



State of Idaho

DEPARTMENT OF WATER RESOURCES

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June 3, 2008

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

North American Foods LLC
PO Box 265
Dubois, ID 83423

RE: Consent Order and Agreement; Notice of Violation Dated March 17, 2008

Dear Gentlemen:

Please find enclosed a Consent Order and Agreement (Agreement) regarding the Notice of Violation (NOV) dated March 17, 2008 that the Idaho Department of Water Resources (Department) sent to Larsen Farms and copied to North American Foods LLC. This Agreement is being sent to you following a compliance conference held on April 25, 2008 between North American Foods LLC (NAF) representative McKay Anderson, Larsen Farms representative Steve Vadnais, and representatives from the Department. I believe the facts, terms, and conditions of the attached agreement are consistent with what we agreed to or negotiated during our April 25th conference. The Department requests that the enclosed agreement be executed by NAF since the parties resolved that NAF will file a water right transfer to include the lands irrigated by land application of waste water and subject to the March 17th NOV as a place of use under industrial water rights 31-7128 and 31-7489.

Please carefully review and consider the terms and conditions of this proposed Agreement. If you continue to agree with the terms and conditions, please sign the document and return it directly to me as soon as possible. I will then execute the agreement on behalf of the Department and return a copy of the original with signatures to you. The agreed upon civil penalty is due to the Department within twenty-one (21) days of the execution of the agreement.

If you have any further concerns or questions about the proposed Agreement, please call me directly or submit written comments to me at the office listed on this letterhead. I look forward to your prompt reply and a final resolution of this matter. Thank you once again for your prompt cooperation in this matter.

Respectfully,

Tim Luke

Manager, Water Distribution Section

Cc: Steve Vadnais, Larsen Farms
Ernie Carlsen, Water District 110 Watermaster
John Homan, Idaho Deputy Attorney General

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

CONSENT ORDER AND AGREEMENT

In the matter of Notice of Violation and Cease and Desist Order dated March 17, 2008 issued to Blaine and Connie Larsen to Section 42-1701B, Idaho Code.

Findings of Fact

- 1) Blaine and Connie Larsen (Larsen) are the owners of record for lands situated in the SWNE and the NWSE of Section 16; the W1/2 of the NE1/4 and the SESE of Section 21; the S1/2 of the NW1/4 and the SW1/4 of Section 22; the NENW and NWNE of Section 27; and the NENE and E1/2 of the SE1/4 of Section 28, Township North (T9N), Range 36 East (R36E). This ground has been irrigated from waste water from the North American Foods LLC potato processing plant under commercial water rights 31-7128 and 31-7489. Water rights 31-7128 and 31-7489 are owned by North American Foods LLC.
- 2) On April 9, 2007, the watermaster of Water District No. 110 sent a notice to Larsen advising that approximately 360 acres located within the area described in Finding 1 were irrigated in 2006 without a valid water right. The approximate 360 acres were shown on maps attached to the notice. The notice advised Larsen that a search of water rights on record at the Idaho Department of Water Resources (Department) found no water rights appurtenant to the lands in question. The watermaster advised Larsen to cease and desist from further irrigation of the 360 acres until valid water rights were obtained for the land. Larsen was further advised that a copy of the notice was forwarded to the Department for potential administrative enforcement action.
- 3) On April 26, 2007, Larsen contacted the watermaster by letter explaining that much of this ground was being irrigated by wastewater from the RDO Processing LLC potato processing plant and/or that Larsen had water rights that could be transferred to the place of use to correct any unauthorized use issues.
- 4) On November 26, 2007, the Department provided notice to Larsen that it may issue a Notice of Violation (NOV) for any unauthorized use found in 2006 and 2007 associated with the watermaster's letter from April 9, 2007.
- 5) The Department finds that RDO Processing Inc., now known as North American Foods LLC (NAF), land applied wastewater on a portion of a full sized pivot and 8 smaller pivots totaling 319 irrigated acres in 2006 and 2007 in the SWNE and the NWSE of Section 16; the W1/2 of the NE1/4 and the SESE of Section 21; the S1/2 of the NW1/4 and the SW1/4 of Section 22; the NENW and NWNE of Section 27; and the NENE and E1/2 of the SE1/4 of Section 28, T9N, R36E. Department records show no water rights that authorize the irrigation or land application of wastewater for these lands.
- 6) On March 17, 2008, the Department sent Larsen a NOV concerning the unauthorized use of water on 319 acres in 2006 and 2007. The NOV required Larsen to provide restitution to replace the amount of water illegally diverted from the Eastern Snake Plain Aquifer in 2006 and 2007 by setting aside and curtailing diversion of ground water on a minimum of 638 acres during 2008, and pay a civil penalty of ninety-five thousand, seven hundred dollars (\$95,700) for the 319 acres irrigated in 2006.

- 7) On April 15, 2008, a compliance conference was held with Steve Vadnasis, who is a representative of Larsen, representatives of NAF, the Water District 110 watermaster, and Department staff. In the compliance conference NAF and Larsen stated that the process of land applying wastewater on this ground had been done since 1987 under a Wastewater-Land Application Permit issued by the Idaho Department of Environmental Quality (DEQ). NAF representatives explained that they were not aware that any additional water right authorization was necessary to apply processing plant wastewater to the cultivated lands in question. It was determined that a water right transfer would be needed to include the lands where wastewater was being applied to the commercial place of use for water rights 31-7128 and 31-7489 to correctly describe the place of use for these water rights. Larsen and NAF representatives stated that they would like to include fresh water in the system to help dilute the wastewater, but will not dilute the water until a second water right transfer has been filed to allow this new use from irrigation wells owned by Larsen. NAF agreed to supply a copy of the Wastewater-Land Application Permit to the Department and pay a \$300.00 penalty.
- 8) On May 16, 2008, the Department received a copy of the DEQ Wastewater-Land Application Permit from NAF. The permit (LA_000075-03) was approved in March of 2003 and modified in January of 2006. The permit authorizes land application on 1676.5 acres of land, including the 319 acres identified in the Department's NOV dated March 17, 2008.

It is hereby ordered and agreed that:

Terms of Agreement

- 1) NAF agrees to file a water right transfer to include the lands in the SWNE and the NWSE of Section 16; the W1/2 of the NE1/4 and the SESE of Section 21; the S1/2 of the NW1/4 and the SW1/4 of Section 22; the NENW and NWE of Section 27; and the NENE and E1/2 of the SE1/4 of Section 28, T9N, R36E as part of the commercial place of use on water rights 31-7128 and 31-7489. North American Foods agrees to file this transfer within ninety (90) days from the execution of this agreement
- 2) Restitution will be recognized by the filing of the transfer in Term 2 above.
- 3) NAF agrees to pay a civil penalty in the amount of three hundred dollars (\$300), payable to the Idaho Department of Water Resources within twenty-one days (21) days of the execution of this agreement for the violation identified in the NOV dated March 17, 2008.
- 4) The Department suspends payment of ninety-five thousand, four hundred dollars (\$95,400) civil penalty identified in the March 17, 2009 NOV. This penalty or any portion may be re-imposed for NAF's failure to fully comply with the terms of this agreement.
- 5) This agreement does not limit the Department or the Watermaster of Water District No. 110 to seek future compliance or regulation of said water use for other issues not directly related to the unauthorized use in 2006 and 2007.

Dated this _____ day of _____, 2008

Tim Luke, Manager
Water Distribution Section
Idaho Department of Water Resources

CONSENT

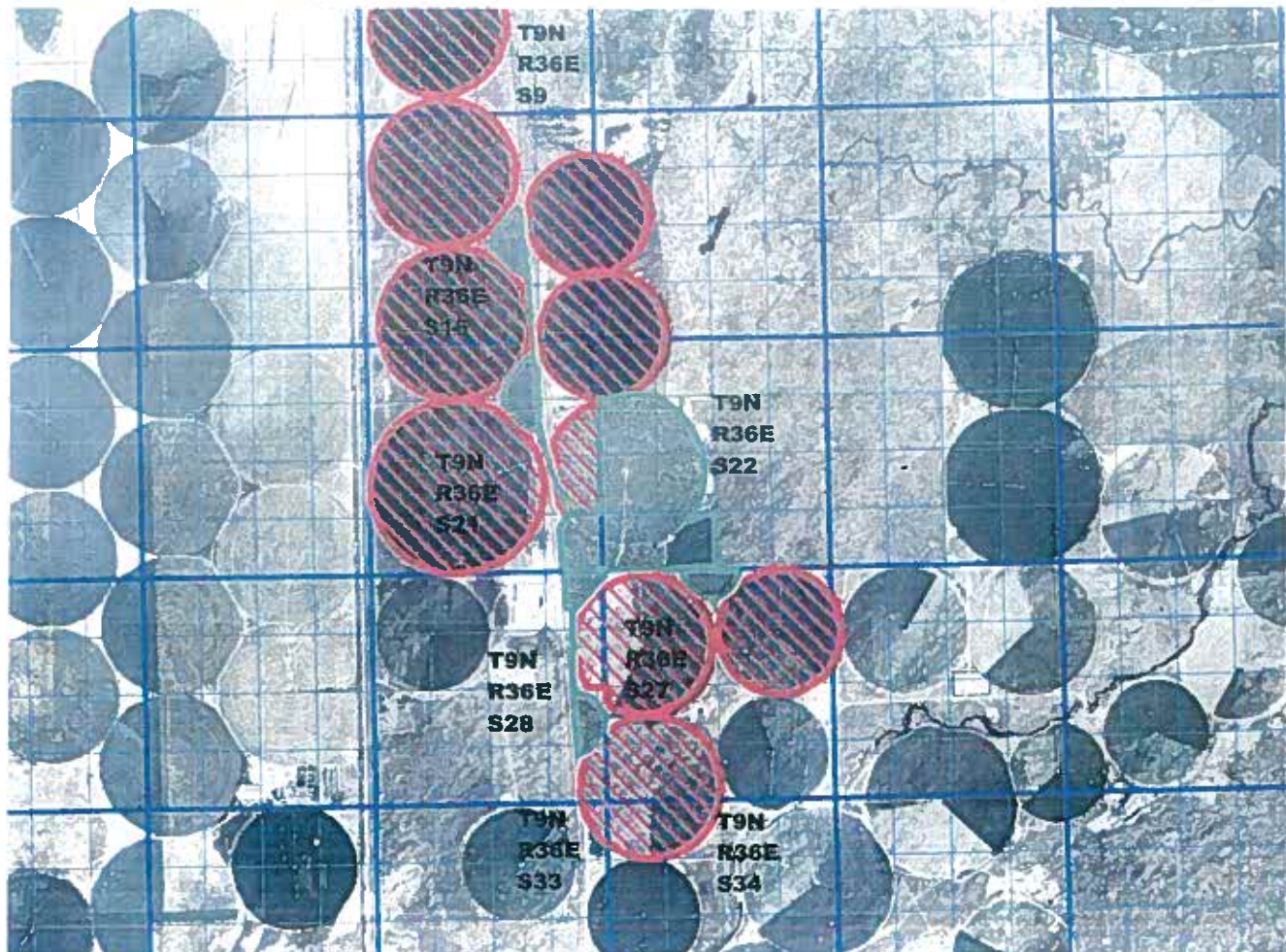
Respondent acknowledges, in general, the facts set forth during the conference and accepts fully the terms and conditions of this Order. These terms shall become effective upon execution by the parties. Respondent waives any right to contest this Order and consents to the issue hereof.

Signed this ____ day of _____, 2008

Representative – North American Foods LLC
Representative's Title: _____

SWNE & NWSE OF SECTION 16, E1/2 OF THE NE1/4 & SESE OF SECTION 21,
 S1/2 OF THE NW1/4 & THE SW1/4 OF SECTION 22, NENE & E1/2 OF THE SE1/4 OF SECTION 28,
 AND TE NENW & NWNE OF SECTION 27 ALL IN T9N R36E
 OWNER: BLAINE AND CONNIE LARSEN
 IRRIGATED GROUND IN 2006 WITHOUT A WATER RIGHT

* Per Current Available County Parcel Data.



-  Lands Irrigated in 2006
-  Current Water Right Place of Use
-  Sections
-  Quarter-Quarter Sections

Imagery: 2006 NAIP photo

0.6 0 0.6 1.2 Miles

Map prepared by D. Nelson
 2/28/2008



Please Note: It appears as though 319 acres were irrigated in 2006 without a recorded water right. Water right 31-7630 irrigates 53.8 acres of the large pivot in Sections 21 and 22, but this was not included in the 319 acres. The water master believes that most of this ground was irrigated by land applying commercial wastewater from the potatoe processing plant in the NE1/4 of Section 28, but the two water rights 31-7489 and 31-7128 associated with that use do not describe land application in the water rights conditions or under the legal description for commercial use. Therefore, all 319 acres of irrigation are considered to be irrigated in 2006 without valid water rights.

Source: Water District No.110 and
 Idaho Department of Water Resources