

**NOW
STARTING
RIGHT
SIDE OF
FILE**

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IDAHO STATE BAR NO. 1693
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ATTORNEYS FOR APPLICANTS DAVID AND SHIRLENE FUNK

RECEIVED
MAR 21 2007
DEPT. OF WATER RESOURCES
SOUTHERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION
FOR TRANSFER NO. 71692

David & Shirlene Funk,

Applicants

Farnum Warr, Kenneth Warr, Kenneth Skow,
Marjorie L. Bradshaw, John Kloer, Thomas C.
Draper,

Protestants.

RESPONSE TO PETITION
FOR RECONSIDERATION
OF FINAL ORDER

SOURCES: Ground water, Wastewater

COUNTY: Cassia

The Petition for Reconsideration of Final Order filed by Protestants Kenneth Warr, Kenneth Skow and Thomas C. Draper on March 7, 2007, received by the IDWR on March 9, 2007, is nothing more than a request that the Interim Director weigh the evidence at the hearing and reach a different conclusion than was reached by the Hearing Officer. As the Interim Director correctly noted on Page 7 of the Final Order:

"Increased risk of contamination does not equate to a determination that the proposed Funk dairy will or is likely to contaminate the ground water to unacceptable levels. The hearing officer concluded, based upon a preponderance of the evidence, that the Funk dairy can operate without violating Idaho water quality standards if Funks adhere to requirements of the waste management plan. The favorable rating by the CAFO siting team supports the hearing officer's conclusions..."

It also should be remembered that the Protestants quotations from the Hearing Officer's Findings of Fact were Findings of Fact that were entered in support of a Preliminary Order granting the transfer.

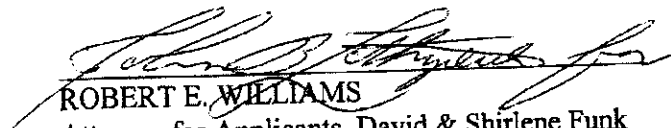
The Final Order correctly establishes that the facts found by the Hearing Officer and confirmed by the Interim Director establish that all of the criteria for approval of the water transfer were met. The Interim Director should refrain from yet another invitation to reweigh the evidence produced at the hearing and reach a different result.

CONCLUSION

The Interim Director should summarily deny the Petition for Reconsideration, or should not respond to it by March 30, 2007, which, under the Departments' Rules of Practice and Procedure, constitutes a denial of the Petition for Reconsideration. See IDWR Rules of Procedure at 740, IDAPA 37.01.01.740.02(a).

Dated this 20 day of March, 2007.

FREDERICKSEN, WILLIAMS, MESERVY & LOTHSPICH, LLP



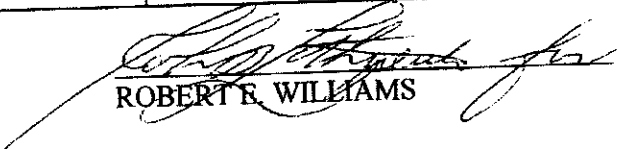
ROBERT E. WILLIAMS

Attorney for Applicants, David & Shirlene Funk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 22 day of March, 2007, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

IDWR – Southern Region 1341 Fillmore St Ste 200 Twin Falls ID 83301	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
IDWR PO Box 83720 Boise ID 83720-0098	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Kenneth Skow 317 S 1400 W Murtaugh, Idaho 83344	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Marjorie L. Bradshaw 1300 W 323 S Murtaugh, Idaho 83344	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
John Kloer 3475 N 4900 E Murtaugh, Idaho 83344	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Thomas C. Draper 3351 N 4900 E Murtaugh, Idaho 83344	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Farnum Warr 1347 W 200 S Murtaugh, Idaho 83344	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Kenneth Warr 1301 W 200 S Murtaugh, Idaho 83344	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express


ROBERT E. WILLIAMS

Goal 4

Encourage water purveyors, regulatory agencies, and local & regional governments to plan for future water needs and incorporate the principles of this Plan in programs, policies, and ordinances.

- 3.4.1 Long-term planning for municipal and community needs should use the tools available to plan for and protect future water needs. The privileges accorded municipal water purveyors by Idaho law should be investigated for use by all local and regional bodies that qualify for that status.
- 3.4.2 IDWR encourages local jurisdictions to require connections to community systems when available in lieu of individual wells.

Goal 5

Encourage water conservation efforts by all users of the resource.

- 3.5.1 For all new water rights or changes to existing water rights held by municipal purveyors, IDWR will require conservation plans for all systems regulated as public water systems. IDWR will enforce adherence to the conservation plan provisions through water right conditions and civil penalties as allowed by law. The advisory committee specifically supports this element of the management plan.

Each plan may include the elements as listed in guidelines published by EPA ("Water Conservation Plan Guidelines", Environmental Protection Agency, 1998, <http://www.epa.gov/owm/water-efficiency/webguid.html>). These guidelines are primarily designed for public water supply systems. However, any water user can follow the steps described in the guidelines to evaluate the existing conditions and systems, identify and evaluate opportunities for conservation measures, and develop strategies and timetables to meet defined, measurable goals.

The advisory committee will identify elements to be considered by IDWR for inclusion based on system size. The conservation plan may include the following components:

- measurable conservation planning goals
- summary of existing system characteristics and water use conditions
 - water system profile
 - description of planned facilities
- current and future conservation opportunities
 - identification of water conservation measures
 - analysis of benefits and costs
- select water conservation measures
- implementation mechanisms, timetable, and assessment strategy

3.5.2 IDWR encourages the establishment of an aquifer-wide water conservation advisory committee representing municipal purveyors for purposes of water conservation planning, education, and implementation.

3.5.3 IDWR will encourage and assist, through management actions, the following measures:

- Economic support for water purveyors to develop conservation plans through access to federal and state programs, such as the Drinking Water State Revolving Fund (SRF);
- Landscaping efficiency demonstration projects and funding support through state and federal sources;
- Price structures for water use that encourage conservation of water resources;
- Development of water conservation educational activities by municipal purveyors regulated as public water systems; and
- Use of reclaimed water for existing or planned consumptive uses of ground water on the Rathdrum Prairie wherever it is readily available and meets water quality requirements. IDWR supports the investigation of using reclaimed wastewater from municipal wastewater facilities to lessen the impact of the wastewater on the Spokane River.

4.0 Additional Actions

- 4.1 New domestic uses defined by Idaho Code § 42-111 shall be authorized only upon IDWR approval of an application for a well drilling permit. New individual ground water domestic uses shall be discouraged if water can be reasonably supplied from a municipal source or community system.
- 4.2 Ground water rights with points of diversion located within the RPGWMA shall not be considered lost, abandoned, and/or forfeited for non-use, in whole or in part, if non-use is for the purposes of conservation or other conditions of this management plan. The five (5) year period of non-use for forfeiture of a water right shall resume upon termination of this Plan unless such non-use is otherwise excepted from forfeiture by Idaho law.
- 4.3 Any well to be abandoned in the RPGWMA shall require a well abandonment permit issued by IDWR. This requirement will protect water quality and limit wasting of water that might otherwise result from improper well abandonment techniques. Before any well is abandoned, the possibility that it could be used for monitoring should be explored.
- 4.4 The Director may require aquifer monitoring for any new ground water diversions approved surrounding the RPGWMA to the extent that such monitoring would be expected to yield data relevant to the boundaries and conditions of the RPGWMA.

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MAR 09 2007

DEPT. OF WATER RESOURCES
SOUTHERN REGION

1 Kenneth Warr
1301 W 200 S
Murtaugh, Idaho 83344

2
3 Kenneth Skow
317 S 1400 W
Murtaugh, Idaho 83344

4
5 Thomas C. Draper
3351 N 4900 E
Murtaugh, Idaho 83344

6 Protestant's

8 vs.

9 David R. Tuthill, Jr.

10 Interim Director

11 Idaho Department of Water Resources

12 323 East Front Street, P.O. Box 83720

13 Boise, Idaho 83720-0098

) Case No.: Water Transfer #71692 Water
) Right #'s 45-2473, 45-10069 and 45-
) 2399), in the names of David &
) Shirlene Funk

)
) Petition for Reconsideration of Final
) Order

14
15
16 The above protestant's are in receipt of your Final Order dated 23 February
17 2007 regarding Water Transfer No. 71692 and hereby petition for
18 reconsideration.

19 In response to our letter dated 5 January 2007 regarding the new Nutrient
20 Management Plan (NMP), dated 30 June 2006, the applicant's attorney submitted
21 a reply which included a letter dated 9 January 2007 from Robert Ohlensehlen,
22 Certified Nutrient Management Planner responding to our concerns regarding
23 the Nutrient Management Plan. In his response Mr. Ohlensehlen, submitted soil
24
25

1 tests for four (4) fields dated March 8, 2003 showing all four fields were
2 below the 40 ppm threshold levels for fields where runoff is a possibility.

3 The obsolete tests of four (4) fields out of fifty (50) is **not** a good
4 indicator of responsible use of nutrients. Where are the tests for the other
5 forty-six (46) fields which would show the ground is capable of receiving
6 additional nutrients without contaminating the ground and surface water?

7 Protestant's pointed out that the NMP identified thirty-seven (37) of fifty
8 (50) identified fields as being vulnerable to ground water contamination. It
9 is noted that much emphasis is placed on the State CAFO Siting Team rating.
10 It should be noted the State Siting Team did not review the new NMP when they
11 assigned a low risk rating.

12 The hearing officer's Finding of Facts twenty-six (26) of the Preliminary
13 Order and Default Orders is correct and should **not** be removed from the Final
14 Order of the Idaho Department of Water Resources (IDWR).

15 The hearing officer wrote: "based on information presented by the Protestants
16 the hearing officer believes there is a risk that, in the future, nitrate
17 levels in vicinity of the Funk Dairy may exceed the maximum limit of 10mg/l
18 of water."

19 This finding alone is sufficient to deny the water transfer as it does not
20 satisfy the local public interest test.

21 It is true the hearing officer did not quantify the risk he found. The
22 Director assumed without explaining why the risk was not "a likelihood". That
23 assumption is arbitrary and capricious.

24

25

1 The Director must clarify whether he means the applicant will be required to
2 submit his waster management proposal and NMP to IDEQ to insure he complies
3 with the States water quality standards

4 The Director has conditioned his approval that the applicants comply with
5 applicable water quality standards of the Idaho Department of Environmental
6 Quality (IDEQ).

7
8
9
10
11
12
13
14 Dated this 7th day of March, 2007

15 
16
17 Kenneth Warr

18 
19
20 Kenneth Skow

21 
22
23 Thomas C. Draper
24
25

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on this 9th day of March 2007, I served a true and correct copy of the foregoing document on the person(s) whose name(s) and addresses appear below by the method indicated.

1 David Tuthill, Director
Idaho Department of Water Resources
322 East Front Street
Boise, Idaho 83720-0098

2. Robert E. Williams
Attorney at Law
117 South Adams Street
P.O. Box 168
Jerome, Idaho 83338

Both parties served by U.S. mail, postage prepaid.


BONNIE PETT



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

JAMES E. RISCH
Governor

KARL J. DREHER
Director

February 22, 2007

To: Parties of Record

Re: Application for Transfer no. 71607 in the Name of 4 Brothers Dairy, Inc.

Dear Parties:

On March 20, 2006, the hearing officer in the contested case for application for transfer no. 71607 ("application for transfer") issued a *Recommended Order* approving application for transfer no. 71607 with conditions. One of the conditions stated.

4 Bros. shall conduct a pump test and analysis of the well, pre-approved by IDWR, that describes the characteristics of the well, the aquifer from which it draws, and the expected impacts of its use, and submit the results of such pump test to IDWR.

On April 3, 2006, Protestant Rural Council filed a *Petition for Reconsideration*. On April 7, 2006, the hearing officer denied the Rural Council's *Petition for Reconsideration*.

On April 21, 2006, the Rural Council filed exceptions to the hearing officer's *Recommended Order*.

On June 12-15, 2006, Brockway Engineering conducted a pump test. Allen Merritt of the IDWR Southern Regional office received on July 24, 2006, from Rob Williams, the attorney for 4 Brothers Dairy, Inc., a copy of the pump test data and analysis document. The letter transmitting the document to IDWR shows that a copy of the document was served on the protestants.

Department staff analyzed the pump test and issued a staff memorandum on January 19, 2007.

This letter transmits IDWR's staff memorandum regarding the test to the parties. IDWR's staff memorandum does not contribute any significant additional information about the pump tests. Nonetheless, **the protestants have until March 8, 2007 (14 days from the date of this letter) to submit rebuttal evidence or otherwise contest the pump test report and IDWR's analysis of the report.** The Director will issue a final order shortly after the March 8, 2007 deadline.

Respectfully,

Gary Spackman

Encl.

cc. IDWR - Southern Region

MEMORANDUM

January 19, 2007

To: **Gary Spackman**

From: **Shane Bendixsen, Technical Hydrogeologist**

Reviewed by: **Garth Newton, Senior Engineer**

Subject: **Aquifer Test for Transfer #71607**

As required by the Preliminary Order for Transfer #71607, the following is a brief review of an aquifer test performed by Brockway Engineering north of Shoshone, Idaho. The purpose of the test was to evaluate if the transfer would interfere with the Buckway well (protestant).

Attachment #1 presents the site location and Attachment #2 presents the well configuration. The well was pumped for 71 hours at approximately 123 gpm then shut off with recovery measurements for approximately 24 hours. Maximum drawdown in the pumping well was 95 feet with an average of approximately 80 feet. The monitoring well had a maximum drawdown of approximately 2 feet. The Buckway well (protestant) was not monitored.

Brockway Engineering believes that the test well is completed in a semi-confined aquifer and receives recharge from the overlying unconfined system. This is based on a well drillers report (attached) and a conversation with the driller. Based on his conceptual model, Hantush and Jacob leaky aquifer curve fit was used. Based on this analysis it was determined the maximum drawdown in the Buckway well would be two feet after one year of pumping continuously at the licensed rate.

Drawdown in the monitoring well approximately 160 feet away was only two feet. Therefore the Buckway, which is approximately 3,800 to 4,000 feet from the production well, should have minimal if any drawdown.

To verify Brockway's results IDWR staff used AQTESOLV to analyze the data. Transmissivity and storage values were approximately the same using the Hantush and Jacob leaky aquifer method (see Attachment #3). WinFlow, by Environmental Simulations, was used to predict drawdown at the Buckway well. While the results were not exactly the same, IDWR predicted drawdown at the Buckway well at less than a foot with continuous pumping for one year at the same rate. The only difference between the

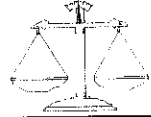
two analyses was IDWR did use slightly different T and S values based on curve matching.

In conclusion, the aquifer test performed by Brockway Engineering was adequate and IDWR staff was able to verify the results.

W-1

Frederickson, Williams, Meservy & Lothspeich, LLP
Attorneys at Law

117 South Adams Street
Post Office Box 168
Jerome, Idaho 83338-0168



ROBERT E. WILLIAMS
JAMES C. MESERVY
JOHN B. LOTHISPEICH

TELEPHONE: (208) 324-2303
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E-MAIL: FWMATTYS@CABLEONE.NET

EUGENE D. FRIEDRICKSEN – Retired

July 20, 2006

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JUL 24 2006

DEPT. OF WATER RESOURCES
SOUTHERN REGION

Department of Water Resources
Allen D. Merritt
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301-3380

Re: Transfer # 71607

Dear Allen:

In accordance with the recommended decision and order issued for the above referenced matter on March 20, 2006, specifically, paragraph two of the actual order, please find enclosed the pump test report prepared by Brockway Engineering, PLLC of Twin Falls. It is my understanding that Shane Bendixsen is the department employee who reviewed and approved the test methodology. Mr. Bendixson has previously been provided a copy of the well test report.

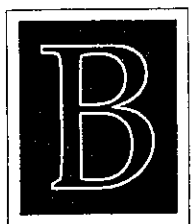
Very truly yours,

FREDERICKSEN WILLIAMS MESERVY & LOTHISPEICH, LLP

ROBERT E. WILLIAMS

REW/ch
Encl.
C: Client
Rich Carlson
Protestants
C:\data\4 Bros Fitzgerald\MDWR\MDWR 7-20-06.doc

SCANNED



BROCKWAY
ENGINEERING
P.L.L.C.

Hydraulics

Hydrology

Water Resources

COPY

July 11, 2006

Mr. Andrew Fitzgerald
4 Brothers Dairy, Inc.
427 N., 250 W.
Shoshone, ID 83352

RECEIVED
JUL 24 2006
DEPT. OF WATER RESOURCES
SOUTHERN REGION

Re: New Well Pump Test (Ref: Transfer # 71607)

Dear Andrew:

This letter report summarizes the pump test performed as required by the Preliminary Order issued on Water Right Transfer #71607 which seeks to transfer an existing irrigation water right for use at the new dairy barn #4 located north of Shoshone, Id. The test was performed to more definitively determine the nature of the aquifer and to estimate the expected magnitude of impacts on other wells in the area due to diversion of the transferred water right at the new location. The well was pumped and monitored for a total of 3 days from June 12th to June 15th, 2006 under the observation and direction of our office. The West well was pumped and both the West well and the East well (which lies approximately 160 ft East of the pumped well) were closely monitored for the initial 4 hour period with daily monitoring performed throughout the remainder of the test.

Background & Test Configuration

The new well is located in the NE ¼ SE ¼ SE ¼ of Section 5, Township 5 South, Range 17 East. The total depth of the well is 630 feet. According to the driller log (attached), the upper portion of the well contains an 8" steel casing extending to a depth of 339' below the ground surface (BGS). The static water level (SWL) in the pumped well was measured to be 254.3' BGS prior to initiating the pump test. Examination of cuttings at the surface indicate that some portion of the well extends through a decomposed granite formation. Based on discussions with Eaton Drilling, the well appears to be drawing water from a semi-confined system as evidenced by the increase in static water level which occurred during the drilling process at a depth of approximately 580' BGS with the piezometric static water level rising to 252' BGS.

For the test, a 7.5 HP submersible pump (the same pump intended for use pending final transfer approval) was placed at a depth of approximately 590' BGS. A 6" orifice meter fitted initially with a 4.032" orifice plate was utilized to measure the well discharge with a throttling valve placed upstream in

CHARLES E.
BROCKWAY,
PH.D., P.E.

CHARLES G.
BROCKWAY,
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TWIN FALLS,
IDAHO 83301

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anticipation of step pumping. The maximum observed diversion was approximately 140 gpm so in order that the maximum impacts could be developed in the monitoring well for best analysis, no stepped testing was performed and the throttling valve was left fully open.

The test pump was started at 12:06 PM on Monday, June 12, 2006. The static water level in the pumping well and the flow rate were closely monitored for the initial 4 hour test period. After approximately 3 hours, the flow rate had declined somewhat and a 3.030" orifice plate was installed (without stopping the pump) to maintain adequate pressure within the orifice meter for accurate discharge measurement. The 3.030" orifice plate was utilized for the remainder of the test.

Periodic measurements were taken over the remaining 71 hours of pumping. Final pumping water level measurements were taken on Thursday, June 15, 2006 at approximately 11:30 AM. The pump was shut off at 11:41 AM and the recovery of the pumping well was closely monitored for 45 minutes after which additional measurements were taken approximately hourly until that evening and the final water level measurement was taken the morning of June 16th at which time the static water level in the pumping well had returned to just over 1 foot below its original starting level and the monitoring well had returned to within 3 inches of its initial static water level.

Test Results

The observation well followed a classic theis drawdown curve for the first 20 hours of pumping, after which it remained relatively stable with near 2' of total drawdown. A similar trend was observed in the pumping well, however total drawdown stabilized in the range of 85' below the initial starting static water level. The pumping rate declined as expected due to the increasing lift in the pumped well. The maximum observed diversion was approximately 140 gpm at the start of the pump test with an average diversion rate of 120 gpm over the course of the test. All data collected during the 3 day pump test were tabulated, and are attached to this report.

Analysis & Conclusions

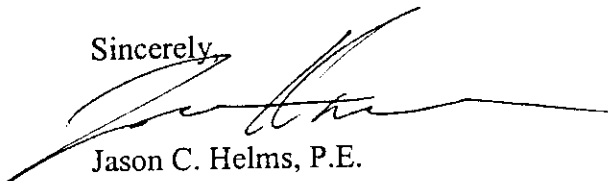
Based on examination of the pump test data, it appears that the aquifer at the location of diversion behaves as a semi-confined system with recharge from the upper unconfined system. Based on this hypothesis, a curve-fit procedure was performed utilizing the Hantush and Jacob Leaky Aquifer formula. The observation well data was used for the curve-fit procedure to eliminate the well efficiency effects which are likely involved in the increased drawdown observed in the pumping well.

The best fit for the observation well data based on the Hantush-Jacob formula indicates overall aquifer transmissivity of 3,514 [ft²/day] and an associated storage coefficient of 4.5×10^{-3} . The (r/B) type-curve with a value of 0.2 appears to match the later stabilization observed in the monitoring well most closely. A graph showing the curve-fit solution with the associated parameters is attached. The closest protestant's estimated well impacts are also shown based on the same theoretical parameters.

Based on the best-fit theoretical curve described above, long-term drawdown to the closest protestant well (Buckway) is estimated to be approximately 2 feet assuming continuous constant pumping at the average tested flow rate of 121 gpm with hydraulic connection and similar aquifer properties at that location. This flow rate represents an approximate average annual diversion of 195 acre-ft which closely corresponds to the proposed maximum authorized transfer volume of 233.1 acre-ft per year.

Please review the information included in this report and contact our office if you have any questions regarding this analysis. Thank you for the opportunity to provide this service to you.

Sincerely,

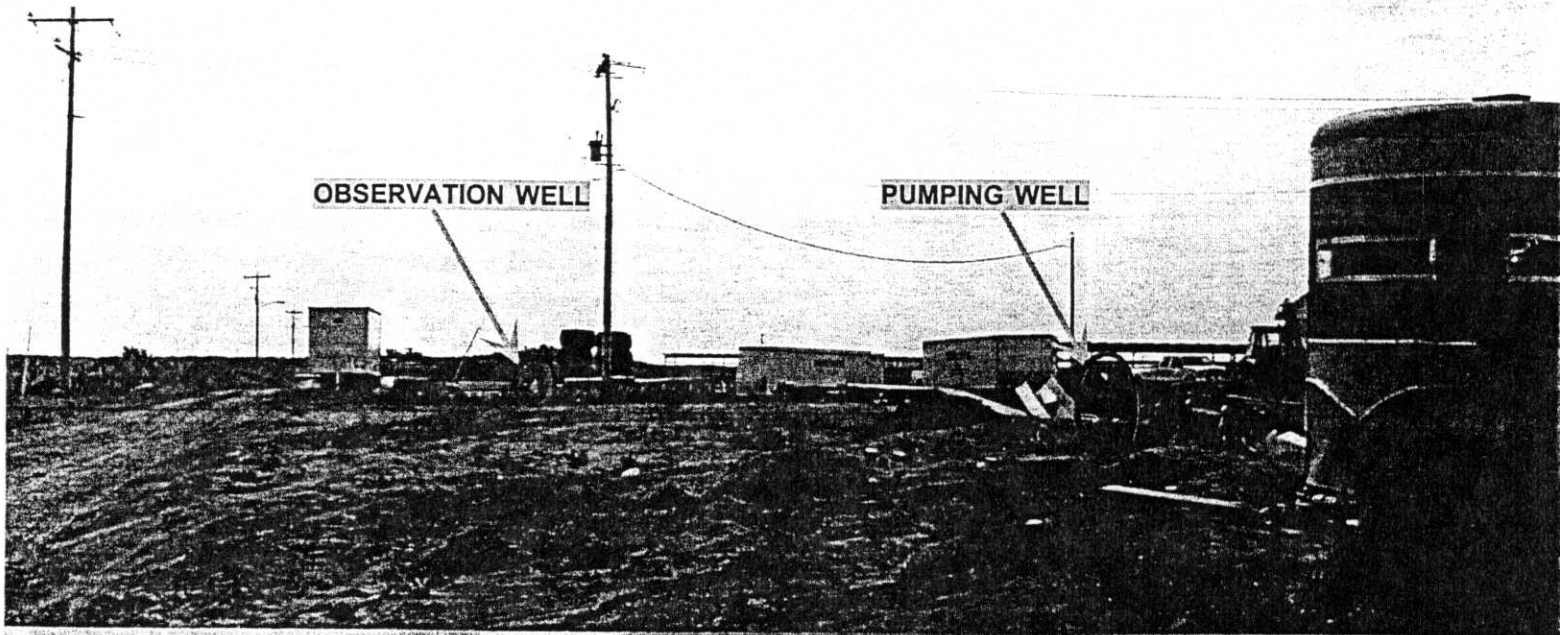


Jason C. Helms, P.E.

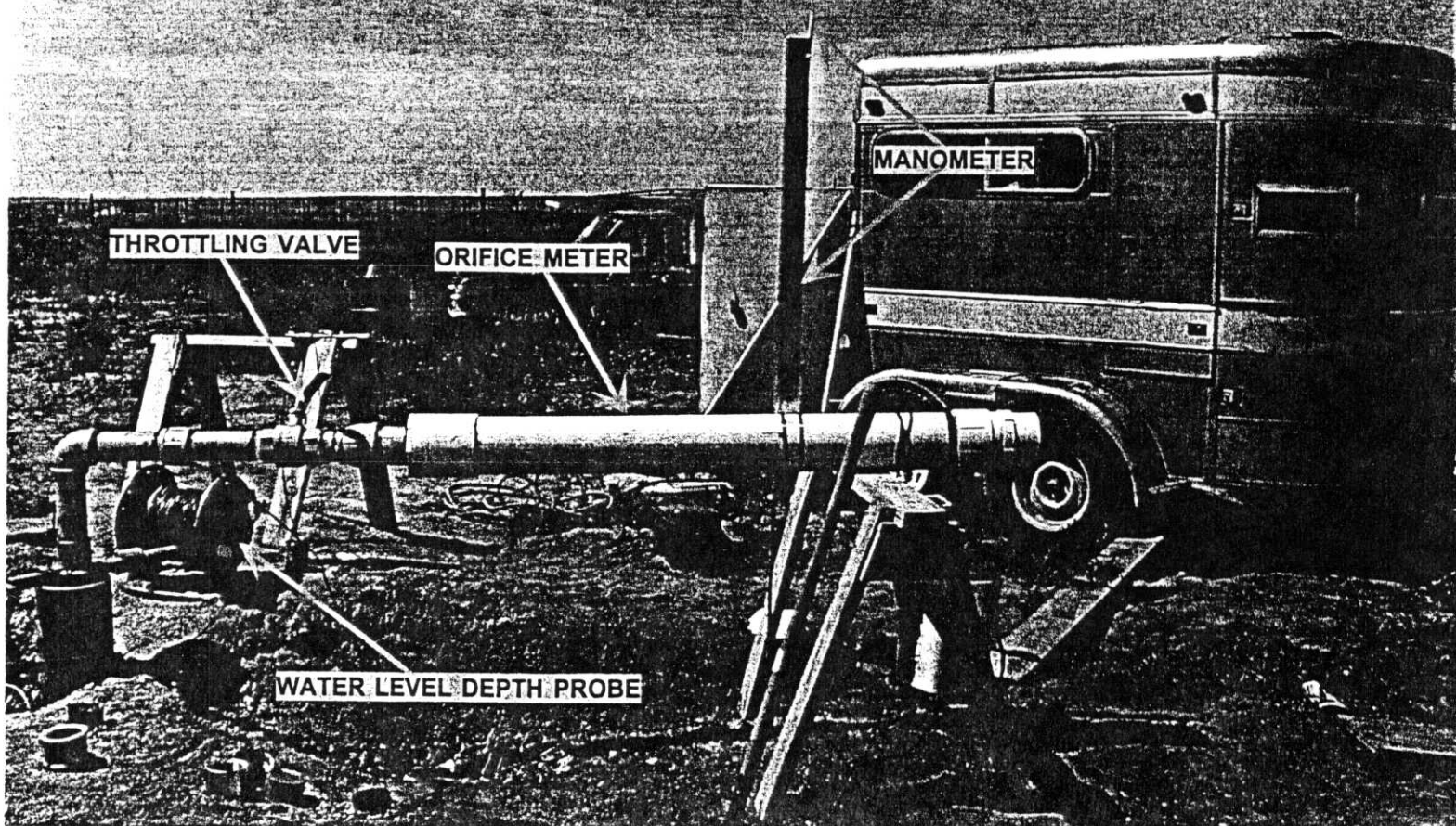
Attachments: Pump Test Data [chart, tables]
Curve-Fit Predicted Drawdown (Hantush-Jacob)
Curve-Fit Analysis Summary
Pump Test Configuration Photos
Driller Logs [4Bros New Wells, Buckway Well]

Cc: Shane Bendixsen (IDWR)
Rob Williams

4 BROS. DAIRY, INC.
NEW BARN #4 TEST WELL LOCATIONS
(LOOKING EAST)



4 BROS. DAIRY, INC.
PUMPING WELL ORIFICE METER CONFIGURATION
(LOOKING SOUTH WEST)

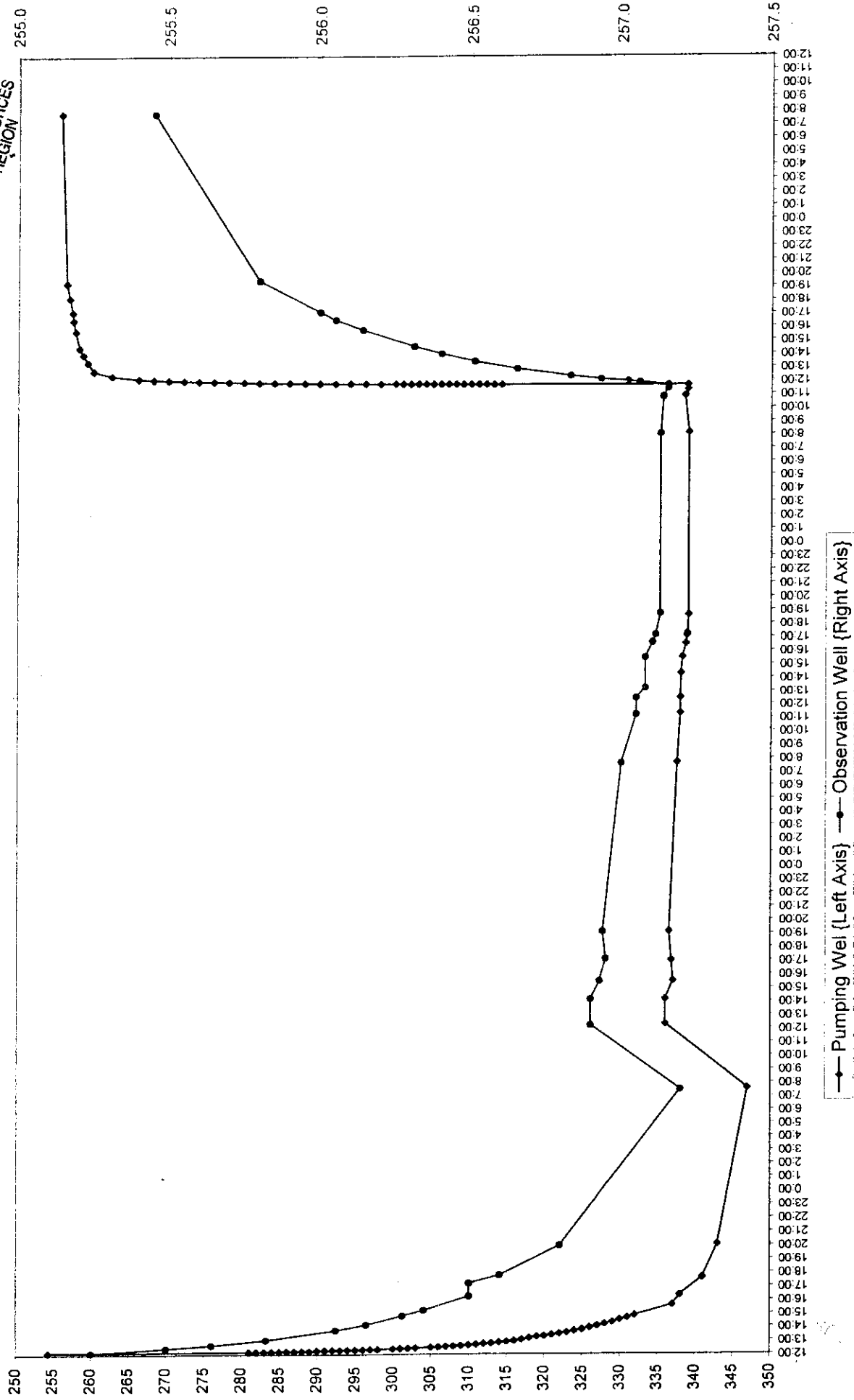


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DEPT OF WATER RESOURCES
SOUTHERN REGION

Measured Static Water Level Below Top of Well Casing (Q ~ 125gpm)



ORIFICE IN PIPE FLOW (GPM)								
6" Orifice Pipe Meter		This sheet contains the equations & correct Cd values for the meter.						
	Per Hunter Rouse 1949 (pg 35)							
	Q = Cd*A*Sqrt(2*g*H)							
	Pipe Diameter			6.020"				
	Orifice Diameter							
	2.023	3.030"	4.032"	5.002"				
d/D	0.336	0.503	0.670	0.831				
Cd	0.631	0.658	0.713	0.870				
Head (in)	Flow in GPM				time [sec]	flow [cfs]	flow [gpm]	head [in]
1	14.6	34.2	65.7	123.3	1	0.274	122.9256	3.5
1.5	17.9	41.9	80.5	151.1	150	0.272	121.9751	
2	20.7	48.4	92.9	174.4	171	0.271	121.8414	
2.5	23.2	54.1	103.9	195.0	199	0.271	121.6629	
3	25.4	59.3	113.8	213.6	233	0.271	121.4459	
3.5	27.4	64.0	122.9	230.7	266	0.270	121.2349	
4	29.3	68.5	131.4	246.7	310	0.270	120.9529	
4.5	31.1	72.6	139.4	261.6	333	0.269	120.8053	
5	32.8	76.5	146.9	275.8	384	0.268	120.4773	
5.5	34.4	80.3	154.1	289.3	420	0.268	120.2452	
6	35.9	83.8	160.9	302.1	507	0.267	119.6825	
6.5	37.3	87.3	167.5	314.5	570	0.266	119.2733	
7	38.8	90.6	173.8	326.3	630	0.265	118.8823	
7.5	40.1	93.7	179.9	337.8	670	0.264	118.621	
8	41.4	96.8	185.8	348.9	690	0.264	118.4901	
8.5	42.7	99.8	191.6	359.6	725	0.264	118.2606	
9	43.9	102.7	197.1	370.0	766	0.263	117.9913	
9.5	45.1	105.5	202.5	380.2	828	0.262	117.5829	
10	46.3	108.2	207.8	390.0	853	0.262	117.4178	
10.5	47.5	110.9	212.9	399.7	960	0.260	116.7086	
11	48.6	113.5	217.9	409.1	1018	0.259	116.3223	
11.5	49.7	116.1	222.8	418.3	1081	0.258	115.9013	
12	50.7	118.6	227.6	427.3	1145	0.257	115.472	
12.5	51.8	121.0	232.3	436.1	1320	0.255	114.29	
13	52.8	123.4	236.9	444.7	1391	0.254	113.807	3
13.5	53.8	125.8	241.4	453.2	1490	0.253	113.7386	
14	54.8	128.1	245.9	461.5	1599	0.253	113.6634	
14.5	55.8	130.3	250.2	469.7	1717	0.253	113.5818	
15	56.7	132.6	254.5	477.7	1856	0.253	113.4857	
15.5	57.7	134.8	258.7	485.6	1980	0.253	113.3998	
16	58.6	136.9	262.8	493.4	2176	0.252	113.264	
16.5	59.5	139.0	266.9	501.0	2343	0.252	113.1482	
17	60.4	141.1	270.9	508.5	2552	0.252	113.0031	
17.5	61.3	143.2	274.9	516.0	2767	0.251	112.8535	
18	62.1	145.2	278.8	523.3	3016	0.251	112.6802	
18.5	63.0	147.2	282.6	530.5	3292	0.251	112.4877	
19	63.8	149.2	286.4	537.6	3722	0.250	112.1871	
19.5	64.7	151.1	290.2	544.6	4140	0.249	111.8941	2.9
20	65.5	153.1	293.8	551.6	4269	0.249	111.6692	
20.5	66.3	155.0	297.5	558.4	4539	0.248	111.1969	
21	67.1	156.8	301.1	565.2	4840	0.247	110.668	
21.5	67.9	158.7	304.7	571.9	5201	0.245	110.0304	
22	68.7	160.5	308.2	578.5	5627	0.243	109.2731	
22.5	69.5	162.4	311.7	585.0	6000	0.242	108.6058	

4" Orifice Plate

4" Orifice Plate

23	70.2	164.1	315.1	591.5		6450	0.240	107.7951		3" Orifice Plate
23.5	71.0	165.9	318.5	597.9		6960	0.238	106.869		
24	71.8	167.7	321.9	604.2		7419	0.236	106.0285		
24.5	72.5	169.4	325.2	610.5		7925	0.234	105.0942		
25	73.2	171.1	328.5	616.7		8570	0.231	103.8911	2.5	
25.5	74.0	172.8	331.8	622.8		9140	0.259	116.0686	11.5	
26	74.7	174.5	335.0	628.9		9750	0.256	115.0548	11.3	
26.5	75.4	176.2	338.2	634.9		12545	0.256	115.0548	11.3	
27	76.1	177.8	341.4	640.9		15203	0.270	121.0098	12.5	
27.5	76.8	179.5	344.6	646.8		257542	0	0		
28	77.5	181.1	347.7	652.6						
28.5	78.2	182.7	350.8	658.4						
29	78.9	184.3	353.8	664.2						
29.5	79.6	185.9	356.9	669.9						
30	80.2	187.5	359.9	675.6						
30.5	80.9	189.0	362.9	681.2						
31	81.6	190.6	365.8	686.7						
31.5	82.2	192.1	368.8	692.2						
32	82.9	193.6	371.7	697.7						
32.5	83.5	195.1	374.6	703.1						
33	84.1	196.6	377.5	708.5						
33.5	84.8	198.1	380.3	713.9						
34	85.4	199.6	383.1	719.2						
34.5	86.0	201.0	385.9	724.4						
35	86.7	202.5	388.7	729.7						
35.5	87.3	203.9	391.5	734.9						
36	87.9	205.4	394.2	740.0						
36.5	88.5	206.8	397.0	745.1						
37	89.1	208.2	399.7	750.2						
37.5	89.7	209.6	402.4	755.3						
38	90.3	211.0	405.0	760.3						
38.5	90.9	212.4	407.7	765.3						
39	91.5	213.7	410.3	770.2						
39.5	92.1	215.1	413.0	775.2						
40	92.6	216.5	415.6	780.1						
40.5	93.2	217.8	418.2	784.9						
41	93.8	219.2	420.7	789.7						
41.5	94.4	220.5	423.3	794.5						
42	94.9	221.8	425.8	799.3						
42.5	95.5	223.1	428.4	804.1						
43	96.1	224.4	430.9	808.8						
43.5	96.6	225.7	433.4	813.5						
44	97.2	227.0	435.8	818.1						
44.5	97.7	228.3	438.3	822.8						
45	98.3	229.6	440.8	827.4						
45.5	98.8	230.9	443.2	832.0						
46	99.3	232.1	445.6	836.5						

Pumping Well Data

												start point	6/12/2006		
	elapsed time [sec]	elapsed time [days]	drawdown	Measured SWL	hour	minute	sec	time	offset [sec]	date & time	Orifice Reading				
Start pump->	0.00	0.000	0.00	254.30	12	9	0	12:09:00	43740	6/12/2006 12:09	3.5 in				
	150.00	0.002	26.70	281.00	12	11	30	12:11:30	43890	6/12/2006 12:11					
	171.00	0.002	27.70	282.00	12	11	51	12:11:51	43911	6/12/2006 12:11					
	199.00	0.002	28.70	283.00	12	12	19	12:12:19	43939	6/12/2006 12:12					
	233.00	0.003	29.70	284.00	12	12	53	12:12:53	43973	6/12/2006 12:12					
	266.00	0.003	30.70	285.00	12	13	26	12:13:26	44006	6/12/2006 12:13					
	310.00	0.004	31.70	286.00	12	14	10	12:14:10	44050	6/12/2006 12:14					
	333.00	0.004	32.70	287.00	12	14	33	12:14:33	44073	6/12/2006 12:14					
	384.00	0.004	33.70	288.00	12	15	24	12:15:24	44124	6/12/2006 12:15	3.5 in				
	420.00	0.005	34.70	289.00	12	16	0	12:16:00	44160	6/12/2006 12:16					
	507.00	0.006	35.70	290.00	12	17	27	12:17:27	44247	6/12/2006 12:17					
	570.00	0.007	36.70	291.00	12	18	30	12:18:30	44310	6/12/2006 12:18					
	630.00	0.007	37.70	292.00	12	19	30	12:19:30	44370	6/12/2006 12:19					
	670.00	0.008	38.70	293.00	12	20	10	12:20:10	44410	6/12/2006 12:20					
	690.00	0.008	39.70	294.00	12	20	30	12:20:30	44430	6/12/2006 12:20					
	725.00	0.008	40.70	295.00	12	21	5	12:21:05	44465	6/12/2006 12:21	3.5 in				
	766.00	0.009	41.70	296.00	12	21	46	12:21:46	44506	6/12/2006 12:21					
	828.00	0.010	42.70	297.00	12	22	48	12:22:48	44568	6/12/2006 12:22					
	853.00	0.010	43.70	298.00	12	23	13	12:23:13	44593	6/12/2006 12:23					
	960.00	0.011	45.70	300.00	12	25	0	12:25:00	44700	6/12/2006 12:25					
	1018.00	0.012	46.70	301.00	12	25	58	12:25:58	44758	6/12/2006 12:25					
	1081.00	0.013	47.70	302.00	12	27	1	12:27:01	44821	6/12/2006 12:27					
	1145.00	0.013	48.70	303.00	12	28	5	12:28:05	44885	6/12/2006 12:28					
	1320.00	0.015	50.70	305.00	12	31	0	12:31:00	45060	6/12/2006 12:31					
	1391.00	0.016	51.70	306.00	12	32	11	12:32:11	45131	6/12/2006 12:32	3.0 in				
	1490.00	0.017	52.70	307.00	12	33	50	12:33:50	45230	6/12/2006 12:33					
	1599.00	0.019	53.70	308.00	12	35	39	12:35:39	45339	6/12/2006 12:35					
	1717.00	0.020	54.70	309.00	12	37	37	12:37:37	45457	6/12/2006 12:37					
	1856.00	0.021	55.70	310.00	12	39	56	12:39:56	45596	6/12/2006 12:39					
	1980.00	0.023	56.70	311.00	12	42	0	12:42:00	45720	6/12/2006 12:42	3.0 in				
	2176.00	0.025	57.70	312.00	12	45	16	12:45:16	45916	6/12/2006 12:45					
	2343.00	0.027	58.70	313.00	12	48	3	12:48:03	46083	6/12/2006 12:48					
	2552.00	0.030	59.70	314.00	12	51	32	12:51:32	46292	6/12/2006 12:51					
	2767.00	0.032	60.70	315.00	12	55	7	12:55:07	46507	6/12/2006 12:55					
	3016.00	0.035	61.70	316.00	12	59	16	12:59:16	46756	6/12/2006 12:59					
	3292.00	0.038	62.70	317.00	13	3	52	13:03:52	47032	6/12/2006 13:03					
	3722.00	0.043	63.70	318.00	13	11	2	13:11:02	47462	6/12/2006 13:11					
	4140.00	0.048	64.70	319.00	13	18	0	13:18:00	47880	6/12/2006 13:18	2.9 in				
	4269.00	0.049	65.70	320.00	13	20	9	13:20:09	48009	6/12/2006 13:20					
	4539.00	0.053	66.70	321.00	13	24	39	13:24:39	48279	6/12/2006 13:24	3.0 in				
	4840.00	0.056	67.70	322.00	13	29	40	13:29:40	48580	6/12/2006 13:29	3.0 in				
	5201.00	0.060	68.70	323.00	13	35	41	13:35:41	48941	6/12/2006 13:35					
	5627.00	0.065	69.70	324.00	13	42	47	13:42:47	49367	6/12/2006 13:42					
	6000.00	0.069	70.70	325.00	13	49	0	13:49:00	49740	6/12/2006 13:49					
	6450.00	0.075	71.70	326.00	13	56	30	13:56:30	50190	6/12/2006 13:56	3.0 in				
	6960.00	0.081	72.70	327.00	14	5	0	14:05:00	50700	6/12/2006 14:05					
	7419.00	0.086	73.70	328.00	14	12	39	14:12:39	51159	6/12/2006 14:12					
	7925.00	0.092	74.70	329.00	14	21	5	14:21:05	51665	6/12/2006 14:21					
	8570.00	0.099	75.70	330.00	14	31	50	14:31:50	52310	6/12/2006 14:31	2.5 in				
	9140.00	0.106	76.70	331.00	14	41	20	14:41:20	52880	6/12/2006 14:41					
	9750.00	0.113	77.70	332.00	14	51	30	14:51:30	53490	6/12/2006 14:51					
	12545.00	0.145	82.70	337.00	15	38	5	15:38:05	56285	6/12/2006 15:38	2.5 in				
	15203.00	0.176	83.70	338.00	16	22	23	16:22:23	58943	6/12/2006 16:22	12.0 in				
	19860.00	0.230	86.70	341.00	17	40	0	17:40:00	63600	6/12/2006 17:40	11.3 in				
	28560.00	0.331	88.70	343.00	20	5	0	20:05:00	72300	6/12/2006 20:05	11.0 in				
	69960.00	0.810	92.70	347.00	31	35	0	7:35:00	113700	6/13/2006 7:35	11.5 in				
	87060.00	1.008	81.70	336.00	36	20	0	12:20:00	130800	6/13/2006 12:20	12.7 in				
	93720.00	1.085	81.70	336.00	38	11	0	14:11:00	137460	6/13/2006 14:11	12.9 in				

4.032" Orifice Plate

Pumping Well Data

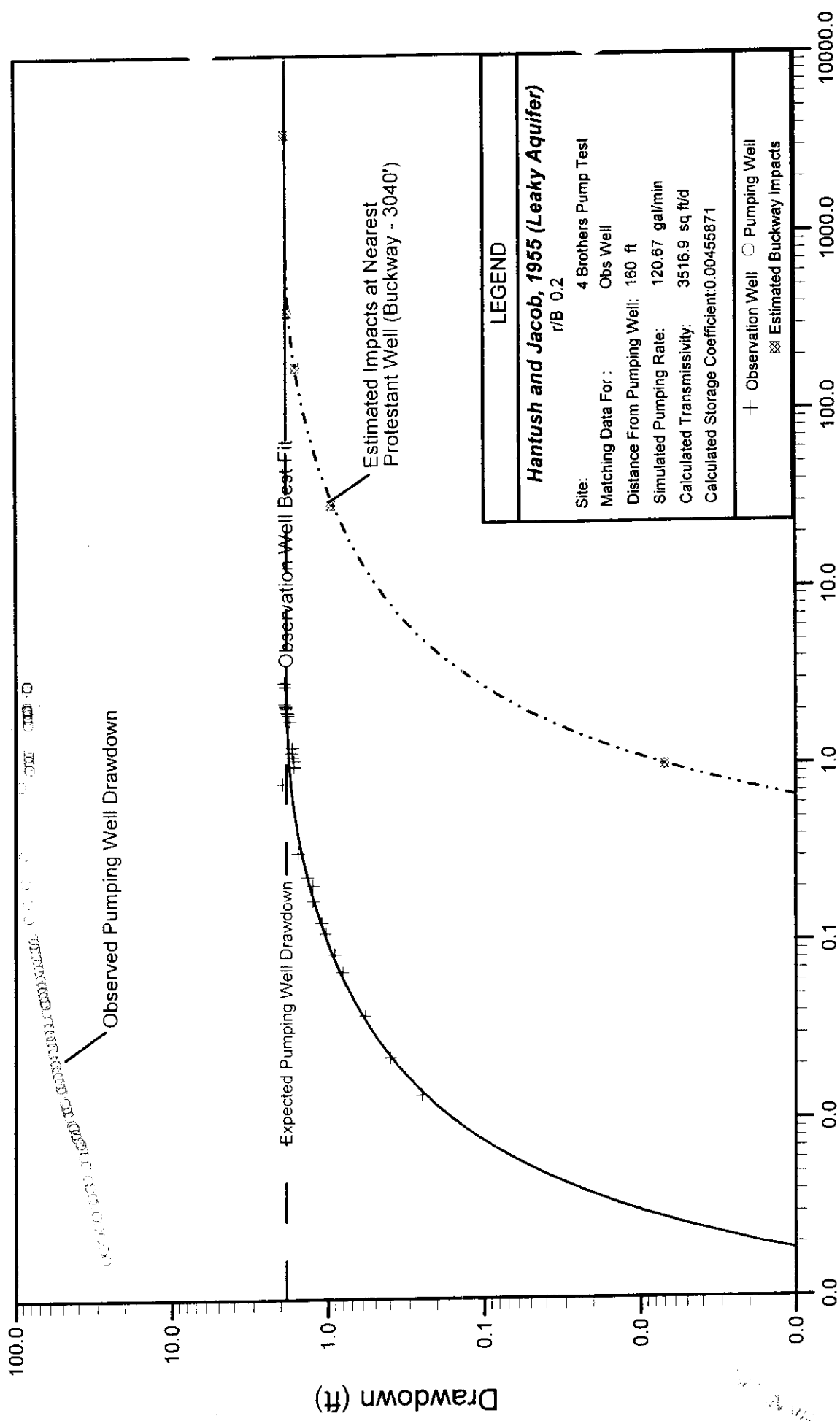
	98580.00	1.141	82.70	337.00	39	32	0	15:32:00	142320	6/13/2006 15:32	12.8 in	3.030" Orifice Plate
	103980.00	1.203	82.50	336.80	41	2	0	17:02:00	147720	6/13/2006 17:02	12.5 in	
	111660.00	1.292	82.20	336.50	43	10	0	19:10:00	155400	6/13/2006 19:10	12.5 in	
	156840.00	1.815	83.20	337.50	55	43	0	7:43:00	200580	6/14/2006 7:43	12.7 in	
	169860.00	1.966	83.60	337.90	59	20	0	11:20:00	213600	6/14/2006 11:20	12.7 in	
	174180.00	2.016	83.60	337.90	60	32	0	12:32:00	217920	6/14/2006 12:32	12.7 in	
	180660.00	2.091	83.70	338.00	62	20	0	14:20:00	224400	6/14/2006 14:20	12.7 in	
	184980.00	2.141	83.90	338.20	63	32	0	15:32:00	228720	6/14/2006 15:32		
	188505.00	2.182	84.37	338.67	64	30	45	16:30:45	232245	6/14/2006 16:30		
	190680.00	2.207	84.49	338.79	65	7	0	17:07:00	234420	6/14/2006 17:07		
	191252.00	2.214	84.53	338.83	65	16	32	17:16:32	234992	6/14/2006 17:16		
	196260.00	2.272	84.70	339.00	66	40	0	18:40:00	240000	6/14/2006 18:40	12.6 in	
	244860.00	2.834	84.70	339.00	80	10	0	8:10:00	288600	6/15/2006 8:10	12.7 in	
	254760.00	2.949	84.20	338.50	82	55	0	10:55:00	298500	6/15/2006 10:55		
	256400.00	2.968	84.53	338.83	83	22	20	11:22:20	300140	6/15/2006 11:22	12.6 in	
STOP pump->	257542.00	2.981	84.55	338.85	83	41	22	11:41:22	301282	6/15/2006 11:41	0.0 in	
	257762.00	2.983	59.70	314.00	83	45	2	11:45:02	301502	6/15/2006 11:45		
	257773.00	2.983	58.70	313.00	83	45	13	11:45:13	301513	6/15/2006 11:45		
	257786.00	2.984	57.70	312.00	83	45	26	11:45:26	301526	6/15/2006 11:45		
	257800.00	2.984	56.70	311.00	83	45	40	11:45:40	301540	6/15/2006 11:45		
	257813.00	2.984	55.70	310.00	83	45	53	11:45:53	301553	6/15/2006 11:45		
	257829.00	2.984	54.70	309.00	83	46	9	11:46:09	301569	6/15/2006 11:46		
	257843.00	2.984	53.70	308.00	83	46	23	11:46:23	301583	6/15/2006 11:46		
	257857.00	2.984	52.70	307.00	83	46	37	11:46:37	301597	6/15/2006 11:46		
	257872.00	2.985	51.70	306.00	83	46	52	11:46:52	301612	6/15/2006 11:46		
	257889.00	2.985	50.70	305.00	83	47	9	11:47:09	301629	6/15/2006 11:47		
	257903.00	2.985	49.70	304.00	83	47	23	11:47:23	301643	6/15/2006 11:47		
	257921.00	2.985	48.70	303.00	83	47	41	11:47:41	301661	6/15/2006 11:47		
	257937.00	2.985	47.70	302.00	83	47	57	11:47:57	301677	6/15/2006 11:47		
	257955.00	2.986	46.70	301.00	83	48	15	11:48:15	301695	6/15/2006 11:48		
	257973.00	2.986	45.70	300.00	83	48	33	11:48:33	301713	6/15/2006 11:48		
	258011.00	2.986	43.70	298.00	83	49	11	11:49:11	301751	6/15/2006 11:49		
	258055.00	2.987	41.70	296.00	83	49	55	11:49:55	301795	6/15/2006 11:49		
	258098.00	2.987	39.70	294.00	83	50	38	11:50:38	301838	6/15/2006 11:50		
	258144.00	2.988	37.70	292.00	83	51	24	11:51:24	301884	6/15/2006 11:51		
	258193.00	2.988	35.70	290.00	83	52	13	11:52:13	301933	6/15/2006 11:52		
	258243.00	2.989	33.70	288.00	83	53	3	11:53:03	301983	6/15/2006 11:53		
	258298.00	2.990	31.70	286.00	83	53	58	11:53:58	302038	6/15/2006 11:53		
	258358.00	2.990	29.70	284.00	83	54	58	11:54:58	302098	6/15/2006 11:54		
	258450.00	2.991	27.70	282.00	83	56	30	11:56:30	302190	6/15/2006 11:56		
	258559.00	2.993	25.70	280.00	83	58	19	11:58:19	302299	6/15/2006 11:58		
	258666.00	2.994	23.70	278.00	84	0	6	12:00:06	302406	6/15/2006 12:00		
	258735.00	2.995	21.70	276.00	84	1	15	12:01:15	302475	6/15/2006 12:01		
	258819.00	2.996	19.70	274.00	84	2	39	12:02:39	302559	6/15/2006 12:02		
	258922.00	2.997	17.70	272.00	84	4	22	12:04:22	302662	6/15/2006 12:04		
	259056.00	2.998	15.70	270.00	84	6	36	12:06:36	302796	6/15/2006 12:06		
	259236.00	3.000	13.70	268.00	84	9	36	12:09:36	302976	6/15/2006 12:09		
	259483.00	3.003	11.70	266.00	84	13	43	12:13:43	303223	6/15/2006 12:13		
	260340.00	3.013	8.12	262.42	84	28	0	12:28:00	304080	6/15/2006 12:28		
	261660.00	3.028	5.70	260.00	84	50	0	12:50:00	305400	6/15/2006 12:50		
	264000.00	3.056	4.90	259.20	85	29	0	13:29:00	307740	6/15/2006 13:29		
	266100.00	3.080	4.30	258.60	86	4	0	14:04:00	309840	6/15/2006 14:04		
	267900.00	3.101	3.80	258.10	86	34	0	14:34:00	311640	6/15/2006 14:34		
	272340.00	3.152	3.30	257.60	87	48	0	15:48:00	316080	6/15/2006 15:48		
	275280.00	3.186	3.00	257.30	88	37	0	16:37:00	319020	6/15/2006 16:37		
	277380.00	3.210	2.90	257.20	89	12	0	17:12:00	321120	6/15/2006 17:12		
	281160.00	3.254	2.50	256.80	90	15	0	18:15:00	324900	6/15/2006 18:15		
	285120.00	3.300	2.10	256.40	91	21	0	19:21:00	328860	6/15/2006 19:21		
	329820.00	3.817	1.35	255.65	103	46	0	7:46:00	373560	6/16/2006 7:46		

Observation Well Data

									start point:	6/12/06
	elapsed time [sec]	elapsed time [days]	drawdown	Measured SWL	hour	minute	sec	time	date/time value	date & time
START pump->	0	0.000	0.00	255.25	12	9	0	12:09:00	43740.00	6/12/06 12:09
	1200	0.014	0.25	255.50	12	29	0	12:29:00	44940.00	6/12/06 12:29
	1950	0.023	0.40	255.65	12	41	30	12:41:30	45690.00	6/12/06 12:41
	3360	0.039	0.58	255.83	13	5	0	13:05:00	47100.00	6/12/06 13:05
	5960	0.069	0.81	256.06	13	48	20	13:48:20	49700.00	6/12/06 13:48
	7485	0.087	0.91	256.16	14	13	45	14:13:45	51225.00	6/12/06 14:13
	9830	0.114	1.03	256.28	14	52	50	14:52:50	53570.00	6/12/06 14:52
	11290	0.131	1.10	256.35	15	17	10	15:17:10	55030.00	6/12/06 15:17
	14990	0.173	1.25	256.50	16	18	50	16:18:50	58730.00	6/12/06 16:18
	18360	0.213	1.25	256.50	17	15	0	17:15:00	62100.00	6/12/06 17:15
	20460	0.237	1.35	256.60	17	50	0	17:50:00	64200.00	6/12/06 17:50
	28260	0.327	1.55	256.80	20	0	0	20:00:00	72000.00	6/12/06 20:00
	69660	0.806	1.95	257.20	31	30	0	7:30:00	113400.00	6/13/06 7:30
	86760	1.004	1.65	256.90	36	15	0	12:15:00	130500.00	6/13/06 12:15
	93660	1.084	1.65	256.90	38	10	0	14:10:00	137400.00	6/13/06 14:10
	98460	1.140	1.68	256.93	39	30	0	15:30:00	142200.00	6/13/06 15:30
	104340	1.208	1.70	256.95	41	8	0	17:08:00	148080.00	6/13/06 17:08
	111600	1.292	1.69	256.94	43	9	0	19:09:00	155340.00	6/13/06 19:09
	156660	1.813	1.75	257.00	55	40	0	7:40:00	200400.00	6/14/06 7:40
	169560	1.963	1.80	257.05	59	15	0	11:15:00	213300.00	6/14/06 11:15
	174060	2.015	1.80	257.05	60	30	0	12:30:00	217800.00	6/14/06 12:30
	176760	2.046	1.83	257.08	61	15	0	13:15:00	220500.00	6/14/06 13:15
	184860	2.140	1.83	257.08	63	30	0	15:30:00	228600.00	6/14/06 15:30
	188885	2.186	1.86	257.11	64	37	5	16:37:05	232625.00	6/14/06 16:37
	190880	2.209	1.87	257.12	65	10	20	17:10:20	234620.00	6/14/06 17:10
	196560	2.275	1.88	257.13	66	45	0	18:45:00	240300.00	6/14/06 18:45
	244560	2.831	1.88	257.13	80	5	0	8:05:00	288300.00	6/15/06 8:05
	254460	2.945	1.89	257.14	82	50	0	10:50:00	298200.00	6/15/06 10:50
	256670	2.971	1.90	257.16	83	26	50	11:26:50	300410.00	6/15/06 11:26
STOP pump->	257542	2.981	1.90	257.16	83	41	22	11:41:22	301282.00	6/15/06 11:41
	258306	2.990	1.81	257.06	83	54	6	11:54:06	302046.00	6/15/06 11:54
	258620	2.993	1.77	257.02	83	59	20	11:59:20	302360.00	6/15/06 11:59
	259100	2.999	1.68	256.93	84	7	20	12:07:20	302840.00	6/15/06 12:07
	260000	3.009	1.58	256.83	84	22	20	12:22:20	303740.00	6/15/06 12:22
	261900	3.031	1.40	256.65	84	54	0	12:54:00	305640.00	6/15/06 12:54
	263940	3.055	1.26	256.51	85	28	0	13:28:00	307680.00	6/15/06 13:28
	265980	3.078	1.15	256.40	86	2	0	14:02:00	309720.00	6/15/06 14:02
	268020	3.102	1.06	256.31	86	36	0	14:36:00	311760.00	6/15/06 14:36
	272460	3.153	0.89	256.14	87	50	0	15:50:00	316200.00	6/15/06 15:50
	275160	3.185	0.80	256.05	88	35	0	16:35:00	318900.00	6/15/06 16:35
	277260	3.209	0.75	256.00	89	10	0	17:10:00	321000.00	6/15/06 17:10
	285660	3.306	0.55	255.80	91	30	0	19:30:00	329400.00	6/15/06 19:30
	329760	3.817	0.20	255.45	103	45	0	7:45:00	373500.00	6/16/06 7:45

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SOUTHERN REGION

Predicted Drawdown



map parameters		NAD83 (Converted to feet)	
basemap origin X	8056260	ft	
basemap origin Y	4287120	ft	
basemap height	40364	ft	
basemap width	50755	ft	
Pumped well (West Well)			
Easting	8079757	ft	
Northing	4306942	ft	
Observation well (East Well)			
Easting	8079915	ft	
Northing	4306939	ft	
Buckway Well			
Easting	8080115	ft	
Northing	4309961	ft	

HANTUSH-4HR.OUT
AQUIFERWIN32 ANALYSIS SUMMARY FILE

Selected Analysis: Hantush and Jacob, 1955 (Leaky Aquifer)

Constant discharge from a fully penetrating well in a leaky aquifer

SITE INFORMATION

Site Designator: 4 Brothers Pump Test
Job Number:
Client: 4 Brothers Dairy, Inc.
Site Name: New Wells
Additional Info:

PUMP TEST DETAILS

Pumping Well Pumping Well

Pumping Rates

Index	Time (d)	Rate (gal/min)
0	1.157407e-005	1.229712e+002
1	1.736111e-003	1.220736e+002
2	1.979167e-003	1.216248e+002
3	2.303241e-003	1.216248e+002
4	2.696759e-003	1.216248e+002
5	3.078704e-003	1.211760e+002
6	3.587963e-003	1.211760e+002
7	3.854167e-003	1.207272e+002
8	4.444444e-003	1.202784e+002
9	4.861111e-003	1.202784e+002
10	5.868056e-003	1.198296e+002
11	6.597222e-003	1.193808e+002
12	7.291667e-003	1.189320e+002
13	7.754630e-003	1.184832e+002
14	7.986111e-003	1.184832e+002
15	8.391204e-003	1.184832e+002
16	8.865741e-003	1.180344e+002
17	9.583333e-003	1.175856e+002
18	9.872685e-003	1.175856e+002
19	1.111111e-002	1.166880e+002
20	1.178241e-002	1.162392e+002
21	1.251157e-002	1.157904e+002
22	1.325231e-002	1.153416e+002
23	1.527778e-002	1.144440e+002
24	1.609954e-002	1.139952e+002
25	1.724537e-002	1.135464e+002
26	1.850694e-002	1.135464e+002
27	1.987269e-002	1.135464e+002
28	2.148148e-002	1.135464e+002
29	2.291667e-002	1.135464e+002
30	2.518519e-002	1.130976e+002
31	2.711806e-002	1.130976e+002
32	2.953704e-002	1.130976e+002
33	3.202546e-002	1.126488e+002
34	3.490741e-002	1.126488e+002
35	3.810185e-002	1.126488e+002
36	4.307870e-002	1.122000e+002
37	4.791667e-002	1.117512e+002
38	4.940972e-002	1.117512e+002

HANTUSH-4HR.OUT

39	5.253472e-002	1.113024e+002
40	5.601852e-002	1.108536e+002
41	6.019676e-002	1.099560e+002
42	6.512731e-002	1.090584e+002
43	6.944444e-002	1.086096e+002
44	7.465278e-002	1.077120e+002
45	8.055556e-002	1.068144e+002
46	8.586806e-002	1.059168e+002
47	9.172454e-002	1.050192e+002
48	9.918981e-002	1.036728e+002
49	1.057870e-001	1.162392e+002
50	1.128472e-001	1.148928e+002
51	1.451968e-001	1.148928e+002
52	1.759606e-001	1.211760e+002
53	2.980810e+000	0.000000e+000

Monitored Wells

Buckway Well
Obs Well
sim-pumping well

ANALYSIS SUMMARY

Number of Points = 31

Manual Match

ANALYSIS PARAMETERS

Radial Distance		
Fixed Value	=	160.036 ft
Pumping Rate		
Fixed Value	=	120.67 gal/min
Transmissivity		
Calculated Value	=	3516.9 sq ft/d
Storage Coefficient		
Calculated Value	=	0.00455871
r/B		
Fixed Value	=	0.2

ANALYSIS STATISTICS

Match Point:

Type Curve: (1.000000e-001, 1.000000e-002)
Data Curve: (8.299597e-004, 5.256431e-003)

Residual Mean	=	-0.006702
Residual Standard Dev.	=	0.068054
Residual Sum of Squares	=	0.144963
Absolute Residual Mean	=	0.049827
Minimum Residual	=	-0.122450
Maximum Residual	=	0.227577

DATA DETAIL

Index	Time	Obs. Drawdown	Calc. Drawdown	Residual
-------	------	---------------	----------------	----------

HANTUSH-4HR.OUT

	(d)	(ft)	(ft)	
0	1.157410e-005	0.000000e+000	0.000000e+000	0.000000e+000
1	1.388889e-002	2.500000e-001	2.375860e-001	1.241399e-002
2	2.256944e-002	4.000000e-001	3.934712e-001	6.528803e-003
3	3.888889e-002	5.800000e-001	6.013638e-001	-2.136379e-002
4	6.898148e-002	8.100000e-001	8.417887e-001	-3.178869e-002
5	8.663194e-002	9.100000e-001	9.397459e-001	-2.974594e-002
6	1.137731e-001	1.030000e+000	1.056586e+000	-2.658550e-002
7	1.306713e-001	1.100000e+000	1.115285e+000	-1.528528e-002
8	1.734954e-001	1.250000e+000	1.232814e+000	1.718609e-002
9	2.125000e-001	1.250000e+000	1.313782e+000	-6.378243e-002
10	2.368056e-001	1.350000e+000	1.355643e+000	-5.642972e-003
11	3.270833e-001	1.550000e+000	1.473340e+000	7.665988e-002
12	8.062500e-001	1.950000e+000	1.722423e+000	2.275769e-001
13	1.004167e+000	1.650000e+000	1.761096e+000	-1.110963e-001
14	1.084028e+000	1.650000e+000	1.772450e+000	-1.224495e-001
15	1.139583e+000	1.680000e+000	1.779283e+000	-9.928320e-002
16	1.207639e+000	1.700000e+000	1.786650e+000	-8.664951e-002
17	1.291667e+000	1.690000e+000	1.794450e+000	-1.044500e-001
18	1.813194e+000	1.750000e+000	1.822705e+000	-7.270505e-002
19	1.962500e+000	1.800000e+000	1.826974e+000	-2.697435e-002
20	2.014583e+000	1.800000e+000	1.828224e+000	-2.822360e-002
21	2.045833e+000	1.830000e+000	1.828922e+000	1.078283e-003
22	2.139583e+000	1.830000e+000	1.830808e+000	-8.082361e-004
23	2.186169e+000	1.860000e+000	1.831641e+000	2.835887e-002
24	2.209259e+000	1.870000e+000	1.832031e+000	3.796934e-002
25	2.275000e+000	1.880000e+000	1.833062e+000	4.693838e-002
26	2.830556e+000	1.880000e+000	1.838509e+000	4.149068e-002
27	2.945139e+000	1.890000e+000	1.839151e+000	5.084879e-002
28	2.970718e+000	1.900000e+000	1.839280e+000	6.072039e-002
29	2.980810e+000	1.900000e+000	1.839329e+000	6.067110e-002
30	2.989653e+000	1.810000e+000	1.839371e+000	-2.937146e-002

WELL NAME - Buckway Well

Number of Points = 6

Manual Match

ANALYSIS PARAMETERS

Radial Distance
Fixed Value = 3039.41 ft

Pumping Rate
Fixed Value = 120.67 gal/min

Transmissivity
Fixed Value = 3514.65 sq ft/d

Storage Coefficient
Fixed Value = 0.00456341

r/B
Fixed Value = 0.2

ANALYSIS STATISTICS

Match Point:

Type Curve: (1.000000e-001, 1.000000e-002)
Data Curve: (2.998657e-001, 5.259790e-003)

Residual Mean = 0.016677
Residual Standard Dev. = 0.017670
Residual Sum of Squares = 0.003542

HANTUSH-4HR.OUT

Absolute Residual Mean = 0.019113
 Minimum Residual = -0.007309
 Maximum Residual = 0.036845

DATA DETAIL

Index	Time (d)	Obs. Drawdown (ft)	Calc. Drawdown (ft)	Residual
0	1.000000e+000	7.000000e-003	6.856235e-003	1.437655e-004
1	3.000000e+001	9.500000e-001	9.220761e-001	2.792394e-002
2	1.800000e+002	1.600000e+000	1.607309e+000	-7.308812e-003
3	3.650000e+002	1.800000e+000	1.763155e+000	3.684451e-002
4	3.650000e+003	1.880000e+000	1.843770e+000	3.622954e-002
5	3.650000e+004	1.850000e+000	1.843771e+000	6.229332e-003

WELL NAME - sim-pumping well

Number of Points = 74

Manual Match

ANALYSIS PARAMETERS

Radial Distance
 Fixed Value = 3 ft

Pumping Rate
 Fixed Value = 120.67 gal/min

Transmissivity
 Fixed Value = 3517.54 sq ft/d

Storage Coefficient
 Calculated Value = 0.0045515

r/B
 Calculated Value = 0.2

ANALYSIS STATISTICS

Match Point:
 Type Curve: (1.000000e-001, 1.000000e-002)
 Data Curve: (2.911369e-007, 5.255462e-003)

Residual Mean = 59.788515
 Residual Standard Dev. = 20.636589
 Residual Sum of Squares = 296039.616984
 Absolute Residual Mean = 59.802992
 Minimum Residual = -0.535651
 Maximum Residual = 90.857746

DATA DETAIL

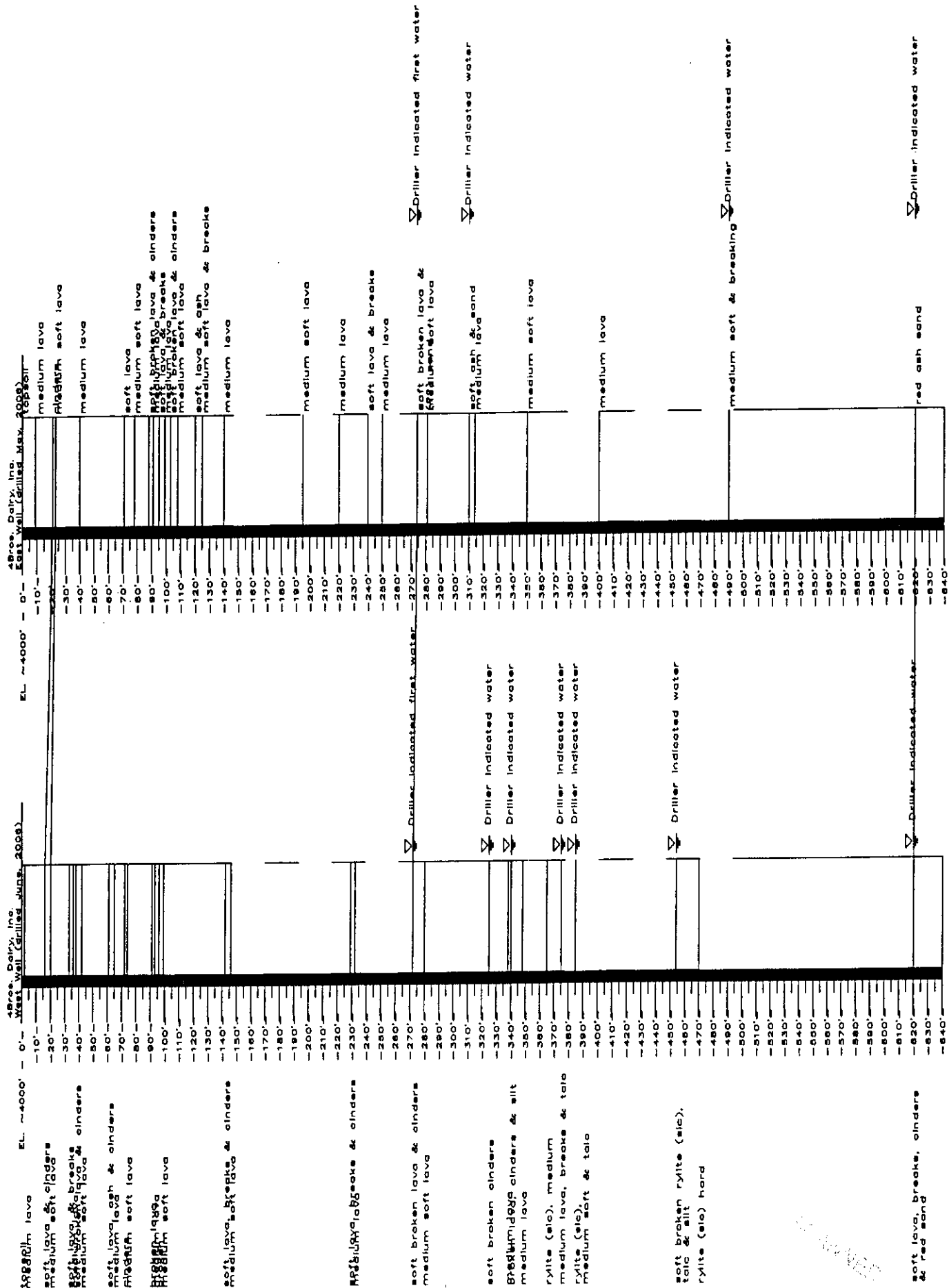
Index	Time (d)	Obs. Drawdown (ft)	Calc. Drawdown (ft)	Residual
0	1.157407e-005	0.000000e+000	5.356512e-001	-5.356512e-001
1	1.736111e-003	2.670000e+001	1.842056e+000	2.485794e+001
2	1.979167e-003	2.770000e+001	1.842177e+000	2.585782e+001
3	2.303241e-003	2.870000e+001	1.842232e+000	2.685777e+001
4	2.696759e-003	2.970000e+001	1.842249e+000	2.785775e+001

HANTUSH-4HR.OUT

5	3.078704e-003	3.070000e+001	1.842252e+000	2.885775e+001
6	3.587963e-003	3.170000e+001	1.842253e+000	2.985775e+001
7	3.854167e-003	3.270000e+001	1.842253e+000	3.085775e+001
8	4.444444e-003	3.370000e+001	1.842254e+000	3.185775e+001
9	4.861111e-003	3.470000e+001	1.842254e+000	3.285775e+001
10	5.868056e-003	3.570000e+001	1.842254e+000	3.385775e+001
11	6.597222e-003	3.670000e+001	1.842254e+000	3.485775e+001
12	7.291667e-003	3.770000e+001	1.842254e+000	3.585775e+001
13	7.754630e-003	3.870000e+001	1.842254e+000	3.685775e+001
14	7.986111e-003	3.970000e+001	1.842254e+000	3.785775e+001
15	8.391204e-003	4.070000e+001	1.842254e+000	3.885775e+001
16	8.865741e-003	4.170000e+001	1.842254e+000	3.985775e+001
17	9.583333e-003	4.270000e+001	1.842254e+000	4.085775e+001
18	9.872685e-003	4.370000e+001	1.842254e+000	4.185775e+001
19	1.111111e-002	4.570000e+001	1.842254e+000	4.385775e+001
20	1.178241e-002	4.670000e+001	1.842254e+000	4.485775e+001
21	1.251157e-002	4.770000e+001	1.842254e+000	4.585775e+001
22	1.325231e-002	4.870000e+001	1.842254e+000	4.685775e+001
23	1.527778e-002	5.070000e+001	1.842254e+000	4.885775e+001
24	1.609954e-002	5.170000e+001	1.842254e+000	4.985775e+001
25	1.724537e-002	5.270000e+001	1.842254e+000	5.085775e+001
26	1.850694e-002	5.370000e+001	1.842254e+000	5.185775e+001
27	1.987269e-002	5.470000e+001	1.842254e+000	5.285775e+001
28	2.148148e-002	5.570000e+001	1.842254e+000	5.385775e+001
29	2.291667e-002	5.670000e+001	1.842254e+000	5.485775e+001
30	2.518519e-002	5.770000e+001	1.842254e+000	5.585775e+001
31	2.711806e-002	5.870000e+001	1.842254e+000	5.685775e+001
32	2.953704e-002	5.970000e+001	1.842254e+000	5.785775e+001
33	3.202546e-002	6.070000e+001	1.842254e+000	5.885775e+001
34	3.490741e-002	6.170000e+001	1.842254e+000	5.985775e+001
35	3.810185e-002	6.270000e+001	1.842254e+000	6.085775e+001
36	4.307870e-002	6.370000e+001	1.842254e+000	6.185775e+001
37	4.791667e-002	6.470000e+001	1.842254e+000	6.285775e+001
38	4.940972e-002	6.570000e+001	1.842254e+000	6.385775e+001
39	5.253472e-002	6.670000e+001	1.842254e+000	6.485775e+001
40	5.601852e-002	6.770000e+001	1.842254e+000	6.585775e+001
41	6.019676e-002	6.870000e+001	1.842254e+000	6.685775e+001
42	6.512731e-002	6.970000e+001	1.842254e+000	6.785775e+001
43	6.944444e-002	7.070000e+001	1.842254e+000	6.885775e+001
44	7.465278e-002	7.170000e+001	1.842254e+000	6.985775e+001
45	8.055556e-002	7.270000e+001	1.842254e+000	7.085775e+001
46	8.586806e-002	7.370000e+001	1.842254e+000	7.185775e+001
47	9.172454e-002	7.470000e+001	1.842254e+000	7.285775e+001
48	9.918981e-002	7.570000e+001	1.842254e+000	7.385775e+001
49	1.057870e-001	7.670000e+001	1.842254e+000	7.485775e+001
50	1.128472e-001	7.770000e+001	1.842254e+000	7.585775e+001
51	1.451968e-001	8.270000e+001	1.842254e+000	8.085775e+001
52	1.759606e-001	8.370000e+001	1.842254e+000	8.185775e+001
53	2.298611e-001	8.670000e+001	1.842254e+000	8.485775e+001
54	3.305556e-001	8.870000e+001	1.842254e+000	8.685775e+001
55	8.097222e-001	9.270000e+001	1.842254e+000	9.085775e+001
56	1.007639e+000	8.170000e+001	1.842254e+000	7.985775e+001
57	1.084722e+000	8.170000e+001	1.842254e+000	7.985775e+001
58	1.140972e+000	8.270000e+001	1.842254e+000	8.085775e+001
59	1.203472e+000	8.250000e+001	1.842254e+000	8.065775e+001
60	1.292361e+000	8.220000e+001	1.842254e+000	8.035775e+001
61	1.815278e+000	8.320000e+001	1.842254e+000	8.135775e+001
62	1.965972e+000	8.360000e+001	1.842254e+000	8.175775e+001
63	2.015972e+000	8.360000e+001	1.842254e+000	8.175775e+001
64	2.090972e+000	8.370000e+001	1.842254e+000	8.185775e+001
65	2.140972e+000	8.390000e+001	1.842254e+000	8.205775e+001
66	2.181771e+000	8.437000e+001	1.842254e+000	8.252775e+001
67	2.206944e+000	8.449000e+001	1.842254e+000	8.264775e+001
68	2.213565e+000	8.453000e+001	1.842254e+000	8.268775e+001
69	2.271528e+000	8.470000e+001	1.842254e+000	8.285775e+001

HANTUSH-4HR.OUT

70	2.834028e+000	8.470000e+001	1.842254e+000	8.285775e+001
71	2.948611e+000	8.420000e+001	1.842254e+000	8.235775e+001
72	2.967593e+000	8.453000e+001	1.842254e+000	8.268775e+001
73	2.980810e+000	8.455000e+001	1.842254e+000	8.270775e+001



Form 238-7
11/97 JGE

IDAHO DEPARTMENT OF WATER RESOURCES

WELL DRILLER'S REPORT

Office Use Only			
Inspected by _____			
Twp _____	Rge _____	Sec _____	
_____ 1/4	_____ 1/4	_____ 1/4	
Lat: _____		Long: _____	

1. WELL TAG NO. D0042887

DRILLING PERMIT NO. 839141

Other IDWR No. 37-20613

2. OWNER:

Name Four Brothers Dairy, Inc.

Address 425 N 250 W

City Shoshone State ID Zip 83352

3. LOCATION OF WELL by legal description:

Sketch map location must agree with written location.

N		Twp. 5		North ☐ or South ☒	
W	E	Rge. 17	East ☒ or West ☐		
		Sec. 5	1/4 SE 1/4 SE 1/4		
		Gov't Lot _____	County Lincoln		
S		Lat _____	Long _____		

Address of Well Site 250 W Rd

City Shoshone

(Give at least name of road - Distance to Road or Landmark)

Lt. _____ Blk. _____ Sub. Name _____

4. USE:

☐ Domestic ☐ Municipal ☐ Monitor ☐ Irrigation
☐ Thermal ☐ Injection ☒ Other commercial/stock

5. TYPE OF WORK: check all that apply (Replacement etc.)

☒ New Well ☐ Modify ☐ Abandonment ☐ Other

6. DRILL METHOD:

☒ Air Rotary ☐ Cable ☐ Mud Rotary ☐ Other

7. SEALING PROCEDURES:

Seal/Filter Pack		AMOUNT		METHOD
Material	From	To	Sacks or Pounds	
shell trap				
bentonite	-1	-20	500 lbs	dry pour

Was drive shoe used? ☒ Y ☐ N Shoe Depth(s) 359' 6"Was drive shoe seal tested? ☐ Y ☒ N How?

8. CASING/LINER:

Diameter	From	To	Gauge	Material	Casing	Liner	Welded	Threaded
8	+1	-339	.250	steel	☒	☐	☒	☐

Length of Headpipe _____ Length of Tailpipe _____

9. PERFORATIONS/SCREENS:

☐ Perforations ☐ Screens
 Method _____ Screen Type _____

From	To	Slot Size	Number	Diameter	Material	Casing	Liner
						☐	☐
						☐	☐
						☐	☐

10. STATIC WATER LEVEL OR ARTESIAN PRESSURE:

252 ft. below ground Artesian pressure _____ lb.

Depth flow encountered _____ ft. Describe access port or control devices: well cap

11. WELL TESTS:

☐ Pump ☐ Bailer ☐ Air ☐ Flowing Artesian

Yield gal./min.	Drawdown	Pumping Level	Time

Water Temp. <85 Bottom hole temp. <85

Water Quality test or comments:

Depth first Water Encounter 272

12. LITHOLOGIC LOG: (Describe repairs or abandonment)

Bore Dia.	From	To	Remarks: Lithology, Water Quality & Temperature	Water Y	N
11	0	2	top soil		
11	2	16	medium lava		
11	16	20	soft lava & cinders		
11	20	33	medium soft lava		
11	33	36	soft lava & breaks		
11	36	38	medium lava		
11	38	42	soft broken lava & cinders		
11	42	61	medium soft lava		
11	61	65	soft lava, ash & cinders		
11	65	72	medium lava		
11	72	74	cinders		
11	74	91	medium soft lava		
11	91	93	broken lava		
11	93	96	medium lava		
11	96	99	broken		
11	99	142	medium soft lava		
11	142	146	soft lava, breaks & cinders		
11	146	229	medium soft lava		
11	229	232	soft lava, breaks & cinders		
11	232	272	medium lava		
11	272	280	soft broken lava & cinders	X	
11	280	325	medium soft lava		
11	325	338	soft broken cinders	X	
11/8	338	340	medium lava		
8	340	348	broken lava, cinders & silt	X	
8	348	365	medium lava		
8	365	375	rylite medium		
8	375	385	medium lava, breaks & talc	X	
8	385	454	rylite medium soft & talc	X	
8	454		soft broken rylite, talc &		
		470	silt	X	
8	470	620	rylite hard		
8	620		soft lava, breaks, cinders		
		640	& red sand	X	

Completed Depth 640 (630)

(Measurable)

Date: Started 6/2/2006

Completed 6/6/2006

13. DRILLER'S CERTIFICATION:

I/We certify that all minimum well construction standards were complied with at the time the rig was removed.

Company Name Eaton Drilling & pump Service, Inc.

Firm No. 26

Firm Official _____

Date 6/20/2006

and

Driller or Operator _____

Date 6/20/2006

(Sign once if Firm Official & Operator)

PUMPED WELL

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MAY 30 2006

Form 238-7
11/97 JGE

IDAHO DEPARTMENT OF WATER RESOURCES

WELL DRILLER'S REPORT

1. WELL TAG NO. D 0042848
DRILLING PERMIT NO. 839142
Other IDWR No. 409485

2. OWNER:
Name: 4 Bros Dairy
Address: 425 N 250 W
City: Shoshone State: ID Zip: 83351

3. LOCATION OF WELL by legal description:
Sketch map location must agree with written location.

Map showing Township, Range, Section, and County. Township: 5, Range: 17, Section: 5, County: Latah. Address of Well Site: 250 W RD, City: Shoshone ID.

4. USE:
☐ Domestic ☐ Municipal ☐ Monitor ☐ Irrigation
☐ Thermal ☐ Injection ☒ Other: Commercial

5. TYPE OF WORK: check all that apply
☒ New Well ☐ Modify ☐ Abandonment ☐ Other

6. DRILL METHOD:
☒ Air Rotary ☐ Cable ☐ Mud Rotary ☐ Other

7. SEALING PROCEDURES:
Material: Bentonite From: -5 To: -22 Depth: 17' Method: Dry pack
Was drive shoe used? ☒ Y ☐ N Shoe Depth(s): 236 ft
Was drive shoe well tested? ☐ Y ☐ N How?

11. WELL TESTS:

Yield gal/min	Drawdown	Pumping Level	Time

Water Temp: 48.5
Water Quality test or comments:
Bottom hole temp: 48.5
Depth first Water Encounter:

12. LITHOLOGIC LOG: (Describe repairs or abandonment)

Depth	From	To	Remarks: Lithology, Water Quality & Temperature	Y	N
1	0	1	Top soil		
1	1	2	mod. loam		
2	2	3	clay loam		
3	3	4	mod. sub. loam		
4	4	5	mod. clay		
5	5	6	Soft clay		
6	6	7	mod. clay loam		
7	7	8	mod. clay loam		
8	8	9	mod. clay loam		
9	9	10	mod. clay loam		
10	10	11	mod. clay loam		
11	11	12	mod. clay loam		
12	12	13	mod. clay loam		
13	13	14	mod. clay loam		
14	14	15	mod. clay loam		
15	15	16	mod. clay loam		
16	16	17	mod. clay loam		
17	17	18	mod. clay loam		
18	18	19	mod. clay loam		
19	19	20	mod. clay loam		
20	20	21	mod. clay loam		
21	21	22	mod. clay loam		
22	22	23	mod. clay loam		
23	23	24	mod. clay loam		
24	24	25	mod. clay loam		
25	25	26	mod. clay loam		
26	26	27	mod. clay loam		
27	27	28	mod. clay loam		
28	28	29	mod. clay loam		
29	29	30	mod. clay loam		
30	30	31	mod. clay loam		
31	31	32	mod. clay loam		
32	32	33	mod. clay loam		
33	33	34	mod. clay loam		
34	34	35	mod. clay loam		
35	35	36	mod. clay loam		
36	36	37	mod. clay loam		
37	37	38	mod. clay loam		
38	38	39	mod. clay loam		
39	39	40	mod. clay loam		
40	40	41	mod. clay loam		
41	41	42	mod. clay loam		
42	42	43	mod. clay loam		
43	43	44	mod. clay loam		
44	44	45	mod. clay loam		
45	45	46	mod. clay loam		
46	46	47	mod. clay loam		
47	47	48	mod. clay loam		
48	48	49	mod. clay loam		
49	49	50	mod. clay loam		
50	50	51	mod. clay loam		
51	51	52	mod. clay loam		
52	52	53	mod. clay loam		
53	53	54	mod. clay loam		
54	54	55	mod. clay loam		
55	55	56	mod. clay loam		
56	56	57	mod. clay loam		
57	57	58	mod. clay loam		
58	58	59	mod. clay loam		
59	59	60	mod. clay loam		
60	60	61	mod. clay loam		
61	61	62	mod. clay loam		
62	62	63	mod. clay loam		
63	63	64	mod. clay loam		
64	64	65	mod. clay loam		
65	65	66	mod. clay loam		
66	66	67	mod. clay loam		
67	67	68	mod. clay loam		
68	68	69	mod. clay loam		
69	69	70	mod. clay loam		
70	70	71	mod. clay loam		
71	71	72	mod. clay loam		
72	72	73	mod. clay loam		
73	73	74	mod. clay loam		
74	74	75	mod. clay loam		
75	75	76	mod. clay loam		
76	76	77	mod. clay loam		
77	77	78	mod. clay loam		
78	78	79	mod. clay loam		
79	79	80	mod. clay loam		
80	80	81	mod. clay loam		
81	81	82	mod. clay loam		
82	82	83	mod. clay loam		
83	83	84	mod. clay loam		
84	84	85	mod. clay loam		
85	85	86	mod. clay loam		
86	86	87	mod. clay loam		
87	87	88	mod. clay loam		
88	88	89	mod. clay loam		
89	89	90	mod. clay loam		
90	90	91	mod. clay loam		
91	91	92	mod. clay loam		
92	92	93	mod. clay loam		
93	93	94	mod. clay loam		
94	94	95	mod. clay loam		
95	95	96	mod. clay loam		
96	96	97	mod. clay loam		
97	97	98	mod. clay loam		
98	98	99	mod. clay loam		
99	99	100	mod. clay loam		

590 bowl

RESERVATION 1/11

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
WELL DRILLER'S REPORT

APR 23 1993

TYPEWRITER OR
BALLPOINT PENState law requires that this report be filed with the Director, Department of Water Resources
within 30 days after the completion or abandonment of the well.

1. WELL OWNER

Name JESSE BUCKMAN
Address 584 N. 250 W. SHOSHONE ID
Drilling Permit No. 37-93-S-0042-000
Water Right Permit No. A37-10237

7. WATER LEVEL

Static water level 268 feet below land surface.
Flowing? ☐ Yes ☒ No G.P.M. flow _____
Artesian closed-in pressure _____ p.s.i.
Controlled by: ☐ Valve ☐ Cap ☐ Plug
Temperature _____ °F. Quality _____
Describe erosion or temperature zones below.

2. NATURE OF WORK

- ☐
- New well
- ☐
- Deepened
- ☒
- Replacement
-
- ☐
- Well diameter increase
- ☐
- Modification
-
- ☐
- Abandoned (describe abandonment or modification procedures
-
- such as liners, screen, materials, plug depths, etc. in lithologic
-
- log, section 8.)

8. WELL TEST DATA

☐ Pump ☐ Bailor ☒ Air ☐ Other _____

Discharge G.P.M.	Pumping Level	Hours Pumped
<u>30</u>	<u>330</u>	<u>1</u>

3. PROPOSED USE

- ☒
- Domestic
- ☐
- Irrigation
- ☐
- Monitor
-
- ☐
- Industrial
- ☐
- Stock
- ☐
- Waste Disposal or Injection
-
- ☐
- Other _____ (specify type)

9. LITHOLOGIC LOG

103772

Bore Diam.	Depth		Material	Water	
	From	To		Yes	No
8	0	7	TOP SOIL		
8	7	10	HARD BLACK LAVA		
26	10	60	BLACK LAVA		
6	60	66	RED CLAY + LAVA		
6	66	84	BROWN CLAY + BIK LAVA		
6	84	112	RED LAVA		
6	112	140	BROWN CLAY + BIK LAVA		
6	140	150	BLACK LAVA		
6	150	200	BROWN CLAY + BIK LAVA		
6	200	217	RED LAVA		
6	217	270	BROWN CLAY + BIK LAVA		
6	270	285	BIK LAVA		
6	285	290	RED LAVA SAND + BROWN CLAY		
6	290	300	GREY LAVA		
6	300	320	RED LAVA + BROWN CLAY		
6	320	360	BIK LAVA, BROWN CLAY, RED LAVA, RED SAND		
6	360	370	RED LAVA		
6	370	378	BIK LAVA		
6	378	388	BROWN CLAY, RED LAVA		
6	388	394	BIK LAVA		
6	394	400	RED LAVA (CRUISE NO RETURN)		
6	400	440	BIK LAVA + TAC		

4. METHOD DRILLED

- ☒
- Rotary
- ☐
- Air
- ☐
- Auger
- ☐
- Reverse rotary
-
- ☐
- Cable
- ☐
- Mud
- ☐
- Other _____
-
- (backhoe, hydraulic, etc.)

5. WELL CONSTRUCTION

Casing schedule: ☒ Steel ☐ Concrete ☐ Other _____Thickness _____ Diameter _____
250 inches 6 inches + 1 1/2 feet 404 feet
_____ inches _____ inches _____ feet _____ feet
_____ inches _____ inches _____ feet _____ feetWas casing drive shoe used? ☐ Yes ☒ NoWas a packer or seal used? ☐ Yes ☒ NoPerforated? ☐ Yes ☒ NoHow perforated? ☐ Factory ☐ Knife ☐ Torch ☐ Gun

Size of perforation? _____ inches by _____ inches

Number _____ From _____ To _____

_____ perforations _____ feet _____ feet

_____ perforations _____ feet _____ feet

_____ perforations _____ feet _____ feet

Well screen installed? ☐ Yes ☒ No

Manufacturer _____ Type _____

Top Packer or Headpipe _____

Bottom of Tailpipe _____

Diameter _____ Slot size _____ Set from _____ feet to _____ feet

Diameter _____ Slot size _____ Set from _____ feet to _____ feet

Gravel packed? ☐ Yes ☒ No ☐ Size of gravel _____

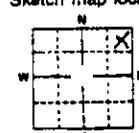
Placed from _____ feet to _____ feet

Surface seal depth 1 Material used in seal: ☐ Cement grout☒ Bentonite ☐ Puddling clay ☐ _____Sealing procedure used: ☐ Slurry pit☐ Temp. surface casing ☒ Overbore to seal depthMethod of joining casing: ☐ Threaded ☒ Welded☐ Solvent Weld ☐ Cemented between strata

Describe access port _____

6. LOCATION OF WELL

Sketch map location must agree with written location.



Subdivision Name _____

Lot No. _____ Block No. _____

County LINCOLNAddress of Well Site 584 N 250 W SHOSHONE

(give at least name of road)

T. 5 N ☐ or S ☒NE 1/4 NE 1/4 Sec. 5 R. 17 E ☐ or W ☒

10.

Work started 3-24-93 finished 3-30-93

11. DRILLER'S CERTIFICATION

I/We certify that all minimum well construction standards were
complied with at the time the rig was removed.Firm Name WOOD RIVER DRILLING & PUMP 265

BOX 837

Address BELLEVUE, ID 83313Signed by Drilling Supervisor Ken Smithand ROD McLANE

(Operator)

(If different than the Drilling Supervisor)

2
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MAY 16 2006

DEPARTMENT OF
WATER RESOURCES

ROBERT E. WILLIAMS

IDAHO STATE BAR NO. 1693

FREDERICKSEN, WILLIAMS, MESERVY & LOTHSPREICH, LLP

Attorneys at Law

117 South Adams Street

P. O. Box 168

Jerome, Idaho 83338

Telephone: (208) 324-2303

Facsimile: (208) 324-3135

Idaho State Bar No. 1693

Attorneys for Applicant 4 Bros. Dairy, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
TRANSFER 71607 IN THE NAME OF 4
BROS. DAIRY, INC.

RESPONSE TO LINCOLN COUNTY
RURAL COUNCIL'S EXCEPTIONS TO
RECOMMENDED ORDER

COMES NOW the Applicant, through its attorney of record, Robert E. Williams of the firm Frederickson, Williams, Meservy & Lothspeich, LLP, and responds to the Lincoln County Rural Council's Exceptions to Recommended Order, filed on April 21st, 2006, as follows:

1. Lincoln County Rural Council, one of the Protestants herein (hereinafter referred to as "Lincoln County") contends that the Department should deny the application for the reason that the CAFO Siting Registration document offered into evidence as Exhibit No. 18 did not contain the full legal description of the real property on which the CAFO was located or operated. This point was addressed by the Hearing Officer in a footnote to

the findings of fact, and is not one of the findings of fact. The purpose of offering the Exhibit was to establish that the Applicants had a permit to operate a dairy in the area where its dairy facilities are located. Lincoln County observed correctly that the accuracy of the siting registration document is not within the local public interest definition of Idaho Code § 42-202(b), where the "local public interest" is defined as:

"...the interest that the people in the area directly effected by a proposed water use have in the effects of such use on the public water resource".

Whether the legal description of the CAFO Registration document is accurate is not within the "local public interest" as defined. The Department has no authority to expand jurisdiction with respect to the determination of the local public interest, or to redefine the term. If Lincoln County believes the Siting Registration Statement to be inaccurate, it should address its concerns to the appropriate zoning authorities, not the Department of Water Resources.

2. Lincoln County next contends that evidence supporting findings as to the volume of historical use of the irrigation water at the "to" well is inadequate. There is substantial evidence in the record from Dr. Brockway and the transfer application file, that the "to" well site had been historically used for the irrigation of pasture, among other crops. Substantial evidence, in the administrative context;

(a) has been defined as "...relevant evidence that a reasonable mind might accept to support a conclusion...";

(b) is said to be, "...less than a preponderance of evidence, but more than a mere scintilla.";

(c) need not be uncontradicted, nor necessarily lead to a certain conclusion, but

need only "... be of a sufficient quantity and probative value that reasonable minds could reach the same conclusion as the fact finder." Chisholm vs Idaho Department of Water Resources, 142 Idaho 159, 125 P.3d 515, at 520 (Idaho, 2005)

Findings are sufficient when they are supported by substantial and competent evidence. *Id.* at 520. There is substantial evidence in the record supporting the findings regarding the quantity of the historical use of the water. Lincoln County's position is really nothing more than an expression of disappointment at findings it wishes had been made differently.

3. Lincoln County's contention that the Hearing Officer incorrectly determined that no enlargement would be produced by the Application evidences a lack of understanding of basic concepts regarding enlargement criteria. Lincoln County essentially argues that unless the Hearing Officer determines that the same molecules of water that would have been present at the "to" site, absent the transfer, would be found at the "from" site, that an enlargement has occurred. Under Lincoln County's theory, no applicant upstream (or as here, upgradient) could ever successfully obtain a transfer because the molecules of water at the "to" site could never reach the "from" site. The enlargement analysis (Exhibit 13) in the record, and the Applicant's willingness to accept the mitigation of 25% of the volume of the consumptive use at the "to" site as a result of the analysis of the affect of the transfer on certain reaches of the Snake River under the new transfer tool, constitutes substantial evidence that no enlargement will be created by the transfer, at either the local or regional level. The record contains a plethora of evidence that, at the end of the day, no more water will be consumptively used as a result of the transfer than was previously consumptively used. No enlargement will be produced by this transfer, and the existing order is correct on

this point.

4. There is substantial evidence in the record that the Applicant will comply with the rules of the Department of Agriculture regarding the management of its waste water. There is no evidence in the record that the Applicant will not comply with those rules, or that the rules are inadequate to protect the quality of the ground or surface water. The primary responsibility for protecting the quality of the waters of the state is that job of the Department of Environmental Quality and other partner agencies, such as the Department of Agriculture. Conditioning the transfer on compliance with their rules is more than adequate protection of the public and the Protestant with regard to water quality. If Lincoln County believes that the Applicant has violated rules of the Department of Agriculture regarding the management of its waste, it can bring an appropriate proceeding with the Department of Agriculture, or a proceeding with the Department of Water Resources, seeking rescission or enforcement of the approved transfer. Nothing suggests that these remedies are inadequate to protect the interest of the Protestant, or other members of the public, in protecting the quality of any water right.

5. There is substantial evidence in the record that the proposed transfer would not quantitatively injure any other water right, local or otherwise. The findings of the Department need only be supported by substantial evidence. Exhibit No. 10 demonstrates no injury to local water rights in the vicinity of the "to" well. The Hearing Officer found that the Applicant's theory as to the nature of the local aquifer was the correct one. Protestant's evidence of injury was thereby implicitly rejected. The findings of no localized injury are supported by substantial evidence in the record. The Hearing Officer added further

protection concerning quantitative injury by requiring a well test in the order.

6. The Applicant's well interference study (Exhibit 10) demonstrated de minimus impact on wells in the vicinity of the "to" site, including all individual Protestant wells. The uncontradicted testimony in the record is that at further distances from the "to" site, no impact on well levels would be present. Lincoln County does not identify any specific water right that will be injured by the proposed transfer. Instead, it invites the Hearing Officer to determine that a host of de minimus impacts to many unidentified water rights should be "cumulated" to reach a finding of material impact. Lincoln County cites no authority for such an unorthodox view and fails to point to any evidence in the record as to a single water right that would suffer from the "cumulative effect" or how such effect would be calculated. Perhaps this is because there is no evidence in the record to support these contentions.

CONCLUSION

For all of the above reasons, the Applicant requests that the exceptions taken by Lincoln County be rejected and that the Recommended Decision and Order issued in this matter be allowed to become a final order, pursuant to Rule 740 of the Rules of Procedure of the Department.

Respectfully submitted this 12th day of May, 2006.

FREDERICKSEN, WILLIAMS, MESERVY
& LOTH SPEICH, LLP

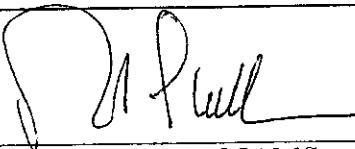


ROBERT E. WILLIAMS
Attorney for 4 Bros Dairy, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 12th day of May, 2006, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

IDWR Document Repository PO Box 83720 Boise ID 83720-0098	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Allen D. Merritt IDWR – Southern Region 1341 Fillmore St Ste 200 Twin Falls ID 83301	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☒ Facsimile ☐ Federal Express
Elizabeth Tews 680 North 350 West Shoshone, Idaho 83352	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Henry and Janene Buckway 585 North 250 West Shoshone, Idaho 83352	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Bev Ashton 685 North 250 West Shoshone, Idaho 83352	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Jerry and Susan Westendorf 707 West 470 North Shoshone, Idaho 83352	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Russell and Pamela Pantone 745 North 550 West Shoshone, Idaho 83352	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Lincoln County Rural Council c/o Rich Carlson Post Office Box 21 Filer, Idaho 83328	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express


 ROBERT E. WILLIAMS

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MAY 12 2006

DEPARTMENT OF
WATER RESOURCES

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Attorneys for Applicant 4 Bros. Dairy, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
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BROS. DAIRY, INC.

RESPONSE TO LINCOLN COUNTY
RURAL COUNCIL'S EXCEPTIONS TO
RECOMMENDED ORDER

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Findings are sufficient when they are supported by substantial and competent evidence. *Id.* at 520. There is substantial evidence in the record supporting the findings regarding the quantity of the historical use of the water. Lincoln County's position is really nothing more than an expression of disappointment at findings it wishes had been made differently.

3. Lincoln County's contention that the Hearing Officer incorrectly determined that no enlargement would be produced by the Application evidences a lack of understanding of basic concepts regarding enlargement criteria. Lincoln County essentially argues that unless the Hearing Officer determines that the same molecules of water that would have been present at the "to" site, absent the transfer, would be found at the "from" site, that an enlargement has occurred. Under Lincoln County's theory, no applicant upstream (or as here, upgradient) could ever successfully obtain a transfer because the molecules of water at the "to" site could never reach the "from" site. The enlargement analysis (Exhibit 13) in the record, and the Applicant's willingness to accept the mitigation of 25% of the volume of the consumptive use at the "to" site as a result of the analysis of the affect of the transfer on certain reaches of the Snake River under the new transfer tool, constitutes substantial evidence that no enlargement will be created by the transfer, at either the local or regional level. The record contains a plethora of evidence that, at the end of the day, no more water will be consumptively used as a result of the transfer than was previously consumptively used. No enlargement will be produced by this transfer, and the existing order is correct on

this point.

4. There is substantial evidence in the record that the Applicant will comply with the rules of the Department of Agriculture regarding the management of its waste water. There is no evidence in the record that the Applicant will not comply with those rules, or that the rules are inadequate to protect the quality of the ground or surface water. The primary responsibility for protecting the quality of the waters of the state is that job of the Department of Environmental Quality and other partner agencies, such as the Department of Agriculture. Conditioning the transfer on compliance with their rules is more than adequate protection of the public and the Protestant with regard to water quality. If Lincoln County believes that the Applicant has violated rules of the Department of Agriculture regarding the management of its waste, it can bring an appropriate proceeding with the Department of Agriculture, or a proceeding with the Department of Water Resources, seeking rescission or enforcement of the approved transfer. Nothing suggests that these remedies are inadequate to protect the interest of the Protestant, or other members of the public, in protecting the quality of any water right.

5. There is substantial evidence in the record that the proposed transfer would not quantitatively injure any other water right, local or otherwise. The findings of the Department need only be supported by substantial evidence. Exhibit No. 10 demonstrates no injury to local water rights in the vicinity of the "to" well. The Hearing Officer found that the Applicant's theory as to the nature of the local aquifer was the correct one. Protestant's evidence of injury was thereby implicitly rejected. The findings of no localized injury are supported by substantial evidence in the record. The Hearing Officer added further

protection concerning quantitative injury by requiring a well test in the order.

6. The Applicant's well interference study (Exhibit 10) demonstrated de minimus impact on wells in the vicinity of the "to" site, including all individual Protestant wells. The uncontradicted testimony in the record is that at further distances from the "to" site, no impact on well levels would be present. Lincoln County does not identify any specific water right that will be injured by the proposed transfer. Instead, it invites the Hearing Officer to determine that a host of de minimus impacts to many unidentified water rights should be "cumulated" to reach a finding of material impact. Lincoln County cites no authority for such an unorthodox view and fails to point to any evidence in the record as to a single water right that would suffer from the "cumulative effect" or how such effect would be calculated. Perhaps this is because there is no evidence in the record to support these contentions.

CONCLUSION

For all of the above reasons, the Applicant requests that the exceptions taken by Lincoln County be rejected and that the Recommended Decision and Order issued in this matter be allowed to become a final order, pursuant to Rule 740 of the Rules of Procedure of the Department.

Respectfully submitted this 12th day of May, 2006.

FREDERICKSEN, WILLIAMS, MESERVY
& LOTHSPREICH, LLP



ROBERT E. WILLIAMS
Attorney for 4 Bros Dairy, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 12th day of May, 2006, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

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Allan D. Merritt IDWR – Southern Region 1341 Fillmore St Ste 200 Twin Falls ID 83301	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☒ Facsimile ☐ Federal Express
Elizabeth Tews 680 North 350 West Shoshone, Idaho 83352	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
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Jerry and Susan Westendorf 707 West 470 North Shoshone, Idaho 83352	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Russell and Pamela Pantone 745 North 550 West Shoshone, Idaho 83352	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Lincoln County Rural Council c/o Rich Carlson Post Office Box 21 Filer, Idaho 83328	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express


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FAX COVER SHEET

To: Idaho Department of Water Resources
Attn: Victoria Wygle
Peter Anderson, Hearing Officer
Fax No.: 208-287-6700
From: Robert E. Williams
Subject: 4 Bros. Dairy Transfer
Date: May 12, 2006

Response to Lincoln County Rural Council's Exceptions to Recommended Order.

If there are any questions, please contact this office at 208-324-2303.

No. of Pages Transmitted: 7, including cover page

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Attorney for Lincoln County Rural Council

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

In the Matter of Application for	)	LINCOLN COUNTY
Transfer No. 71607 in the name of	)	RURAL COUNCIL'S
4 Bros. Dairy, Inc.,	)	EXCEPTIONS TO
Applicant,	)	RECOMMENDED ORDER
	)	AND DENIAL OF PETITION
Lincoln County Rural Council,	)	FOR RECONSIDERATION
Protestant.	)	

The protestant Lincoln County Rural Council (LCRC), through its attorney, Richard A. Carlson, hereby takes exceptions to the Department's Recommended Decision and Order dated March 20, 2006 and its summary denial of a Petition for Reconsideration dated April 7, 2006. The LCRC requests that the Director review those decisions pursuant to Rule 720 of the Idaho Department of Water Resources for the following reasons:

1. The applicants offered into evidence what appears on its face to be an official Lincoln County CAFO "Siting Registration" document containing a legal description where CAFO operations were authorized. (Ex. 18, p.2) While the Department may no longer consider compliance with local zoning laws to be within the scope of the Department's public interest review in the context of a transfer case, it was the applicant who first "opened the door" with the exhibit. Protestant contends that it is not in the local public interest to allow a transfer that would, in effect, facilitate an unauthorized local land use.

The Hearing Officer addressed this issue in his decision where he wrote the following: "A question was raised whether the legal description under the CAFO registration was sufficient to cover the expansion. **The undisputed testimony was that it was**". (Decision, p.9, fn.5 . Bold added) The Hearing Officer's conclusion on this point is directly contradicted by the evidence. The section of ground where applicant has already begun to expand its operation and where the new proposed points of diversion are located are clearly outside the boundaries Lincoln County has authorized.

2. The decision contains a discussion concerning evidence in the record of the "highest consumptive use" of the water right applicants want to transfer. (Decision, pp. 9-10) The Protestant contends that the record did not contain adequate proof of historic

crop production at the “from” well place of use (the McCowan place) as required by the department’s policies.¹ Instead, the decision relied upon undocumented testimony from Dr. Brockway that he had reviewed air photos (not in evidence) that he thought showed that there had been irrigated pasture on some indeterminate number of acres at the McCowan farm sometime in the past ten years. If there even had been a “pasture” crop grown, there was no evidence of how long the “pasture” crop was irrigated (it may have been just a temporary cover crop). Dr. Brockway’s testimony did not meet the standards of evidence required by Department policy. Other documentary evidence of actual water diversions at the “from” well provide a more reliable basis for calculating historic consumptive use and should have been the basis for making the determination of what that was.

3. The Hearing Officer failed to address (either in his decision or upon requested reconsideration) important Department precedents relating to the issue of whether or not the proposed transfer would constitute an enlargement (amounting to a new appropriation of water) of the water right involved in this case.² Protestant’s written closing argument summarized its contention on this point as follows:

“Enlargement- New Appropriation

From the Department’s own map of ground water elevations in the ESPA it is clear that the aquifer at both the “from” and “to” wells flows in a southwesterly direction. In response to several questions about that exhibit Dr. Brockway conceded that water not pumped at the “from” well was not likely to reach the location of the “to” well and therefore would not be available for diversion. Mr. Drury’s testimony was consistent on the point.

In at least two prior cases the Department has held that in order to avoid what would otherwise amount to a new appropriation of water in the ESPA, a transfer applicant had to prove that the water not pumped at a “from” well would be available for diversion at the “to” well.³ Both cases involved attempts to transfer ground water rights from Bingham County, in one case to a location in the City of Jerome, in the other case to a site in the Bell Rapids area of Twin Falls County.

The principle involved and applied in those cases is applicable here: unless it can be shown that water not pumped at a “from” well becomes available at the “to” well, allowing such a transfer constitutes a new appropriation of water, an enlargement, and injury to other water rights. The Department put it this way in the Jerome Cheese transfer case:

¹ “Transfer Processing Policies & Procedures”, Karl Dreher and Norm Young (Oct. 2002), p. 23.

² The parties agreed that the Department should take official notice of the cases, copies of which were going to be offered by protestants and had been marked EX. 117. The cases are: Transfer No. 5804 in the Name of David Bloxham and Transfer No. 5436 in the Name of Jerome Cheese Co.

“6. The moratorium designated by the Department on May 15, 1992 for the Snake Plain Aquifer was issued to prevent further development of water resources on the plain in order to protect water rights and to ensure compliance with provisions of chapter 2, title 42, Idaho Code.

7. The proposed point of diversion by the applicant for the cheese plant is within the Snake Plain Aquifer area. Since only a small unquantified portion of ground water which would not be pumped at the Hinks well would reach the proposed new well(s) located about 90 miles to the southwest, the diversion of 3.2 cfs or the majority thereof at the proposed new well(s) would have the same physical effect as a new appropriation of ground water and would cause injury because it would have a senior priority over validly established water rights held by junior appropriators.

8. It is not in the local public interest to approve a transfer that would essentially be a new appropriation of water which would otherwise be prevented by the moratorium”.⁴⁵

The Department should have re-examined this issue more carefully and provided a reasoned statement why its prior rulings from similar cases dealing with identical issues would not be followed in this case. Otherwise, a reviewing court cannot determine whether the Department’s decision is arbitrary and capricious. See, for example, *Intermountain Gas Co. v. Idaho Public Utilities Commission*, 97 Idaho 113, 514 P.2d 775 (1975).

4. “Conclusion of Law No. 11” - holding that “4 Bros. is complying with the requirements of the Department of Agriculture” – should have been reconsidered carefully because of the un-contradicted evidence that 4 Bros. have been applying lagoon waste through a pivot (or gated pipe system attached to a pivot) directly onto farm ground with numerous uncovered rock out-croppings providing a direct path to the aquifer. Such a practice is not in compliance with Department of Agriculture rules, and specifically, nutrient management plan requirements designed to prevent ground water pollution. It is inconsistent to condition approval of the transfer on future compliance with Department of Agriculture rules (i.e. a NMP) but ignore blatant violations of current rules by misapplication of lagoon waste which will damage water quality.

The statement in Finding of Fact No. 48 that “Solid waste from the dairy is provided to third parties for application as fertilizer.....No evidence was presented regarding whether those third parties are located near the 4Bros. dairy, are located elsewhere, or are even out of the State” should be reconsidered for at least two reasons: (1) applicant’s own EX. 19 identifies many fields which 4Bros. owns in the vicinity of the dairy to which solid manure will be applied (2) the 4 Bros. failed to provide as part of their exhibits the list of

⁴ Transfer No. 5436, Amended Conclusions of Law 6-8, p. 9. The same scenario was described as an “enlargement” too in Transfer No. 5804.

⁵ LCRC Closing Argument, pp.3-5.

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APR 21 2006

RICHARD A. CARLSON

Attorney at Law
ISB #5971 OSB #79-180

Department of Water Resources

P.O. Box 21
Filer, ID 83328Telephone and fax: (208) 326-3686
E-mail: carlsonr@filertel.comFACSIMILE TRANSMITTAL

TO: Victoria Wigle -IDWR FAX NO.: 208-287-6700
 for Karl Dreher, Director IDWR
FROM: R.A. Carlson
DATE: 4-21-06
RE: Four Bros. Dairy- Transfer No. 71607
PAGES (incl. cover): 6

Dear Ms. Wigle

Please find attached for immediate filing the Lincoln County Rural Council's Exceptions to Recommended Order and Denial of Petition for Reconsideration requesting that the Director review this matter. The original will be put into the mail today.

If you do not receive all the pages please call (208) 326-3686. The documents that have been transmitted are confidential and/ or privileged. The information is intended for the use of the individual or entity named above. If you are not the intended recipient, please be aware that any disclosure, copying, distribution or use of the contents of this telecopied information is strictly prohibited. If you have received this transmittal in error, please notify me by telephone immediately.

Thank you,


Richard A. Carlson

Richard A. Carlson, ISB #5971
 P.O. Box 21
 Filer, ID 83328
 Telephone and fax: (208) 326-3686

Attorney for Lincoln County Rural Council

BEFORE THE DEPARTMENT OF WATER RESOURCES
 OF THE STATE OF IDAHO

In the Matter of Application for	)	LINCOLN COUNTY
Transfer No. 71607 in the name of	)	RURAL COUNCIL'S
4 Bros. Dairy, Inc.,	)	EXCEPTIONS TO
Applicant,	)	RECOMMENDED ORDER
	)	AND DENIAL OF PETITION
Lincoln County Rural Council,	)	FOR RECONSIDERATION
Protestant.	)	

The protestant Lincoln County Rural Council (LCRC), through its attorney, Richard A. Carlson, hereby takes exceptions to the Department's Recommended Decision and Order dated March 20, 2006 and its summary denial of a Petition for Reconsideration dated April 7, 2006. The LCRC requests that the Director review those decisions pursuant to Rule 720 of the Idaho Department of Water Resources for the following reasons:

1. The applicants offered into evidence what appears on its face to be an official Lincoln County CAFO "Siting Registration" document containing a legal description where CAFO operations were authorized. (Ex. 18, p.2) While the Department may no longer consider compliance with local zoning laws to be within the scope of the Department's public interest review in the context of a transfer case, it was the applicant who first "opened the door" with the exhibit. Protestant contends that it is not in the local public interest to allow a transfer that would, in effect, facilitate an unauthorized local land use.

The Hearing Officer addressed this issue in his decision where he wrote the following: "A question was raised whether the legal description under the CAFO registration was sufficient to cover the expansion. **The undisputed testimony was that it was**". (Decision, p.9, fn.5 . Bold added) The Hearing Officer's conclusion on this point is directly contradicted by the evidence. The section of ground where applicant has already begun to expand its operation and where the new proposed points of diversion are located are clearly outside the boundaries Lincoln County has authorized.

2. The decision contains a discussion concerning evidence in the record of the "highest consumptive use" of the water right applicants want to transfer. (Decision, pp. 9-10) The Protestant contends that the record did not contain adequate proof of historic

crop production at the "from" well place of use (the McCowan place) as required by the department's policies.¹ Instead, the decision relied upon undocumented testimony from Dr. Brockway that he had reviewed air photos (not in evidence) that he thought showed that there had been irrigated pasture on some indeterminate number of acres at the McCowan farm sometime in the past ten years. If there even had been a "pasture" crop grown, there was no evidence of how long the "pasture" crop was irrigated (it may have been just a temporary cover crop). Dr. Brockway's testimony did not meet the standards of evidence required by Department policy. Other documentary evidence of actual water diversions at the "from" well provide a more reliable basis for calculating historic consumptive use and should have been the basis for making the determination of what that was.

3. The Hearing Officer failed to address (either in his decision or upon requested reconsideration) important Department precedents relating to the issue of whether or not the proposed transfer would constitute an enlargement (amounting to a new appropriation of water) of the water right involved in this case. ² Protestant's written closing argument summarized its contention on this point as follows:

"Enlargement- New Appropriation"

From the Department's own map of ground water elevations in the ESPA it is clear that the aquifer at both the "from" and "to" wells flows in a southwesterly direction. In response to several questions about that exhibit Dr. Brockway conceded that water not pumped at the "from" well was not likely to reach the location of the "to" well and therefore would not be available for diversion. Mr. Drury's testimony was consistent on the point.

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² The parties agreed that the Department should take official notice of the cases, copies of which were going to be offered by protestants and had been marked EX. 117. The cases are: Transfer No. 5804 in the Name of David Bloxham and Transfer No. 5436 in the Name of Jerome Cheese Co.

"6. The moratorium designated by the Department on May 15, 1992 for the Snake Plain Aquifer was issued to prevent further development of water resources on the plain in order to protect water rights and to ensure compliance with provisions of chapter 2, title 42, Idaho Code.

7. The proposed point of diversion by the applicant for the cheese plant is within the Snake Plain Aquifer area. Since only a small unquantified portion of ground water which would not be pumped at the Hinks well would reach the proposed new well(s) located about 90 miles to the southwest, the diversion of 3.2 cfs or the majority thereof at the proposed new well(s) would have the same physical effect as a new appropriation of ground water and would cause injury because it would have a senior priority over validly established water rights held by junior appropriators.

8. It is not in the local public interest to approve a transfer that would essentially be a new appropriation of water which would otherwise be prevented by the moratorium".⁴⁵

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⁵ LCRC Closing Argument, pp.3-5.

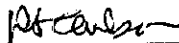
the "third-party" manure recipients even though it is applicant's responsibility to show that their waste management practices will not cause water quality problems.⁶

5. The record is clear that the proposed transfer will increase the water diversion from and reduce the recharge to a *part* of the aquifer in the *local* area northwest of Shoshone – a part of the ESPA showing the most significant decline in ground water levels for the past 25 years. The Hearing Officer's conclusion that the "the 12 mile change in location is insignificant in the context of the 10,000 square mile ESPA"⁷ does not address the issue of *localized* impacts and should be reconsidered.

6. In "Conclusion of Law III.3" the decision contains the following statement: "In the present case there is no evidence of any water rights junior to the Irrigation Right in the localized area of either the McCowan place or of the 4. Bros Dairy". The Department's own records showing such rights down gradient of the "to" well will undoubtedly reveal many such rights in addition to the domestic rights identified in EX. 106, p.3. There will be a cumulative effect on some junior rights down gradient as a result of pumping the "to" well which the Department has to account for just as the Department has accounted for decreased spring flows likely to occur down gradient. If spring flows are affected, at a minimum so will all water right holders, including pre- 1978 domestic wells, between the affected springs and the "to" well- i.e. down- gradient of the "to" well. Allowing a transfer will give a senior priority right to applicants at the new well location injuring other validly established water right holders down- gradient. Although impacts to affected individual water right holders might be small, the cumulative impact will logically equal the amount of any new ground water diversion the applicant makes.

For the reasons stated above and set forth comprehensively in LCRC's Closing Argument Protestant LCRC respectfully requests that the Director of the Department of Water Resources review the Recommended Decision and Order and subsequent Petition for Reconsideration and deny the proposed transfer.

DATED this 21ST day of April, 2006


Richard A. Carlson
Attorney for Lincoln County Rural Council

⁶ It is counsel's recollection that the Hearing Officer would not allow questions about who the "third party" recipients were and where they were located. EX. 19. P. 3 mentions that those recipients were included in the plan but they were not.

⁷ Decision, p.14.

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of April 2006, I served a true copy of the foregoing document on the person listed below, by the method indicated below:

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Bev Ashton E-mail
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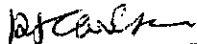
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APR 10 2006

WATER RESOURCES

Fax Filed

3-31-06 VW

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

In the Matter of Application for	)	PETITION FOR
Transfer No. 71607 in the name of	)	RECONSIDERATION
4 Bros. Dairy, Inc.,	)	OF RECOMMENDED ORDER
Applicant,	)	BY LINCOLN COUNTY
	)	RURAL COUNCIL
Lincoln County Rural Council,	)	
Protestant.	)	

The protestant Lincoln County Rural Council (LCRC), through its attorney, Richard A. Carlson, hereby petitions the Department of Water Resources for reconsideration of its Recommended Decision and Order dated March 20, 2006. This petition is made pursuant to Rule 720 of the Idaho Department of Water Resources for the following reasons:

1. The applicants offered into evidence what appears on its face to be an official Lincoln County CAFO "Siting Registration" document containing a legal description where CAFO operations were authorized.¹ While the Department may no longer consider compliance with local zoning laws to be within the scope of the Department's public interest review in the context of a transfer case, it was the applicant who first "opened this door" with its exhibit. Protestant contends that it is not in the local public interest to allow a transfer that would, in effect, facilitate an unauthorized local land use.

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² Decision, p.9, fn.5.(Bold added)

³ Decision, pp.9-10.

“from” well place of use (the McCowan place) as required by the department’s policies.⁴ Instead, the decision relied upon undocumented testimony from Dr. Brockway that he had reviewed air photos (not in evidence) that he thought showed that there had been irrigated pasture on some indeterminate number of acres at the McCowan farm sometime in the past ten years. If there even had been a “pasture” crop grown, there was no evidence of how long the “pasture” crop was irrigated (it may have been just a temporary cover crop). Dr. Brockway’s testimony did not meet the standards of evidence required by Department policy. Other documentary evidence of actual water diversions at the “from” well provide a more reliable basis for calculating historic consumptive use and should have been the basis for making the determination of what that was.

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⁴ “Transfer Processing Policies & Procedures”, Karl Dreher and Norm Young (Oct. 2002), p. 23.

⁵ The parties agreed that the Department should take official notice of the cases, copies of which were going to be offered by protestants and had been marked EX. 117. The cases are: Transfer No. 5804 in the Name of David Bloxham and Transfer No. 5436 in the Name of Jerome Cheese Co.



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov.

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

March 17, 2006

Interested Parties

Re: 4 Brothers Dairy – Transfer No. 71607

Dear Parties:

Enclosed is the decision that the Idaho Department of Water Resources will take notice of in the above referenced matter.

Sincerely,

A handwritten signature in black ink that reads 'Victoria Wigle'. The signature is fluid and cursive, with the first name 'Victoria' written in a larger, more prominent script than the last name 'Wigle'.

Victoria Wigle
Administrative Assistant to the Director

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER OF WATER RIGHT

TRANSFER NO. 5183
WATER RIGHT NO. 37-07413B

This is to certify that: **4 BROTHERS DAIRY INC**
425 N 250 W
SHOSHONE ID 83352

has requested a change to the above captioned water right(s). This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code, provided the conditions listed below are met.

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
STOCKWATER	01/01 to 12/31	0.58 CFS	117.0 AF
COMMERCIAL	01/01 to 12/31	0.58 CFS	41.5 AF
	Totals	* 0.58 CFS	* 158.5 AF

SOURCE
GROUNDWATER

Priority: 12/19/1974

LOCATION OF POINT(S) OF DIVERSION: NENW , Sec. 9, Township 05S, Range 17E
LINCOLN County

PLACE OF USE: STOCKWATER

TWN RGE SEC

05S 17E 9

NENW

NWNW

PLACE OF USE: COMMERCIAL

TWN RGE SEC

05S 17E 9

NWNW

CONDITIONS OF APPROVAL AND REMARKS

1. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
2. The dairy operation authorized under this approval shall comply with applicable county zoning and use ordinances.
3. Use of water under this approval shall comply with applicable water quality standards of the Division of Environmental Quality of the Idaho Department of Health and Welfare.

MAY 14 1978

TRANSFER NO. 5183
WATER RIGHT NO. 37-07413B

CONDITIONS OF APPROVAL AND REMARKS

4. The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.
5. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
6. Approval of this transfer does not preclude the opportunity for review of the validity of the water right(s) in the ongoing Snake River Basin Adjudication.
7. Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.
- * 8. The total instantaneous diversion of water from all points of diversion under Transfer 5183 shall not exceed 0.58 cfs, nor a total combined annual volume of 158.5 af.
9. Two points of diversion are located within NENW, S09, T05S, R17E.
10. After specific notification by the department, the right holder shall annually report the amount of water diverted to the department.
11. The remainder of Right 37-07413 is identified as 37-07413A and is limited to a diversion rate of 1.12 cfs, an annual diversion volume of 309.6 af, and irrigation of 77.4 acres each year.
12. The acres which are no longer authorized for irrigation under Right 37-07413A are specifically described as follows: 39.0 acres in the SENE, and 0.3 acres in both the NESE and SESE, S20, T06S, R18E.

Dated this 22nd day of April, 1998

J. Blw Saxton
Chief, Water Allocation Bureau

MAY 14 1998

Page 1 of 7STATE OF IDAHO
DEPARTMENT OF WATER RESOURCESTransfer No. 5183

RECEIVED

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1

FEB 06 1998

Name of applicant 4 Bros Dairy Phone 208 886 7716
Post Office address 425 North 250 West Shoshone, Idaho 83352

A. PURPOSE OF TRANSFER

1. ☐ Change point of diversion ☒ Add diversion point ☒ Change place of use
☒ Change nature of use ☒ Change period of use ☐ Other Split right
2. Describe the reason for the proposed changes Split the right to provide commercial and stock water for a new dairy in Lincoln County

B. DESCRIPTION OF RIGHT(S) OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. Right Number 37-07413B Priority 12/19/1974 Amount (cfs/ac-ft) .58/117 Nature of Use Stockwater Period of Use 1-1 to 12-31
.58/41.5 Commercial 1-1 to 12-31
to
to
2. Total amount of water being transferred .58 cubic feet per second and/or 158.5 acre-feet per annum.
3. Source of water Ground water tributary to
4. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge	County	Local name for diversion
	NW	NE	NW	9	5S	17E	Lincoln	2 wells

5. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
5S	17E	9					S	C, S											

MICROFILMED
MAY 14 1998

PART 1

6. General Information:

- a. Description of diversion system _____
Two wells will be connected and water distributed through common main to dairy
facilities
- b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?
☐ Yes ☒ No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.
- c. Describe the effect on the land now irrigated if the place of use is changed pursuant to this transfer:
Sprinkler system from part of the land currently irrigated (39.6 acres) will be
removed and the land no longer irrigated
- d. Remarks:
Ground water developed through this transfer will provide water for a new dairy
designed to accommodate 2700 milking cows and 750 dry cows upon completion of the
project

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____
 And said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 19 _____

MICROFILM
MAY 14 1998

A. DESCRIPTION OF RIGHT AS RECORDED:

Water Right No. 37-07413

STAGE: LICENSE

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL VOLUME</u>
IRRIGATION	03/15 to 11/15	1.70 CFS	468.0 AF
STOCKWATER	01/01 to 12/31	0.07 CFS	4.1 AF
	Totals	1.70 CFS	472.1 AF

SOURCE

GROUNDWATER

Priority: 12/19/1974

LOCATION OF POINT(S) OF DIVERSION:NESE , Sec. 20, Township 06S, Range 18E
LINCOLN County**PLACE OF USE: IRRIGATION**

<u>TWN</u>	<u>RGE</u>	<u>SEC</u>	<u>ACRES</u>	<u>ACRES</u>	<u>ACRES</u>	<u>TOTAL</u>
06S	18E	20	SENE 39	NESE 39	SESE 39	117
Total number of acres irrigated:						117

PLACE OF USE: STOCKWATER, same as IRRIGATION use**CONDITIONS/REMARKS:**MICROFILMED
MAY 14 1998

Page 4 of 7Transfer No. 5183

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT

PART 2

(Attach one copy for each right)

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. _____ Decreed to _____
in case of _____ vs. _____
dated _____ in _____ county of _____
- b. License No. 37-7413 issued by the Idaho Department of Water Resources.
- c. Claim No. _____ on file with the Idaho Department of Water Resources.
- d. Transfer No. _____ which produced this right.

2. Attach a copy of last year's tax notice for the property to which the water right is appurtenant or other documents which show ownership. Label document as attachment A. check appropriate box below.

☐ Tax notice

☐ Warranty Deed

☒ Other Certificate of Sale

3. Source of water Ground water tributary to _____

4. Date of priority 12/19/1974

5. Water is used for the following purpose:

Amount 1.70cfs for Irrigation purposes from 3/15 to 11/15
(cfs/ac-ft)
Amount .07cfs for Stockwater purposes from 1/1 to 12/31
(cfs/ac-ft)
Amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

6. Total amount of water under right 1.70 cubic feet per second and/or 472.1 acre-feet per annum.

7. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec.	Twp.	Rge	County	Local name for diversion
	NE	SE		20	6S	18E	Lincoln	Well

8. Lands irrigated or place of use:

Twp.	Rge.	Sec.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
6S	18E	20				39									39			39	117

Total acres 117

9. Describe any other water rights used for the same purpose as described above _____

None

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

- A. Draw a map or attach a USGS map indicating the new point(s) of diversion and/or the new place of use for rights described in part 1. Clearly depict the land by section, township and range number.

See Attached Map

RECEIVED
MAY 14 1988

SCALE: 2 inches equals 1 mile. Draw plan in ink.

TAGZ

H. MOSWAN

54.3

a. 1.0 ac
b. 0.5 "

1.5 ac SE 1/4 NE 1/4

708

S. M. C. S.

C. and CATTLE

c. 3.0 ac.
d. 4.0 ac.
e. 0.3 ac

7.3 ac

NE 1/4 SE 1/4

125.3

f. 7.5 ac.
g. 6.5 ac.

14 ac SE 1/4 SE 1/4

See
G-12

W. SWEET

29/28

MAY 14 1998

Sec 20, T06S, R18E SE NE & E 1 SE
4 Bros. Dairy

T# 5183

ASCS 1992 Flight

37-07413

PART 3

B. CHANGES IN NATURE OF USE

1.	New Nature of Use	Amount (cfs/ac-ft)	Hours/days/year	Period of Use
	Stockwater	.58/117	as needed	1/1 to 12/31
	Commercial	.58/41.5	as needed	1/1 to 12/31

2. Quantity and quality of return flows and location of discharge:

5
Dairy return flow will be retained in lagoon for subsequent irrigation application

3. Describe the effects on other water uses resulting from the proposed change:

None

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in voiding its approval.



Subscribed and sworn to before me this

1

day of

November, 1997

Andrew Fitzgerald SEC-TRES
(Signature of Applicant)

Michelle Fitzgerald
(Notary Public)

My commission expires

12/17/97

FOR DEPARTMENT USE ONLY

Transfer contains 7 pages and 8 attachments

Received by GLS Date 4 NOV 97

Protest filed by None

Prelim. check by " Fee \$100

Received by GLS Date 7 NOV 97 5020690

Published in Lincoln Co. Journal

Pub. dates 12/24 + 12/31/97

Watermaster recommendation requested on N/A

Copies of protest forwarded by

Hearing held by Date

Recommended for

(Approve)

! Denial

rec'd.

by AD

Copy of transfer sent to lien holder

MAY 14 1998

RECEIVED

NOV 04 1997

Department of Water Resources
Southern Region

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of March, 2006, the above and foregoing, was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

4 BROS. DAIRY INC
ANDREW FITZGERALD
427 N 250 W
SHOSHONE ID 83352

ROBERT WILLIAMS
FREDERICKSEN WILLIAMS
PO BOX 168
JEROME ID 83338-0168

CHARLES BROCKWAY PE PHD
BROCKWAY ENGINEERING
2016 N WASHINGTON ST STE 4
TWIN FALLS ID 83301

IDWR – SOUTHERN REGION
1341 FILLMORE ST STE 200
TWIN FALLS ID 83301

ELIZABETH TEWS
680 N 350 W
SHOSHONE ID 83352

DOUG ALBRIGHT
675 N 150 W
SHOSHONE ID 83352

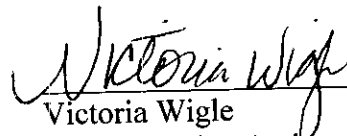
HENRY BLAKE
JA NENE BUCKWAY
585 N 250 W
SHOSHONE ID 83352

BEV ASHTON
685 N 250 W
SHOSHONE ID 83352

JERRY & SUSAN WESTENDORF
707 W 470 N
SHOSHONE ID 83352

RUSSELL & PAMELA PANTONE
745 N 550 W
SHOSHONE ID 83352

LINCOLN CO RURAL COUNCIL
C/O RICH CARLSON
PO BOX 21
FILER ID 83328


Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources

JAN 10 2006

DEPARTMENT OF
WATER RESOURCES

ROBERT E. WILLIAMS
IDAHO STATE BAR NO. 1693
FREDERICKSEN, WILLIAMS, MESERVY & LOTH SPEICH, LLP
Attorneys at Law
117 South Adams Street
P. O. Box 168
Jerome, Idaho 83338
Telephone: (208) 324-2303
Facsimile: (208) 324-3135

Attorneys for Applicant 4 Bros. Dairy, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
TRANSFER 71607 IN THE NAME OF 4
BROS. DAIRY, INC.

FINAL STATEMENT OF
4 BROS DAIRY, INC

COMES NOW the Applicant, 4 Bros. Dairy, Inc., by and through its attorney, Robert E. Williams of the firm Fredericksen, Williams, Meservy & Lothspeich, LLP, and, pursuant to the order of the Hearing Officer, submits its Final Statement. This Final Statement is submitted in the form of proposed Findings of Fact and Conclusions of Law.

LEGAL STANDARDS

Idaho Code § 42-222 provides in pertinent part that:

"1) Any person, entitled to the use of water whether represented by license issued by the department of water resources, by claims to water rights by reason of diversion and application to a beneficial use as filed under the provisions of this chapter, or by decree of the court, who shall desire to change the point of diversion, place of use, period of use or nature of use of all or part of the water, under the right shall first make application to the department of water resources for approval of such change. Such application shall be upon forms furnished by the department and shall describe the right licensed, claimed or decreed which is to be changed and the changes which

are proposed, and shall be accompanied by the statutory filing fee as in this chapter provided. ... The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter. The director may consider consumptive use, as defined in section 42-202B, Idaho Code, as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right. The director shall not approve a change in the nature of use from agricultural use where such change would significantly affect the agricultural base of the local area..."

Idaho Code §42-202(B)(3) describes the local public interest as:

"...the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource".

Idaho Code §42-202(B) (1) defines "consumptive use" as

"...that portion of the annual volume of water diverted under a water right that is transpired by growing vegetation, evaporated from soils, converted to nonrecoverable water vapor, incorporated into products, or otherwise does not return to the waters of the state. Consumptive use is not an element of a water right. Consumptive use does not include any water that falls as precipitation directly on the place of use. Precipitation shall not be considered to reduce the consumptive use of a water right. "Authorized consumptive use" means the maximum consumptive use that may be made of a water right. If the use of a water right is for irrigation, for example, the authorized consumptive use reflects irrigation of the most consumptive vegetation that may be grown at the place of use. Changes in consumptive use do not require a transfer pursuant to section 42-222, Idaho Code."

The Department of Water Resources has not issued or promulgated rules governing transfer proceedings but has issued an Administrator's Memorandum, dated October 30, 2002, as updated by a Memorandum dated April 15, 2005, offering guidance putting forth transfer processing policies and procedures.

FINDINGS OF FACT
PROCEDURAL BACKGROUND

1. On April 19, 2004 4 Bros. Dairy, Inc., submitted an application to transfer existing Water Right #37-20613. The transfer sought (a) to establish two (2) new points of diversion in the SE1/4, SE1/4, Section 5, Township 5 South Range 17, EBM, Lincoln County, Idaho; (b) to change the nature of the use of the water right from irrigation to stock water and commercial; (c) to establish new places of use in Sections 5 and 8, Township 5 South, Range 17 EBM, Lincoln County, Idaho; and (d) to change the period of use to year round from seasonal irrigation use. (March 15 to November 15)

2. Notice of the Application was published in the Lincoln County Journal, on or about the 13th day of January and the 20th day of January, 2005.

3. Protests to the Application for Transfer were made by Elizabeth Tews, Henry and Janene Buckway, Bev Ashton, Jerry and Susan Westendorf, Russell and Pamela Pantone, Doug Albright and the Lincoln County Rural Council. The protests were filed primarily on the grounds that the proposed transfer would create injury by affecting the quantity and quality of the water in neighboring wells owned by the Protestants. The Protestants also believed that the transfer would cause an impermissible enlargement of Water Right No. 37-20613.

4. Peter R. Anderson was appointed Hearing Officer by order of the Director of the Idaho Department of Water Resources, dated March 15, 2005.

5. An order defaulting Protestant Doug Albright and denying his protest was entered on the 20th day of May, 2005. An Order defaulting Protestants Pantone and denying their protest was entered on the 15th day of July, 2005.

6. A Pre-Hearing Conference was noticed for Thursday, April 20, 2005, Twin Falls, Idaho. It was vacated and reset for Friday May 13, 2005, by Order dated April 27, 2005. The Pre-Hearing Conference was held on May 13, 2005.

7. A Pre-Hearing Order allowing for the conduct of discovery; establishing a schedule for discovery; providing for a date for exchange of witnesses and exhibits; establishing the hearing date of July 23, 2005; and, requesting a Staff Memorandum from the Idaho Department of Water

Resources was entered on May 20, 2005.

8. Notice of Pre-Hearing Conference for July 14, 2005 was entered by the Hearing Officer on July 7, 2005. A Pre-Hearing Conference was held on Thursday, July 14, 2005, at the Lincoln County Cooperative Extension office in Shoshone, Idaho.

9. Following the Pre-Hearing Conference, the Applicant filed a Motion for Order Striking Protestants Exhibits and, Alternatively, for Vacation and Sanctions on July 26, 2005.

10. After conversations with the attorney for 4 Bros. Dairy, Inc., and the attorney for the Lincoln County Rural Council, the Hearing Officer entered an Order Vacating Hearing on July 26, 2005.

11. On August 4, 2005, an Amended Pre-Hearing Order was entered reestablishing discovery completion dates and the date upon which final witness lists and proposed exhibits would be exchanged by the parties. The hearing date was tentatively set for September 1 and 2, 2005.

12. On August 12, 2005 the parties were advised, by correspondence from the Department of Water Resources, that the tentative hearing dates of September 1 and 2 would be vacated because of the unavailability of one of the Applicant's witnesses. On September 9, 2005, the matter was re-noticed for a hearing on October 20 and October 21, 2005.

13. Following a receipt of correspondence from the attorney for the Applicants that he would be unavailable October 20 and 21, 2005, the October hearing dates were vacated and the matter was reset for hearing on November 17, and November 18, 2005 at the Bureau of Land Management conference room in Shoshone, Idaho.

14. Hearing on the Application was held on November 17 and November 18, 2005, at the Bureau of Land Management conference room in Shoshone, Idaho. At the hearing the Applicant was represented by Robert E. Williams. Protestants Lincoln County Rural Council was represented by Richard Carlson. Elizabeth Tews, Henry and Janene Buckway, Bev Ashton, Jerry and Susan Westendorf and Russell and Pamela Pantone appeared for themselves.

15. During the hearing, Marv Patten, Chief of the Bureau of Dairying of the Idaho Department of Agriculture, who was a witness subpoenaed by Protestant Lincoln Rural Council was not available to testify. On November 28, 2005, a Notice of Hearing was provided to all

parties that the testimony of Mr. Patten would be taken by telephonic hearing originating from the Idaho Department of Water Resources office, 322 East Front St., Boise, Idaho, commencing at 9:00 a.m., on December 9, 2005.

16. The hearing was reconvened at that time for purposes of securing Mr. Patten's testimony. Brief rebuttal testimony was proffered by the Applicant.

17. At the conclusion of the hearing on December 9, 2005, the parties were given until the end of business Friday, January 6, 2006, to file Final Statements, which may include Proposed Findings of Fact and Conclusions of Law. Those submissions were to be made simultaneously by the parties. The time for submission was extended by stipulation of the parties to January 9, 2006.

EVIDENCE IN RECORD

18. The following Exhibits, offered by 4 Bros., Inc., and admitted by Stipulation of all Protestants as part of the record, were considered by the Hearing Officer:

EXHIBITS

1. Eastern Snake River Plane Aquifer map
2. Site Location Map
3. Aerial Photo of proposed place of use and points of diversion
- 3(a) Aerial oblique photograph of proposed place of use and point of diversion
- 3(b) Enlargement of Exhibit 3(a)
4. Driller logs for wells near proposed place of use
5. Driller logs in vicinity of proposed place of use
6. Test/production well design schematic
7. Dairy Water Requirements Worksheets
8. Consumptive use for certain irrigation crops from Brockway/Allen study
9. Local well water quality data
10. Well interference analysis prepared by Brockway Engineering
11. Copy of Transfer application with mitigation plan narrative and transfer

spread sheet output

12. Well hydrographs from local USGS observation wells
13. Water Balance spread sheet
14. Local climate and precipitation data
15. Local soils data
16. Aerial photograph of "from" well site
17. Mitigation plan analysis under new regional ESPA model
18. Copy of Applicant's Lincoln County CAFO permit
19. Applicant's Nutrient Management Plan for their expanded facility
20. Chart of allocation of ESPA water
21. Direct power coefficient data from farm well

Exhibits admitted into the record, offered by the Protestants and admitted by Stipulation of the parties considered by the Hearing Officer were:

100. IDWR map depicting ground water districts
101. IDWR map depicting ground water elevations and ESPA
102. IDWR map depicting ground water flow directions
103. IDWR map depicting ground water elevations and ESPA
104. Water right records of surrounding properties
105. Well logs from vicinity of proposed to wells
- 106(a) - 106(f) Transfer Impacts
107. Response to public records request.
108. 4 Bros. Dairy, Inc., application to rent water from water bank
109. Miscellaneous IDWR data and correspondence RE: Black Butte Transfer
110. Site team report considering expanded operation of 4 Bros. Dairy, Inc.

111. 4 Bros. Dairy, Inc., withdrawal of Lincoln County Application
112. Nutrient Management Plan of Applicant
113. Response to public records request made to the Department of Agriculture.
114. Water quality tests from Buckway well.
116. Crop statistics from 1990.
118. Satellite photograph
119. Satellite photograph
120. Lincoln County Planning and Zoning documents.
121. Ground water level change map.
122. ISDA response to public records request through July 29, 2005.

19. The Hearing Officer took official notice of Exhibit No. 117, which contained IDWR Orders on other water transfer applications. Protestants Exhibit No. 115 was admitted into evidence over the objection of the Applicant. This was a study of the Idaho Department of the Environmental quality entitled "Cumulative Impacts Assessments" from the year 2000. The Staff Memorandum of the Idaho Department of Water Resources, dated July 7, 2005, was admitted into evidence as Exhibit No. 800, at the instance of the Hearing Officer. At the instance of Protestant Buckway, Exhibit No. 300 was admitted into evidence without objection.

20. The following persons testified on behalf of the Applicant: Andrew Fitzgerald and Dr. Charles E. Brockway. The following persons testified on behalf of the Protestants: Paul Drury, Rusty Tews, Janene Buckway, Bev Ashton, Jerry and Susan Westendorf and Marv Patten.

FACTS RELATED TO APPLICATION PARAMETERS

21. 4 Bros. Dairy, Inc., is an Idaho corporation, owned by four (4) Fitzgerald brothers, with an existing dairy operation in Lincoln County, Idaho. This transfer was sought to obtain additional water for stock water and commercial purposes in order to allow an additional 3500 head of cows and 500 head of heifers to be placed at the Applicant's existing dairy operations. The Applicant has a permit from Lincoln County allowing 10,887 animal units.

22. The application seeks to transfer water from an existing irrigated farm owned by the Applicant. This farm was some times referred to in the proceedings as the "McCowan Place," and consists of approximately 77.4 acres in Township 6 South, Range 18, EBM Section 20, NE1/4. The point of diversion of the well at the McCowan place is in the NE1/4 SE1/4 of that section, township and range. This existing point of diversion for Water Right No. 37-20613 is approximately 12 miles southeast of the proposed new points of diversion. The McCowan well was sometimes referred to in the proceedings as the "from" well.

23. The new wells, sometimes referred to in the proceedings as the "to" wells along with the "from" well, are located within the bounds of the Eastern Snake River Plain Aquifer.

24. Water Right No. 37-20613 has been partially decreed for a diversion rate of 1.12 cfs with an annual volume of 309.6 acre feet. The right's priority date is December 19, 1974.

25. The pending transfer application seeks to move 232.2 acre ft. of the existing volume under Water Right No. 37-20613.

FACTS RELATED TO QUANTITATIVE INJURY

26. A study was conducted by Dr. Charles E Brockway concerning the impact of pumping at the new points of diversion to produce the 232 acre ft. of annual volume of water proposed by the Transfer. The study utilized the Theiss Equation model to predict point to point impacts of water usage in the aquifer. This study was designed to show the effects of the transfer on wells of the Protestants in the surrounding area. The study assumed that the aquifer surrounding the new points of diversion and other wells was characterized by fractured basalt, and that the average pumping rate to produce the annual volume requirement from the new wells would be .32 cfs. Utilizing these parameters, at 60 days of continuous pumping, the anticipated draw down of the existing wells of Protestants Buckway, Pantone, Albright and Ashton would be -.22 ft. for the Buckway well, -.04 ft. for the Pantone well. -.02 ft. for the Albright well and -.01 ft for the Ashton well.

27. Each of the Protestants, except for the Lincoln County Rural Council owns, or has an interest in, wells in the vicinity of the proposed new points of diversion. These wells range in distance from the proposed new points of diversion as follows:

Buckway: .7 miles;
Ashton: 1.5 miles;
Tews: 1.7 miles;
Pantone: 3.12 miles;
Westendorf: 4.53 miles.

28. Due to long term drought conditions in the area surrounding the "to" wells, general ground water levels in the area have been declining.

29. Using the water as proposed at the "to" well site will not create material injury to other existing water rights in the area in terms of reducing the amount of water available to the other water rights holders or requiring them to go to unreasonable expense or efforts in order to obtain their water under existing rights.

30. Dr. Charles E. Brockway holds a Ph.D. in Hydrology as well as Bachelor's and Master's Degrees in Civil Engineering. He has considerable experience as an expert witness in other hearings and trials regarding characteristics of the Eastern Snake River Plains Aquifer. He has focused on the ESPA in his work.

31. Dr. Charles E. Brockway authored a study in the year 1998 regarding water right transfer application No. 5098 in the name of Black Butte Properties, LLC. The "to" well site in that application arises several miles to the northeast of the "to" well site in the present application. The aquifer at the "to" well site in the Black Butte transfer was characterized in the proceeding as a confined or semi-confined system. The "to" well site in this proceeding is not a confined or semi-confined system.

32. Paul Drury, the Protestants' expert witness, who holds a Bachelors Degree in Agriculture Engineering and a Masters Degree in Fishery Science, utilized the well interference data from the 1998 Brockway Black Butte Report and applied the same data to the present transfer.

33. A confined or semi-confined aquifer is characterized by a layer of clay on the top and the bottom of that aquifer.

34. Utilizing the Black Butte data, Mr. Drury testified that the impacts on the surrounding wells from the new wells at the "to" site would produce a draw down of 17 ft. within a 1/2 mile of the new points of diversion, 12.2 ft. within 1 mile of the proposed points of diversion,

and 5.9 ft within 2 miles of the new points of diversion.

35. Mr. Drury did not testify as to what assumptions he used in the pumping of the wells at the "to" site or in reaching his predictions of the level of draw down.

36. The lithology at the proposed points of diversion at the "to" site in the Black Butte transfer demonstrated the characteristic of a confined or semi-confined aquifer between two (2) layers of clay. The aquifer at the proposed points of diversion of the present transfer did not show these confined aquifer characteristics.

37. The proposed point of diversion for the Black Butte transfer was at the periphery or just outside the bounds of the ESPA.

38. Concerning the characteristics of the aquifer at the "to" well site for the present transfer, the preponderance of the evidence is that it is not a confined, or semi-confined, aquifer. The Brockway study more accurately reflects the likely effects on the neighboring wells as a result of the transfer.

39. If the assumptions used by the Brockway 2005 study were extended in terms of hours of continuous pumping, the effects on the surrounding wells would not be materially different than shown at the 60 day continuous pumping level.

FINDINGS RELATED TO INJURY TO WATER QUALITY

40. The general nitrate levels in the ground water surrounding the proposed "to" site, and the adjacent wells, are stable or declining.

41. The nitrate level at the Buckway well declined from ten (10) parts per million in 2002 to 6.1 part per million in 2004. The most recent test records for wells on the Applicant's property, near the site where the new points of diversion would be constructed, range between less than 1 part of nitrate per million to 2.12 parts per million.

42. The Applicant has a Nutrient Management Plan for its expanded facility that has been approved by the Idaho Department of Agriculture. The Applicant will also construct berms to shield water from its facility from entering area canals. The Applicant will construct a new lagoon in accordance with the requirement of the Idaho Department of Agriculture.

43. Under existing statutes and regulations, the operator of a dairy in Idaho, such as that

owned by the Applicant, must not allow waters containing manure or other pollutants generated by it to enter waters of the United States. The Idaho Department of Agriculture also forbids the operator of a dairy from allowing water containing manure or other pollutants to escape the boundaries of the Applicant's facility.

44. The dairy pollution initiative, administered by the Idaho Department of Agriculture under a memorandum of understanding with the Idaho Department of Water Resources, the United States Environmental Protection Agency, the Idaho Department of Environmental Quality, and the Idaho Dairymen's Association has been praised by the United States Environmental Protection Agency as a model for the nation in terms of its effectiveness. The objective of the initiative is to protect surface and ground water quality.

45. Pursuant to existing regulations administered by the Idaho Department of Agriculture, a dairy, such as that of the Applicants, is subject to frequent inspections for compliance with regulations regarding waste management.

46. Under nutrient management planning regulations, administered by the Idaho Department of Agriculture, the Applicant is required to apply liquid or solid waste to its fields at agronomic rates, meaning the rate at which the nutrients can be uptaken by crops, when certain thresholds of phosphorus on fields to which waste is applied have been observed.

47. The Applicant is in compliance with its Nutrient Management Plan at the present time. The Nutrient Management Plan has been rewritten for the expanded operation and has been approved by the Idaho Department of Agriculture. The Applicant has agreed to conduct soil sampling to monitor nutrient levels in the soil.

48. The Applicant has operated a significantly sized dairy in the vicinity of the proposed locations of the new points of diversion for many years. The Applicant has recently purchased an additional 400 acres of farmland in the vicinity of its operation which will be available for application of nutrients from manure generated from the dairy.

49. Phosphorus levels in the soil to which dairy waste is applied do not have an ill effect by themselves on ground water, but are used by the Department of Agriculture as a predictor of the presence of nitrate.

50. Dairy lagoons in which waste water generated by the dairy operations is stored,

must be constructed to standards approved by the Idaho Department of Agriculture before the newer expanded dairy is allowed to commence operations.

51. The Idaho Department of Agriculture does occasionally test dairy lagoon water for pathogens when situations require it to. The data from testing of existing wells owned by the Applicant near the proposed site for the new points of diversion show the presence of fecal coliform bacteria at less than one colony per 100 milliliters of water.

52. The Applicant has implemented, or has agreed to implement, all the mitigation measures for the expanded dairy site proposed by the Site Team Report in Exhibit No. 110.

53. The Protestants have provided no evidence that the dairy operation conducted by the Applicant has, or will in the future, have a material impact on the quality of the water obtained from Protestants' wells. There is no credible evidence in the record that the existing programs administered by other agencies are not effective to protect the quality of surrounding water rights from potential bad effects of dairy operations. No evidence was produced to show that Applicant is, or likely would be, in violation of any of the existing laws protecting water quality.

FACTS RELATED TO ENLARGEMENT

54. The effect of the proposed transfer on various regions of the Snake River as computed on the basis of the "old" ESPA computer model, sometimes referred to as the "old transfer tool" would require a 5% reduction in the annual volume of water proposed by the present transfer to mitigate for impacts predicted by that model. The Applicant agreed to this mitigation.

55. A subsequent mitigation analysis prepared by Shane Bendixsen, on behalf of the IDWR was based upon the "New transfer tool", an updated computer model. It predicted an approximate 25% reduction of volume under the transfer to be required to produce the mitigation of predicted affects on identifiable regions of the Snake River.

56. It is not certain which tool, the old transfer tool, or the new transfer tool is the most reliable, but it is probable that the newer model is more accurate.

57. The Applicant testified that it would abide by the 25% mitigation plan predicted by the Bendixsen memorandum of July 7, 2005 using the "new transfer tool."

58. The historical use of the Water Right No. 37-20613 was for the irrigation of crops.

From the study done by Brockway and Allen in 1983, the consumptive use available for transfer at the "from" site is 2.99 acre ft. for 77.4 acres, or 231.4 acre ft.

59. Using 77.4 acres, at 2.99 acre ft. per year of consumptive use, 231.4 acre ft. are available for transfer.

60. The McCowan place has been farmed consecutively for many years prior to the year the application for transfer was filed.

61. A power consumption coefficient (PCC) for a given pump may be used to estimate volumes of water pumped therefrom, where the power usage at the well to which the pump is installed is available.

62. Utilizing the 2004 measurement field form admitted as Exhibit No. 21, with a PCC of 679, the historical annual volume of use, was estimated to be 188 acre ft. per year for Water Right No. 37-20613.

63. The method of estimating volumes from power records and power consumption coefficients is not extremely accurate.

64. The Idaho Department of Water Resources has, on many prior occasions acknowledged the consumptive use of crops in Southern Idaho to be as determined from the 1983 Brockway/Allen study. That study shows the annual consumptive use to be 2.99 acre ft. per acre for irrigation purposes at the McCowan farm. It is a more reliable method of determining historical consumptive use than volumes computed from power records and power consumption coefficients.

FINDINGS RELATED TO CONSERVATION OF WATER

65. There will not be more water utilized in the "to" site than was consumptively used historically at the "from" site.

66. The Applicant will use the same water for multiple tasks involved in the dairy operation, instead of using a "new" water for each operation, thereby conserving the usage of water.

FINDINGS RELATED TO THE LOCAL PUBLIC INTEREST

67. The effects of the proposed transfer on the local public interest as defined at I.C.

§ 42-202(B)(3) are covered by the findings related to the impacts of the transfer on the quality and quantity of the water in the area, as previously set forth in these findings.

FINDINGS RELATED TO IMPACT ON LOCAL ECONOMY

68. The transfer will enable the Applicant to expand its existing dairy operations which already have a substantial beneficial economic impact on the local area.

69. Dairy and related farming endeavors contribute significantly to the local economies of the areas where they are located.

CONCLUSIONS OF LAW

INJURY TO QUANTITY OF WATER

1. The transfer will not injure any other water right and, specifically, will not injure any water right of any of the Protestants. A maximum draw down of two-tenths (2/10) of a foot or less, as shown by the Brockway well interference study, is not significant enough to constitute an injury to any of the water rights of any of the Protestants. Impact on reaches of the Snake River predicted by the new transfer tool will be mitigated by reducing the volume of water otherwise available for transfer by 25%.

2. The consumptive use volume of the water available for transfer is 231.4 acre ft. per annum. Reducing that amount by 25% to account for the mitigation required by the Benedixsen analysis results in a volume of 173.55 acre ft. per annum available for transfer. The volume transferred of 173.55 acre ft. will not constitute an enlargement of Water Right No. 37-20613.

INJURY TO QUALITY OF WATER

3. Current law places the primary duty of regulation over the possible harmful effects of the discharge of polluted waste water from a dairy in the hands of the Idaho Department of Agriculture. The Applicants have not been shown to be in violation, or that they will be in violation, of any of the statutes or regulations currently administered by the Idaho Department of Agriculture, or other agencies. It is not the duty of the Department of Water Resources to second guess the regulations of other agencies concerning water quality and the like, where it has been

demonstrated that such matters are regulated by other governmental agencies and that the Applicant is in compliance with such regulations. *Shokal vs Dunn*, 109 Idaho 330, 707 P.2d 441, 442 (1985).

CONSERVATION OF WATER RESOURCES

4. The application will not increase the amount of water withdrawn under former Water Right No. 37-20613, and is, therefore, in keeping with conservation of water resources in the State of Idaho. The Applicant has also demonstrated that it will use in a redundant fashion the water available, thereby further conserving the water resources of the State of Idaho.

BENEFICIAL USE

5. Use of water for dairy and related farming activities consisting of stock water and commercial usage, as a beneficial use of water in this state.

ECONOMIC IMPACT ON LAND AREA

6. The transfer will enable the existing dairy and farming operations of the Applicant to expand, enhancing the local agricultural economy.

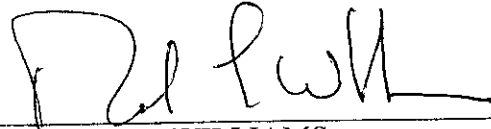
LOCAL PUBLIC INTEREST

7. The standards of I.C. § 42-222(B)(3) have been met by the Applicant's demonstration that there will be no significant adverse effect on the quantity or quality of the water resource in the area as a result of the transfer.

SUMMATION

8. Water Right No. 71607 is approved in the amount of 173.55 acre ft. per annum; with a diversion rate of 1.12 cfs; with a year round period of use; with a nature of use for stock water and commercial and with all other parameters concerning points of diversion, place of use, priority date, and other elements as contained in the Application.

FREDERICKSEN, WILLIAMS, MESERVY
& LOTHSPREICH, LLP



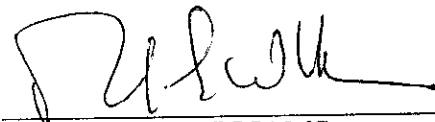
ROBERT E. WILLIAMS
Attorney for 4 Bros Dairy, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 9th day of January, 2006, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

IDWR – Southern Region 1341 Fillmore St Ste 200 Twin Falls ID 83301	☒ 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
Peter R. Anderson Hearing Officer 322 East Front Street PO Box 83720 Boise, Idaho 83720-0098	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☒ Facsimile ☐ Federal Express
Elizabeth Tews 680 North 350 West Shoshone, Idaho 83352	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Henry and Janene Buckway 585 North 250 West Shoshone, Idaho 83352	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Bev Ashton 685 North 250 West Shoshone, Idaho 83352	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express

Jerry and Susan Westendorf 707 West 470 North Shoshone, Idaho 83352	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Russell and Pamela Pantone 745 North 550 West Shoshone, Idaho 83352	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Lincoln County Rural Council c/o Rich Carlson Post Office Box 21 Filer, Idaho 83328	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express



ROBERT E. WILLIAMS

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JAN 10 2006

DEPARTMENT OF
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Attorney for Lincoln County Rural Council

Filed via fax
1-9-06 VW

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

In the Matter of Application for	)	CLOSING ARGUMENT BY
Transfer No. 71607 in the name of	)	LINCOLN COUNTY RURAL
4 Bros. Dairy, Inc.,	)	COUNCIL
Applicant,	)	
	)	
Lincoln County Rural Council,	)	
Protestant.	)	

The protestant Lincoln County Rural Council (LCRC), through its attorney, Richard A. Carlson, submits the following closing argument:

Introduction

Idaho Code 42-222 sets forth the standards that the Idaho Department of Water Resources must consider when reviewing an application for a water right transfer:

Idaho Code 42-222 (1) ... The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided:

- no other water rights are injured thereby;
- the change does not constitute an enlargement in the use of the original right;
-
- is in the local public interest as defined in section 42-202B, Idaho Code.....¹

The applicant has the burden of proof that all criteria have been satisfied before a transfer can be approved.² The Department is under an obligation to do its "investigation" whether or not protests are filed.³

As a result of a series of orders by the Director of IDWR issued in 1992 and 1993 new appropriations of groundwater in the relevant section of the Eastern Snake River Plain Aquifer are prohibited.

¹ This section contains other criteria that are not applicable in this case. IDWR has also published guidance memoranda concerning transfers: "Transfer Processing Policies & Procedures", by Karl Dreher and Norm Young (Oct. 30, 2002) and "Information Required to Satisfy Public Interest Requirements" by Gary Spackman (April 15, 2005).

² *Shokal v. Dunn*, 109 Idaho 330, 707 P.2d 441 (1985).

³ *Barron v. IDWR*, 135 Idaho 414, 18 P.3d 219 (2001).

LCRC contends that the applicant has failed to prove that the proposed transfer will meet the standards imposed by Idaho Code 42-222 and that, in essence, applicant is asking for a new appropriation of water that must be denied.

Injury to Other Water Rights

Applicant's evidence that the transfer would not cause injury to other water rights consisted primarily of testimony from Dr. Brockway and several reports he prepared, including a "well interference analysis".⁴ That evidence is based on the premise that the aquifer at the "to" well will react to more pumping as if the underlying aquifer is a "water table aquifer".⁵ Mr. Drury's testimony about the fallacy of that premise can be summarized as follows:

- There are lithological differences between the sites where the "to" and "from" wells are;

- The well driller logs in the vicinity of the "from" well indicate a water table aquifer. The drill rig operator drilled down until water was encountered and then stopped because sufficient water was encountered for the production well;

- The static water level in the "from" well is near the level that water was first encountered indicating a water table aquifer;

- The well driller logs for the applicant's proposed wells (the "to" wells), the Black Butte, and the closest of protestants' wells indicate something different, possibly a confined or semi-confined aquifer. The drill rig operator drilled down through several segregated water bearing zones before sufficient water was encountered. The segregated water bearing zones are separated by zones of dry hard rock. (Confining layers may be caused by any impermeable feature such as clay or hard rock). The static water levels in these wells are well above the level that water was first encountered indicating an aquifer under artesian pressure;

- The behavior of the "to" well is going to be more like the nearby wells owned by the applicants, some of the protestants and the Black Butte well than the "from" well. Dr. Brockway's assumptions about aquifer characteristics may be reasonable concerning the "from" well. They are not reasonable with respect to the "to" well.

- Dr. Brockway's estimation of well drawdown using the Theiss analysis and his "water table aquifer" assumption is not reasonable;

- The potential impact of drawdown on the protestant's wells is accurately estimated using the Theiss analysis, as long as it is recognized that the aquifer characteristics are those of a confined or semi-confined aquifer. It is likely that there will be injury to wells within at least a two-mile radius of the proposed wells caused by applicant's use of the proposed wells.⁶

⁴ EX 10.

⁵ The aquifer at the "from" well might be a "water table aquifer" but it is located 12-13 miles southeast of the "to" well.

⁶ For a more complete review of evidence that the transfer will cause injuries to neighboring wells see EX. 106 and Mr. Drury's testimony.

The Department's own "Ground Water Level Change Map" (July, 2005)⁷ would appear to support Mr. Drury's conclusions and observations summarized above. The "to" well site is northwest of Shoshone, more or less at the epicenter of the area showing the greatest drop in ground water levels in the entire ESPA between 1980 and 2005 while the "from" well site is in an area showing a lesser drop in ground water levels.⁸

It is a reasonable inference that the aquifer characteristics at the "to" well are more similar to those nearby (including the Black Butte wells less than 3 miles distant) than to the "from" well which is 12 – 13 miles distant.

On another level there is evidence to support the conclusion that there will be impacts and unlawful injuries to other water right holders as a result of this transfer: the recently revised "Enhanced ESRP Model 1.1" (the "model"). The applicant did not contradict the model's prediction of substantial spring flow impacts caused by the transfer.⁹ If spring flows are affected, at a minimum so will all water right holders, including pre- 1978 domestic wells¹⁰, between the affected springs and the "to" well- i.e. down- gradient of the "to" well. Allowing a transfer will give a senior priority right to applicants at the new well location injuring other validly established water right holders down- gradient. Although impacts to affected individual water right holders might be small, the cumulative impact will logically equal the amount of any new ground water diversion the applicant makes.

Enlargement- New Appropriation

From the Department's own map of ground water elevations in the ESPA¹¹ it is clear that the aquifer at both the "from" and "to" wells flows in a southwesterly direction. In response to several questions about that exhibit Dr. Brockway conceded that water not pumped at the "from" well was not likely to reach the location of the "to" well and therefore would not be available for diversion. Mr. Drury's testimony was consistent on the point.

In at least two prior cases the Department has held that in order to avoid what would otherwise amount to a new appropriation of water in the ESPA, a transfer applicant had to prove that the water not pumped at a "from" well would be available for diversion at the "to" well.¹² Both cases involved attempts to transfer ground water rights from

⁷ EX. 121.

⁸ If this transfer were to be approved there would not only be an increase in withdrawals from the area, there would be less net recharge caused by drying up crop ground on the Pierce field to accommodate the dairy: less irrigation, less recharge. It is not in the local public interest to exacerbate problems with the declining aquifer in the area.

⁹ Details appear in the "Transfer Memorandum" prepared by IDWR staff dated July 7, 2005 that Mr. Anderson should take official notice of.

¹⁰ Those water rights are absolutely protected from drawdowns as a result of a transfer. *Parker v. Wallentine*, 103 Idaho 506, 650 P.2d 648 (1982). A small fraction of those rights is depicted in EX. 106.

¹¹ Reproduced as EX. 103.

¹² The parties agreed that the Department should take official notice of the cases, copies of which were going to be offered by protestants and had been marked EX. 117. The

Bingham County, in one case to a location in the City of Jerome, in the other case to a site in the Bell Rapids area of Twin Falls County.

The principle involved and applied in those cases is applicable here: unless it can be shown that water not pumped at a “from” well becomes available at the “to” well, allowing such a transfer constitutes a new appropriation of water, an enlargement, and injury to other water rights. The Department put it this way in the Jerome Cheese transfer case:

“6. The moratorium designated by the Department on May 15, 1992 for the Snake Plain Aquifer was issued to prevent further development of water resources on the plain in order to protect water rights and to ensure compliance with provisions of chapter 2, title 42, Idaho Code.

7. The proposed point of diversion by the applicant for the cheese plant is within the Snake Plain Aquifer area. Since only a small unquantified portion of ground water which would not be pumped at the Hinks well would reach the proposed new well(s) located about 90 miles to the southwest, the diversion of 3.2 cfs or the majority thereof at the proposed new well(s) would have the same physical effect as a new appropriation of ground water and would cause injury because it would have a senior priority over validly established water rights held by junior appropriators.

8. It is not in the local public interest to approve a transfer that would essentially be a new appropriation of water which would otherwise be prevented by the moratorium”.¹³

In a transfer case involving a change in the nature or purpose of use, season of use or the place of use, the Department has to consider actual historic consumptive use associated with a right in order to avoid an enlargement.¹⁴ Because the present transfer is not simply a transfer of one irrigation use to another irrigation use, LCRC contends that the Department cannot determine “historic consumptive use” based on the most water consumptive crop applicant may have grown on the Dietrich property- the Department has to make that determination on what the evidence shows in the way of historic crop records or, preferably, what the watermaster’s measurement records in evidence proves.¹⁵

cases are: Transfer No. 5804 in the Name of David Bloxham and Transfer No. 5436 in the Name of Jerome Cheese Co.

¹³ Transfer No. 5436, Amended Conclusions of Law 6-8, p. 9. The same scenario was described as an “enlargement” too in Transfer No. 5804.

¹⁴ IDWR “Transfer Processing Policies & Procedures” Memo, Oct. 30, 2002.

¹⁵ This point is discussed by Fereday, Meyer, and Creamer in their “Water Law Handbook” (2005), fn. 232, pp.74-75: “As originally introduced, the legislation [*referring to Idaho Code 42-202B(1)*] would have required the Department to quantify a right in a transfer proceeding based on the authorized consumptive use defined as “the maximum consumptive use that may be made of a water right.” Thus, the Department would have been required, apparently, to look at the most water consumptive crop that could possibly have been grown on the property, and base the quantity of water transferred on that hypothetical use, irrespective of what was actually grown. This provision of the legislation was dropped prior to passage. Consequently, the limitation to historic consumptive use remains in effect.”

The original pump records reflecting water use at the “from” well indicated a peak annual diversion of 115.5 AFA between 1998 and 2002.¹⁶ If irrigation efficiency using sprinklers is about 80% as Mr. Drury testified, actual historic consumptive use would then be 92.4 AFA based on the peak year use. That amount would be reduced further to account for the mitigation requirement applicant agreed to, leaving 69.3 AFA for transfer. Anything greater than that is not based on reliable evidence in the record reflecting what crops were actually grown on the Dietrich property and would constitute an enlargement of applicant’s use.¹⁷

Local Public Interest- Water Quality

It is not in the local public interest to allow more groundwater diversions in a part of the ESPA proven to have had the greatest magnitude of declines since 1980.¹⁸ Dr. Brockway attributed those declines to several things in the following exchange: “I believe that the increased water level change from 1980 to 2005 appears to be anomalous in that area and I think that’s the way Mr. Drury used the word anomalous. The question of why it is there- is it because we have an entirely different type of aquifer, it it because we have significantly more pumping in that area which might have caused that [interruption] or is it because we’ve had over that period some significant changes in local re-charge that might affect it and I think all of those could have resulted in the anomalous water level change [interruption- Q: “they’re all reasonable explanations?”] ..or combined, and I don’t know the answer to that. Q: But would you agree that those all are reasonable explanations? A: They would all contribute to that, yes”.¹⁹

This transfer would shift a diversion from a part of the aquifer less affected by ground water declines to an area most affected. At the same time, as a result of less irrigation at the point of diversion, the benefits of some amount of associated recharge would be reduced.

¹⁶ EX 107 and Testimony of Paul Drury. Mr. Drury did re-calculate the diversion from the McCowan well using the PCC Dr. Brockway claimed should have been used by the watermaster just to see what that might show. The result was a diversion of 188.6 afa that, after reductions for pump efficiency, would lower the historic consumptive use to 142 afa as a starting point from which to further reduce the amount available for transfer because of the mitigation requirement. The net result using the “revised” PCC approach yielded 115 afa available for transfer.

¹⁷ In this case, the applicant did not submit evidence in the form of crop records to substantiate its historical consumptive use: instead, applicant relied on some conflicting testimony from Dr. Brockway who claimed he had looked at air photos and some “FSA” records to determine what the most consumptive crop had been over some unstated period of time. At least one point in his testimony he seemed to need some prompting about whether those records had shown an alfalfa crop or pasture.¹⁷ The Department’s own October 30, 2002 “Transfer Memo” suggests that something more is required to prove historic consumptive use in a transfer case like this one.

¹⁸ EX. 121.

¹⁹ Nov. 18 hearing record at 1:24:22.

Water quality concerns are another issue. The applicant failed to prove that the waste generated at the dairy will not cause groundwater contamination. Groundwater pollution is appropriate for consideration under the “public interest” criteria of Idaho Code 42-222.

The applicant relied primarily on its nutrient management plan (NMP) as evidence that the dairy operation would be able dispose of its manure wastes without threatening ground water. Although the NMP had been approved by ISDA, its implementation will likely cause some ground water pollution in the near term and will not protect ground water from pollution over the longer term.

In the near term the approved NMP revealed that approximately 500 acres will be needed to dispose of the liquid lagoon waste. That waste likely contains a myriad of human or livestock pathogens, as well as other pollutants.

The plan designates fields for liquid waste disposal including fields named “Hubbs, Kelly, Mini-pivot, Pantone, Sandy North, Silva#1, Silva #2, Silva#3, and Zimmatic”.²⁰ Mr. Fitzgerald testified that two additional fields - named “Sandy South, Sherman (or Odell)” - were to be used for such disposal. More than half of them show that a “rock layer is present” and that a “water table is present”.²¹ These fields, pock-marked with blowouts without soil to sustain crops which capture “nutrients” to some degree, are inappropriate for liquid waste disposal- the blow outs are direct connections to the aquifer with nothing to prevent percolation of contaminants from leaching into the aquifer.

Mr. Fitzgerald’s testimony on the dairy’s liquid manure application system was contradictory at best:

1. The Nov. 17 hearing record contains the following exchange: “Q: And when we’re talking about liquid manure application we’re talking about applying it through pivots?” “A: Correct” ... “Q: And that’s what’s contemplated as part of the NMP is to apply the liquid manure through the pivots?” “A: Yes. We pump the liquid manure, for instance from Barn #2.... Our liquid waste we pump for about 10 days once a year... we pump our lagoons in the Fall”.²²

2. Mrs. Westendorf testified on Nov. 18 that she had seen lagoon waste being pumped through one of applicant’s pivots the previous day: “As I was driving to the hearing yesterday I saw the dairy pumping black waste from their lagoon through a pivot out onto their property next to the road.”²³ This property has rock outcroppings like the map over here (*referring to EX. 3B*) shows.... It’s going right onto that land. Eventually won’t that waste filter down and affect our water supply?”

3. It wasn’t until several weeks later at the Dec. 9 hearing that the applicant mentioned anything about using a gated pipe “under-slung” underneath a pivot when there was this exchange involving a question about mixing of irrigation water and lagoon effluent: “The NMP at some point suggested that you were going to be mixing the liquid manure during the disposal window 50% water, 50% fresh water, canal water” “A: That is one of the common practices that is used but we’ve took it one step further, we’ve

²⁰ EX. 19.pp. 5-33.

²¹ EX. 19, p. 92. For an illustration of the “rock layer present” condition the department can examine EX. 3(b) revealing what several witnesses described as “blowouts”.

²² Nov. 17 hearing record at 59:51. (All quotations are as accurate as possible without an actual transcript)

²³ Nov. 18 hearing record at 40:45.

actually installed a gated pipe system underneath our pivots and that way there's no atomization of the manure and the water- (1) it reduces smell, (2) it reduces the amount of actual water we have to dispose of – we're only disposing of what's in the lagoon, we're not disposing of any more water of what is necessary"....."Q: " where does the other water come from and what's the mechanism for getting the 50-50 proof?" "A: The other water would come from the rest of the pivot that will be applied before or after we apply waste water through gated pipe..... There is no mix in the fresh water and the lagoon water, fresh water and lagoon water".²⁴

So, based on Mr. Fitzgerald's testimony, the Department could find either that the lagoon water is being applied through the pivots or through gated pipes "under-slung" underneath the pivot structure. Either way the lagoon water will be applied to fields that are unsuitable for this type of liquid waste manure disposal because of all the outcrops and, in some cases, presence of a water table.²⁵

Over the longer term the Department should consider several serious gaps in the NMP and dairy well testing protocols:

1. Regulatory (ISDA) soil testing is done at the 0-12" depth where there are surface water runoff concerns and at the 18-24" depth where there are groundwater contamination concerns.²⁶ Such shallow testing does not account for any nutrients (or other pollutants) which likely will be carried to the aquifer by the (minimum of) 10% of the irrigation water applied to a crop which recharges the aquifer.

Every one of the fields which either Mr. Fitzgerald or the NMP reported will be used for liquid waste disposal is identified as a "groundwater resource concern" because of a "limiting factor" within five feet of the surface.²⁷

Field	Subsurface Feature	Depth from Surface (inches)
Hubbs	fractured bedrock	21
Kelly	" "	25
Mini- pivot	" "	13
Pantone	" "	25
Sandy North	" "	25
Sandy South	" "	25
Sherman	" "	25

²⁴ Dec. 9 hearing record at 1:01:05.

²⁵ Even if the "gated pipe" version is believed, there was still no testimony that the gates were opened and closed to avoid application on the rock blowouts. That would be an extraordinarily difficult, if not impossible, management practice anyway. It would require an employee on every field at all times during the application process to open and close the outflow gates to avoid the outcrops. In addition, under this version of Mr. Fitzgerald's testimony, there is no mixing of the "fresh water" and lagoon water. He described a protocol where either the fresh water was applied before, or after, the lagoon waste was applied. If the "fresh" water application occurs after the lagoon waste is applied, that will likely wash the previously applied lagoon waste further down into the rock outcrops into the aquifer.

²⁶ EX. 19, p.3.

²⁷ EX. 19, pp. 38-39.

Silva #1	“	“	25
Silva #2	“	“	10
Silva #3	“	“	25
Zimmatic	“	“	13

How soil samples from an 18-24” depth will even be possible on fields like “Mini-pivot”, “Silva #2” and “Zimmatic” where fractured bedrock appears at 10-13” is anyone’s guess.

2. The proposed dairy is located in a “critical Nitrate-Nitrogen management area Wood River, Priority 2.” Priority 2 is designated because at least 50% of the ground water sampling locations within the area exceed 2-milligrams/liter nitrate. This concentration threshold provides an indication of human caused (anthropogenic) impacts. The upper limit for naturally occurring (background) concentrations of nitrate is considered to be about 2 mg/l”.²⁸

3. On an annual basis applicant’s dairy complex will produce 10,296 tons of manure in the form of separated solids, 197,842 tons in the form of “solid stack” manure, and 9,959 tons in the form of waste storage pond waste.²⁹ About 80% of the total will be “exported” to neighbors’ fields which are not covered by the NMP and which ISDA does virtually no monitoring of.³⁰

4. In a year 2000 report the Idaho Dept. of Environmental Quality estimated that the manure from the dairy and beef livestock population in Gooding and Jerome counties accounted for about 40% of the nitrogen load which could contribute to rising nitrate/nitrate trends detected in spring flows down-gradient of those counties.³¹ The estimate was based in part on records showing a population of 98,932 mature milk cows in the two counties.³² More recent statistics show that those numbers have increased to a total of 179,030 as of July, 2005.³³ The potential nitrogen source contribution from dairy cows in the two counties has likely grown in proportion to their increase in numbers. After describing statistically significant increases in the nitrate/nitrite levels in springs down-gradient of the counties,³⁴ the report stated that: “ This analysis suggests that there may be an overabundance of nitrogen being applied to areas up-gradient of the springs”³⁵

It is not in the local public interest to allow the transfer - applicant’s proposal will increase the “over-application” by substantially increasing the amount of manure waste that has to be disposed of in the area- the vast majority of which is not accounted for by a NMP. Unlike commercial fertilizer that a farmer has to pay for, most dairy manure waste is free to whomever is willing to accept it.³⁶ There are fewer incentives to apply it at

²⁸ EX. 19. P. 37.

²⁹ EX. 19, p.72.

³⁰ EX. 19, p. 73 and testimony of Marv Patten.

³¹ EX. 115, p.21.

³² Id., p. 18-19.

³³ EX 122, p. 30.

³⁴ EX. 115, pp. 23-28.

³⁵ Id., at 28.

³⁶ Testimony of Marv Patten.

agronomic rates because manure waste is being produced at such an astonishing volume that it is now free.

5. ISDA's dairy well monitoring program is inadequate to prevent groundwater contamination. The monitoring may reveal ground water pollution once it reaches well depth but by then it's too late to prevent contamination above the well from moving down to the aquifer. Monitoring wells are not required near lagoons, nor are leak detection systems.³⁷

Finally, applicant sought to prove (with its own EX. 18) that its proposed dairy was in compliance with Lincoln County's zoning ordinance. That exhibit accomplished the opposite: the section of ground where applicant has already begun to expand its operation and where the new proposed points of diversion are located are clearly outside the boundaries Lincoln County has authorized. The Department may no longer consider this problem to be within the scope of the Department's public interest review in the context of a transfer case based on recent changes in the law. On the other hand, it was the applicant who first "opened this door" with its exhibit. It is not in the local public interest to allow a transfer that would, in effect, facilitate an unauthorized local land use.

Conclusion

This transfer may be typical of many the Department has reviewed and approved in the past. However, for many reasons, citizens who may be affected by transfers are now rightfully demanding that the Department evaluate their impacts more closely. Drought, a public perception that the water resource has been over appropriated and has been "transferred" hither and yon, uphill, sideways, as well as blatant and widespread overapplication of waste that can threaten water quality- all have heightened expectations that the Department will now approach transfer applications with the utmost caution on the public's behalf.

In this case, the Department has before it a record upon which it could and should deny the requested transfer for all the reasons stated above. This transfer does not meet the requirements of the law either as it is written or as it has previously been interpreted and applied by the Department. It should be denied.

DATED this 9th day of January, 2006



Richard A. Carlson
Attorney for Lincoln County Rural Council

³⁷ Testimony of Marv Patten.

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of January, 2006, I served a true copy of the foregoing document on the person listed below, by the method indicated below:

Robert E. Williams
Attorney at Law
P.O. Box 168
Jerome, ID 83338

U.S. Mail, postage pre-paid and Facsimile

Bev Ashton
685 N 250 W
Shoshone, ID 83352

U.S. Mail, postage pre-paid

Henry and JaNene Buckway
585 N 250 w
Shoshone, ID 83352

U.S. Mail, postage pre-paid

Russell and Pamela Pantone
745 N 550 W
Shoshone, ID 83352

U.S. Mail, postage pre-paid

Elizabeth Tews
680 N 350 W
Shoshone, ID 83352

U.S. Mail, postage pre-paid

Rusty and Carla Tews
675 N 150 w
Shoshone, ID 83352

U.S. Mail, postage pre-paid

Jerry and Susan Westendorf
707 W 470 N
Shoshone, ID 83352

U.S. Mail, postage pre-paid



Richard A. Carlson

Peter Anderson

RECEIVED

JAN 10 2006

DEPARTMENT OF
WATER RESOURCES

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*Filed via FAX
1-9-06 VW*

Attorneys for Applicant 4 Bros. Dairy, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
TRANSFER 71607 IN THE NAME OF 4
BROS. DAIRY, INC.

FINAL STATEMENT OF
4 BROS DAIRY, INC

COMES NOW the Applicant, 4 Bros. Dairy, Inc., by and through its attorney, Robert E. Williams of the firm Fredericksen, Williams, Meservy & Lothspeich, LLP, and, pursuant to the order of the Hearing Officer, submits its Final Statement. This Final Statement is submitted in the form of proposed Findings of Fact and Conclusions of Law.

LEGAL STANDARDS

Idaho Code § 42-222 provides in pertinent part that:

"1) Any person, entitled to the use of water whether represented by license issued by the department of water resources, by claims to water rights by reason of diversion and application to a beneficial use as filed under the provisions of this chapter, or by decree of the court, who shall desire to change the point of diversion, place of use, period of use or nature of use of all or part of the water, under the right shall first make application to the department of water resources for approval of such change. Such application shall be upon forms furnished by the department and shall describe the right licensed, claimed or decreed which is to be changed and the changes which

are proposed, and shall be accompanied by the statutory filing fee as in this chapter provided. ... The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter. The director may consider consumptive use, as defined in section 42-202B, Idaho Code, as a factor in determining whether a proposed change would constitute an enlargement in use of the original water right. The director shall not approve a change in the nature of use from agricultural use where such change would significantly affect the agricultural base of the local area..."

Idaho Code §42-202(B)(3) describes the local public interest as:

"...the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource".

Idaho Code §42-202(B) (1) defines "consumptive use" as

"...that portion of the annual volume of water diverted under a water right that is transpired by growing vegetation, evaporated from soils, converted to nonrecoverable water vapor, incorporated into products, or otherwise does not return to the waters of the state. Consumptive use is not an element of a water right. Consumptive use does not include any water that falls as precipitation directly on the place of use. Precipitation shall not be considered to reduce the consumptive use of a water right. "Authorized consumptive use" means the maximum consumptive use that may be made of a water right. If the use of a water right is for irrigation, for example, the authorized consumptive use reflects irrigation of the most consumptive vegetation that may be grown at the place of use. Changes in consumptive use do not require a transfer pursuant to section 42-222, Idaho Code."

The Department of Water Resources has not issued or promulgated rules governing transfer proceedings but has issued an Administrator's Memorandum, dated October 30, 2002, as updated by a Memorandum dated April 15, 2005, offering guidance putting forth transfer processing policies and procedures.

FINDINGS OF FACT
PROCEDURAL BACKGROUND

1. On April 19, 2004 4 Bros. Dairy, Inc., submitted an application to transfer existing Water Right #37-20613. The transfer sought (a) to establish two (2) new points of diversion in the SE1/4, SE1/4, Section 5, Township 5 South Range 17, EBM, Lincoln County, Idaho; (b) to change the nature of the use of the water right from irrigation to stock water and commercial; (c) to establish new places of use in Sections 5 and 8, Township 5 South, Range 17 EBM, Lincoln County, Idaho; and (d) to change the period of use to year round from seasonal irrigation use. (March 15 to November 15)

2. Notice of the Application was published in the Lincoln County Journal, on or about the 13th day of January and the 20th day of January, 2005.

3. Protests to the Application for Transfer were made by Elizabeth Tews, Henry and Janene Buckway, Bev Ashton, Jerry and Susan Westendorf, Russell and Pamela Pantone, Doug Albright and the Lincoln County Rural Council. The protests were filed primarily on the grounds that the proposed transfer would create injury by affecting the quantity and quality of the water in neighboring wells owned by the Protestants. The Protestants also believed that the transfer would cause an impermissible enlargement of Water Right No. 37-20613.

4. Peter R. Anderson was appointed Hearing Officer by order of the Director of the Idaho Department of Water Resources, dated March 15, 2005.

5. An order defaulting Protestant Doug Albright and denying his protest was entered on the 20th day of May, 2005. An Order defaulting Protestants Pantone and denying their protest was entered on the 15th day of July, 2005.

6. A Pre-Hearing Conference was noticed for Thursday, April 20, 2005, Twin Falls, Idaho. It was vacated and reset for Friday May 13, 2005, by Order dated April 27, 2005. The Pre-Hearing Conference was held on May 13, 2005.

7. A Pre-Hearing Order allowing for the conduct of discovery; establishing a schedule for discovery; providing for a date for exchange of witnesses and exhibits; establishing the hearing date of July 23, 2005; and. requesting a Staff Memorandum from the Idaho Department of Water

Resources was entered on May 20, 2005.

8. Notice of Pre-Hearing Conference for July 14, 2005 was entered by the Hearing Officer on July 7, 2005. A Pre-Hearing Conference was held on Thursday, July 14, 2005, at the Lincoln County Cooperative Extension office in Shoshone, Idaho.

9. Following the Pre-Hearing Conference, the Applicant filed a Motion for Order Striking Protestants Exhibits and, Alternatively, for Vacation and Sanctions on July 26, 2005.

10. After conversations with the attorney for 4 Bros. Dairy, Inc., and the attorney for the Lincoln County Rural Council, the Hearing Officer entered an Order Vacating Hearing on July 26, 2005.

11. On August 4, 2005, an Amended Pre-Hearing Order was entered reestablishing discovery completion dates and the date upon which final witness lists and proposed exhibits would be exchanged by the parties. The hearing date was tentatively set for September 1 and 2, 2005.

12. On August 12, 2005 the parties were advised, by correspondence from the Department of Water Resources, that the tentative hearing dates of September 1 and 2 would be vacated because of the unavailability of one of the Applicant's witnesses. On September 9, 2005, the matter was re-noticed for a hearing on October 20 and October 21, 2005.

13. Following a receipt of correspondence from the attorney for the Applicants that he would be unavailable October 20 and 21, 2005, the October hearing dates were vacated and the matter was reset for hearing on November 17, and November 18, 2005 at the Bureau of Land Management conference room in Shoshone, Idaho.

14. Hearing on the Application was held on November 17 and November 18, 2005, at the Bureau of Land Management conference room in Shoshone, Idaho. At the hearing the Applicant was represented by Robert E. Williams. Protestants Lincoln County Rural Council was represented by Richard Carlson. Elizabeth Tews, Henry and Janene Buckway, Bev Ashton, Jerry and Susan Westendorf and Russell and Pamela Pantone appeared for themselves.

15. During the hearing, Marv Patten, Chief of the Bureau of Dairying of the Idaho Department of Agriculture, who was a witness subpoenaed by Protestant Lincoln Rural Council was not available to testify. On November 28, 2005, a Notice of Hearing was provided to all

parties that the testimony of Mr. Patten would be taken by telephonic hearing originating from the Idaho Department of Water Resources office, 322 East Front St., Boise, Idaho, commencing at 9:00 a.m., on December 9, 2005.

16. The hearing was reconvened at that time for purposes of securing Mr. Patten's testimony. Brief rebuttal testimony was proffered by the Applicant.

17. At the conclusion of the hearing on December 9, 2005, the parties were given until the end of business Friday, January 6, 2006, to file Final Statements, which may include Proposed Findings of Fact and Conclusions of Law. Those submissions were to be made simultaneously by the parties. The time for submission was extended by stipulation of the parties to January 9, 2006.

EVIDENCE IN RECORD

18. The following Exhibits, offered by 4 Bros., Inc., and admitted by Stipulation of all Protestants as part of the record, were considered by the Hearing Officer:

EXHIBITS

1. Eastern Snake River Plane Aquifer map
2. Site Location Map
3. Aerial Photo of proposed place of use and points of diversion
- 3(a) Aerial oblique photograph of proposed place of use and point of diversion
- 3(b) Enlargement of Exhibit 3(a)
4. Driller logs for wells near proposed place of use
5. Driller logs in vicinity of proposed place of use
6. Test/production well design schematic
7. Dairy Water Requirements Worksheets
8. Consumptive use for certain irrigation crops from Brockway/Allen study
9. Local well water quality data
10. Well interference analysis prepared by Brockway Engineering
11. Copy of Transfer application with mitigation plan narrative and transfer

spread sheet output

12. Well hydrographs from local USGS observation wells
13. Water Balance spread sheet
14. Local climate and precipitation data
15. Local soils data
16. Aerial photograph of "from" well site
17. Mitigation plan analysis under new regional ESPA model
18. Copy of Applicant's Lincoln County CAFO permit
19. Applicant's Nutrient Management Plan for their expanded facility
20. Chart of allocation of ESPA water
21. Direct power coefficient data from farm well

Exhibits admitted into the record, offered by the Protestants and admitted by Stipulation of the parties considered by the Hearing Officer were:

100. IDWR map depicting ground water districts
101. IDWR map depicting ground water elevations and ESPA
102. IDWR map depicting ground water flow directions
103. IDWR map depicting ground water elevations and ESPA
104. Water right records of surrounding properties
105. Well logs from vicinity of proposed to wells
- 106(a) - 106(f) Transfer Impacts
107. Response to public records request.
108. 4 Bros. Dairy, Inc., application to rent water from water bank
109. Miscellaneous IDWR data and correspondence RE: Black Butte Transfer
110. Site team report considering expanded operation of 4 Bros. Dairy, Inc.

111. 4 Bros. Dairy, Inc., withdrawal of Lincoln County Application
112. Nutrient Management Plan of Applicant
113. Response to public records request made to the Department of Agriculture.
114. Water quality tests from Buckway well.
116. Crop statistics from 1990.
118. Satellite photograph
119. Satellite photograph
120. Lincoln County Planning and Zoning documents.
121. Ground water level change map.
122. ISDA response to public records request through July 29, 2005.

19. The Hearing Officer took official notice of Exhibit No. 117, which contained IDWR Orders on other water transfer applications. Protestants Exhibit No. 115 was admitted into evidence over the objection of the Applicant. This was a study of the Idaho Department of the Environmental quality entitled "Cumulative Impacts Assessments" from the year 2000. The Staff Memorandum of the Idaho Department of Water Resources, dated July 7, 2005, was admitted into evidence as Exhibit No. 800, at the instance of the Hearing Officer. At the instance of Protestant Buckway, Exhibit No. 300 was admitted into evidence without objection.

20. The following persons testified on behalf of the Applicant: Andrew Fitzgerald and Dr. Charles E. Brockway. The following persons testified on behalf of the Protestants: Paul Drury, Rusty Tews, Janene Buckway, Bev Ashton, Jerry and Susan Westendorf and Marv Patten.

FACTS RELATED TO APPLICATION PARAMETERS

21. 4 Bros. Dairy, Inc., is an Idaho corporation, owned by four (4) Fitzgerald brothers, with an existing dairy operation in Lincoln County, Idaho. This transfer was sought to obtain additional water for stock water and commercial purposes in order to allow an additional 3500 head of cows and 500 head of heifers to be placed at the Applicant's existing dairy operations. The Applicant has a permit from Lincoln County allowing 10,887 animal units.

22. The application seeks to transfer water from an existing irrigated farm owned by the Applicant. This farm was some times referred to in the proceedings as the "McCowan Place," and consists of approximately 77.4 acres in Township 6 South, Range 18, EBM Section 20, NE1/4. The point of diversion of the well at the McCowan place is in the NE1/4 SE1/4 of that section, township and range. This existing point of diversion for Water Right No. 37-20613 is approximately 12 miles southeast of the proposed new points of diversion. The McCowan well was sometimes referred to in the proceedings as the "from" well.

23. The new wells, sometimes referred to in the proceedings as the "to" wells along with the "from" well, are located within the bounds of the Eastern Snake River Plain Aquifer.

24. Water Right No. 37-20613 has been partially decreed for a diversion rate of 1.12 cfs with an annual volume of 309.6 acre feet. The right's priority date is December 19, 1974.

25. The pending transfer application seeks to move 232.2 acre ft. of the existing volume under Water Right No. 37-20613.

FACTS RELATED TO QUANTITATIVE INJURY

26. A study was conducted by Dr. Charles E Brockway concerning the impact of pumping at the new points of diversion to produce the 232 acre ft. of annual volume of water proposed by the Transfer. The study utilized the Theiss Equation model to predict point to point impacts of water usage in the aquifer. This study was designed to show the effects of the transfer on wells of the Protestants in the surrounding area. The study assumed that the aquifer surrounding the new points of diversion and other wells was characterized by fractured basalt, and that the average pumping rate to produce the annual volume requirement from the new wells would be .32 cfs. Utilizing these parameters, at 60 days of continuous pumping, the anticipated draw down of the existing wells of Protestants Buckway, Pantone, Albright and Ashton would be -.22 ft. for the Buckway well, -.04 ft. for the Pantone well. -.02 ft. for the Albright well and -.01 ft for the Ashton well.

27. Each of the Protestants, except for the Lincoln County Rural Council owns, or has an interest in, wells in the vicinity of the proposed new points of diversion. These wells range in distance from the proposed new points of diversion as follows:

Buckway: .7 miles;
Ashton: 1.5 miles;
Tews: 1.7 miles;
Pantone: 3.12 miles;
Westendorf: 4.53 miles.

28. Due to long term drought conditions in the area surrounding the "to" wells, general ground water levels in the area have been declining.

29. Using the water as proposed at the "to" well site will not create material injury to other existing water rights in the area in terms of reducing the amount of water available to the other water rights holders or requiring them to go to unreasonable expense or efforts in order to obtain their water under existing rights.

30. Dr. Charles E. Brockway holds a Ph.D. in Hydrology as well as Bachelor's and Master's Degrees in Civil Engineering. He has considerable experience as an expert witness in other hearings and trials regarding characteristics of the Eastern Snake River Plains Aquifer. He has focused on the ESPA in his work.

31. Dr. Charles E. Brockway authored a study in the year 1998 regarding water right transfer application No. 5098 in the name of Black Butte Properties, LLC. The "to" well site in that application arises several miles to the northeast of the "to" well site in the present application. The aquifer at the "to" well site in the Black Butte transfer was characterized in the proceeding as a confined or semi-confined system. The "to" well site in this proceeding is not a confined or semi-confined system.

32. Paul Drury, the Protestants' expert witness, who holds a Bachelors Degree in Agriculture Engineering and a Masters Degree in Fishery Science, utilized the well interference data from the 1998 Brockway Black Butte Report and applied the same data to the present transfer.

33. A confined or semi-confined aquifer is characterized by a layer of clay on the top and the bottom of that aquifer.

34. Utilizing the Black Butte data, Mr. Drury testified that the impacts on the surrounding wells from the new wells at the "to" site would produce a draw down of 17 ft. within a 1/2 mile of the new points of diversion, 12.2 ft. within 1 mile of the proposed points of diversion,

and 5.9 ft within 2 miles of the new points of diversion.

35. Mr. Drury did not testify as to what assumptions he used in the pumping of the wells at the "to" site or in reaching his predictions of the level of draw down.

36. The lithology at the proposed points of diversion at the "to" site in the Black Butte transfer demonstrated the characteristic of a confined or semi-confined aquifer between two (2) layers of clay. The aquifer at the proposed points of diversion of the present transfer did not show these confined aquifer characteristics.

37. The proposed point of diversion for the Black Butte transfer was at the periphery or just outside the bounds of the ESPA.

38. Concerning the characteristics of the aquifer at the "to" well site for the present transfer, the preponderance of the evidence is that it is not a confined, or semi-confined, aquifer. The Brockway study more accurately reflects the likely effects on the neighboring wells as a result of the transfer.

39. If the assumptions used by the Brockway 2005 study were extended in terms of hours of continuous pumping, the effects on the surrounding wells would not be materially different than shown at the 60 day continuous pumping level.

FINDINGS RELATED TO INJURY TO WATER QUALITY

40. The general nitrate levels in the ground water surrounding the proposed "to" site, and the adjacent wells, are stable or declining.

41. The nitrate level at the Buckway well declined from ten (10) parts per million in 2002 to 6.1 part per million in 2004. The most recent test records for wells on the Applicant's property, near the site where the new points of diversion would be constructed, range between less than 1 part of nitrate per million to 2.12 parts per million.

42. The Applicant has a Nutrient Management Plan for its expanded facility that has been approved by the Idaho Department of Agriculture. The Applicant will also construct berms to shield water from its facility from entering area canals. The Applicant will construct a new lagoon in accordance with the requirement of the Idaho Department of Agriculture.

43. Under existing statutes and regulations, the operator of a dairy in Idaho, such as that

owned by the Applicant, must not allow waters containing manure or other pollutants generated by it to enter waters of the United States. The Idaho Department of Agriculture also forbids the operator of a dairy from allowing water containing manure or other pollutants to escape the boundaries of the Applicant's facility.

44. The dairy pollution initiative, administered by the Idaho Department of Agriculture under a memorandum of understanding with the Idaho Department of Water Resources, the United States Environmental Protection Agency, the Idaho Department of Environmental Quality, and the Idaho Dairymen's Association has been praised by the United States Environmental Protection Agency as a model for the nation in terms of its effectiveness. The objective of the initiative is to protect surface and ground water quality.

45. Pursuant to existing regulations administered by the Idaho Department of Agriculture, a dairy, such as that of the Applicants, is subject to frequent inspections for compliance with regulations regarding waste management.

46. Under nutrient management planning regulations, administered by the Idaho Department of Agriculture, the Applicant is required to apply liquid or solid waste to its fields at agronomic rates, meaning the rate at which the nutrients can be uptaken by crops, when certain thresholds of phosphorus on fields to which waste is applied have been observed.

47. The Applicant is in compliance with its Nutrient Management Plan at the present time. The Nutrient Management Plan has been rewritten for the expanded operation and has been approved by the Idaho Department of Agriculture. The Applicant has agreed to conduct soil sampling to monitor nutrient levels in the soil.

48. The Applicant has operated a significantly sized dairy in the vicinity of the proposed locations of the new points of diversion for many years. The Applicant has recently purchased an additional 400 acres of farmland in the vicinity of its operation which will be available for application of nutrients from manure generated from the dairy.

49. Phosphorus levels in the soil to which dairy waste is applied do not have an ill effect by themselves on ground water, but are used by the Department of Agriculture as a predictor of the presence of nitrate.

50. Dairy lagoons in which waste water generated by the dairy operations is stored,

must be constructed to standards approved by the Idaho Department of Agriculture before the newer expanded dairy is allowed to commence operations.

51. The Idaho Department of Agriculture does occasionally test dairy lagoon water for pathogens when situations require it to. The data from testing of existing wells owned by the Applicant near the proposed site for the new points of diversion show the presence of fecal coliform bacteria at less than one colony per 100 milliliters of water.

52. The Applicant has implemented, or has agreed to implement, all the mitigation measures for the expanded dairy site proposed by the Site Team Report in Exhibit No. 110.

53. The Protestants have provided no evidence that the dairy operation conducted by the Applicant has, or will in the future, have a material impact on the quality of the water obtained from Protestants' wells. There is no credible evidence in the record that the existing programs administered by other agencies are not effective to protect the quality of surrounding water rights from potential bad effects of dairy operations. No evidence was produced to show that Applicant is, or likely would be, in violation of any of the existing laws protecting water quality.

FACTS RELATED TO ENLARGEMENT

54. The effect of the proposed transfer on various regions of the Snake River as computed on the basis of the "old" ESPA computer model, sometimes referred to as the "old transfer tool" would require a 5% reduction in the annual volume of water proposed by the present transfer to mitigate for impacts predicted by that model. The Applicant agreed to this mitigation.

55. A subsequent mitigation analysis prepared by Shane Bendixsen, on behalf of the IDWR was based upon the "New transfer tool", an updated computer model. It predicted an approximate 25% reduction of volume under the transfer to be required to produce the mitigation of predicted affects on identifiable regions of the Snake River.

56. It is not certain which tool, the old transfer tool, or the new transfer tool is the most reliable, but it is probable that the newer model is more accurate.

57. The Applicant testified that it would abide by the 25% mitigation plan predicted by the Bendixsen memorandum of July 7, 2005 using the "new transfer tool."

58. The historical use of the Water Right No. 37-20613 was for the irrigation of crops.

From the study done by Brockway and Allen in 1983, the consumptive use available for transfer at the "from" site is 2.99 acre ft. for 77.4 acres, or 231.4 acre ft.

59. Using 77.4 acres, at 2.99 acre ft. per year of consumptive use, 231.4 acre ft. are available for transfer.

60. The McCowan place has been farmed consecutively for many years prior to the year the application for transfer was filed.

61. A power consumption coefficient (PCC) for a given pump may be used to estimate volumes of water pumped therefrom, where the power usage at the well to which the pump is installed is available.

62. Utilizing the 2004 measurement field form admitted as Exhibit No. 21, with a PCC of 679, the historical annual volume of use, was estimated to be 188 acre ft. per year for Water Right No. 37-20613.

63. The method of estimating volumes from power records and power consumption coefficients is not extremely accurate.

64. The Idaho Department of Water Resources has, on many prior occasions acknowledged the consumptive use of crops in Southern Idaho to be as determined from the 1983 Brockway/Allen study. That study shows the annual consumptive use to be 2.99 acre ft. per acre for irrigation purposes at the McCowan farm. It is a more reliable method of determining historical consumptive use than volumes computed from power records and power consumption coefficients.

FINDINGS RELATED TO CONSERVATION OF WATER

65. There will not be more water utilized in the "to" site than was consumptively used historically at the "from" site.

66. The Applicant will use the same water for multiple tasks involved in the dairy operation, instead of using a "new" water for each operation, thereby conserving the usage of water.

FINDINGS RELATED TO THE LOCAL PUBLIC INTEREST

67. The effects of the proposed transfer on the local public interest as defined at I.C.

§ 42-202(B)(3) are covered by the findings related to the impacts of the transfer on the quality and quantity of the water in the area, as previously set forth in these findings.

FINDINGS RELATED TO IMPACT ON LOCAL ECONOMY

68. The transfer will enable the Applicant to expand its existing dairy operations which already have a substantial beneficial economic impact on the local area.

69. Dairy and related farming endeavors contribute significantly to the local economies of the areas where they are located.

CONCLUSIONS OF LAW

INJURY TO QUANTITY OF WATER

1. The transfer will not injure any other water right and, specifically, will not injure any water right of any of the Protestants. A maximum draw down of two-tenths (2/10) of a foot or less, as shown by the Brockway well interference study, is not significant enough to constitute an injury to any of the water rights of any of the Protestants. Impact on reaches of the Snake River predicted by the new transfer tool will be mitigated by reducing the volume of water otherwise available for transfer by 25%.

2. The consumptive use volume of the water available for transfer is 231.4 acre ft. per annum. Reducing that amount by 25% to account for the mitigation required by the Benedixsen analysis results in a volume of 173.55 acre ft. per annum available for transfer. The volume transferred of 173.55 acre ft. will not constitute an enlargement of Water Right No. 37-20613.

INJURY TO QUALITY OF WATER

3. Current law places the primary duty of regulation over the possible harmful effects of the discharge of polluted waste water from a dairy in the hands of the Idaho Department of Agriculture. The Applicants have not been shown to be in violation, or that they will be in violation, of any of the statutes or regulations currently administered by the Idaho Department of Agriculture, or other agencies. It is not the duty of the Department of Water Resources to second guess the regulations of other agencies concerning water quality and the like, where it has been

demonstrated that such matters are regulated by other governmental agencies and that the Applicant is in compliance with such regulations. *Shokal vs Dunn*, 109 Idaho 330, 707 P.2d 441, 442 (1985).

CONSERVATION OF WATER RESOURCES

4. The application will not increase the amount of water withdrawn under former Water Right No. 37-20613, and is, therefore, in keeping with conservation of water resources in the State of Idaho. The Applicant has also demonstrated that it will use in a redundant fashion the water available, thereby further conserving the water resources of the State of Idaho.

BENEFICIAL USE

5. Use of water for dairy and related farming activities consisting of stock water and commercial usage, as a beneficial use of water in this state.

ECONOMIC IMPACT ON LAND AREA

6. The transfer will enable the existing dairy and farming operations of the Applicant to expand, enhancing the local agricultural economy.

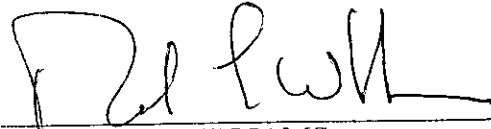
LOCAL PUBLIC INTEREST

7. The standards of I.C. § 42-222(B)(3) have been met by the Applicant's demonstration that there will be no significant adverse effect on the quantity or quality of the water resource in the area as a result of the transfer.

SUMMATION

8. Water Right No. 71607 is approved in the amount of 173.55 acre ft. per annum; with a diversion rate of 1.12 cfs; with a year round period of use; with a nature of use for stock water and commercial and with all other parameters concerning points of diversion, place of use, priority date, and other elements as contained in the Application.

FREDERICKSEN, WILLIAMS, MESERVY
& LOTHSPREICH, LLP



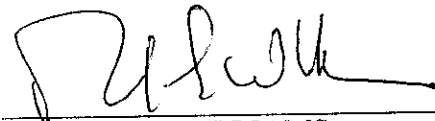
ROBERT E. WILLIAMS
Attorney for 4 Bros Dairy, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 9th day of January, 2006, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

IDWR - Southern Region 1341 Fillmore St Ste 200 Twin Falls ID 83301	☒ 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
Peter R. Anderson Hearing Officer 322 East Front Street PO Box 83720 Boise, Idaho 83720-0098	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☒ Facsimile ☐ Federal Express
Elizabeth Tews 680 North 350 West Shoshone, Idaho 83352	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Henry and Janene Buckway 585 North 250 West Shoshone, Idaho 83352	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Bev Ashton 685 North 250 West Shoshone, Idaho 83352	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express

Jerry and Susan Westendorf 707 West 470 North Shoshone, Idaho 83352	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Russell and Pamela Pantone 745 North 550 West Shoshone, Idaho 83352	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Lincoln County Rural Council c/o Rich Carlson Post Office Box 21 Filer, Idaho 83328	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express



ROBERT E. WILLIAMS

Peter Anderson

RECEIVED

JAN 10 2006

DEPARTMENT OF
WATER RESOURCES

Filed via Fax

1-9-06 VW

To the Honorable Peter Anderson, Hearing officer in the matter of
In the Matter of Application for) CLOSING ARGUMENT BY
Transfer No. 71607 in the name of) Richard (Rusty) Tews
4 Bros. Dairy, Inc.,

Jan 9, 2006

Mr. Anderson;

This has been a very difficult process for my neighbors and me. We are not used to complaining publicly about our neighbors and we certainly make it a point to stay out of their business.

I appreciate the decorum that was exhibited during the hearings. It makes me feel much better about our government agencies that allow everyone a chance to be heard.

For me, and the Tews family, the issue is one of protecting our water. As Dr. Brockway pointed out, we live at the edge- of the edge- of the Snake River aquifer. Damage to the aquifer is magnified in our location.

Ten miles south of us, it is easy to argue that the Snake River aquifer is hundreds of feet thick. Here in north Shoshone, Dr. Brockway discussed the thin nature of our aquifer, especially as one gets closer to the foot hills to the north.

We don't know where that thin nature of the aquifer ends and the deep, abundant Snake River aquifer begins. Dr. Brockway said it ends at two miles from the Black Buttes well (the southern edge of the foothills that form the Black Buttes).

Our "expert" Paul Drury said that it extended to three miles, past the "to" well the Four Brothers are proposing. Mr. Drury sited well logs and topography to make his point. The artesian nature of both the "to" well and the Black Buttes well would make both wells in a confined aquifer. The "from" well, twelve miles south exhibits a different type of aquifer.

Dr. Brockway discounted the well logs as only crude and untrustworthy approximations of what the well driller encounters. Unless he could produce otherwise, these logs are the only true information we have on what lies underground. True may not be the exact word to use, but the logs are the only information we have.

For Dr. Brockway to discount the well logs, he must also discount his assumption that the “to” wells would have no effects on the protestants’ wells. His assumptions are based on those logs.

I tried to demonstrate that there were many obstacles to water from the “from” well ever getting to the “to” well. The IDWR’s requirement of a 25% mitigation of effects on the northern most reach of the Snake River aquifer demonstrates my point amply.

The ridge created by the Dietrich lava crater (mentioned by Mr. Drury) is the first impediment. The lava flows from the Ice Caves that bisect the area between Shoshone and north Shoshone, form a second impediment. And a third is the topography of the north Shoshone area- the general slope is southwesterly, away from the “from” well.

Our expert- their expert. As you know, experts and statistics can be used to “prove” most anything. Which do you accept? Our expert certainly wasn’t the suave, experienced presence on the stand that Dr. Brockway was.

Our expert had a considerable amount of staff at ERO consultants behind him. It takes being very right before one can challenge the established expert in the field. Mr. Drury and the staff at ERO made sure their evidence and conclusions were very right.

You have the unenviable task of sorting reams of data and legal issues. Midst all that information, you must decide if the Four Brothers Dairy new well will harm my well of 50 years. The data the applicants presented didn’t prove that it wouldn’t. On the contrary, the same data examined by another expert said that it would. Compare the well logs, examine the topography and look at the IDWR mitigation. The transfer would harm my well, denying the transfer is the only reasonable conclusion.

" I__Richard (Rusty) Tews_, hereby certify that on the 9th day of January, 2006 I served a true copy of the foregoing on the person named below at the address below by depositing the copy into the U.S. Mail, postage prepaid"

Rob Williams P.O. Box
168 Jerome, ID 83338.

Richard Tews Richard Tews

Richard Tews

RECEIVED
JAN 10 2006
DEPARTMENT OF
WATER RESOURCES

Filed via Fax
1-9-06 VW

CLOSING STATEMENT

1. This request is not a transfer as defined but actually represents a new appropriation of water and an enlargement of water use.
2. The applicant has failed in its responsibility to prove Historic Consumptive Water Use at the FROM well site.
3. The applicant has failed in its responsibility to prove that this request will not injure existing water rights.
4. The proposed site for establishing two new wells is in a location other than the site approved by Lincoln County for use as a CAFO; therefore the applicant is asking for water to run an operation that is illegal under its county permit.

All testimony given by expert witnesses, including the applicant's witness Dr. Charles Brockway, and the evidentiary exhibit "IDWR Eastern Snake River Aquifer new enhanced model 1.1" demonstrates that the ground water presently being pumped for irrigation at the McGowan FROM well in the Dietrich area will, if not used at the Dietrich site, flow to the southwest, not to the northwest.

This application actually represents a request for a new appropriation of water since the two new proposed wells are located, as the expert testimony and exhibits substantiate, in a significantly different aquifer, or portion of the aquifer. Drying up irrigated acres in the Dietrich area will not serve to mitigate the impact of these new wells on the water sources that supply the proposed TO site.

The Dietrich water quite simply will never be available in North Shoshone, so a right to divert water in the Dietrich area cannot logically be transferred to a site where that Dietrich water will never be available. This application represents a new appropriation of water from the Snake River Plain Aquifer.

Point 2. NO PROOF OF HISTORIC CONSUMPTIVE USE

During his testimony on Nov. 17, Dr. Brockway said that the applicant felt the Watermaster's records for Historic Consumptive Use at the Dietrich site were in error. He testified that the historic use was then recalculated using a "Power Coefficient" to *correct* the amount of water the applicant wishes the hearing officer to believe has been used at the Dietrich site and thus support the size of the applicant's request. No evidence, other than Dr. Brockway's statement, was introduced to support that the official Watermaster records are in error.

On Nov. 18, in response to Paul Drury's testimony that the "Power Coefficient" calculations do not support the applicant's claim for Historic Consumptive Use, Dr. Brockway testified that there is a danger in using Power Coefficient to calculate the actual water use and that using the coefficient method can- Quote "Come up with funny numbers."

Dr. Brockway also testified that he preferred to use a chart that he, himself, created for the University of Idaho in 1983 to calculate water use based on a specific crop and that he had used "pasture" to determine the applicant's use at the Dietrich site. The applicant's counsel asked Dr. Brockway if he really meant "alfalfa." Then the Lincoln County Rural Council's counsel asked Dr. Brockway to read the evidentiary documents, submitted by the applicant to support its claim for Historic Consumptive Use, – the document states that the site was used to grow corn.

It is the applicant's responsibility to prove Historic Consumptive Use. The applicant presented confused and contradictory testimony by first claiming that the Watermaster's records were wrong and needed to be recalculated based on Power Coefficient, then by claiming that the Power Coefficient method is flawed and produces "funny numbers," and finally by claiming water use based on a 20 year old chart but not providing consistent testimony as to what crop was actually produced at the Dietrich site.

The applicant has not provided sufficiently documented information to support its claim for the amount of water being requested and has failed to meet its responsibility to prove Historic Consumptive Use.

Point 3. NO PROOF THAT NEW USE WILL NOT INJURE EXISTING RIGHTS

The Idaho Department of Water Resources has already determined that drilling these two new wells will injure the Malad Reach of the Snake River. The applicant agreed at hearing to accept that finding and reduce its diversion of water by 25 percent. It must be concluded that this new use will have similar impact on any previously existing wells located between the proposed new wells and the Snake River. The injury to each individual well may not be extensive, but the cumulative loss to all pre-1978 domestic wells down gradient will be significant. Even though all those water rights holders did not protest this application, the IDWR has a statutory duty to hold all existing water rights holders safe from injury, regardless of whether formal protests were filed. Injury has been demonstrated.

Expert testimony, test wells in the Shoshone area, and the Eastern Snake River Plain Ground Water Level Change Map submitted as exhibit #121 all demonstrate that the area from the City of Shoshone north to the proposed new well site and

beyond is an area of critical concern. The TO site is located in North Shoshone, an area located on the northern, up gradient fringe of the Eastern Snake River Plain Aquifer. An area that appears to be, as all expert testimony indicates, something of an anomaly when compared to the deeper more basin-like structure found in other areas of the aquifer; an area that is documented to be experiencing a significant decline in available water. Testimony indicates it is an area that contains a blend of water sources, including the Big Wood River, and not necessarily relative to other areas of the aquifer, contains to one degree or another confined, partially confined, or artesian systems and therefore cannot be expected to respond in the same way as areas with fewer anomalies.

Dr. Brockway testified on Nov. 17 that his "Well Interference Analysis" shows any impact to neighboring wells would be negligible and that he based his findings on well drillers' logs for wells on the applicant's property.

On Nov. 18, in response to testimony from Paul Drury and the introduction of documents for a test well that Dr. Brockway had overseen in the late 1990's at Black Butte, Dr. Brockway questioned the validity of well drillers' logs as a means of predicting the behavior of future wells. Drury testified that his examination of the well drillers' logs for wells located in 2 1/2 Townships surrounding the proposed site and a review of Dr. Brockway's findings at the test well at Black Butte, located approximately 3 miles north of the applicant's proposed wells, show the existence of anomalous conditions in the region, including artesian effect.

Dr. Brockway then testified that well drillers' logs are unreliable as a source to make such determinations. He made a joke about the way well drillers keep their logs and apologized to anyone in the hearing who might be a driller or have family who drill wells. Under questioning by protestant Buckway, the last recorded statement Dr. Brockway made was to affirm that his own determination of negligible impact was made based on well drillers' logs.

Under questioning by protestant Richard Tews, Dr. Brockway agreed that the new well site is in a very shallow area of the aquifer, a Hot Zone of concern due to significantly declining water supply as supported by exhibit #121. He also stated that a loss of water, even what might be considered a small loss, in such a shallow location represents a larger loss of the total volume available than a similar loss in a location with a greater volume of available water.

The applicant has the legal responsibility to prove that **no** injury to existing water rights holders will be created by this new use of water. The applicant has failed to provide such proof.

The applicant has already accepted the IDWR findings of injury to the Malad Reach and by definition any water rights holders existing between the new site and the Malad Reach. Additionally, expert testimony from all parties documents that this specific, isolated section of the aquifer is poorly understood, contains a wide diversity of lithology and water related structures, and cannot be expected to react according to data applied to other areas of the aquifer. Further, if Dr. Brockway's testimony that well drillers' logs are unreliable in predicting how a new well will respond is accepted then it must also be accepted that Dr. Brockway's own predictions, based on well drillers' logs, that these new wells will produce "negligible" injury are also unreliable.

Point 4. NO NEED FOR THE NEW APPROPRIATION

The Lincoln County CAFO permit entered as exhibit #18 by the applicant specifically points out that the CAFO is to be located at a site south of and in a different legal boundary than the site designated for the two new wells. Andrew Fitzgerald of 4-Brothers Dairy, Inc. testified Nov. 17 that the dairy was “expanding” by building a new “double forty” milking parlor at the same site as the proposed new wells and adding 3,500 milking cows and 500 calves or heifers at that site.

The permit, a document provided by Lincoln County, does not authorize locating a CAFO at the site proposed and the applicant’s stated “understanding” that he could expand to contiguous land is not supported by the documentation provided in evidence. Additionally, the number of cattle Fitzgerald testified would be needed to support the new milking parlor appears to exceed the number of cattle approved by Lincoln County for this CAFO. Under questioning from his own counsel, Fitzgerald stated he did not intend to violate his county permit but his previous testimony indicates his plans exceed what is approved and indeed, the new barn is already built at the site outside the boundaries listed in the permit.

As with other areas of testimony in this process, descriptions of the need for and actual proposed use of the water is contradictory and confused. IDWR rules require that all the proper local permits be in place but it does not appear that there is a clear, or properly permitted use for this water now on record.

SUMMATION –

From the beginning of this process, the applicant’s documents, testimony and evidence has been confused and contradictory. The applicant has not met the burden of proof required by law to show that the volume of water requested for this new use is in keeping with Historic Water Use at the FROM site nor has the applicant met the burden of proof to show that this new use will not injure existing water rights. This is not a transfer or change in point of diversion but actually represents a new appropriation of water. The applicant has not demonstrated that it has legal permission for the stated use at the site indicated, and while pollution has not been discussed in this document, we also conclude from the written evidence and oral testimony that the applicant has not provided appropriate evidence of safeguards against ground water pollution from a livestock operation of the size proposed and this creates a clear and present danger of further injury to existing water rights holders in the form of biochemical contamination.

A new appropriation of water cannot be granted.

A transfer of water cannot be granted without the required proof of historic consumption and the required proof that existing water rights holders will not be injured

CONCLUSION:

This request must be denied.

ADDENDUM

The applicant's counsel attempted, during the hearing, to make the point that neither protestant Henry Blake Buckway nor his wife JaNene Buckway hold a property deed to the ground where the Buckway well is located. In response we submit:

There is no disagreement that the Buckway well exists, that it is a documented and approved domestic and livestock well with a 1945 priority date and located within ½ mile of the proposed new appropriation of water requested by 4-Brothers Dairy, Inc.

There is also no argument that it is owned by the Buckway family, specifically Patty Lee Buckway (Joseph Jacob Buckway being deceased) who is the mother of Henry Blake Buckway and that he is her only child and sole heir. Additionally there is no dispute that the well is used in the Buckway Acres Angus operation, a small, family, beef operation jointly owned and operated by Henry Blake and his mother Patty, that he has a vested interest in that operation, and owns the cattle there involved. Additionally, there is no dispute that he does have deed to certain acreage within the total acreage owned by Patty and operated jointly by both Henry and Patty. Henry has access to and uses the Buckway family well as part of the family business.

Most important is the fact that the well exists and has a priority date considerably superior to either the well from which the applicant is requesting transfer or the new appropriation represented by this application. The well is the property of the Buckway family and the family has the right to protest a new appropriation of water within ½ mile of its well, which constitutes a threat to the Buckway water right. As primary owner, Patty Lee Buckway has the absolute right to designate her son and business partner, Henry Blake Buckway, as family spokesperson in this matter.

Of primary importance is the statutory requirement that the applicant prove the new water use will not injure ANY existing water right holder, whether or not such water right holder files a protest to the transfer action and without prejudice as to who files and/or speaks for the owner.

Also of primary importance is the statutory duty that the IDWR prevent injury to ANY existing water rights, without regard to whether the water right owner filed a protest and without prejudice as to who speaks for the owner.

Certificate of Service

A true and correct copy of this Closing Statement has been sent to Robert E. Williams, attorney for the applicant, at;

Fredericksen, Williams, Meservy & Lothspeich, LLP
117 S. Adams Street
PO Box 168
Jerome, ID 83338

Through the US Mail 9 January 2006

And each protestant:

Elizabeth Tews
Richard and Carla Tews
Val and Beverly Ashton
Jerry and Susan Westendorf
Russell and Pamela Pantone
Lincoln County Rural Council (C/O Rich Carlson)

By way of Electronic Mail (Email) 9 January 2006

Henry Blake Buckway
JaNene Buckway
Protestants

FREDERICKSEN, WILLIAMS, MESERVY & LOTHSPICH, LLP
ATTORNEYS AT LAW

117 SOUTH ADAMS STREET - POST OFFICE BOX 168 - JEROME, IDAHO 83338-0168
TELEPHONE (208) 324-2303 E-MAIL FWMATTYS@CABLEONE.NET TELECOPIER (208) 324-3135

TELECOPIER COVER SHEET

TO Patsy FAX NO. 287-6700
IDWR DATE 01, 04, 06

From: ☒ Robert E. Williams ☐ James C. Meservy ☐ John B. Lothspeich

Matter: 4 Bros.

Memo/Transmitted: Here is the executed stipulation
& proposed order we spoke about
earlier. Please present to Mr Anderson
& if proper, & Mr Anderson executes please
fax back to me for mailing. Thank you

- ☐ ORIGINAL WILL FOLLOW BY MAIL
- ☐ FOR YOUR INFORMATION
- ☐ PURSUANT TO OUR CONVERSATION
- ☐ FOR SUBMISSION TO THE COURT
- ☐ CALL ME TO DISCUSS THIS MATTER
- ☐ IMMEDIATE ATTENTION REQUIRED
- ☐ OTHER: _____

- ☐ ORIGINAL WILL NOT FOLLOW BY MAIL
- ☐ PURSUANT TO YOUR REQUEST
- ☐ FOR PROCESSING WITH YOUR OFFICE
- ☐ REVIEW & CALL WITH ANY REVISIONS
- ☐ SIGN WHERE INDICATED AND RETURN PROMPTLY
- ☐ VIA RETURN FAX
- ☐ PLEASE HAVE SIGNATURE NOTARIZED

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IDAHO RURAL COUNCIL

01/04/06 NEW 10:04 FAX 208 3135

ROBERT E. WILLIAMS
IDAHO STATE BAR NO. 1693
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 117 South Adams Street
 P. O. Box 168
 Jerome, Idaho 83338
 Telephone: (208) 324-2303
 Facsimile: (208) 324-3135
 Idaho State Bar No. 1693

Attorneys for Applicant 4 Bros. Dairy, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES
 OF THE
 STATE OF IDAHO

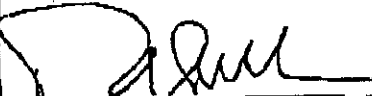
IN THE MATTER OF APPLICATION FOR
 TRANSFER 71607 IN THE NAME OF 4
 BROS. DAIRY, INC.

STIPULATION TO ENLARGE
 TIME TO FILE SIMULTANEOUS
 FINAL STATEMENTS

COME NOW, Applicant, 4 Bros. Dairy, Inc., by and through their attorney of record, Robert E. Williams of the firm Frederickson, Williams, Meservy & Lothspeich, LLP, and Richard Carlson on behalf of the Lincoln County Rural Council and after having spoken with Protestants Tews, Pantone, Buckway, Ashton and Westendorf who are not in opposition to the enlargement, and stipulate that the Hearing Officer issue an Order to enlarge the specified time period to file simultaneous Final Statements from Friday, January 6, 2006 to Monday, January 9, 2006.

Dated this 4th day of January, 2006.

FREDERICKSEN, WILLIAMS, MESERVY
 & LOTHSPREICH, LLP


ROBERT E. WILLIAMS
 Attorney for 4 Bros Dairy, Inc.


RICH CARLSON
 Lincoln County Rural Council

ROBERT E. WILLIAMS
IDAHO STATE BAR NO. 1693
FREDERICKSEN, WILLIAMS, MESERVY & LOTH SPEICH, LLP
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Idaho State Bar No. 1693

Attorneys for Applicant 4 Bros. Dairy, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR
TRANSFER 71607 IN THE NAME OF 4
BROS. DAIRY, INC.

ORDER ENLARGING
TIME TO FILE SIMULTANEOUS
FINAL STATEMENTS

The above entitled matter having come before the Hearing Officer on the parties' Stipulation to Enlarge Time to File Simultaneous Final Statements, the Hearing Officer having reviewed the filings herein, and good cause showing,

IT IS HEREBY ORDERED, AND THIS DOES ORDER that the parties' time to file their simultaneous Final Statements is enlarged from Friday, January 6, 2006 to Monday, January 9, 2006.

DATED this _____ day of January, 2006.

PETER ANDERSON, Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this ____ day of January, 2006, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

Elizabeth Tews 680 North 350 West Shoshone, Idaho 83352	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Henry and Janene Buckway 585 North 250 West Shoshone, Idaho 83352	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Bev Ashton 685 North 250 West Shoshone, Idaho 83352	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Jerry and Susan Westendorf 707 West 470 North Shoshone, Idaho 83352	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Russell and Pamela Pantone 745 North 550 West Shoshone, Idaho 83352	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express
Lincoln County Rural Council c/o Rich Carlson Post Office Box 21 Filer, Idaho 83328	☐ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Court Folder ☐ Facsimile ☐ Federal Express

ROBERT E. WILLIAMS

Wigle, Victoria

From: Richard Carlson [carlsonr@filertel.com]
Sent: Friday, December 16, 2005 8:00 AM
To: Wigle, Victoria
Subject: Re: Four Bros. Transfer- hearing tapes

Well thank you!

On Dec 15, 2005, at 3:28 PM, Wigle, Victoria wrote:

> Rich,
>
> Since converting the hearing tapes into a MP3 format and copying
> them to a CD is a new process for us, we have decided not to charge
> anything
> at this time. Should the requests become voluminous and time
> consuming, we
> will revisit the issue at a later date. Meantime, your CD will go
> out in
> tomorrow's mail free of charge.
>
> Victoria
>
> -----Original Message-----
> From: Richard Carlson [mailto:carlsonr@filertel.com]
> Sent: Friday, December 09, 2005 4:04 PM
> To: Victoria Wigle
> Subject: Four Bros. Transfer- hearing tapes
>
>
> Victoria:
> I would like audio disc copies of all of the hearing tapes as
> soon as you are able. I understand there will be a charge for this
> and will take care of that when I get the bill.
> Thanks for your help. Hope you have a good weekend.
> Rich Carlson

ROSTER OF ATTENDANCE

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 71607 IN THE)
NAME OF 4 BROS. DAIRY, INC.)
_____)

December 9, 2005
Hearing
Conducted by Peter Anderson
Hearing Officer

NAME	ADDRESS	REPRESENTING
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Bev Ashton by Rich Carlson

Janene Buckway by Rich Carlson

Lincoln Co. Rural Council by Rich Carlson

4 Bros. Dairy - Fitzgeralds, Rob Williams

Elizabeth Tew's - ~~not~~ present

Westendorf - present

Pantone - not present

IDWR - Alan Merritt

BEFORE THE DEPARTMENT OF WATER RESOURCES

FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 71607 IN THE)
NAME OF 4 BROS. DAIRY, INC.)
_____)

NOTICE OF HEARING

The Department of Water Resources has scheduled the continued formal hearing in this matter as follows:

Date: Friday, December 9, 2005
Location: Idaho Department of Water Resources
322 E. Front Street
Boise, Idaho 83706
(208) 287-4800
Time: 9:00 a.m.

The hearing will be accessible telephonically by dialing in on (713) 577-1201 and using participant code number 260503. The parties calling in will be responsible for their own long distance charges associated with the call. Because a hearing on this date and time was discussed at the hearing on November 18, 2005, good cause exists to give less than fourteen (14) days notice of this continued hearing.

The hearing will be held in accordance with the provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the adopted Rules of Procedure of the department. IDAPA 37.01.01. A copy of the rules may be obtained from the department upon request. The presiding officer at the hearing will be the Peter R. Anderson.

If you plan to offer exhibits for the record, note that Rule 606 of the department's Rules of Procedure requires that a copy be provided to each party and to the presiding officer.

The hearing will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise the department prior to the hearing. Inquires about scheduling, hearing facilities, etc., should be directed to Victoria Wigle, Administrative Assistant to the Director, Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho 83720-0098, telephone: (208)287-4803, fax: (208)287-6700.

All parties to the matter will have the opportunity to respond and present evidence and argument on all issues involved.

Dated this 28th day of November, 2005.



Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of November, 2005, the above and foregoing, was served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

4 BROS. DAIRY INC
ANDREW FITZGERALD
427 N 250 W
SHOSHONE ID 83352

ROBERT WILLIAMS
FREDERICKSEN WILLIAMS
PO BOX 168
JEROME ID 83338-0168

CHARLES BROCKWAY PE PHD
BROCKWAY ENGINEERING
2016 N WASHINGTON ST STE 4
TWIN FALLS ID 83301

IDWR – SOUTHERN REGION
1341 FILLMORE ST STE 200
TWIN FALLS ID 83301

ELIZABETH TEWS
680 N 350 W
SHOSHONE ID 83352

DOUG ALBRIGHT
675 N 150 W
SHOSHONE ID 83352

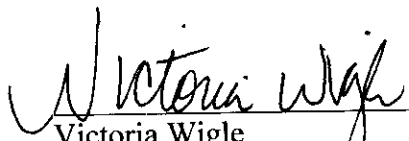
HENRY BLAKE
JA NENE BUCKWAY
585 N 250 W
SHOSHONE ID 83352

BEV ASHTON
685 N 250 W
SHOSHONE ID 83352

JERRY & SUSAN WESTENDORF
707 W 470 N
SHOSHONE ID 83352

RUSSELL & PAMELA PANTONE
745 N 550 W
SHOSHONE ID 83352

LINCOLN CO RURAL COUNCIL
C/O RICH CARLSON
PO BOX 21
FILER ID 83328


Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources

ROSTER OF ATTENDANCE

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 71607 IN THE)
NAME OF 4 BROS. DAIRY, INC.)
_____)

November 17 & 18, 2005
Hearing
Conducted by Peter Anderson
Hearing Officer

NOVEMBER 18, 2005

NAME	ADDRESS	REPRESENTING
Rich Carlson	Box 21 Filer, ID 83328	L.C.R.C.
Jerry Westendorf	707 W 470 N Shoshone	L.C.R.C.
Susan Westendorf	202 W 470 N Shoshone	property-owner/business
Russell Pantone	745 N 550 W Shoshone	property owner
Clem Fitzgerald	420 N 253 W	4 Bros Dairy
JEROME FITZGERALD	440 N 350 W	4-BROS
~~Cheryl Fitzgerald~~	427 N 250 W	4-BROS
Rob Williams	JEROME	4-BROS

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November 17 & 18, 2005
Hearing
Conducted by Peter Anderson
Hearing Officer

NOVEMBER 18, 2005

17

NAME

ADDRESS

REPRESENTING

KICH CARLSON

Box 21 Filer, ID 83324

L.C.R.C.

Clement G Fitzgerald 420-N 253-W Shoshone

4 Bros. Dairy

Jerome Fitzgerald

4 Bros.

Andrew Fitzgerald

427D 250 W

SHOSHONE

4-BROS. DAIRY

Elizabeth Tews

680 N 350 W

Shoshone

LCRC

Bill (Ricky) Tews

675 N 350 W

Shoshone

LCRC

Servy Westendorf

707 W 470 N

Shoshone

LCRC

Paul Drury

3314 Grace St. Boise 83703

LCRC

NORMAN YOUNG

3314 GRACE ST. BOISE 83703 ERD RES. for LCRC.

Tim Ridinger

607WB PO110 Shoshone 83352

Self

Bev Ashton

685 N 250 W, Shoshone 83352

LCRC

Janene Beckway

585 N 250 W Shoshone 83352

LCRC

Theresa Beckway

585 N 250 W SHOSHONE 83352

LCRC

Charles Beckway

2016 Washington D. Falls 83301

4 Bros

Carl Williams

117 S Adams Jerome

Applicant

Type Log

by ADm

T 71607 4 Bros Transfer

11/17/05

0000

Peters Introduction

0200

1-21 Applic Exhibits 1-21 admitted

Protectors

0300

100 - 122

admitted

except #115

0328

#117 Take official notice

0404

Andrew Fitzgerald

4000 acres

total 10,000 head including babies

88 employees

Started dairy 1980

Propose to double 40 barn (80 cap)

3,000 cows & dry & heifers

CATFO 7258 animal units

10,887 Animal

Nutritional Management Plan

800

956

4700 acres needed 6700 under natural

1020

Protect exhibit 110

1150

Expansion issue (New Model)

Will abide by new model mitigation

TYPE Log

page 2

1200 ... Water use - measurement in brown
 ... - No flush - Scrap & dry lot

1314 ...
 ... X-examination of Andrew Fitzgerald by Carlson

1528 ... admitted exhibit 3B
 ... marked phot.

2300 ... Peter discuss public interest

2682 ... 25% reduction - immediately.

2700 ... 3500 milkers 85% wet 15% dry
 ... 500 heifers

2834 ... End of X

2851 ... Re-direct

2982

3000 ... Dr. Brockway Sr. Direct

3350 ... Exhibit 10

3344 ... Exhibit 2 Well inter fer

3595 ... - No effect

7647 ... Black Butte analysis 109 & 106

3989 ... Not change register found

4045 Enlarge ment issue

4215 CU IR 233.1 A.F.

4346 MUK Exhibit 13A

4400 New Model Projection

4500 Exhibit 13A admitted

4601 Review of power records & pumping record
from WM 130.

4800 Exhibit #20

4912 Lunch

5060 X-examine Boxkury by Carlson

5617 Exhibit 106

5647 Exhibit #2

6066 ? Exhibit #10

7223 ? Exhibit #21 PCC #3

7400 ? Exhibit #121

7588 X-of Boxkury by Tew

7780 Bev Ashton X on Brockway

8129 Exhibit #10 does not have.

8278 107 & 21 Rebuttal by Williams of Brockway

8479 End of Brockway

8500 official notice of previous transfer.

8740 Dr. Brockway Continued. Exhibit #2 OK. end

Protestants

8750 Paul Drury

8760 End of Tape #1

0000 Tape #2

Drury background

0117 Exhibit #106 caution

0200 Opinion of Zquirer

0309 Proposed wells likely to be similar to existing

& Bros wells

0336 Exhibit 106 D based on Black butte well properties

0610 Bracketing est. over conservation (too low)

0710 Proposed design.
Need to extend casing to bottom of well of confining layer.

0945 PCC review (exhibit 21)

Perk 115 AF
Div. Vol.

188 Ac Ft.

apply 25% → 142 Ac Ft

1335

115 A.F.

1416

Exhibit #121 decline map.

1652

End of direct by Carlson

Direct by Tews

1762

2, 2500' confined aquifer

1765

2 by Mrs. ?

1881

Less Predictability

1959

X-exam by Williams

Methodology discussion

2450

Reasonable pumping level,

2830 Clarify numbers slightly less than those listed on exhibit

3174 End of 1st day End of Tape #2
 Day 2 Tape 3

0000 Peter's intro

0060
 ↓
 0150 Attempted phone call to Merv Petten

165	Jay Nene Buckwry	Direct testimony
	Injury issues	1945 priority
	Quantity, & Quality	1993 redmilled
		90' deeper

585 X-exam of Buckwry by Williams

709

790

800 Exhibit 300 admitted

825	Beu Ashton	Direct testimony
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988 X-exam of Buckwry by Williams

1073

Sassan Westendorf

Lives 9 miles
West of Laramie,
1912 well
1950 well

1237

1254

X-examination by Williams

1273

1290

Offer Exhibit 115

1443

admitted

Potential Date

Dec. ②, ⑦ 9 Mornings.

1510

Backus modified testimony about
ownership of property.

1520

Recall Dr. Backus

Rebuttal

1600

Comments of PCC method

1800

Comments on model

2200

Comments on well logs.

2500

Re-X by Carlson

2878

2880

2. by Backus

Mr. Tewes

3022

More model discussion

{ Left tape running, over break

3940

3946

Exhibit 121

Mr. Wasterdorf

4611

↓

4835

4840

Re-direct Dr. Brockway

4870

End Dr. Brockway

Peter's discussion about continuing, hearing.

Dec 2nd highly likely.

Send copy of previous transcript 1987.

Dec 21 briefing

5042

End Tape #3