), Idaho Code.
1. C18

Remarks:

1. Purpose of Use
 THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS EARLY AS MARCH 1 AND MAY CONTINUE TO AS LATE AS NOVEMBER 15, PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE OF WATER BEFORE APRIL 1 AND AFTER NOVEMBER 1 UNDER THIS REMARK IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.

Dates:

Other Information:
 State or Federal: S
 Owner Name Connector:
 Water District Number:
 Generic Max Rate per Acre:
 Generic Max Volume per Acre:
 Swan Falls Trust or Nontrust:
 Swan Falls Dismissed:
 DLE Act Number:
 Cary Act Number:
 Mitigation Plan: False



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

December 23, 2010

KEVIN DUESMAN
ELIZABETH DUESMAN
3555 E BARBER DR
BOISE ID 83716

RE: Preliminary Order in the matter of Application for Transfer No. 73785

Dear Applicant(s):

The accompanying order is a "**Preliminary Order**" issued by the Department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the department unless a party petitions for reconsideration within fourteen (14) days after issuance as described in the enclosed yellow information sheet.

If you have any questions regarding this matter, please call me at 208-334-2190.

Sincerely,



for: John Westra
Manager, Western Regional Office

Enclosures

cc: Scott King @ SPF Water Engineering

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "**Preliminary Order**" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082

PHONE: (208) 334-2190 FAX: (208) 334-2348 www.idwr.idaho.gov

C.L. "BUTCH" OTTER, Governor
GARY SPACKMAN, Interim Director

September 20, 2010

KEVIN & ELIZABETH DUESMAN
C/O SCOTT KING/ROXANNE BROWN
SPF WATER ENGINEERING LLC
300 E MALLARD DR STE 350
BOISE ID 83706

Re: Mitigation Plan, Application for Transfer No. 73785

Dear Scott & Roxanne:

My letter to you dated March 4, 2010, approved more time in which to provide a mitigation plan for this transfer application. The latest deadline was September 15, 2010. An approvable mitigation plan has not been provided.

As evidenced by our conversations in this regard in the past year, mitigation has sometimes been an elusive and difficult matter. On the other hand, the department has issued quite a few approvals that required mitigation of one sort or another. Mitigation is possible, although sometimes difficult to achieve.

Based on this history, it is appropriate to extend the deadline again. An approvable mitigation plan should be submitted by December 1, 2010. The transfer should be rejected without a timely written response by this new deadline. A rejected application can be re-filed when the required information can be provided.

Thank you for your attention to this matter. Please let me know if I can provide additional assistance in this process.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Lester'.

Steve Lester
Water Rights Supervisor



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082

PHONE: (208) 334-2190 FAX: (208) 334-2348 www.idwr.idaho.gov

C.L. "BUTCH" OTTER, Governor
GARY SPACKMAN, Interim Director

March 4, 2010

KEVIN & ELIZABETH DUESMAN
C/O SCOTT KING/ROXANNE BROWN
SPF WATER ENGINEERING LLC
300 E MALLARD DR STE 350
BOISE ID 83706

Re: Mitigation Plan for Application for Transfer No. 73785

Dear Scott & Roxanne:

Your recent request for more time to provide an approvable mitigation plan for the above referenced application is approved. The new deadline to provide the information is September 15, 2010. Due to difficult and unresolved policy questions regarding this situation, more time could be provided based on a timely request submitted by that date.

I appreciate your continued efforts to resolve this application. For example, earlier today we met and discussed the situation at length in an attempt to resolve the issues. Apparently, mitigation from the Boise City Canal Company water rights will not work based on Duesmans' upstream location from the canal company point of diversion.

Please let me know if I can provide additional assistance in this process.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Lester'.

Steve Lester
Water Rights Supervisor



SPF WATER
ENGINEERING

February 26, 2010

Mr. Steve Lester (via hand-delivery)
Idaho Department of Water Resources
Western Region Office
2735 Airport Way
Boise, ID 83705-5082

RECEIVED

FEB 26 2010

WATER RESOURCES
WESTERN REGION

Re: Mitigation Plan for Transfer No. 73785 (Duesman)

Dear Steve,

In response to your letter dated December 30, 2009, we respectfully request additional time to provide a complete mitigation plan for the transfer application captioned above.

As you know, Boise City Canal Company (BCCC) is willing to provide shares to Mr. Duesman to be used for mitigation purposes. We have been in active conversation with you, John Westra and Bruce Smith (attorney for BCCC) to develop the appropriate process to deliver and administer those shares.

Please allow additional time to work through this process. Thank you for your consideration.

Best Regards,

Roxanne Brown
Sr. Water Rights Specialist

CC: Kevin Duesman

SPF Job No. 400.0010



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082

PHONE: (208) 334-2190 FAX: (208) 334-2348 www.idwr.idaho.gov

C.L. "BUTCH" OTTER, Governor
GARY SPACKMAN, Interim Director

December 30, 2009

KEVIN & ELIZABETH DUESMAN
C/O SCOTT KING/ROXANNE BROWN
SPF WATER ENGINEERING LLC
300 E MALLARD DR STE 350
BOISE ID 83706

Re: Mitigation Plan for Application for Transfer No. 73785

Dear Scott & Roxanne:

I am writing to both of you in a single letter. Scott has been the designated contact person according to the application file. Roxanne submitted a proposed mitigation plan dated December 28, 2009. I will assume Scott remains the "official contact" until notified otherwise, but also wanted to be sure you both saw this reply.

The proposed mitigation plan involving irrigation shares from the Boise City Canal Company cannot be endorsed by the Idaho Department of Water Resources (IDWR) at this time. Typical mitigation efforts in this regard have included one of the two following options.

Option #1, Non-diverted Water – Irrigation shares will not be diverted. The shares left in the river will mitigate for consumptive use attributed to the Duesman application. This option is typically proposed in a mitigation plan signed by the delivery organization to authorize the non-diversion. In this scenario, IDWR changes the irrigation shares to the beneficial use of mitigation to protect the non-use from forfeiture pursuant to I. C. § 42-223(10).

Option #2, Diverted Water – Irrigation shares will be diverted but not used for irrigation. This option requires a separate transfer application to change the nature of use for the appropriate amount of irrigation water to another use such as aesthetic, recreation etc. in a manner that will compensate for consumptive use attributed to the Duesman application. Mitigation as a beneficial use is not listed on the delivery organization application since that beneficial use is typically reserved for non-diversion of water.

The proposed mitigation plan selects elements from both options without meeting typical requirements of either option. Under the proposed plan, mitigation water diverted through the company's system could be

Mitigation Plan for Application for Transfer No. 73785

December 30, 2009

Page 2

used by another shareholder for irrigation, leading to an overall enlargement of consumptive use when coupled with the Duesman transfer proposal.

Option #1 is approvable if offered by the delivery organization. Option #2 is more difficult to use in your client's situation. The latter alternative is typically seen in permit/transfer packages for shallow ground water ponds, but that option might be amenable to the Duesman scenario.

A prior deadline to provide information requested by IDWR for the Duesman application was vacated by my July 7, 2008 email copied to Scott (subject line "FW: Peregrine Springs Transfer"). A non-approvable mitigation plan was submitted about 1.5 years later. IDWR should complete its work for this application under one of the following ways.

Withdrawal – The applicant can withdraw application 73785 and receive a refund for the \$100 filing fee that was paid. The enclosed form can be used for that action. Another application could be filed at an appropriate time.

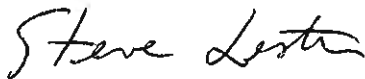
Process – The applicant can provide an approvable mitigation plan for processing of application 73785 to continue.

Please submit a withdrawal of application 73785 or provide an approvable mitigation plan within the next sixty (60) days. A request for more time in which to provide the plan probably would not be approved given the extensive time already available to the applicant in this regard.

Without a timely written reply, IDWR will issue a preliminary order to reject application 73785 on the basis of injury to other water rights. The application fee will not be refunded for a rejected application. A rejected application may be re-filed when adequate information can be provided.

Please let me know if you have any questions or need more information. Thank you for your attention to this matter.

Sincerely,



Steve Lester
Water Rights Supervisor

Enclosure



SPF WATER
ENGINEERING

December 28, 2009

Idaho Department of Water Resources
Western Regional Office
2735 Airport Way
Boise, ID 83705-5082

Attention: Steve Lester

Subject: Transfer Application No. 73785

RECEIVED

DEC 30 2009

WATER RESOURCES
WESTERN REGION

Dear Steve,

We are happy to propose the following mitigation plan on behalf of Kevin and Elizabeth Duesman in support of the above-captioned *Application for Transfer of Water Right*. You may recall the Duesmans purchased a 3-acre portion of water right 63-7194 and proposed changing the point of diversion and place of use to provide for irrigation on property they own near Warm Springs Boulevard in Boise.

The Duesman's 3-acre portion of 63-7194 has been recorded by IDWR in their name and numbered 63-32399. A *Partial Decree* for the right was issued May 16, 2008. IDWR has requested the Duesmans mitigate potential injury to current water right holders in the Boise River drainage before using 63-32399 at the new location. We propose the following mitigation plan:

1. The Duesmans will purchase three shares in Boise City Canal Company and pay annual assessments as required by the company.
2. Boise City Canal Company will not use the shares for irrigation, as evidenced by the attached resolution, which will be signed if the proposed mitigation is acceptable to IDWR.
3. The proposed actions will occur prior to use of the water under the approved transfer.

Please contact me with any questions or requests for additional information.

Sincerely,

Roxanne Brown
Sr. Water Rights Specialist

cc: Kevin Duesman

File: 400.0010

RESOLUTION

WHEREAS Boise City Canal Company is a canal company organized pursuant to Idaho statute; and

WHEREAS Boise City Canal Company holds water right 63-20041; and

WHEREAS, Boise City Canal Company delivers water pursuant to water right 63-20041 to its members for irrigation and other purposes; and

WHEREAS, Boise City Canal Company has additional shares which are available to issue to new members; and

WHEREAS, Kevin G. Duesman wishes to become a member of the Boise City Canal Company by acquiring three shares in the Boise City Canal Company for purposes of mitigating potential injury to senior water right holders in the Boise River in connection with application for transfer number 73785;

NOW THEREFORE BE IT RESOLVED

1. The Board of the Boise City Canal Company hereby agrees to issue three shares of stock to Mr. Duesman for use as mitigation pursuant to Idaho Code.
2. It is further resolved that, so long as Mr. Duesman pays the assessments associated with the three shares of water, the Boise City Canal Company agrees not to irrigate three acres of lands within its authorized place of use, using the water represented by these shares.
3. The IDWR is authorized to note in the records of Water Right 63-20041 that the water represented by the shares will continue to be diverted, but the shares will be dedicated to mitigation and the land will not be irrigated.
4. The assessments will run with the land and unpaid assessments shall be a lien against the property pursuant to I.C. 42-101 and I.C. 42- 906. The shareholder will enter into such agreements as are necessary to document the contractual obligation to pay the assessments

It is so resolved this ____ day of January,2010.

BOISE CITY CANAL COMPANY

Chairman

Buffington, Denise

From: Lester, Steve
Sent: Monday, July 07, 2008 8:14 AM
To: Buffington, Denise
Subject: FW: Peregrine Springs Transfer

Peregrine: 74360
Duesman: 73785

Denise:

Please put a copy of this email in two transfer application files: (1) Peregrine Springs and (2) Duesman.

Thanks

Steve

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

From: Lester, Steve
Sent: Monday, July 07, 2008 8:12 AM
To: 'Hofstetter Law Office'
Cc: sking@spfwater.com
Subject: RE: Peregrine Springs Transfer

Dana:

You are correct. The deadline for submitting information has been vacated. I understand SPF, on your behalf, is preparing information to be submitted in this regard. IDWR will wait for that information without any deadline for it. The same is also true for the Duesman transfer being handled by Scott King of SPF.

This email exchange has been copied to the Peregrine Springs and Duesman transfer files to note the absence of deadlines for applicants to submit information.

Please let me know if I can provide anything else for you in this matter.

Thank you.

Steve Lester
IDWR Western Region

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

From: Hofstetter Law Office [mailto:Dana@IdahoWaterLaw.com]
Sent: Thursday, July 03, 2008 4:36 PM
To: Lester, Steve
Cc: Terry Scanlan
Subject: Peregrine Springs Transfer

Steve:

This will confirm our telephone conversation today in which you informed me that there is no need to submit the requested information for the Peregrine Springs transfer by the deadline of July 11, 2008. You explained that Terry Scanlan is working on a proposal to address the Peregrine Springs transfer and that accordingly IDWR has vacated any pending deadlines applicable to the submission of information for this transfer. Please let me know if my understanding regarding these matters is incorrect in any regard.

Thank you,
Dana Hofstetter

MEMORANDUM

TO: Transfers 73785, Duesman & 74360, Peregrine Springs
FROM: Steve Lester 
DATE: April 29, 2008
RE: Meeting about Additional Information

Consultant Terry Scanlan of SPF met with John Westra and me today to discuss several transfer issues in Basin 63, including the above applications. SPF is handling the Duesman transfer while attorney Dana Hofstetter represents Peregrine Springs. SPF has consulted with the attorney regarding her client.

The department has been seeking additional information for these transfers to resolve the issue of applicants' shallow wells presumed tributary to the fully appropriated reach of the Boise River above Star.

Scanlan summarized current work in this regard:

1. Collecting technical information to show Peregrine Springs well does not communicate with the river.
2. Preparing a mitigation plan for Duesman wells, probably will be associated with proposed development for a new city park related to continued development of the Harris Ranch project along Warm Springs Avenue.

Both transfers can be held pending submittal of the additional information and mitigation plan. Follow up letters from the department are not necessary at this time.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

April 18, 2008

KEVIN AND ELIZABETH DUESMAN
3555 E BARBER DR
BOISE, ID 83716

Re: Application for Transfer No. 73785

Dear Applicant:

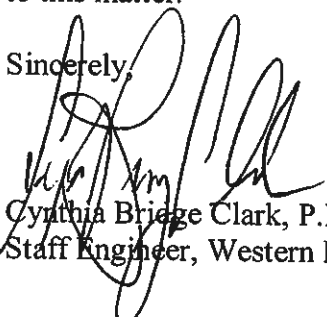
As you are aware, the Idaho Department of Water Resources (IDWR) is in the process of reviewing the above referenced application for transfer. In a letter to you dated March 18, 2008, additional information was requested to evaluate and process the application. IDWR received a letter on your behalf from Scott King of SPF Water Engineering, LLC requesting an additional ninety (90) days to respond. This request is approved.

The information requested by IDWR is therefore due by July 15, 2008.

Without a timely reply, IDWR will issue a preliminary order to reject the application. A rejected application may be re-filed when adequate information can be provided.

Please contact me at 208-334-2190 if you have any questions. Thank you for your attention to this matter.

Sincerely,



Cynthia Bridge Clark, P.E.
Staff Engineer, Western Region

Cc: Scott King, SPF Water Engineering

**SPF**Water Engineering, LLC
water resource consultants**RECEIVED****APR 18 2008****WATER RESOURCES
WESTERN REGION**

April 16, 2008

Via facsimile and U.S. Mail

Cynthia Bridge Clark, P.E.
Idaho Department of Water Resources
Western Regional Office
2735 Airport Way
Boise, ID 83705-5082

Subject: Kevin and Elizabeth Duesman - Transfer Application No. 73785

Dear Cynthia,

We are in the process of gathering information to respond to your letter dated March 18, 2008 concerning the above-referenced matter. Accordingly, I would like to request and additional ninety (90) days to respond. We hope to provide a response sooner, but in case this is not possible, we would appreciate a ninety-day extension. Please contact me with any questions or requests for additional information.

Sincerely,

Scott N. King, P.E.
Senior Project Engineer

cc: Kevin and Elizabeth Duesman

File: 400.0010



SPF Water Engineering, LLC
water resource consultants

April 16, 2008

Via facsimile and U.S. Mail

Cynthia Bridge Clark, P.E.
Idaho Department of Water Resources
Western Regional Office
2735 Airport Way
Boise, ID 83705-5082

Subject: Kevin and Elizabeth Duesman - Transfer Application No. 73785

Dear Cynthia,

We are in the process of gathering information to respond to your letter dated March 18, 2008 concerning the above-referenced matter. Accordingly, I would like to request and additional ninety (90) days to respond. We hope to provide a response sooner, but in case this is not possible, we would appreciate a ninety-day extension. Please contact me with any questions or requests for additional information.

Sincerely,

Scott N. King, P.E.
Senior Project Engineer

cc: Kevin and Elizabeth Duesman

File: 400.0010

Lester, Steve

From: Lester, Steve
Sent: Monday, March 24, 2008 1:41 PM
To: 'sking@spfwater.com'
Subject: Duesman Transfer 73785

Contacts: Scott King

Scott:

I am responding on behalf of Cynthia to your email request for what appears to be a considerable amount of department information regarding ground water and the Boise River. I am taking the liberty of making this response in my role as water rights supervisor currently overseeing the big push to reduce our transfer backlog. Cynthia's time is better spent working on additional transfers instead of preparing a rather involved reply to your request.

In my opinion, the request seems overly broad for the Duesman case.

Notwithstanding that editorial comment, please provide a letter requesting the information. Since we attempt to "respond in kind" and since an email response would be cumbersome in this case, a letter from you would be more appropriate. I will respond to that formal request once made.

Please direct your request to me. Thank you for your cooperation in this matter.

Steve

Clark, Cynthia (Bridge)

From: Scott King [SKing@spfwater.com]
Sent: Friday, March 21, 2008 8:44 AM
To: Clark, Cynthia (Bridge)
Subject: Duesman transfer

Hi Cynthia,

Can you please send a copy of the pertinent statutes, rules, guidelines, policies, administrator's memorandums and/or other guidance with respect to the requirements outlined in your March 18, 2008 letter regarding application for Transfer No. 73785. Specifically, we are interested in the restrictions regarding diversions of ground water upstream of Star Bridge.

Thank you,
Scott

Scott N. King, P.E.
Senior Project Engineer
SPF Water Engineering, LLC
600 East River Park Lane, Suite 105
Boise, Idaho 83706
phone: (208) 383-4140 x209
fax: (208) 383-4156
email: sking@spfwater.com
web page: www.spfwater.com

3/24/2008



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

March 18, 2008

KEVIN AND ELIZABETH DUESMAN
3555 E BARBER DR
BOISE, ID 83716

Re: Application for Transfer No. 73785

Dear Applicant:

The Idaho Department of Water Resources (IDWR) is currently reviewing the above referenced application for transfer to change a water right(s). Additional information is needed to evaluate and process your application.

As you may be aware, surface water in the Boise River or tributary to the Boise River upstream from Star Bridge is fully appropriated during the irrigation season and during most of the rest of the year. Therefore, applications which propose use of surface water upstream of Star Bridge are denied unless the applicant files an acceptable plan to mitigate for potential material injury to existing water rights.

Additionally, at the location of the point of diversion proposed in the above referenced transfer application, ground water shallower than 200 feet below the ground surface is generally considered to be tributary to the Boise River upstream from Star Bridge. The application for transfer for a new consumptive use of shallow ground water tributary to the Boise River upstream of Star Bridge cannot be approved at this time unless the following information is provided:

- The applicant must demonstrate that the holders of water rights to divert from the Boise River will not be injured by the proposed appropriation; or
- The applicant must file an acceptable plan to mitigate for a water use that would otherwise cause injury to existing water rights from the Boise River.

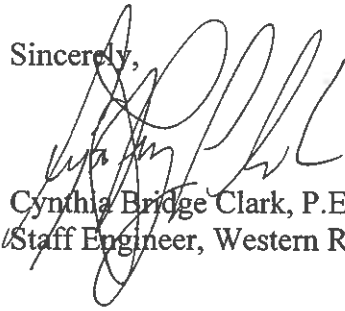
Finally, a well drilling permit fee of \$200.00 is required for wells used for purposes other than domestic use as defined in Section 42-111, Idaho Code. This fee applies to wells drilled after July 1, 1987. The drilling fee for domestic wells exempt from filing for a water right was \$35.00 between July 1, 1990 and June 30, 1996. To authorize non-domestic use of the primary well, drilled in 1994, an upgrade fee of \$165.00 (\$200.00 - \$35.00) should be submitted.

You may seek additional time to provide the above referenced information by making a written request to delay processing. Your written response with the requested information, or a request for more time to seek the information, must be received within thirty (30) days of the date of this letter.

Without a timely reply, IDWR will issue a preliminary order to reject the application. A rejected application may be re-filed when adequate information can be provided.

Please contact me at 208-334-2190 if you have any questions. Thank you for your attention to this matter.

Sincerely,



Cynthia Bridge Clark, P.E.
Staff Engineer, Western Region

Cc: Scott King, SPF Water Engineering



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082 - (208) 334-2190

FAX (208) 334-2348

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

December 1, 2005

KEVIN &/OR ELIZABETH DUESMAN
C/O SCOTT KING
SPF WATER ENG LLC
600 E RIVER PARK LN STE 105
BOISE ID 83706

Re: Application for Transfer of Water Right No. 63-719~~4~~

Dear Applicant:

The above referenced application for transfer to change a water right(s) was recently received. Processing of the application must be delayed as explained below.

The application describes a water right for which a Snake River Basin Adjudication (SRBA) Claim has been filed. SRBA Claims in the area affected by the transfer application are currently being reviewed. The role of the Idaho Department of Water Resources (IDWR) in the SRBA is to review claims and make recommendations regarding those claims to the SRBA Court. Recommendations are presented to the court in a Director's Report. Potentially affected parties may object to recommendations in a Director's Report. This process introduces uncertainty regarding water rights until the objection period is over.

IDWR's limited staff resources must be used to complete the remaining Director's Reports during the next year. Additionally, experience indicates that processing an application for transfer in an area where a Director's Report is being prepared can result in confusion and complications by mixing judicial (SRBA) and administrative (transfer) actions.

The SRBA objection period for the area in question is expected to conclude sometime during the latter half of next year if not earlier. Based on that schedule and the above reasoning, the application cannot be processed at this time. IDWR will hold the transfer application and will notify you at the appropriate time for it to be processed.

IDWR regrets the inconvenience undoubtedly caused by this necessary delay. Please contact me at 208-334-2190 if you have any questions in this regard.

Sincerely,

Steve Lester
Water Rights Supervisor



November 22, 2005

RECEIVED

NOV 25 2005

WATER RESOURCES
WESTERN REGION

Idaho Department of Water Resources
Western Regional Office
2735 Airport Way
Boise, ID 83705-5082

Attention: Steve Lester

Subject: Duesman Application for Transfer

Dear Mr. Lester,

Enclosed on behalf of Kevin and Elizabeth Duesman is an Application for Transfer of Water Right. Duesman's have purchased a 3-acre portion of water right 63-7194 as evidenced by the enclosed contract for sale and grant deed. The applicants propose changing the point of diversion and place of use for their portion of 63-7194. Two existing wells will supply irrigation water for 3 acres under this right. The property address is 3555 E. Barber Drive, Boise, also identified as Ada County parcel S0919428315.

Also enclosed is a Notice of Change in Water Right Ownership for Duesman's 3-acre portion of 63-7194. Further, a map depicting the transferred portion is included. If you would like digital shapefiles for this application, please let me know.

A check for \$100 is enclosed to the cover filing fees for this application. Please contact me with any questions or requests for additional information.

Sincerely,

Scott N. King, P.E.
Senior Project Engineer

File: 400.0010