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DEPARTMENT OF
WATER RESOURCES

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Attorneys for Dry Lot LLC

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

IN THE MATTER OF APPLICATIONS FOR	)	
PERMIT NO. 37-22252 and TRANSFER NO.	)	
74449 (In the Name of Dry Lot LLC)	)	APPLICANT DRY LOT LLC'S
	)	PETITION FOR
	)	RECONSIDERATION AND
	)	REQUEST FOR HEARING
	)	
	)	

COMES NOW, the applicant DRY LOT LLC (hereinafter "Dry Lot"), by and through its attorneys of record, BARKER ROSHOLT & SIMPSON LLP, and pursuant to Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730) and Idaho Code § 42-1701A(3), and hereby files this *Petition for Reconsideration and Request for Hearing* on the preliminary orders issued by IDWR in this matter on February 24, 2010.

REASONS FOR PETITION

IDWR issued "preliminary orders" approving the above-numbered applications for permit and transfer on February 24, 2010. Dry Lot contests certain elements of the water rights, as well as certain conditions of approval, as identified below. Dry Lot requests IDWR to reconsider the "preliminary orders" for the following reasons, as specified by application.

Application for Transfer No. 74449

Volume (All Water Rights)

The existing surface water rights do not include any “volume” limitations. For purposes of the transfer approval, IDWR has included a maximum volume limitation of 75.4 acre-feet per year. Dry Lot disputes this volume limitation for the following reasons.

First, IDWR explains that its prior volume limitation, “[u]sing the historic consumptive use volume and Brockway’s estimate of irrigation system efficiency, rights 37-22313, 37-22318, and 37-22323, when combined, should be limited to an annual diversion volume for ground water recharge of 68.4 acre-feet (51.3 af/75%)”. See *Marshall 1/28/10 Memorandum*. IDWR then apparently used a 70% estimate of irrigation system efficiency to arrive at the “75.4 acre-feet” volume limitation. The calculated net irrigation requirement near Hailey for alfalfa crops with less frequent cuttings, 2.07 feet per year for an assumed growing season of 115 days, does not account for any water lost through delivery and an expected irrigation inefficiency with a more representative irrigation season based upon the priority of the water rights. Accordingly, IDWR wrongly assumes that irrigation of 27.5 acres at the former place of use, and the new place of use, has been or will be 70% efficient. IDWR must account for that fact and authorize Dry Lot to use sufficient water to meet the “full season consumptive irrigation requirement” at the new place of use, plus sufficient water to account for the best representative irrigation inefficiency.

Dry Lot presented the analysis of the amount of water required for both “flood irrigation” efficiency and “sprinkler irrigation” efficiency at page 4 of the *Transfer Narrative*. In addition, Dry Lot has presented an analysis of the most likely operating irrigation efficiency for this project which is 65-70%. See *Brockway February 11, 2010 Memo* (incorporated herein by

reference). IDWR should authorize the maximum amount of water needed with a 65% irrigation efficiency, in the event the new place of use is irrigated with an expected efficiency in that manner.

In addition, the volume restriction does not account for the water diverted into the Hiawatha Canal for conveyance loss purposes. At a minimum, Dry Lot is entitled to additional volume to continue to divert water for conveyance loss purposes (0.10 cfs) in the Hiawatha Canal. This should be clarified in the condition. Accordingly, the annual volume associated with the water rights should be revised to a combined maximum limitation of 83.4 acre-feet plus additional volume to account for the conveyance loss water in the Hiawatha Canal.

Conditions of Approval (All Water Rights)

Condition #2

This condition should be clarified to note that the “0.50 cfs” and the associated volume of 113.9 acre-feet (0.50 cfs multiplied by 115 days) to be left in-stream in the Big Wood River is pursuant to the *Amended Water Rights Use Agreement* with the Big Wood Canal Company, and is not an additional amount to be left in-stream independent of that agreement. Dry Lot agrees that it shall cease diverting a total of 0.50 cfs of these rights from the Big Wood River for purposes of the Agreement. Dry Lot maintains the right to divert 0.10 cfs for conveyance loss and up to 1.06 cfs for recharge purposes.

The last sentence of the condition should be revised to read as follows: “The combined diversion and use of water under rights 37-22313, 37-22318, and 37-22323 for ground water recharge is limited to a diversion rate of 1.06 cfs and a maximum diversion volume of 83.4 (plus additional volume for conveyance loss) acre-feet as measured at the point(s) of recharge.”

Condition #4

Dry Lot disputes IDWR's requirement that Dry Lot "shall comply with the requirements governing the construction and use of injection wells if applicable". The infiltration basins that Dry Lot proposes to use for groundwater recharge do not meet the definition of an "Injection well" or a "Shallow injection well" set forth in Idaho Code § 42-3902(8) and (16), hence the condition is erroneous. First, the infiltration basin will not be a "bored, drilled or dug hole" or a "driven mine shaft or a driven well point." Second, the infiltration basins will not be "deeper than [their] largest straight-line surface dimension." As described in the *Transfer Narrative*, the length of the infiltration basin will be approximately "115 feet". *Transfer Narrative* at 3. The combined length of both basins will be approximately 300 feet. Dry Lot does not propose to excavate the infiltration basin "115 feet" into the ground or 300 feet into the ground for both basins. Finally, Dry Lot does not propose to use the infiltration basins for "injection". Dry Lot proposes to recharge surface water by gravity percolation through a sand filter using "perforated pipe distribution systems". See *Transfer Narrative* at 3.

Since the infiltration basins do not meet the definition of an "injection well" or a "shallow injection well" pursuant to Idaho law, this condition should be removed and IDWR should affirmatively find that Dry Lot's project is not subject to these requirements.

Condition #9

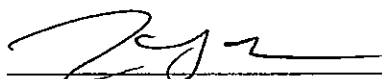
Dry Lot disputes this condition on the basis the elements should be revised as set forth above. The diversion rate and annual volume limitations listed in the "preliminary order" are not justified and should be reconsidered. To the extent those elements are modified as set forth above, this condition is acceptable.

REQUESTS FOR RELIEF

1. Dry Lot requests IDWR to reconsider the "preliminary orders" issued on February 24, 2010 amend them as requested above.
2. Dry Lot requests a hearing on the "preliminary orders" pursuant to Idaho Code § 42-1701A(3).

DATED this 9th day of March 2010.

BARKER ROSHOLT & SIMPSON LLP



Travis L. Thompson

Attorneys for Dry Lot LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of March, 2010, I served a true and correct copy of the foregoing by hand delivery, email and depositing same in the United States mail, postage prepaid, addressed to the following:

✓ Gary Spackman, Interim Director
✓ Shelley Keen, Manager (Water Rights Permits Section)
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
gary.spackman@idwr.idaho.gov
shelley.keen@idwr.idaho.gov
victoria.wigle@idwr.idaho.gov

By Hand Delivery:

Allen Merritt
Idaho Department of Water Resources
1341 Fillmore St., Suite 200
Twin Falls, Idaho 83301-3380
allen.merritt@idwr.idaho.gov


Travis L. Thompson

Faxed copy received
by S. Keen 3/9/2010

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Paul L. Arrington, ISB #7198
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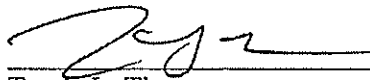
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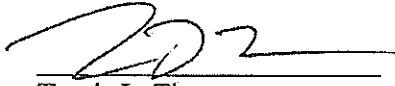
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I hereby certify that on this 9th day of March, 2010, I served a true and correct copy of the foregoing by hand delivery, email and depositing same in the United States mail, postage prepaid, addressed to the following:

Gary Spackman, Interim Director
Shelley Keen, Manager (Water Rights Permits Section)
Idaho Department of Water Resources
P.O. Box 83720
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