

MEMORANDUM

Date: March 2, 2010
To: 37-8813 & 37-8814 file
From: Nick Van Dyke
Re: Proof of Beneficial Use/Additional Information

After reviewing the field examinations submitted by Brockway Engineering I noticed there was not sufficient supporting evidence to confirm stock numbers at the time proof of beneficial use (proof) was filed in late 1993 for both permits. On January 15, 2010, additional information was submitted consisting of two dairy livestock inventory sheets for each permit. The inventory sheets were prepared by the accounting firm of Leforgee, Rogers & Evans on March 31 of 1994, within a few months after both proofs were filed. The permit for 37-8813 and 37-8814 allowed 950 and 1200 dairy cattle, respectively. 1000 dairy stock was listed on the proof for both permits. Below is a breakdown of the stock numbers given by the inventory sheets:

		<i>37-8813, North Valley Milk Inc</i>	<i>37-8814, 4 Brothers Dairy Inc</i>
Dairy Cows		425	877
Springers			170
Heifers	Pregnant		165
	750lb		83
	600lb		75
	400lb	75	93
	300lb	50	108
	250lb		140
	Less than 250lb	25	130
Steers	500-700lb		140
	400lb	25	130
	250lb	150	154
	Less than 250lb	15	168
Bulls		12	40
TOTALS:		777	2473

In the January 2010 letter from Brockway Engineering, compilation tables were drafted to summarize the inventory sheets of the two permits. The tables group the raised heifers and steers for both North Valley Milk and 4 Brothers Dairy under 37-8813 and combined the dairy cows, springers, pregnant heifers, and bulls for both North Valley Milk and 4 Brothers Dairy under 37-8814. The tables seem to indicate that 37-8813 is for heifers and steers, while 37-8814 is for dairy stock. This is inconsistent with the permit files and inventory sheets which support that these were two different dairy herds/operations at the time proof of beneficial use was filed. Furthermore, the field examiner reported that there is no overlap between 37-8813 & 37-8814 (see Part B; Overlap Review of the

Memo to File 37-8813 & 37-8814

March 2, 2010

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Beneficial Use Field Report). The compilation tables appear to take the extra stock numbers of 37-8814 (2473, permit allowed 1200) and supplement the shortfall of 37-8813 (777, permit allowed 950). Therefore the numbers used in calculating the stockwater volume for both permits are taken directly from the inventory sheets.

In 1996 North Valley Milk merged into Four Brothers Dairy. Therefore, the license for 37-8813 should be issued under the name of Four Brothers Dairy Inc. A copy of the Certificate of Merger or Consolidation from the Idaho Secretary of State website is attached to this memo.

Permit 37-8813 Volume Calculation:

To calculate the stockwater volume required, I used water intake standards for dairy cattle and a worksheet published by Dean E. Falk, Extension Dairy Specialist, University of Idaho, which can be found at <http://www.oneplan.org/Stock/DairyWater.asp>. Using this information, I calculated that 16.9 acre-feet per annum (afa) was required for the herd size identified at the North Valley facility around the time proof was filed. Attached to this memo is a copy of the worksheet and water intake tables. Note that for the estimated use in gallons per day I took an average of the seasonal values given in Table 2, rounded to a whole number.

There is an overlapping water right to 37-8813. Right 37-22326 is a recently decreed domestic/stockwater right that is limited to 13,000 gallons per day, or 14.6 afa. As noted in Brockway's January 2010 letter, 37-22326 is used for the same herd as 37-8813. Therefore a combined limit of 16.9 afa between 37-8813 and 37-22326 is recommended. A copy of the decree for 37-22326 is attached to this memo.

Permit 37-8814 Volume Calculation:

Using the same worksheet and water intake tables described above, it's estimated that 66.6 afa was required for the herd size recorded at the Four Brothers Dairy facility around the time proof was filed (see worksheet **A**, attached). However using the full herd size exceeds the permit limitation of 1200 head. A total of 35.1 afa is estimated when limiting the herd size to 1200 head (see worksheet **B**, attached). In worksheet **B** for the 1200 head I used the full number of dairy cows, springers, & pregnant heifers to determine the number of milking cows (1047), and for the remaining 153 head available I used dry cows. The commercial volume, as estimated by the Water Requirements and Consumptive Use Worksheet attached to the field exam, is 19.3 afa. Therefore a total of 54.4 afa is recommended. Note that for the estimated use in gallons per day I took an average of the seasonal values given in Table 2, rounded to a whole number.

Right 37-8814 also has an overlapping right. Right 37-10446 was decreed in December of 2002 as a stockwater right limited to 13,000 gallons per day, or 14.6 afa. However according to the field examiner, this right is used for an additional increment of dairy livestock to the 1200 allowed under 37-8814, therefore no combined limit is recommended.

State of Idaho

Department of State

CERTIFICATE OF MERGER OR CONSOLIDATION

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that duplicate originals of Articles of merger of NORTH VALLEY MILK, INC., an Idaho corporation, file number C 92777, into 4 BROS. DAIRY, INC., an Idaho corporation, file number C 83266, duly executed pursuant to the provisions of the Idaho Business Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I issue this certificate of merger, and attach hereto a duplicate original of the Articles of merger.

Dated: July 10, 1996



Pete T. Cenarrusa
SECRETARY OF STATE

By *Tonya Herold*

JUL 10 8 21 AM '96
SECRETARY OF STATE
STATE OF IDAHO

ARTICLES OF MERGER

KNOW ALL MEN BY THESE PRESENTS, that **4 BROS. DAIRY, INC.**, and **NORTH VALLEY MILK, INC.**, both Idaho Corporations, have merged with the surviving corporation being **4 BROS. DAIRY, INC.** In support thereof, it is respectfully shown that:

ARTICLE I

The plan of merger is as follows:

1. The names of the corporation to be merged are **4 BROS. DAIRY, INC.**, and **NORTH VALLEY MILK, INC.**, both Idaho Corporations.

2. **4 Bros. Dairy, Inc.** is the corporation into which they shall be merged and is the surviving corporation.

3. The shareholders of **North Valley Milk, Inc.**, and the amount of shares held by each of them, are as follows:

Jerome Fitzgerald	-	100
Andrew Fitzgerald	-	100
Clement Fitzgerald	-	100

There is only one class of common stock in **North Valley Milk, Inc.**

4. The shareholders of **4 Bros. Dairy, Inc.**, and the amount of shares held by each shareholder are as follows:

Jerome Fitzgerald	-	38
Andrew Fitzgerald	-	38
Clement Fitzgerald	-	38

5. Each share of stock held by shareholders in **North Valley Milk, Inc.**, shall be endorsed in blank and delivered to **4 Bros. Dairy, Inc.** **4 Bros. Dairy, Inc.** shall issue to each shareholder of **North Valley Milk, Inc.** one (1) share of stock in **4 Bros. Dairy, Inc.** for every share of stock **North Valley Milk, Inc.** endorsed and delivered. There is only one class of common stock in each of the corporations. Thereupon, **North Valley Milk, Inc.** will file Articles of Dissolution and be dissolved, with its assets being owned by **4 Bros. Dairy, Inc.** and its liabilities assumed by that corporation.

2

CK #: 17537 CUST# 1660

MERGER

10:30:00 30.00

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6. No changes in the Articles of Incorporation of 4 Bros. Dairy, Inc., will be required because of the merger.

7. The merger shall become effective upon the issuance of a certificate of merger by the Secretary of State.

8. This plan of merger shall be submitted to a vote of approval by the shareholders of the Corporations at special meetings called for that purpose.

ARTICLE II

The number of shares outstanding for 4 Bros. Dairy, Inc. are 114. The number of shares outstanding for North Valley Milk, Inc. are 300.

ARTICLE III

At a meeting of the shareholders of 4 Bros. Dairy, Inc., held the 3rd day of July, 1996, 114 shares were voted in favor of the plan of merger and 0 shares against. At a meeting of the shareholders of North Valley Milk, Inc., held the 3rd day of July, 1996, 300 shares were voted in favor of the plan of merger and 0 shares against.

DATED this 3rd day of July, 1996.

4 BROS. DAIRY, INC.

By: Jerome Fitzgerald
JEROME FITZGERALD, President

NORTH VALLEY MILK, INC.

By: Clement Fitzgerald
CLEMENT FITZGERALD, President

STATE OF IDAHO)

County of Jerome)

ss:

On this 3rd day of July, 1996, before me, the undersigned, a Notary Public in and for said County and State, personally appeared JEROME FITZGERALD, known to me to be the President of 4 BROS. DAIRY, INC., and whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that he executed the same.

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



NOTARY PUBLIC for Idaho

Residing at Jerome, Idaho

Commission Expires: 2/9/99

STATE OF IDAHO)

County of Jerome)

ss:

On this 3rd day of July, 1996, before me, the undersigned, a Notary Public in and for said County and State, personally appeared CLEMENT FITZGERALD, known to me to be the President of NORTH VALLEY MILK, INC., and whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that he executed the same.

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



NOTARY PUBLIC for Idaho

Residing at Jerome, Idaho

Commission Expires: 2/9/99

Worksheet 1. Calculating Daily Herd Requirements for Fresh Water

Drinking Water Estimates (see Table 1 & 2)

	Number	Estimated Use (gallons per day)	
		Individual	Total
		per day	
Milking Cows	<u>425</u>	<u>28</u>	<u>11,900</u>
Dry Cows	<u>202</u>	<u>13</u>	<u>2,626</u>
Heifers			
16-24 mo	<u> </u>	<u> </u>	<u> </u>
13-15 mo	<u> </u>	<u> </u>	<u> </u>
9-12 mo	<u> </u>	<u> </u>	<u> </u>
5-8 mo	<u>75</u>	<u>5</u>	<u>375</u>
3-4 mo	<u>50</u>	<u>3</u>	<u>150</u>
0-2 mo	<u>25</u>	<u>3</u>	<u>75</u>

(777)

Total herd drinking water used

A. 15,124

Wash Pen Estimate (see Table 3)

1 - Sprinkler discharge per nozzle

2 - Number of nozzles

3 - Minutes per day used

Total wash pen water used

(Line 1 x line 2 x line 3)

B.

Milk house and Parlor Estimate (see Table 4)

Water per operation

Gallons per day

Bulk tank

Pipeline

Backflush

Cleanup

(Parlor, milk house and holding pen)

Cow prep

Plate cooler

(ignore if water recycled)

Total milk house and parlor water used

C.

TOTAL FRESH WATER ESTIMATE (A + B + C)

15,124

$$15,124 \text{ gal/day} (365) = 5,520,990 \text{ gal/year}$$

$$5,520,990 \text{ gal/year} \left(\frac{1 \text{ af}}{325,850 \text{ gal}} \right) = 16.9 \text{ af}$$

OCT 20 1994

4 Bros. Dairy

37-8814

A

Worksheet 1. Calculating Daily Herd Requirements for Fresh Water

Drinking Water Estimates (see Table 1 & 2)

	Number	Estimated Use (gallons per day)	
		Individual	Total
		per day	
(Dairy Cows, Springers, & Preg Heifers)			
Milking Cows	1047	28	29,316
Dry Cows	632	13	8,216
Heifers			
16-24 mo	165	11	1,815
13-15 mo	83	8	664
9-12 mo	75	8	600
5-8 mo	73	5	465
3-4 mo	108	3	324
0-2 mo	270	3	810

Total herd drinking water used

A. 42,210

Wash Pen Estimate (see Table 3)

1 - Sprinkler discharge per nozzle

2 - Number of nozzles

3 - Minutes per day used

Total wash pen water used

(Line 1 x line 2 x line 3)

B. _____

Milk house and Parlor Estimate (see Table 4)

Water per operation

Gallons per day

Bulk tank _____
Pipeline _____
Backflush _____
Cleanup _____
(Parlor, milk house and holding pen)
Cow prep _____
Plate cooler _____
(ignore if water recycled)
Total milk house and parlor water used

C. _____

17,244 gal/d

OR

19.3 g/a

See
Consumptive Use
Worksheet with
the Field Exam

TOTAL FRESH WATER ESTIMATE (A + B + C)

Stockwater

$$2,210 (365) = 15,406,650$$

$$15,406,650 \left(\frac{1}{325,850} \right) = 47.3 \text{ g/a}$$

Commercial

19.3 g/a

=

66.6 g/a
Total

Michigan State University

OGT 20 1994

4 Bros. Dairy

37-8814

(B)

Worksheet 1. Calculating Daily Herd Requirements for Fresh Water

Drinking Water Estimates (see Table 1 & 2)

(Dairy Cows, Springers, & Preg Heifers)	Number	Estimated Use (gallons per day)	
		Individual per day	Total
Milking Cows	1047	28	29,316
Dry Cows	153	13	1989
Heifers			
16-24 mo			
13-15 mo			
9-12 mo			
5-8 mo			
3-4 mo			
0-2 mo			

Total herd drinking water used

A. 31,305

Wash Pen Estimate (see Table 3)

1 - Sprinkler discharge per nozzle

2 - Number of nozzles

3 - Minutes per day used

Total wash pen water used

(Line 1 x line 2 x line 3)

B. _____

Milk house and Parlor Estimate (see Table 4)

Water per operation

Gallons per day

Bulk tank

Pipeline

Backflush

Cleanup

(Parlor, milk house and holding pen)

Cow prep

Plate cooler

(ignore if water recycled)

Total milk house and parlor water used

C. _____

17,244 gal/day
or
19.3 gpd
per the
Consumptive Use
Worksheet
with the Field
exam

TOTAL FRESH WATER ESTIMATE (A + B + C)

Stockwater

31,305 (365) = 11,426,325

11,426,325 $\left(\frac{1}{325,850}\right)$ = 35.1 gpd

Commercial

+

19.3 gpd

= 54.4 gpd

TOTAL

Michigan State University

OCT 20 1994

Table 1. Herd Makeup

Category	Number	% of Herd	Average Weight (lbs.)
Milking Cows	83	83	1400
Dry Cows	17	17	1550
Total Mature Cows	100		
Heifers			
16-24 months	42	38	1050
13-15 months	13	12	800
9-12 months	19	17	600
5-8 months	19	17	400
3-4 months	9	8	250
0-2 months	9	8	150
Total Replacements	111		

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Table 2. Water Intake for Dairy Cattle -- Gallons per Day

Weight (lb)	Milk (lb)	40° & below	60°	80°
(Lactating cows)				
1400	20 ²	12.0	14.5	17.9
	60 ²	22.0	26.1	24.7
	80 ²	27.0	31.9	38.7
	100 ²	32.0	37.7	45.7
(Dry cows)				
1400 ¹		9.7	12.0	16.2
1600 ¹		10.4	12.8	17.3
(Heifers)				
1200 ¹		8.7	10.8	14.5
800		6.3	7.9	10.6
400		3.7	4.6	6.1
200		2.0	2.5	3.3

¹Maintenance and pregnancy.

²Maintenance and milk production.

[Back to Water Needs](#)

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
Case No. 39576)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 37-22326

RECEIVED
DEC 23 2009
DEPARTMENT OF
WATER RESOURCES

NAME AND ADDRESS: 4 BROS DAIRY INC
425 N 250 W
SHOSHONE, ID 83352

SOURCE: GROUND WATER

QUANTITY: 0.02 CFS

The quantity of water under this right shall not exceed 13,000
gallons per day.

PRIORITY DATE: 12/31/1930

POINT OF DIVERSION: T05S R17E S09 SESESW Within Lincoln County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Stockwater	01-01 TO 12-31	0.02 CFS
	Domestic	01-01 TO 12-31	0.02 CFS

PLACE OF USE:	Stockwater		Within Lincoln County
	T05S R17E S09	SESW	
	Domestic		Within Lincoln County
	T05S R17E S09	SESW	

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

The quantity of water decreed for this water right is not a
determination of historical beneficial use.
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. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance
with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a
final judgment and that the court has and does hereby direct that the above judgment or order shall be a final
judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

John M. Melanson
John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication