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DEPARTMENT OF
WATER RESOURCES

Dean and Eden Dimond
1454 Hwy. 25
Jerome, Idaho 83338

Before the Department of Water Resources
Of the State of Idaho

In the matter of application for transfer no. 72435

Motion to dismiss the pending water transfer and to further augment the record with the fact that Don McFarland DBA as Big Sky Farms no longer owns the property or the disputed water rights.

COMES NOW, Dean and Eden Dimond being a recognized protestant in the Big Sky Farms LCO ask the Department of Water Resources to dismiss with prejudice the pending water transfer.

1. We ask that the Department of Water Resources (henceforth the Department) add into the record the fact that Don McFarland has sold the property and water rights. Idaho Power has contacted Jim Stewart on behalf of the new owners seeking permission to cross the Stewarts property. Mike Gott has contracted with the new owner to farm the farm for the 2008 farming year. Mr. McFarland is quoted in the paper saying a sell was pending and to seek further information from his lawyers. Rob Williams is quoted in papers saying this is a private issue not relevant to the Judicial Review pending before the court. If the property had not been sold Mr. Williams would have simply said it had not been sold. The owner of a water right is relevant information before the Department.

Idaho Code 42-203a (5) The Director of Water Resources shall find and determine from the evidence to what use or uses the water sought to be appropriated can be and are intended to be applied. In all applications whether protested or not protested where the proposed use is such (a)...(b)... (c) where it appears to the satisfaction of the Director that such application is not made in good faith, is made for delay or SPECULATIVE purposes. (d) that the applicant has not sufficient financial resources with which to complete the work involved therein.

The sale of this property plainly shows that McFarland application was for

speculative purposes and not made in good faith. This application therefore is in violation of Idaho Law and must be denied. McFarland has not presented any evidence that he does have the financial resources to complete the work involved and the sale of the property proves that he does not.

2. The transfer of ownership significantly changes evidence/testimony offered in the application and the hearing. IDAPA 37.01.01.202.01 clearly defines who can represent a party. While it allows Don McFarland to represent Big Sky Farms LCO it does not provide a provision for Don McFarland to represent a future buyer. Furthermore, Rob Williams was retained to represent Big Sky Farms. This transfer in ownership makes the new owner the applicant and they were not represented at the hearing. Thus, the new applicant was a no show. The new applicant has not presented any evidence or even an application for the Department to consider. Thus they have also not provided an opportunity for the protestants to review their proposed transfer.

In the first paragraph under 3 of the applicants closing Statement it reads in part "for a new Holstein heifer raising facility to be constructed by the applicant in eastern Jerome County." Since the property has been sold this statement can not be true. This alone should void the application.

3. While the Department does allow a water right to be transferred, it does not allow for a pending application to be transferred. Furthermore, there was a time frame in which a party could petition to become a party in the transfer. This time has more than passed and the new owners are not a recognized party in this transfer. The record has been closed and it is illegal for the applicant to submit new evidence that changes the scope of the transfer.

4. It was asked by protestant, Lee Halper, at the preliminary hearing that the Applicant wait and see the outcome of the county hearing before proceeding with the water transfer. Mr. Williams responded that his client did not wish to do this. The applicant should have waited for the county. He should have also identified who would own the CAFO and the property at the time a decision would be issued and while/after it was built. At the very least he should have disclosed that property would likely be sold and the buyer's identity. The applicant instead chose to simply say "it is not determined at this time."

5. With the sale of the property the new owner will have to come up with a new NMP. Don McFarland even testified to this at the hearing. Since the property was sold while the water transfer is pending there is in effect no approved NMP in place for the pending transfer. Under 5. The last sentence in the last paragraph of the applicants closing statement it reads in part "There is no evidence in this record that the Applicant could not, or would not, adhere to the requirements of it approved NMP." This is not the case since the new owner will have to come up with there own NMP and the one before the Department is not the plan that will pertain to this CAFO. If a NMP plan is not to be followed it is not even worth the paper it is written on. It Definitely does not meet the requirement of the department.

6. This sell has changed testimony that was given at the hearing. One example of this is: Matt Thompson testified that Big Sky Farms had received a "low" risk rating from the state sitting team. One of the reasons the sitting team offered for lowering the rating from moderate to low was because of the amount of ground McFarland owned. Unless McFarland sold all the ground he owns to the buyer this is no longer the case.

7. Even "IF" Don McFarland DBA Big Sky Farms has maintained an interest in the property he is no longer the controlling partner and Big Sky Farms has lost their standing as the applicant in the water transfer.

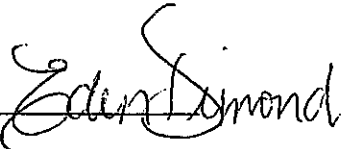
8. Since Big Sky Farms has caused undo hardship upon the neighbors and has not been forth coming with this new evidence. We request that he be required to pay all cost incurred by us and the Department.

WHEREFORE, we request relief from the hearing officer as follows:

1. The hearing officer add to the record the transfer of ownership
2. Order Big Sky Farms pay all costs related to this proceeding
3. The hearing officer officially DENY the permit.

DATED: April 25, 2008


Dean Dimond


Eden Dimond