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MAY 22 2008

DEPARTMENT OF
WATER RESOURCES

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER NO. 72435	
BIG SKY FARMS,	RESPONSE TO MOTION OF DEAN AND EDEN DIMOND
Applicant,	
Dean T. Dimond, Harold S. Dimond, Richard Bullers, Cyrus Bullers, James Stewart, Brenda Herrmann, Dennis H. Dimond, Blaine E. Miller, James Wyatt, Rita Ayers & Lee Halper,	SOURCE: Ground water
Protestants.	County: Jerome

Applicant, Big Sky Farms, through its attorney, Robert E. Williams of Fredericksen, Williams, Meservy & Lothspeich, LLP, hereby responds to the Motion of Dean and Eden Dimond dated April 25th, 2008, as follows:

1. The Dimonds apparently contend that the Idaho Department of Water Resources (IDWR) should dismiss the present Application for Transfer because the real property and water rights to which the application applies have allegedly been sold to a third party. The "facts" offered by the Dimonds in support consist of conjecture and hearsay and are not documented. Even if the fact of a sale by the Applicant of real property and appurtenant water rights were properly established, the Department of Water Resources has

consistently regarded such applications as bound up with the real property to which they apply and pursuable by the new owner of the real property.

2. The Dimonds cite Idaho Code §42-203(a)(5) in support of their contention the Applicant was pursuing the transfer for “speculative purposes and not in good faith”. I.C. §42-203(a)(5) applies to applications for appropriations of a water right, and not to applications for transfer of a water right. The requirements for approval of a transfer are found in I.C. §42-222, not I.C. §42-203(a)(5), which is inapplicable to the current application.

3. The Dimonds apparently contend that Big Sky Farms, LP, the Applicant herein, was not the owner of the real property subject to the Application at the time the Application was filed or the hearing was held. The Dimonds have provided no evidence of this. The record is clear that, at the time the Application for Transfer was filed and the hearing on this matter held, that Big Sky Farms, LP, the Applicant herein, was the owner of the real property and water rights involved.

4. With no authority, the Dimonds contend that the IDWR does not permit a pending Application for Water Transfer to itself be transferred. In fact, IDWR has routinely recognized the transfers of such pending applications to new owners of the underlying real property.

5. Argument before the honorable Richard J. Bevan in the Fifth Judicial District Court, in and for the county of Jerome, on the Applicant’s appeal of Jerome County’s denial of its LCO Application for the feedlot facility which underlies the current water transfer application, is set to be heard Friday, May 23rd, 2008. A decision from Judge Bevan will be forthcoming shortly thereafter. As the Applicant has previously maintained, once that decision has been made, the hearing officer would be in the best position to render his recommended decision on the pending Application for Transfer.

6. Adherence to an approved Nutrient Management Plan has, in the past, been imposed as a condition to an approved Water Transfer Application of the type at issue here. Any subsequent owner of the water right created by any approved transfer application would be subject to the condition that it adhere to an approved Nutrient Management Plan certified by the Idaho Department of Agriculture, if such a condition appears in the order.

7. The Dimonds contend that this "sell" (sic) has changed testimony that was given at the hearing. There is no relevant evidence of a sale or transfer of the real property subject to the Application now in the record. Any decision on the pending Application must be made upon the record as it now stands.

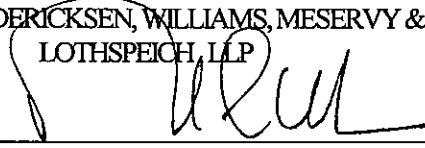
8. The Dimonds contend that Big Sky Farms, LP, has caused "undo" (sic) hardship upon the neighbors, without citing any evidence of such hardship. In fact, the Applicant lawfully filed and pursued the present Application in accordance with the laws of this state. The Applicant also filed and lawfully pursued a related application for an LCO Permit before Jerome County. The Applicant does not agree with the Dimonds that lawfully pursuing rights granted by the laws of this state should be considered to create a hardship on anyone.

9. The Dimonds failed to file proof of service required by Rule 303 (IDAPA 37.01.303) with respect to their motion. Thus, it is impossible to determine the service date of the motion in accordance with other rules of procedure with the IDWR. For all of the

For all of the above reasons, the hearing officer should deny the motion of the Dimonds.

RESPECTFULLY SUBMITTED this 20th day of May, 2008.

FREDERICKSEN, WILLIAMS, MESERVY &
LOTHSPEICH LLP

By: 

ROBERT E. WILLIAMS
Attorney for Applicant

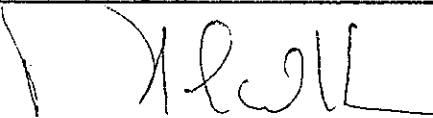
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this date I caused a true and correct copy of the foregoing instrument to be served upon the following at the address and in the manner indicated below:

Gary Spackman Idaho Department of Water Resources PO Box 83720 Boise Idaho 83720-0098	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
IDWR Document Repository PO Box 83720 Boise ID 83720-0098	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
IDWR – Southern Region 1341 Fillmore St Ste 200 Twin Falls ID 83301	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Deborah Gibson PO Box 83720 Boise ID 83720-0098	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
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Harold S Dimond 3059 S 1800 E Wendell ID 83355	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express

DATED: May 10, 2008



ROBERT E. WILLIAMS