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BEFORE THE DEPARTMENT OF WATER RESOURCES

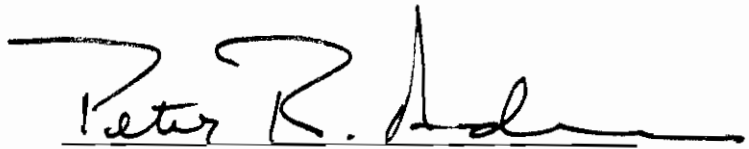
FOR THE STATE OF IDAHO

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

**ORDER DENYING PETITION
FOR RECONSIDERATION**

*The Petition for Reconsideration of Recommended Order by Lincoln County
Rural Council* filed in this matter on March 31, 2006, is hereby DENIED.

Dated this 7th day of April, 2006.

A handwritten signature in black ink, appearing to read "Peter R. Anderson", written over a horizontal line.

Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of April, 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

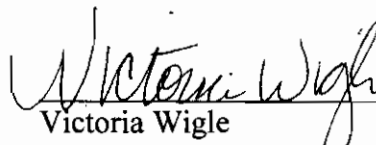
HENRY BLAKE
JA NENE BUCKWAY
585 N 250 W
SHOSHONE ID 83352

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

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION)	
FOR TRANSFER 71607 IN THE)	RECOMMENDED DECISION
NAME OF 4 BROS. DAIRY, INC.)	AND ORDER
_____)	

LEGAL STANDARDS

This matter comes before the Idaho Department of Water Resources ("IDWR") on the application by 4 Bros. Dairy Inc. ("4 Bros." or "Applicant") to change the place of use, point of diversion, purpose of use and period of use of existing ground water right no. 37-20613. Applications to change water rights in this way are processed under Idaho Code § 42-222. Idaho Code § 42-222(1) provides in part that:

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) (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."

IDWR has no rules governing transfers, but has issued an Administrator's Memorandum, dated October 30, 2002, as updated by a Memorandum dated April 15, 2005, which provides policy direction to IDWR staff. Ex. 800. A water right transfer applicant bears the burden of proof for the factors IDWR must consider under Idaho Code §§ 42-222. *See Barron v. Idaho Dep't of Water Resources*, 135 Idaho 414 (2001).

FINDINGS OF FACT

I. Course of Proceedings.

1. On April 19, 2004, 4 Bros. submitted an Application for Transfer of Water Right to IDWR. The Application for Transfer of Water Right sought to make several changes to water right no. 37-20613, and was assigned Transfer No. 71607 (the "Transfer"). The Transfer sought (a) to establish two new points of diversion; (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; and (d) to change the period of use to year round from seasonal irrigation use, in order to allow this water right to be used at the 4 Bros. dairy.

2. Notice of the Transfer was published in the Lincoln County Journal of Shoshone, Idaho on January 13 and 20, 2005.

3. Protests to the Transfer were received by IDWR from Elizabeth Tews, Henry Blake and JaNene Buckway, Doug Albright, Jerry Westendorf, Bev Ashton, Russell and Pamela Pantone, and the Lincoln County Rural Council. Issues raised by the protests were:

- a. Whether the proposed wells would decrease the amount of water in neighboring wells?
- b. Whether the proposed wells would overstress the aquifer already stressed by drought?
- c. Whether the change from an irrigation season of use to a year-round season of use improperly enlarges the water right?
- d. Whether the aquifer under the proposed wells on the fringe of the Eastern Snake River Plain Aquifer is more vulnerable to increased water withdrawals than the current location of the water right?
- e. Whether the proposed use threatens water quality?

The protests requested that the Transfer be denied.

4. Peter R. Anderson was appointed Hearing Officer by the Director of IDWR on March 14, 2005.

5. A prehearing conference was held on May 13, 2005, in Twin Falls, Idaho. Protestant Doug Albright did not attend this prehearing conference. Following that conference a Prehearing Order was issued on May 20, 2005, allowing for the conduct of discovery; establishing a schedule for discovery; tentatively scheduling a second prehearing conference; providing for a date for exchange of witness and exhibit lists; establishing tentative hearing dates of July 28 - 29, 2005; and setting the date for issuance of any IDWR Staff Memorandum.

6. On May 20, 2005, the Hearing Officer invited IDWR staff to file by July 8, 2005 a staff memorandum providing: (1) an analysis by IDWR staff of whether the Transfer should be granted and, if so, any proposed conditions; (2) a listing of applicable IDWR memoranda; (3) an analysis of the availability of ground water at the proposed point of diversion, or analysis of any studies related to the availability of ground water at the proposed point of diversion; and (4) a GIS map showing the proposed place of use and point of diversion. A staff memorandum was submitted on July 8, 2005. Ex. 800.

7. A *Notice of Proposed Default Order* was issued to Protestant Doug Albright on May 20, 2005, for his failure to attend the May 13, 2005, prehearing conference. He was given seven days to respond to the *Notice*. He filed no response.

8. A second prehearing conference was held on July 14, 2005, at the Lincoln County Cooperative Extension office in Shoshone, Idaho. Protestants Russell and Pamela Pantone did not attend this prehearing conference. Following this conference, the Applicant filed a *Motion for Order Striking Respondent's Exhibits or, Alternatively, for Vacation of Hearing Other Sanctions* (sic) on July 26, 2005. 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.

9. A *Notice of Proposed Default Order* was issued on July 15, 2005, to Protestants Russell and Pamela Pantone for their failure to attend the July 14, 2005, prehearing conference. They were given seven days to respond to the *Notice*. The Pantones filed their response with IDWR on July 22, 2005, indicating that Rich Carlson, attorney for the Idaho Rural Council, represented their views.

10. An Amended Prehearing Order was issued on August 4, 2005, amending the schedule for the conduct of discovery and for the exchange of exhibit and witness lists, and establishing tentative hearing dates of September 1-2, 2005.

11. After being re-set a number of times a hearing on the Transfer was held on November 17 and November 18, 2005, at the Bureau of Land Management conference room in Shoshone, Idaho and on December 9, 2005, by telephonic hearing originating from IDWR's office in Boise, Idaho. At the hearing the Applicant was represented by Robert E. Williams. Protestant Lincoln County Rural Council was represented by Richard Carlson. Protestants Elizabeth Iews, Henry Blake and JaNene Buckway, Bev Ashton, Jerry and Susan Westendorf and Russell and Pamela Pantone appeared for themselves, but were represented by Richard Carlson when not present.

12. At the conclusion of the hearing on December 9, 2005, the parties were given until January 6, 2006, to file written closing statements. The time for submission was extended by stipulation of the parties to January 9, 2006. 4 Bros., Lincoln County Rural Council, Richard

Tews, and Henry Blake Buckway and JaNene Buckway filed written statements. This matter was fully submitted to IDWR on January 9, 2006.

II. Evidence Considered.

13. Exhibits offered by 4 Bros. and admitted by stipulation of all Protestants as part of the record are as follows:

EXHIBIT NO.

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 the "Black Butte" property.
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. Enlargement analysis.
- 13A. Enlargement analysis with 25% mitigation.
14. Local climate and precipitation data.
15. Local soils data.
16. Aerial photograph of currently authorized place of use.

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.

At the request of 4 Bros. IDWR took official notice of its decision in Transfer No. 5193, which was a previous transfer of a portion of the water right involved in the present transfer.¹

14. Exhibits offered by the Lincoln County Rural Council and admitted into the record² 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 in the general area of the 4 Bros. dairy.
- 106(a) - (f). Transfer Impacts.
107. Response to public records request.
108. 4 Bros. 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.
111. 4 Bros. 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.

¹ At the time of this transfer the water right was assigned number 37-07413B.

² The Hearing Officer took official notice of Exhibit No. 117 Exhibit No. 115 was admitted into evidence over the objection of the Applicant. The Lincoln County Rural Council's remaining exhibits were admitted by stipulation of all parties.

- 115. Idaho Department of Environmental Quality, "Cumulative Impacts Assessments" (2000).
 - 116. Crop statistics from 1990.
 - 117. IDWR orders re water right transfers.
 - 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.
15. The following exhibit was offered by JaNene Buckway and admitted into the record:
- 300. Written testimony.
16. IDWR, on its own initiative and without objection from the parties, admitted the following exhibit:
- 800. Staff Memorandum.³
17. The following persons testified on behalf of the Applicant:⁴
- Andrew Fitzgerald.
 - Dr. Charles E. Brockway.
18. The following persons testified on behalf of the Lincoln County Rural Council:
- Paul Drury.
 - Marv Patten.
19. The following persons testified in their own behalf:
- Rusty Iews.
 - Janene Buckway.
 - Beverly Ashton.
 - Jerry Westendorf.

³ Shane Bendixsen of IDWR was made available for cross-examination by the parties pursuant to IDAPA 37.01.01 602, but no party requested such examination.

⁴ Applicant's witnesses offered testimony both in their case-in-chief and in rebuttal to Protestants' testimony

Susan Westendorf.

20. No other party offered exhibits or testimony for IDWR's consideration.

21. All parties present at the hearing were afforded the opportunity to cross-examine the opposing side's witnesses.

III. Applicant.

22. 4 Bros. is an Idaho corporation, owned by the four Fitzgerald brothers, with an existing dairy and row crop operation in Lincoln County. 4 Bros. submitted no direct evidence showing that it had sufficient financial resources to complete this transfer and put the water to the proposed beneficial use. It does, however, own and operate a large dairy operation with 10,000 head of livestock and 88 employees. It irrigates just under 4000 acres of row crops. It has been located in Lincoln County since late 1980.

23. 4 Bros. owns the irrigated farmland to which water right no. 37-20613 (the "Irrigation Right") is currently appurtenant, the Irrigation Right itself, and the land upon which 4 Bros. proposes to expand its dairy operation. The Transfer was submitted in order to move the Irrigation Right to the dairy operation. 4 Bros. has begun construction of the new barn which is an integral part of the proposed use. Ex. 3B. 4 Bros. has a CAFO registration from Lincoln County allowing 10,889 animal units at the dairy, which would cover the animal units proposed under the expansion.⁵ Ex. 18.

IV. Current Water Use Under the Irrigation Right.

24. The Irrigation Right was partially decreed in the Snake River Basin Adjudication to 4 Bros. for the following water use:

Priority Date:	12/12/1974
Source of Water:	Ground water.
Point of Diversion:	SENESE Sec. 20, T6S, R18E, B.M., Lincoln County, Idaho.
Purpose of Use:	Irrigation of 77.4 acres.
Total Quantity:	1.12 cfs/ 309.6 acre feet annually (AFA).
Period of Use:	March 15 – November 15.
Place of Use:	SENESE Sec. 20, T6S, R18E, B.M., Lincoln County, Idaho.

Ex. 11 (last page).

A. Source of Water.

25. The source of water for the Irrigation Right is the Eastern Snake River Plain Aquifer (the “ESPA”). The ESPA, at the location of the Irrigation Right, is a water-table aquifer in the deep Snake River Plain basalts, with water generally flowing in a southwest direction. Ex. 1. The ESPA discharges into the Snake River at numerous locations.

B. Point of Diversion and Place of Use.

26. Water used under the Irrigation Right is diverted from the ESPA by a single well, located approximately 5 miles southeast of Shoshone, Idaho.

C. Use and Quantity.

27. The historical use of the Irrigation Right was for the irrigation of crops on 77.4 acres known as the “McCowan place.” The McCowan place has been farmed consecutively for many years prior to the year the application for transfer was filed. Charles Brockway testified that the most water consumptive crop historically irrigated on the McCowan place in the last 10 years was “pasture,” although no written documentation was offered to further substantiate this testimony. Documents submitted with the Application suggest that alfalfa was raised on the McCowan place, and Exhibit 21 indicates that corn has also been cultivated there.

28. Dr. Charles Brockway opined that the highest historic consumptive use under the Irrigation Right was 3.01 AFA per acre. He reached this conclusion by determining the consumptive irrigation requirement for pasture under the water use study done by Brockway and Allen in 1983. Ex. 8. Multiplying that “per acre” amount by 77.4 acres results in a maximum historic consumptive use of 233.1 AFA.

29. Paul Drury opined that the highest historic consumptive use under the Irrigation Right was 150 AFA. He reached this conclusion by applying the 2004 measurement field form, Ex. 21, with a power consumption co-efficient (PCC) of 679, to the historical power consumption at the McCowan place, Ex. 107,⁶ to determine a maximum diversion volume under the Irrigation Right of 188 AFA. Mr. Drury then applies an assumed water application efficiency of 80% to conclude that 150 AFA was the historic consumptive use of the Irrigation Right.

⁵ 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.

⁶ The PCC originally used in Ex. 107 was 1114.4. Charles Brockway worked with Cindy Yenter, the Watermaster for District 130, to revise the PCC for the well used by the Irrigation Right to the more accurate 679. This change is reflected in Ex. 21.

30. Dr. Brockway's calculation of historic consumptive use under the Irrigation Right is more reliable. IDWR regularly determines the consumptive use of crops in Southern Idaho using the 1983 Brockway/Allen study, which is generally based upon the water requirements of irrigated plants. The PCC method of estimating consumptive use from power records and power consumption coefficients, among other things, depends upon assumptions regarding pump efficiency, piping, irrigated acreage, most water consumptive crop, and application efficiency.

31. The weakness in Dr. Brockway's conclusion regarding historic consumptive use under the Irrigation Right was the failure to produce evidence that pasture was an irrigated crop on the McCowan place. However, Dr. Brockway testified under oath that his review indicated that pasture was irrigated there in the last ten years, and this testimony was undisputed. Dr. Brockway is a well-respected and credible expert in hydraulics and water resources engineering, and there is no reason to question his testimony.

D. Period of Use.

32. The Irrigation Right is used during the irrigation season: March 15 – November 15.

V. Proposed Dairy Water Use.

33. The proposed water use, if the Transfer is granted, would be as follows:

Priority Date:	12/12/1974
Source of Water:	Ground water.
Point of Diversion:	SESE Sec. 5, T5S, R17E, B.M., Lincoln County, Idaho.
Purpose of Use:	Stock water and commercial.
Total Quantity:	1.12 cfs/ 174.8 ⁷ AFA.
Period of Use:	January 1 – December 31 (year round).
Place of Use:	SWSE and SESE of Sec. 5 and NENE and NWNE of Sec. 8, T5S, R17E, B.M., Lincoln County, Idaho.

The proposed water use will allow up to an additional 3500 head of cows and 500 head of heifers to be placed at the Applicant's existing dairy operations.⁸

34. 4 Bros. submitted no designs or engineering plans for the proposed dairy water use. A well schematic was submitted for the proposed wells. Ex. 6. An exterior picture of a

⁷ The annual volume is different than that requested in the Application. It is reduced by 25% based upon the representation of Andrew Fitzgerald, as discussed in Finding of Fact 38

new “double 40” dairy barn; in which 80 cows can be milked at a time, was submitted into the record. Ex. 3B. The water will be used to water livestock, for milk cooling in the dairy barn, and cleaning. The Applicant will construct two lagoons to store liquid waste until that waste is land applied through gated pipe, and will construct berms to shield water from its facility from entering area canals, all in accordance with the requirements of the Idaho Department of Agriculture. The water quantity requested is justified in Exhibit 7.

A. Source of Water.

35. The point of diversion for the proposed dairy water use is on the northern fringe of the ESPA. The lithology revealed in the well logs near the location of the proposed wells suggests that the aquifer in this area is likely to continue to be the water-table aquifer in the deep basalts of the ESPA. Ex. 4. There is a chance that the aquifer in the area of the proposed use may be confined by fingers of granite and/or clay intruding into the aquifer from the Idaho Batholith, but it is not likely. This aquifer confinement is seen in the Black Butte area, 2 or 3 miles to the north of the proposed well site. The lithology in that area shows the increased granite and clay layers from the Idaho batholith. Ex. 5. The preponderance of the evidence is that the aquifer at the 4 Bros. site is not a confined, or semi-confined, aquifer.

B. Point of Diversion and Place of Use.

36. Water for the proposed use will be diverted from the ESPA by two wells and used approximately 12 miles northwest of the point of diversion and place of use of the Irrigation Right.

C. Use and Quantity.

37. The maximum instantaneous quantity requested in the transfer is 1.12 cfs. This equals the maximum instantaneous quantity under the Irrigation Right.

38. In his testimony Andrew Fitzgerald agreed to use 174.8 AFA at the dairy under the Application. *See also* Ex. 13A. This represents a reduction of 25% of the historic consumptive use under the Irrigation Right as stated in Finding of Fact 28.

⁸ Some livestock will be moved into the new facility from other areas of the dairy.

D. Period of Use.

39. The proposed dairy water use would occur year-round. The annual volume limitation of 174.8 AFA, however, would only allow for an average continuous flow of 0.24 cfs.

VI. Impacts of Change on Other Water Rights.

40. No evidence was presented regarding any water rights near the McCowan place that would be injured by moving the Irrigation Right off of the McCowan place. The primary impact would be drying up of 77.4 acres of irrigated farmland. Because only an amount that was consumptively used is being transferred, there will be no loss of water returning to the ESPA.

41. Water rights in the vicinity of the proposed dairy water use are as follows:

<u>Number</u>	<u>Name</u>	<u>Priority</u>	<u>Use(s)</u>	<u>Quantity</u>
37-10405	Westendorf	1/1/1912	Domestic	0.04 cfs
37-0404	Westendorf	1/1/1950	Domestic/Stockwater	0.04 cfs
37-10425	Albright	12/31/1910	Domestic/Stockwater	0.17cfs
37-10382	Tews	1/1/1952	Domestic/Stockwater	0.04 cfs
37-10237	Buckway	7/31/1945	Domestic/Stockwater	0.13 cfs

Ex. 104. The wells utilized by these and other water rights range in distance from the proposed new points of diversion as follows:

Buckway: .7 miles;
Albright 1-1.5 miles (estimated);
Ashton: 1.5 miles;
Tews: 1.7 miles;
Pantone: 3.12 miles (the water right for this well was not identified);
Westendorf: 4.53 miles.

Ex. 2.

42. Dr. Charles Brockway estimated the localized aquifer impact of pumping for the proposed dairy use using the Theis Formula. The study assumed that the aquifer at the new points of diversion is a water table aquifer in fractured basalt, and that the average pumping rate to produce the annual volume requirement from the new wells would be .32 cfs.⁹ Utilizing these

⁹ This is a conservative quantity. As discussed in Finding of Fact 39, an average continuous flow of only 0.24 cfs could be pumped at the dairy under the Application.

parameters the anticipated draw down of the existing wells would be less than 3 inches after 60 days of continuous pumping. Ex. 10.

43. Paul Drury utilized the well interference data from the "Black Butte Transfer" to estimate the local aquifer impact of pumping for the proposed dairy use. Ex. 106D. Dr. Brockway conducted a pump test to estimate the drawdowns that would result from water right transfer application No. 5098 in the name of Black Butte Properties, LLC., and submitted those results in 1998. Ex. 109. Utilizing the Black Butte data, Mr. Drury determined that the impacts on the surrounding wells from the new wells at the dairy would produce a draw down of 17 ft. within 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.

44. Dr. Brockway's estimate of the impact of the proposed dairy water use is likely the correct one. It is based upon the assumption that the aquifer from which the water will be withdrawn continues to be the deep basalt, water table aquifer of the ESPA. As Finding of Fact 35 indicates, this is the better characterization of the aquifer at the proposed point of diversion. Mr. Drury's estimate of the impact of the dairy wells is based upon the unlikely possibility that the character of the aquifer at the dairy site is similar to that at the Black Butte site. The aquifer in the Black Butte transfer was characterized as a confined or semi-confined system. Mr. Drury concedes that Dr. Brockway's analysis is reasonable if the aquifer at the 4 Bros. sites is the highly permeable aquifer of the ESPA.

45. Shane Bendixsen, IDWR Technical Hydrogeologist, performed an analysis assessing the impact of the proposed transfer on flows in the Snake River. Using the Eastern Snake River Plan Ground Water Rights Transfer Spreadsheet, based on the Enhanced Snake Plain Aquifer Model, Version 2.0, he concluded that a reduction at the 4 Bros. dairy of 25% of the amount historically consumptively used under the Irrigation Right at the McCowan place would be necessary to achieve $\leq 5\%$ reduction of surface water flows in any Snake River reach. Ex. 800. It is uncontested that this 25% reduction is sufficient to mitigate any impacts the transfer will have on Snake River flows.

VII. Impacts on Local Public Interest.

46. Ground water levels in the area of both the McCowan place and the 4 Bros. dairy have declined from 1980 – 2005. Ex. 21. Although the area near the 4 Bros. dairy appears to

have a somewhat greater reduction in ground water levels than the McCowan place, the 12 mile change in location is insignificant in the context of the 10,000 square mile ESPA. Granting the Application would not cause a greater impact upon the overall water supply in the aquifer. For that matter, the 25% reduction in overall consumptive use as a result of the transfer will reduce withdrawals from the ESPA.

47. The agency primarily responsible for reviewing and controlling water quality impacts at the 4 Bros. dairy is the Idaho Department of Agriculture. The Idaho Department of Agriculture forbids dairy operators, such as the Applicant, from allowing water containing manure or other pollutants to escape the boundaries of the dairy facility. The Applicant has a Nutrient Management Plan for the waste from the dairy, including the new facility for which the Application was filed, that has been approved by the Idaho Department of Agriculture. Applicant's dairy is subject to inspections by the Idaho Department of Agriculture for compliance with regulations regarding waste management. The Applicant has implemented, or has agreed to implement, the mitigation measures for the expanded dairy site proposed by the CAFO Siting Team Report to lessen the "moderate risk" posed by the new dairy facilities. Ex. 110.

48. Solid waste from the dairy is provided to third-parties for application as fertilizer. Those third-parties are responsible to be sure that the solid waste does not then harm water quality. No evidence was presented regarding whether those third parties are located near the 4 Bros. dairy, are located elsewhere, or are even out of the State.

CONCLUSIONS OF LAW

Based upon the Findings of Fact, IDWR makes the following Conclusions of Law:

I. Entitlement to the Use of Water.

1. 4 Bros. has satisfied its burden of showing that it is entitled to the use of water under the Irrigation Right and to change the Irrigation Right as provided in the Transfer.

II. Beneficial Use.

2. 4 Bros. has satisfied its burden of showing that the proposed dairy use is a beneficial use, and that water right no. 37-20613 will continue to be used for an agricultural use in the same local area.

III. Injury to Other Water Rights.

3. The primary focus of the “no injury” rule is on injury to junior water rights who lose return flows, or who are subjected to a new, senior water right as a result of a transfer. *See* Trelease, *Changes and Transfer of Water Rights*, 13 Rocky Mtn. Min. L. Inst. 507, 511 (1967). 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.¹⁰ Any impact on junior water rights utilizing discharge from the ESPA into the Snake River would be mitigated by the 25% reduction in consumptive use agreed to by 4 Bros. Findings of Fact 38 and 45. The Applicant has satisfied its burden of showing that there will be no injury to junior water rights by approving the Transfer.

4. Theoretically, under the prior appropriation doctrine the Transfer cannot “injure” water rights senior to the Irrigation Right. This is because if a water right with a senior priority date is not receiving its water supply, because of the junior Irrigation Right, the Irrigation Right must be regulated to remedy that shortfall.¹¹ A party applying for a water right change is not required to show that the proposed use will never interfere with an existing senior water use. Occasional impacts on senior water rights are resolved by the application of the priority system.¹²

5. When a change would cause continuous interference with a senior right, however, a transfer should be denied. Such a denial technically would not be because of “injury” to the senior water right, but because the junior water right could not be beneficially used following such change. In the present case, recognizing that the risk is solely to its junior water right, the Applicant has met its burden to show that it will be able to beneficially use Water Right No. 37-20613 at the dairy despite the presence of senior water rights in the area. A condition requiring completion of a pump test of the dairy wells will provide for greater certainty in this regard and effective administration of the proposed dairy use.

6. Any impact on senior water rights utilizing discharge from the ESPA into the Snake River would be mitigated by the 25% reduction in consumptive use agreed to by 4 Bros.

¹⁰ The Pantone well is within 3.12 miles of the proposed dairy wells, Finding of Fact 41, but no evidence was presented regarding the priority date of the Pantone water right, if any.

¹¹ The exception to this general rule would be if the dairy use after the Transfer caused an irreversible reduction in a senior water right's supply. No evidence was offered regarding irreversible impacts of the Transfer.

Findings of Fact 38 and 45. With the imposition of the condition stated in Conclusion of Law 5, the Applicant has satisfied its burden of showing that there will be no injury to other water rights by approving the Transfer.

IV. Enlargement.

7. Idaho Code § 42-222(1) provides, in part, that:

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 Transfer risks being an enlargement by the change in period of use from the irrigation season to year-round use. Restricting the transferred amount to only the historic consumptive amount, however, ensures that the maximum amount of water consumed from the ISPA remains the same.¹³ Applicant has satisfied its burden of showing that there will be no unacceptable enlargement in water use by approving the Transfer.

V. Conservation of Water Resources within the State of Idaho.

8. The proposed dairy use will occur in Idaho, near the City of Shoshone. The Applicant has satisfied its burden to show that the proposed water use is consistent with the conservation of water resources within the state of Idaho.

VI. Local Public Interest.

9. 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.

This standard does not give IDWR the role of evaluating the efficacy of the programs of those agencies with primary responsibility for protecting water quality. *Shokal vs Dunn*, 109 Idaho 330, 340-341 (1985). IDWR simply evaluates whether a proposed water use will comply with those programs, and whether any other, unregulated aspect of the water use, will have an effect on the public water resource.

10. 4 Bros. submitted sufficient information regarding the dairy water use, to allow its water resource impact to be evaluated. The amount of water involved in the Transfer is

¹² In ground water interference cases, between hydraulically connected ground water rights, the placement of the burden of proof on the junior water right to disprove interference, ensures that senior water users are not harmed by a junior water user. See *Martiny v. Wells*, 91 Idaho 215 (1966).

¹³ Although not imposed to prevent enlargement, the 25% reduction in historic consumptive use to mitigate any increased impacts on reaches of the Snake River also ensures no enlargement in impact

moderate and dairy use is a commonly accepted use in the area. Granting the Transfer would not cause a greater impact upon the overall water supply in the ISPA.

11. The Idaho Department of Agriculture has the primary duty of regulating dairy waste water. 4 Bros. is complying with the requirements of the Idaho Department of Agriculture. So long as 4 Bros. complies with its Nutrient Management Plan, Exhibit 19, the dairy will comply with applicable water quality protections.

12. There is insufficient evidence to conclude that the additional solid dairy waste that will be generated as a result of granting the Transfer will be used or disposed of in such a way that it will lead to water quality concerns in Idaho or elsewhere.

13. With the conditions stated in Conclusion 11, 4 Bros. has satisfied its burden of showing that approving the Transfer does not conflict with the local public interest.

VII. Appeal of Doug Albright.

14. Doug Albright failed to fulfill his responsibilities as a Protestant in this matter. Having shown no cause for failing to fulfill his responsibilities, his protest should be denied.

RECOMMENDED ORDER

Based upon these Findings of Fact and Conclusions of Law the Transfer is GRANTED with the following conditions:

1. The annual volume that may diverted shall be 174.8 acre feet.
2. 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.
3. Compliance with the requirements of the Idaho Department of Agriculture or its successors, including compliance with the Nutrient Management Plan, with any approved or required amendments.
4. IDWR's standard conditions, including those regarding well construction standards, measurement of diversions, and time periods for the completion of the transfer.

Further, Based upon Protestant Doug Albright's failure to appear at the time and place set for prehearing conference it is ORDERED that his protest is DENIED.

PROCEDURAL RIGHTS

This is the Recommended Decision and Order of the Hearing Officer. It will not become final without action of the Director of the Idaho Department of Water Resources. Any party may file a petition for reconsideration of this recommended order with the Hearing Officer within fourteen (14) days of the service date of this order. The Hearing Officer will dispose of any petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See* Section 67-5243(3) Idaho Code.

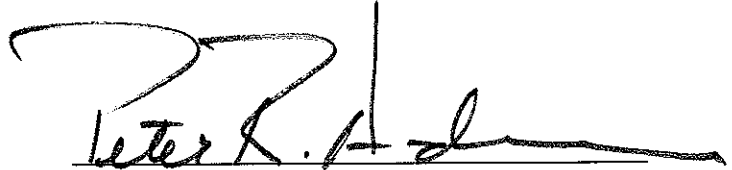
Within fourteen (14) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's position with the Director or Director's designee on any issue in the proceeding. If no party files exceptions to the recommended order with the Director or Director's designee, the Director or Director's designee will issue a final order within fifty-six (56) days after:

- i. The last day a timely petition for reconsideration could have been filed with the hearing officer;
- ii. The service date of a denial of a petition for reconsideration by the hearing officer; or
- iii. The failure within twenty-one (21) days to grant or deny a petition for reconsideration by the hearing officer.

Written briefs in support of or taking exceptions to this recommended order shall be filed with the Director or Director's designee. Opposing parties shall have fourteen (14) days to respond. The Director or Director's designee may schedule oral argument in the matter before

issuing a final order. The Director or Director's designee will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

Dated this 20th day of March, 2006.

A handwritten signature in black ink, appearing to read "Peter R. Anderson", written over a horizontal line.

Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th 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 IEWS
680 N 350 W
SHOSHONE ID 83352

DOUG ALBRIGHT
675 N 150 W
SHOSHONE ID 83352

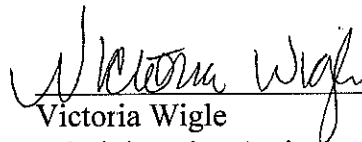
HENRY BLAKE
JA NENE BUCKWAY
585 N 250 W
SHOSHONE ID 83352

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

**NOW
STARTING
RIGHT
SIDE OF
FILE**

**PLEASE REFER TO FILE
FOLDER NO. 3**

**FOR THE
CONTINUATION OF THIS
WATER RIGHT FILE**

No. 37-20613

41

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 5804 IN THE)
NAME OF DAVID BLOXHAM)
_____)

PRELIMINARY ORDER

This matter having come before the Idaho Department of Water Resources ("Department") in the form of a protested application for transfer and the Department having held a conference and a hearing in the matter and the parties having filed closing arguments and responses, the hearing officer enters the following Findings of Fact, Conclusions of Law and Preliminary Order:

FINDINGS OF FACT

1. On June 19, 1973, the Department issued License No. **35-02727** to Vern M. Brown as follows:

Source:	Ground water
Priority:	March 13, 1965
Rate of diversion:	3.66 cubic feet per second ("cfs")
Volume:	819 Acre Feet ("af") per year at 3.5 af per acre
Point of diversion:	SW1/4NW1/4 Section 17, T4S, R31E, B.M., Bingham County
Use:	Irrigation
Season of use:	April 1 to November 1
Place of use:	234 acres in parts of Sections 17 and 18, T4S, R31E, B.M.

(Note: The "1/4" designations will be omitted from subsequent legal descriptions in this order).

2. On May 4, 2000, the Department issued Transfer **5688** in the name of Foster Farms as follows:

Identification No:	35-02727B
Source:	Ground water
Priority:	March 13, 1965
Rate of diversion:	1.54 cfs
Volume:	345.4 af per year
Point of diversion:	SWSE Section 5, T6S, R30E, B.M., Bingham County
Use:	Irrigation

Season of use: April 1 to November 1
Place of use: 132 acres within Section 5, T6S, R30E, B.M.
Conditions of approval: This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 af per acre per year at the field headgate

Note: The rate of diversion is less than a proportionate share of the right and was determined by the sales agreement.

3. The remaining portion of License No. 35-02727 as recommended in the Snake River Basin Adjudication is as follows:

Identification No: **35-02727A**
Source: Ground water
Priority: March 13, 1965
Rate of diversion: 2.12 cfs
Volume: 408 af per year
Point of diversion: SWNW Section 17, T4S, R31E, B.M., Bingham County
Use: Irrigation
Season of use: April 1 to November 1
Place of use: 181 acres within Sections 17 and 18, T4S, R31E, B.M.
Conditions of approval: Use of this right with right no. 35-07603C is limited to a total combined diversion rate of 2.12 cfs.

4. On September 9, 1993, the Department issued License Nos. 35-07603A, 35-07603B and 35-07603C all in the name of Roy E. Hincks and Delores B. Hincks. License No. **35-07603C** provides the following:

Source: Ground water
Priority: February 15, 1986
Rate of diversion: 0.93 cfs
Point of diversion: SWNW Section 17, T4S, R31E, B.M., Bingham County
Use: Irrigation
Season of use: April 1 to October 1
Place of use: 79 acres within parts of Sections 17 and 18, T4S, R31E, B.M.
Conditions of approval: Use of this right with right no. 35-02727 is limited to a total combined diversion rate of 3.66 cfs, a total combined annual diversion volume of 1,240 af, a total combined annual consumptive use volume of 930 af and to the irrigation of a combined total of 310 acres in a single irrigation season.

5. On July 27, 2000, David Bloxham ("applicant") filed Application for Transfer No. **5804** ("application") with the Department proposing to change 0.62 cfs and

160.5 af per year of water right nos. 35-02727 and 35-07603C diverted in Bingham County to year-round stockwater and commercial for use at a proposed dairy ("dairy") in Section 19, T7S, R19E, B.M. in Twin Falls County. The dairy will have 1,900 milking cows and 200 non-milking cattle. The owner of the water rights sought for transfer plans to cease irrigating approximately 53.5 acres in Bingham County to provide water for the dairy from two wells located in the NWNW Section 19, T7S, R13E, B.M. in Twin Falls County.

6. The Department published notice of the application that was subsequently protested by the Idaho Rural Council ("protestant").

7. On February 7, 2000, the Department conducted a hearing in the matter. The applicant was present and was represented by Robert E. Williams. Richard A. Carlson appeared for the protestant. William Chisholm appeared as a public witness.

8. Issues identified by the protestant are as follows:

- a. The proposed changes will injure other water rights.
- b. The proposed changes will constitute an enlargement in use of the original right.
- c. The proposed changes are not in the local public interest.
- d. The proposed changes are not consistent with the conservation of water resources within the state of Idaho.
- e. The water rights sought for transfer are not valid.

9. Exhibits premarked, offered or accepted as a part of the record are as follows:

- a. Applicant's Exhibit 1 – Location maps of dairy site (2)
- b. Applicant's Exhibits 2-1, 2-2 and 2-3 – Site Plan Maps - Bloxham Dairy - (large 2' x 3' exhibits)
- c. Applicant's Exhibit 3 – Well Interference Analysis Bloxham Dairy - Bell Rapids
- d. Applicant's Exhibit 4 – Livestock Confinement Operations – Water Requirements and Consumptive Use Worksheet
- e. Applicant's Exhibit 5 – Water Balance Analysis Bloxham Dairy – Bell Rapids

- f. Applicant's Exhibit 6 – Bell Rapids Area South and Bell Rapids North – Ground Water Hydrographs
- g. Applicant's Exhibit 7 – Groundwater Contours and Flow Lines
- h. Applicant's Exhibit 8 – USGS Well data
- i. Applicant's Exhibit 9 – Nutrient Management Plan for David Bloxham Dairy, Hagerman, Idaho, April 28, 2000
- j. Applicant's Exhibit 10 – Letter dated January 20, 2001 to Rob Williams from LeRoy Hayes
- k. Applicant's Exhibit 11 – Letter dated June 10, 2000 from Jane George
- l. Applicant's Exhibit 12 – Letter dated June 8, 2000 from Randy Bean
- m. Applicant's Exhibit 13 – Letter dated June 14, 2000 to Bill Crafton from Dave Burgess
- n. Applicant's Exhibit 14 – Letter dated August 17, 2000 to David Bloxham from Lee Taylor
- o. Applicant's Exhibit 15 – Memorandum dated August 1, 2000 to Norm Young from Helen Harrington
- p. Applicant's Exhibit 16 – Groundwater Contours and Flow Lines for the Bloxham Dairy Water Right Transfer, Brockway Engineering, 1-23-01
- q. Applicant's Exhibit 17 – Bloxham Dairy Ownership - (large 3' x 4' exhibit)
- r. Protestant's Exhibit A – Memorandum dated August 1, 2000 to Transfer File No. 5804 from Corey Skinner and Memorandum dated July 28, 2000 to Allen Merritt from Corey Skinner
- s. Protestant's Exhibit B – A Hydrostratigraphic Model for the Perched Aquifer Systems Located Near Hagerman Fossil Beds National Monument, Idaho by Charles Neal Farmer, 1988
- t. Protestant's Exhibit C – Evaluation of Hydrological Processes Affecting Soil Movement in the Hagerman Fauna Area, Hagerman, Idaho, U.S. Geological Survey, Water-Resources Investigations Report 84-4137
- u. Protestant's Exhibit D – ISDA Dairy Nitrate Study

- v. Protestant's Exhibit E – Letter dated March 6, 2000 from Gus Eliopolos and Idaho State Department of Agriculture Technical Results Summary #2 titled "Ground Water Quality of Twin Falls County Volcanic and Sedimentary Aquifer"
- w. Protestant's Exhibit F – E-Mail messages between Richard Carlson and Jeni Beddoes
- x. Protestant's Exhibit G – NOT ADMITTED
- y. Protestant's Exhibit H – E-Mail messages between Richard Carlson and Nicholas Cizmich of DEQ – (Note: Only part of the proposed exhibit was admitted).
- z. Protestant's Exhibit I – NOT ADMITTED
- aa. Protestant's Exhibit J – NOT OFFERED
- ab. Protestant's Exhibit K – NOT ADMITTED
- ac. Protestant's Exhibit L – Middle Snake River Recreational Opportunities At Risk by Middle Snake River Recreation Work Group, Twin Falls, ID, October 1997
- ad. Protestant's Exhibit M – Hagerman Fossil Beds National Monument – General Management Plan, September 1996
- ae. Protestant's Exhibit N – Hagerman Fossil Beds National Monument – Idaho, Draft General Management Plan/Environmental Impact Statement, November 1995

The hearing officer officially noticed certain information at the hearing including the Amended Preliminary Order issued by the Department on October 12, 1999 for Transfer No. 5436 that was filed in the name of Jerome Cheese Company.

10. The licensed point of diversion ("Hincks well") is within the Eastern Snake Plain Aquifer ("ESPA") and the proposed new points of diversion are within the Bell Rapids Aquifer located approximately 110 miles to the west of the Hincks well. The ESPA and the Bell Rapids Aquifer are different aquifers and are not hydraulically connected.

11. Approximately 90 per cent of the ground water not pumped at the Hincks well will reach American Falls Reservoir on the Snake River and the remainder of the ground water flows through the ESPA emerging as springs and reaching the Snake River in the Milner to King Hill reach near Twin Falls, Idaho.

12. There are numerous diversions of water from the Snake River downstream from the locations where the ground water not pumped at the Hincks well reaches American Falls Reservoir and the Snake River. Ground water that is not pumped which reaches the Snake River during the non-irrigation season is subject to impoundment under any water rights authorized to store water during the non-irrigation season.

13. The applicant owns approximately 3,400 acres of land in the Bell Rapids area including the proposed dairy site and owns 100 shares of water provided by Bell Rapids Irrigation District ("District"). The District pumps Snake River water for delivery to the applicant for irrigation purposes. The applicant plans to cease using District water if the transfer is approved. The applicant stated that the District will not divert Snake River for his use if he did not plan to use the water even though he would be required to continue payment for operation and maintenance charges to the District for the water shares.

14. On May 15, 1992, the Director issued a moratorium order affecting the Eastern Snake River Plain area ("Moratorium Order") curtailing new uses of surface and ground water within the Snake River Basin upstream from the USGS gage on the Snake River near Weiser, Idaho. The moratorium was issued to prevent further development of water resources in the Snake Plain Aquifer to ensure compliance with provisions of chapter 2, title 42, Idaho Code. The Director subsequently amended the moratorium order on January 6, 1993 and on April 30, 1993.

ANALYSIS

The applicant proposes to transfer the use of ground water located in one aquifer to a different aquifer located approximately 110 miles distant. The aquifers are not connected and are separate ground water sources.

The applicant advocates that by looking at the "big picture" of water balance, the proposal will not injure other water rights or result in enlargement in use of the original rights, since ground water not diverted at the Hincks well will reach the Snake River and since the 100 shares of Bell Rapids water owned by the applicant which the applicant will cease diverting from the Snake River will also remain in the river to offset the ground water use at the dairy site. This position appears to have the elements of an "exchange" as codified in Section 42-240, Idaho Code, but deals with the interaction of a surface water source and ground water sources rather than with only surface water sources described in the statute.

Water not diverted at the Hincks well that reaches the Snake River will be intercepted and used at other points of diversion from the Snake River for other water rights which divert from the Snake River. Water diverted at the proposed dairy site when considered together with intercepted water then will result in an overall enlargement in water use.

The applicant's proposal also appears to suggest that ground water near the Hincks well that reaches the Snake River together with District water that will not be diverted, offsets or "mitigates" the applicant's proposed use of ground water at the dairy site. The Moratorium Order for the Eastern Snake River Plain Area does provide that the Director can review for approval on a case-by-case basis an application (for permit) which otherwise would not be approved under terms of the moratorium, if suitable mitigation to offset injury to other water rights is provided by an applicant for a permit. The applicant, however, has filed an application for transfer.

Although both the applicant and protestant presented evidence, testimony and argument in connection with all of the issues described in Finding of Fact No. 8 above, this preliminary order only addresses enlargement, injury and local public interest, since the findings of fact, conclusions of law and order relative to these issues makes a ruling on the other issues unnecessary.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, provides in pertinent part as follows:

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, and 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 42-203A(5), Idaho Code.

2. Section 42-1805(7), Idaho Code, and IDAPA 37.03.08055 (Water Appropriation Rule 55) provide for the establishment of a moratorium preventing further development of a water resource in a designated area to ensure compliance with provisions of chapter 2, title 42, Idaho Code.

3. The applicant carries the burden of coming forward with evidence that the proposed change will not injure other water right holders, that it will not constitute an enlargement of the use and will be consistent with principles of conservation of the water of the state of Idaho.

4. Both the applicant and the protestant have the responsibility of coming forward with evidence regarding matters of public interest of which they are each most cognizant.

5. The applicant has the ultimate burden of persuasion for all of the criteria of Section 42-222, Idaho Code.

6. The Moratorium Order issued by the Department on May 15, 1992 was intended to prevent further development of water resources on the Eastern Snake River Plain area in order to protect prior water rights and to ensure compliance with provisions of chapter 2, title 42, Idaho Code.

7. Ground water not pumped at the Hincks well will reach the Snake River and will be captured by other water rights such as being stored in American Falls Reservoir on the Snake River or as direct diversion from the Snake River and will not be available to offset use of ground water by the applicant for the proposed dairy located 110 miles westerly from the Hincks well.

8. The locations of the proposed points of diversion are within the area included in the Moratorium Order. Since none of the ground water in the ESPA physically is available for diversion at the proposed new points of diversion in the Bell Rapids Aquifer, diversion of water at the proposed new wells 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 rights held by junior appropriators.

9. Ground water not diverted at the Hincks well that reaches the Snake River will be intercepted and used at other points of diversion from the Snake River for other water rights which divert from the Snake River before the water reaches the general area of the proposed dairy site. Ground water that reaches the Snake River during the non-irrigation season is subject to diversion to storage under water rights authorized to store water. Water then diverted at the dairy site when considered together with intercepted water will result in an overall enlargement in water use.

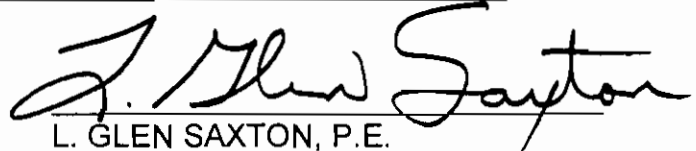
10. It is not in the local public interest to approve a transfer that would essentially be a new appropriation of water and that otherwise would be prevented by the Moratorium Order.

11. The Department should deny the application without prejudice.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Transfer No. 5804 in the name of David Bloxham is **DENIED** without prejudice.

Signed this 6th day of March, 2001.


L. GLEN SAXTON, P.E.
Hearing Officer

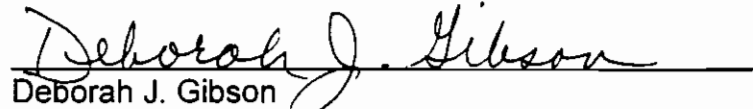
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of March, 2001, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

ROBERT E WILLIAMS
FREDERICKSEN WILLIAMS &
MESERVY
PO BOX 168
JEROME ID 83338

RICHARD A CARLSON
PO BOX 21
FILER ID 83328

ALLEN MERRITT
IDWR - SOUTHERN REGION
1341 FILLMORE ST STE 200
TWIN FALLS ID 83301-3380


Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

October 12, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

RE: In the matter of Application for transfer No. 5436 in the name of Jerome Cheese Company

Dear Interested Parties:

The accompanying order is a "preliminary order" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the department unless a party petitions for reconsideration within fourteen (14) days after issuance as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of this order. The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within twenty-one (21) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The director retains the right to review the preliminary order on his own motion.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary

order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one(21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,

A handwritten signature in black ink, reading "L. Glen Saxton". The signature is written in a cursive, flowing style.

L. GLEN SAXTON, Chief
Water Allocation Bureau

Enclosure

c: IDWR Region
City of Jerome

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION	)	
FOR TRANSFER NO. 5436 IN THE	)	
NAME OF JEROME CHEESE	)	PRELIMINARY ORDER
COMPANY	)	
_____	)	

This matter having come before the Idaho Department of Water Resources (the "Department") in the form of a protested application for transfer and the Department having held a conference and a hearing in the matter, the hearing officer enters the following Findings of Fact, Conclusions of Law and Preliminary Order:

FINDINGS OF FACT

1. On May 10, 1995, the Department issued License No. 35-08606 in the name of Roy E. Hincks as follows:

Source:	Groundwater
Priority:	July 1, 1985
Rate of diversion:	6.07 cubic feet per second ("cfs")
Volume:	1214 acre feet per year ("afy")
Point of diversion:	NE1/4NW1/4, Section 16, T4S, R31E, B.M. ("Hincks" well)
Use:	Irrigation
Season of use:	April 1 to October 31
Place of use:	303.5 acres within parts of Section 16, T4S, R31E, B.M.

(Note: The "1/4" designations will be omitted from subsequent legal descriptions in this order).

2. On March 3, 1999, Roy Hincks ("Hincks") and Davisco Foods, Inc. ("Davisco") entered into a Memorandum of Agreement in which Hincks agreed to sell 160 miner's inches (3.2 cfs) of water from License No. 36-08606 to Davisco.

3. On March 8, 1999, Jerome Cheese Company ("applicant") filed Application for Transfer No. 5436 ("application") with the Department seeking to change the point of diversion, place of use, season of use and nature of use of a portion of License No. 35-08606. The applicant proposes to cease the diversion of 3.2 cfs and 480 afy of ground water from the Hincks well and to divert the water from two new wells

to be drilled in the NWNE Section 25, T8S, R16E, B.M. near Jerome, Idaho. The applicant also proposes to cease the irrigation of 160 acres in Section 16, T4S, R31E, B.M. and to change the season and nature of use to year-round commercial use in an existing cheese plant ("plant") in Section 25, T8S, R16E, B.M. near Jerome. The commercial use will consist of washing cheese processing equipment and washing cheese during production.

4. The Department published notice of the Application which was subsequently protested by Bill Chisholm, Lee Halper, Darcy Thornborrow and Michael Ihler ("protestants").

5. Issues identified by the protestants are as follows:

- a. The proposed changes will injure other water rights.
- b. The proposed changes will constitute an enlargement in use of the original right.
- c. The proposed changes are not in the local public interest.
- d. The proposed changes are not consistent with the conservation of water resources within the state of Idaho.

6. On July 27 and 28, 1999, the Department conducted a hearing in the matter in Twin Falls, Idaho. The applicant was present and was represented by Christopher Meyer and Mike Creamer. Protestants Bill Chisholm, Lee Halper and Michael Ihler were present and represented themselves. Darcy Thornborrow was represented by Pat Brown. The hearing officer allowed the city of Jerome ("city") to participate as a public witness as provided in IDAPA 37.01.01355 (Procedure Rule 355). The city did not appear as a public witness at the hearing, but on August 13, 1999, submitted written comments for consideration. On August 31, 1999, the applicant responded to the public witness comments of the city.

7. Exhibits premarked, offered or accepted as a part of the record are as follows:

- a. Applicant's Exhibit 1 - Schematic generally showing water flow through cheese plant
- b. Applicant's Exhibit 2 - Schematic titled Jerome Cheese Economic Factors in Magic Valley

- c. Applicant's Exhibit 3 - Bar chart titled Jerome Cheese Company Water Conservation Measures
- d. Applicant's Exhibit 4 - Snake Plain Aquifer
- e. Applicant's Exhibit 5 - Jerome Cheese Water Right Transfers Annual Water Budget Comparisons
- f. Applicant's Exhibit 6 - Jerome Cheese Co. Water Use Schematic
- g. Applicant's Exhibit 7 - NOT OFFERED
- h. Applicant's Exhibit 8 - NOT OFFERED
- i. Applicant's Exhibit 9 - Well Interference Analysis Proposed Jerome Cheese Well(s) $Q = 0.66$ cfs
- j. Applicant's Exhibit 10 - Well Interference Analysis Proposed Jerome Cheese Well(s) $Q = 3.2$ cfs
- k. Applicant's Exhibit 11 - Well Interference Analysis Proposed Jerome Cheese Well(s) $Q = 3.86$ cfs (Sandy and Hincks Transfers)
- l. Applicant's Exhibit 12 - NOT OFFERED
- m. Applicant's Exhibit 13 - Summary of Jerome Cheese Water Transfers
- n. Applicant's Exhibit 14 - Blue line print - Site Plan for Jerome Cheese
- o. Applicant's Exhibit 15 - Blue line print - Wellhouse Water Supply Plan and Elevations for Jerome Cheese
- p. Applicant's Exhibit 16 - Second Addendum to Agreement for Sale of Water Right
- q. Applicant's Exhibit 17 - First Addendum to Agreement for Sale of Water Right
- r. Applicant's Exhibit 18 - GIS shape file
- s. Applicant's Exhibit 19 - GIS shape file - Sandy Property

- t. Protestant's Exhibit A - Letter dated July 20, 1999 to Robert E. Williams from Gary G. Allen together with a draft Complaint for Declaratory Relief

8. The applicant presently receives ground water from the city for the plant. The applicant wants to obtain its own water supply due to concerns about water quality (sediment), water pressure and the cost of water provided by the city. Water available from the city may be used as a backup source of supply. The water sought for transfer under this application is in addition to that sought under Application for Transfer No. 5401 which also was submitted in the name of Jerome Cheese Company.

9. The proposed new wells are located down gradient of the licensed well a distance of approximately 90 miles. The well design for one well proposes a 12" diameter bore to a total depth of about 400 feet. The proposed surface seal is a 20" diameter initial bore to a depth of 80 feet with a 16" diameter casing to be installed in the 20" hole. The design discharge is 1,000 gallons per minute. The design has been reviewed and approved by the Division of Environmental Quality, Idaho Department of Health and Welfare. The second well has not been designed yet.

10. The applicant's expert testified that if ground water is not pumped at the Hincks well, most of the unpumped ground water is tributary to the Snake River upstream of either Neeley or Minidoka and would not again be available as ground water in the Snake Plain Aquifer. Only a small, unquantified portion of the ground water not diverted at the Hincks well would reach the Jerome area as ground water.

11. The protestants allege that dairies are not in the local public interest, and that since the cheese plant uses milk originating from dairies, the cheese plant is not in the local public interest. The protestants also allege that nitrates from dairy waste contaminate groundwater.

12. In its public witness comments, the city alleges that the application is not in the public interest, since the applicant might cease using water provided by the city and might cease using the wastewater treatment system of the city, thus depriving the city of user fees. The city also alleges there will be an expansion in use of water by the applicant, if the applicant uses its own well and still uses water provided by the city in the cheese plant or uses city water as a backup source of water for the cheese plant.

13. On May 15, 1992, the Director issued a moratorium order curtailing the use of surface and ground water within the Snake River Basin upstream from the USGS gauge on the Snake River near Weiser, Idaho ("Snake Plain Aquifer"). The moratorium was issued to prevent further development of water resources in the Snake Plain Aquifer to ensure compliance with provisions of chapter 2, title 42, Idaho Code. The Director subsequently amended the moratorium order on January 6, 1993 and April 30, 1993.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, provides in pertinent part as follows:

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, and 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 42-203A(5), Idaho Code;

2. Section 42-1805(7), Idaho Code, and IDAPA 37.03.08055 (Water Appropriation Rule 55) provide for the establishment of a moratorium preventing further development of a water resource in a designated area to ensure compliance with provisions of chapter 2, title 42, Idaho Code.

3. The applicant carries the burden of coming forward with evidence that the proposed change will not injure other water right holders, that it will not constitute an enlargement of the use and will be consistent with principles of conservation of the water of the state of Idaho.

4. Both the applicant and the protestants have the responsibility of coming forward with evidence regarding matters of public interest of which they are each most cognizant.

5. The applicant has the ultimate burden of persuasion for all of the criteria of Section 42-222, Idaho Code.

6. The moratorium designated by the Department on May 15, 1992 for the Snake Plain Aquifer was issued to prevent further development of water sources on the plain in order to protect prior 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 Hincks 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.

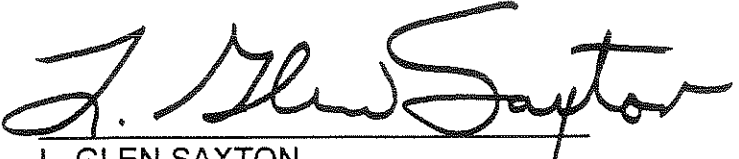
8. It is not in the local public interest to approve a transfer that would essentially be a new appropriation of water which would otherwise be prevented by the moratorium.

9. The Department should deny the application.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Transfer No. 5436 in the name of Jerome Cheese Company is **DENIED**.

Signed this 12th day of October, 1999.


L. GLEN SAXTON
Hearing Officer

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 12th day of October, 1999, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

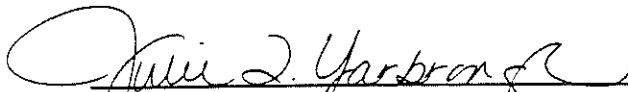
CHRISTOPHER H MEYER
MICHAEL C CREAMER
GIVENS PURSLEY LLP
277 N 6TH ST STE 200
PO BOX 2720
BOISE ID 83701-2720

LEE HALPER
331 S 230 W
JEROME ID 83338

BILL CHISHOLM
19073 E HWY 30
BUHL ID 83316

MICHAEL IHLER
2635A E 3100 N
TWIN FALLS ID 83301

DARCY THORNBORROW
1676 E 3800 N
BUHL ID 83616



JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

Summary of Jerome Cheese Water Transfers			
	Sandy Right	Hincks Right	Total
Water Right No.	36-07337E	35-08606	
Transfer No.	5401	5436	
Original Water Right			
County of Origin	Gooding	Bingham	
Acres irrigated	159 acres	303.5 acres	
Flow rate	3.18 cfs (159 inches)	6.07 cfs (303.5 inches)	(H)
Annual volume	636 acre-feet/yr	1214 acre-feet/yr	
Portion Transferred to Jerome Cheese			
Acres dried up	33 acres	160 acres	193 acres
Flow rate	0.66 cfs (33 inches)	3.2 cfs (160 inches)	3.86 cfs (193 inches)
Annual volume	99 acre-feet/yr	480 acre-feet/yr	579 acre-feet/yr

Christopher H. Meyer, Esq. (Idaho State Bar No. 4461)

Michael C. Creamer, Esq. (Idaho State Bar No. 4030)

GIVENS PURSLEY LLP

277 North 6th Street, Suite 200

P.O. Box 2720

Boise, Idaho 83701-2720

Office: 208-388-1200

Fax: 208-388-1300

Counsel for Applicant Jerome Cheese

**BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES**

In the Matter of Application For Transfer
Nos. 5436 (Water Right No. 35-08606)

Jerome Cheese,

Applicant

William K. Chisholm,

Lee J. Halper,

Michael Ihler,

Darcy Thornborrow,

Protestants

**PETITION FOR RECONSIDERATION
(HINCKS RIGHT)**

INTRODUCTION

COMES NOW Applicant Daisco Foods International, Inc., dba Jerome Cheese Company ("Applicant," "Jerome Cheese" or the "Company"), by and through its attorneys, Givens Pursley LLP, and submits this petition for reconsideration.

ARGUMENT

In support of its petition, Applicant states as follows:

1. The application for transfer of a water right was denied on a single basis.

The Department concluded that the Applicant failed to demonstrate that the ground water located at the original point of diversion would reach (or hydrologically influence) the new point of diversion, if the original pumping were curtailed.

2. None of the other issues raised by any of the Protestants or the City of Jerome were found to have merit.

3. Specifically, the Preliminary Order stated:

“The applicant’s expert testified that if ground water is not pumped at the Hincks well, most of the ground water is tributary to the Snake River upstream of either Neeley or Minidoka and would not again be available as ground water in the Snake Plain Aquifer. Only a small, unquantified portion of the ground water not diverted at the Hincks well would reach the Jerome area as ground water.” Finding of Fact No. 10.

“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 Hincks 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." Conclusion of Law No. 7

4. The expert referred to in the Preliminary Order is Charles E. Brockway, Ph.D., P.E., of Brockway Engineering, P.L.L.C., who appeared on behalf of the Applicant.

5. Dr. Brockway was the only expert who testified on this subject. None of the Protestants or the City of Jerome offered any expert testimony on the subject. Nor was any offer of proof submitted on this subject. None of the Protestants extracted any relevant and material concessions or contradictions in their cross-examination of Dr. Brockway. Thus, Dr. Brockway's testimony on this subject is undisputed.

6. Dr. Brockway's testimony is now being transcribed, and will be made available to the Department as soon as it is completed.

7. Contrary to the Preliminary Order, Dr. Brockway did not state that "most" of the ground water from the original point of diversion is tributary to the Snake above Neeley or Minidoka. Nor did he state that only a "small" amount of water from the Hincks diversion point would reach the Jerome area and/or Thousand Springs.

8. Dr. Brockway acknowledged that some of the ground water at the original point of diversion is tributary to the Snake above Milner Dam, and that the balance flows in the direction of the proposed new points of diversion near Jerome (and ultimately to the

Thousand Springs area).

9. At the hearing, Dr. Brockway stated that he was unable, at that time, to quantify how much of the ground water would reach the Snake above Milner versus how much flowed toward Jerome and Thousand Springs. Although Dr. Brockway was unable to place any precise number on the division, he did indicate that a substantial quantity (as opposed to a "small" amount) of the ground water flowed toward the Jerome area.

10. Dr. Brockway's testimony, as summarized above, is not consistent with the statement in the Preliminary Order that "most" of the water will fall into the Snake above Jerome, and that only a "small" amount will reach wells in the Jerome area.

11. Dr. Brockway also testified to the projected "water budget" for the proposed new use of the Hincks right. The water budget took into account water conservation practices at the plant (which reduced the need for input water) and the addition of new water inputs to the system (so-called "cow water" extracted from milk, as well as "moisture in product"). Dr. Brockway concluded that, owing to these new inputs, the system-wide operation is not only non-consumptive, but that it actually adds water to the hydrological system.

12. Dr. Brockway testified that, taking into account (1) the water budget and (2) the "substantial" amount of water which would reach Jerome from the Hincks point of diversion, it is reasonable to conclude that Jerome area would experience a net improvement in water availability as a result of the transfer.

13. Although Dr. Brockway was careful to avoid offering a legal conclusion, it follows readily that a net improvement in the availability of water to the area means that the transfer will not result in injury to other users in the vicinity of Jerome.

14. It bears emphasis that Dr. Brockway's conclusion of a net improvement in water availability is specific to this transfer, and would not necessarily be applicable to other transfers of water from the Hincks right, or that area. The critical distinction is the unique water budget calculation which is substantially influenced by the addition of substantial quantities of cow water and product moisture water.

15. Cow water and product moisture water, as established at the hearing, is "new" to the system. (This is because any water used in the creation of the cow water and the product moisture water, would have been deemed to have been consumptively used, lost to the system and so accounted for in other water rights.) Thus the reintroduction of cow water and product moisture water to the hydrologic system in the Jerome area may legally be viewed as developed water.

16. Dr. Brockway's evidence concerning the water budget was not contradicted by any other expert witness.

17. The Preliminary Order failed to address or take into account the water budget analysis offered by Dr. Brockway.

RELIEF

For each of these reasons, the Applicant requests that the Preliminary Order be modified in the following respects:

1. The Preliminary Order should be modified to reflect that the only expert testimony on the subject concluded that a substantial portion of the ground water at the original point of diversion, if not pumped there, will flow toward wells in the Jerome area.
2. The Preliminary Order should be modified to reflect the "water budget" for the proposed new use of water, as described and quantified by Dr. Brockway, shows a net gain to the hydrological system (due to the introduction of cow water and product moisture water).
3. For these reasons, the Preliminary Order should be modified to conclude that the proposed transfer will not injure other ground water users in the Jerome area.

TIMING

For the reasons stated above, we believe that there is sufficient credible evidence in the record (and no contrary evidence) to demonstrate, today, that the Hincks right may be transferred to Jerome Cheese without injury. We believe this may be accomplished even without a precise quantification of the portion of ground water from the original point of diversion which flows toward the Jerome area.

On the other hand, if the Department determines that it cannot make a finding of

no injury on the basis of the record today, then we ask that the Department suspend further action on the transfer application until such information may be obtained.

For instance, the IDWR Snake Plain Aquifer Ground Water Model could be utilized to specifically evaluate a change in ground water use at the Hincks point of diversion.

Moreover, it is our understanding that additional work aimed at more fully calibrating this model is now underway, and that further efforts in this regard appear likely to occur over the course of the next two years or more by the Department, in cooperation with water users, academics and other interested parties.

It is very likely that as these efforts unfold, it will be possible to more precisely characterize the direction and quantity of flow from the Hincks point of diversion. At that time, the Department will be in a better position to rule on the basis of the newly recalibrated model just how much of the flow is likely to reach the Jerome area, and whether that is sufficient to support a transfer.

While a delay of this magnitude in the processing of this transfer application is not desirable from the Applicant's perspective, the Company is prepared to accept such a delay rather than the loss of this water right altogether.

CONCLUSION

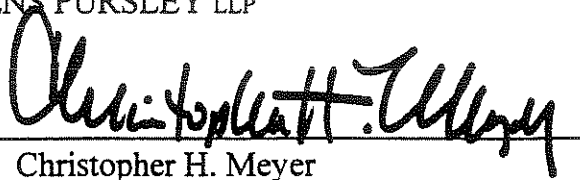
We ask that the Department reverse the decision in the Preliminary Order, and approve the application on the basis of information in the record today. In the alternative,

if the Department cannot do so, we ask that the Department suspend all action on the application until additional information is developed concerning the ground water model for the Snake Plain Aquifer.

Dated this 26th day of October, 1999.

GIVENS PURSLEY LLP

By

A handwritten signature in black ink, appearing to read "Christopher H. Meyer", is written over a horizontal line.

Christopher H. Meyer

*Attorneys for Applicant
Jerome Cheese Company*

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 1999 I caused to be served a true and correct copy of the foregoing Petition for Reconsideration together with supporting affidavit to each of the persons named below by the method indicated below each of their names.

Patrick D. Brown, Esq.

109 S. Adams Street

Jerome, ID 83338

☒ US Mail ☐ Email ☐ Fax ☐ Hand ☐ Overnight

Original filed with:

Mr. Karl J. Dreher

Idaho Department of Water Resources

1301 N. Orchard St.

Statehouse Mail

Boise, ID 83720-9000

☐ US Mail ☐ Email ☐ Fax ☒ Hand ☐ Overnight

Mr. Michael Ihler

2635-A East 3100 North

Twin Falls, ID 83301

☒ US Mail ☐ Email ☐ Fax ☐ Hand ☐ Overnight

Mr. L. Glen Saxton

Idaho Department of Water Resources

1301 N. Orchard

Statehouse Mail

Boise, ID 83720-9000

☐ US Mail ☐ Email ☐ Fax ☒ Hand ☐ Overnight

Robert E. Williams, Esq.

Fredericksen, Williams & Meservy

117 S. Adams Street

P.O. Box 168

Jerome, ID 83338

☒ US Mail ☐ Email ☐ Fax ☐ Hand ☐ Overnight

Mr. William K. Chisholm

19073 E. Hwy. 30

Buhl, ID 83316

☒ US Mail ☐ Email ☐ Fax ☐ Hand ☐ Overnight

Mr. Lee J. Halper

331 South 230 West

Jerome, ID 83338

☒ US Mail ☐ Email ☐ Fax ☐ Hand ☐ Overnight

Allen D. Merritt, P.E.

Idaho Department of Water Resources

1341 Fillmore St., Ste. 200

Twin Falls, ID 83301-3380

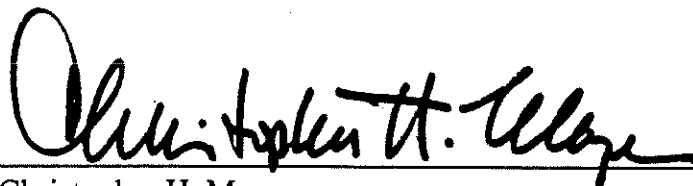
☒ US Mail ☐ Email ☐ Fax ☐ Hand ☐ Overnight

Ms. Darcy Thornborrow

1676 East 3800 North

Buhl, ID 83316

☒ US Mail ☐ Email ☐ Fax ☐ Hand ☐ Overnight



Christopher H. Meyer

Christopher H. Meyer, Esq. (Idaho State Bar No. 4461)

Michael C. Creamer, Esq. (Idaho State Bar No. 4033)

GIVENS PURSLEY LLP

277 North 6th Street, Suite 200

P.O. Box 2720

Boise, Idaho 83701-2720

Office: 208-388-1200

Fax: 208-388-1300

Counsel for Applicant Jerome Cheese

**BEFORE THE
IDAHO DEPARTMENT OF WATER RESOURCES**

In the Matter of Application For Transfer
Nos. 5436 (Water Right No. 35-08606)

Jerome Cheese,
Applicant

William K. Chisholm,
Lee J. Halper,
Michael Ihler,
Darcy Thornborrow,
Protestants

**AFFIDAVIT OF CHARLES E.
BROCKWAY, PH.D., P.E.**

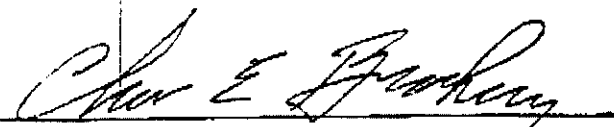
STATE OF IDAHO)
) ss:
COUNTY OF TWIN FALLS)

CHARLES E. BROCKWAY, being first duly sworn on oath, deposes and says:

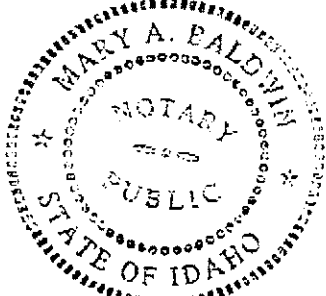
1. I am an expert retained by Jerome Cheese Company in connection with the above-captioned application for transfer of water right. I testified in support of the application at the hearing conducted in Twin Falls on July 27 and 28, 1999.

2. I am the only expert who testified with respect to the impact of the proposed transfer on the hydrological water balance and the potential impacts on other water users.
3. I was consulted by counsel who sought my assistance in the preparation of the Petition for Reconsideration to be filed on this date in this proceeding.
4. I have reviewed in the Petition for Reconsideration. I concur in each of the factual statements contained in that Petition, of which I have knowledge.
5. In particular, I have reviewed the statements which summarize my testimony at the July hearing. Although I have not reviewed a transcript of the hearing (because it has not yet been completed), the statements concerning my testimony in the Petition for Reconsideration are accurate and complete to the best of my recollection.
6. Those statements, and the Petition as a whole, faithfully reflect my views and positions as an expert on behalf of the Applicant.

Your affiant further sayeth not.


Charles E. Brockway

SUBSCRIBED AND SWORN TO before me this 26th day of October, 1999.




Notary Public for Idaho
Residing at Twain Falls, Id
My Commission expires: 10/16/2004



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

October 29, 1999

RE: In the Matter of Application for Transfer No. 5436 in the name of
Jerome Cheese Company

Dear Interested Party:

I have enclosed a copy of the Order Granting Petition for
Reconsideration, issued in connection with above referenced transfer
application.

If you have any questions concerning the enclosed document, please
contact me directly at (208)327-7953.

Sincerely,

JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

Enclosure

c: IDWR Southern - A. Merritt
City of Jerome

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF TRANSFER NO.)	
5436 IN THE NAME OF JEROME)	ORDER GRANTING
CHEESE COMPANY)	PETITION FOR RECONSIDERATION
_____)	

On October 12, 1999, the Department of Water Resources ("the department") issued Transfer No. 5436 in the name of Jerome Cheese Company ("applicant") as a Preliminary Order.

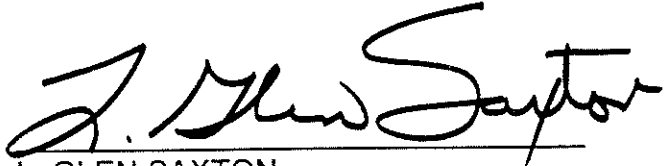
On October 26, 1999, the applicant filed a Petition for Reconsideration ("petition") with the hearing officer in connection with the Preliminary Order.

ORDER

The department has reviewed the petition and HEREBY ORDERS that the petition is **GRANTED** under the following terms:

1. Granting of the petition does not represent department agreement with any provision of the petition.
2. The department retains jurisdiction of the matter to allow time for the department to review and consider the petition.

Dated this 28th day of October, 1999.



L. GLEN SAXTON
Hearing Officer

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 29th day of October, 1999, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

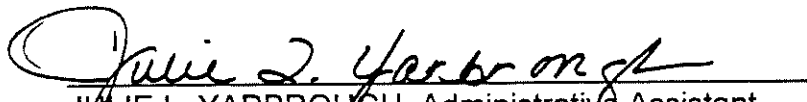
CHRISTOPHER H MEYER
MICHAEL C CREAMER
GIVENS PURSLEY LLP
277 N 6TH ST STE 200
PO BOX 2720
BOISE ID 83701-2720

LEE HALPER
331 S 230 W
JEROME ID 83338

BILL CHISHOLM
19073 E HWY 30
BUHL ID 83316

MICHAEL IHLER
2635A E 3100 N
TWIN FALLS ID 83301

DARCY THORNBORROW
1676 E 3800 N
BUHL ID 83616


JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau

644
1970



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098
Phone: (208) 327-7900 FAX: (208) 327-7866

November 12, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

RE: In the matter of Application for transfer No. 5436 in the name of Jerome Cheese Company

Dear Interested Parties:

The accompanying order is a "amended preliminary order" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the department unless a party petitions for reconsideration within fourteen (14) days after issuance as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of this order. The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within twenty-one (21) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The director retains the right to review the preliminary order on his own motion.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary

order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one(21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

Sincerely,

A handwritten signature in black ink, reading "L. Glen Saxton". The signature is written in a cursive, flowing style.

L. GLEN SAXTON, Chief
Water Allocation Bureau

Enclosure

c: IDWR Region
City of Jerome

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION	)	
FOR TRANSFER NO. 5436 IN THE	)	
NAME OF JEROME CHEESE	)	AMENDED
COMPANY	)	PRELIMINARY ORDER
_____	)	

On October 12, 1999, the hearing officer for the Idaho Department of Water Resources ("Department") issued a Preliminary Order in connection with the above captioned matter. On October 26, 1999, Jerome Cheese Company filed a Petition for Reconsideration ("petition") with the Department which was granted on October 28, 1999. The protestants did not file any timely response with the Department.

The hearing officer has reviewed the petition in detail and responds to it as follows:

Paragraphs 1 through 6 - Consists of statements to which no response is necessary.

Paragraph 7

Assertion: Contrary to the Preliminary Order, Dr. Brockway did not state that "most" of the ground water from the original point of diversion is tributary to the Snake above Neeley or Minidoka. Nor did he state that only a "small" amount of water from the Hincks diversion point would reach the Jerome area and/or Thousand Springs.

Response: It is true that the applicant's consultant did not use the word "most" when describing the amount of unpumped water at the Hincks well which would reach the Snake River and did not use the word "small" when describing the amount of ground water which would reach the Jerome area. The consultant, however, on four different occasions either stated or acknowledged as correct that the "majority" of water not pumped at the Hincks well is tributary to springs which enter the Snake River in the Blackfoot to Neeley reach or below Neeley. He also stated that "some" of the unpumped water will go west in the aquifer and also used the word "significant" when describing the amount of water flowing west. See the discussion of "significant" in the response to paragraph 9 below.

Finding of Fact 10 has been changed in this Amended Preliminary Order to show the language specifically used by the consultant.

Paragraph 8 Consists of a statement to which no response is necessary.

Paragraph 9

Assertion: At the hearing, Dr. Brockway stated that he was unable, at that time, to quantify how much of the ground water would reach the Snake above Milner versus how much flowed toward Jerome and Thousand Springs. Although Dr. Brockway was unable to place any precise number on the diversion, he did indicate that a substantial quantity (as related to a "small" amount) of the ground water flowed toward the Jerome area.

Response: The applicant's expert witness did not state that a "substantial" quantity of ground water would flow toward the Jerome area. He said a "significant" quantity of ground water would flow toward Jerome. He then said "statistically speaking, significant generally means you are 95% sure that something is going to happen and is big enough to be significant." He also described "significant" as being "large enough to be sure that it occurred and that you can ascribe a benefit to it." The expert did not define "significant" in terms of its more common meaning of "a lot" or "much." The expert could not quantify how much water in terms of percentage, rate or volume which would flow toward the Jerome area.

The assertion does not require or justify changes to the order.

Paragraph 10

Assertion: Dr. Brockway's testimony, as summarized above, is not consistent with the statement in the Preliminary Order that "most" of the water will fall into the Snake above Jerome, and that only a "small" amount will reach wells in the Jerome area.

Response: See responses to Paragraphs 7 and 9 above.

Paragraph 11

Assertion: Dr. Brockway also testified to the projected "water budget" for the proposed new use of the Hincks right. The water budget took into account water conservation practices at the plant (which reduced the need for input water) and the addition of new water inputs to the system (so-called "cow water" extracted from milk, as well as "moisture in product"). Dr. Brockway concluded that, owing to these new inputs, the system-wide operation is not only non-consumptive, but that it actually adds water to the hydrologic system.

Response: The application for transfer does not create more water. Cow water is water attributable to different water rights than the right sought for transfer and is already available to the applicant and is being used by the applicant. The applicant's expert did not know how much unpumped ground water at the Hincks well site would reach the Jerome area. Hence estimates of water being "added" to the hydraulic system as a result of the transfer are not supportable.

The assertion does not require or justify changes to the order.

Paragraph 12

Assertion: Dr. Brockway testified that, taking into account (1) the water budget and (2) the "substantial" amount of water which would reach Jerome from the Hincks point of diversion, it is reasonable to conclude that Jerome area would experience a net improvement in water availability as a result of the transfer.

Response: See response to paragraphs 7, 9 and 11 above.

The assertion does not require or justify changes to the order.

Paragraph 13

Assertion: Although Dr. Brockway was careful to avoid offering a legal conclusion, it follows that a net improvement in the availability of water to the area means that the transfer will not result in injury to other users in the vicinity of Jerome.

Response: The Department denied the application, since it is not in the local public interest to approve the transfer and allow a use

of water which would otherwise be prevented by the existing moratorium in the Snake Plain Aquifer area.

The assertion does not require or justify changes to the order.

Paragraph 14, 15 and 16 Responses are not appropriate, since the paragraphs are repetitive of other assertions above.

Paragraph 17

Assertion: The Preliminary Order failed to address or take into account the water budget analysis offered by Dr. Brockway.

Response: The assertion is incorrect, since the water budget analysis was received as an exhibit and was considered in the Preliminary Order. The analysis improperly includes "external" water associated with other water rights which are not a proper part of the analysis to determine enlargement. Public interest, however, not enlargement, was the basis of denial of the application. Also see the response to paragraph 13 above.

The assertion does not require or justify changes to the order.

Response to Relief Requested:

The Department should not make any changes to the Preliminary Order other than to Finding of Fact 10 as described above.

Response to Timing Requested:

The Department should not suspend action on the application for up to two years, as suggested by the applicant, to allow time to gather more information. The Department scheduled and held the hearing as requested and urged by the applicant. Failure of the applicant to provide information which it could have presented at the hearing is not reason to delay a decision in the matter or to rehear the matter at some later date.

Based upon his understanding of the law and the facts in this matter, the hearing officer enters the following Findings of Fact, Conclusions of Law and Amended Preliminary Order:

FINDINGS OF FACT

1. On May 10, 1995, the Department issued License No. 35-08606 in the name of Roy E. Hincks as follows:

Source:	Groundwater
Priority:	July 1, 1985
Rate of diversion:	6.07 cubic feet per second ("cfs")
Volume:	1214 acre feet per year ("afy")
Point of diversion:	NE1/4NW1/4, Section 16, T4S, R31E, B.M. ("Hincks" well)
Use:	Irrigation
Season of use:	April 1 to October 31
Place of use:	303.5 acres within parts of Section 16, T4S, R31E, B.M.

(Note: The "1/4" designations will be omitted from subsequent legal descriptions in this order).

2. On March 3, 1999, Roy Hincks ("Hincks") and Davisco Foods, Inc. ("Davisco") entered into a Memorandum of Agreement in which Hincks agreed to sell 160 miner's inches (3.2 cfs) of water from License No. 36-08606 to Davisco.

3. On March 8, 1999, Jerome Cheese Company ("applicant") filed Application for Transfer No. 5436 ("application") with the Department seeking to change the point of diversion, place of use, season of use and nature of use of a portion of License No. 35-08606. The applicant proposes to cease the diversion of 3.2 cfs and 480 afy of ground water from the Hincks well and to divert the water from two new wells to be drilled in the NWNE Section 25, T8S, R16E, B.M. near Jerome, Idaho. The applicant also proposes to cease the irrigation of 160 acres in Section 16, T4S, R31E, B.M. and to change the season and nature of use to year-round commercial use in an existing cheese plant ("plant") in Section 25, T8S, R16E, B.M. near Jerome. The commercial use will consist of washing cheese processing equipment and washing cheese during production.

4. The Department published notice of the Application which was subsequently protested by Bill Chisholm, Lee Halper, Darcy Thornborrow and Michael Ihler ("protestants").

5. Issues identified by the protestants are as follows:

- a. The proposed changes will injure other water rights.
- b. The proposed changes will constitute an enlargement in use of the original right.

- c. The proposed changes are not in the local public interest.
- d. The proposed changes are not consistent with the conservation of water resources within the state of Idaho.

6. On July 27 and 28, 1999, the Department conducted a hearing in the matter in Twin Falls, Idaho. The applicant was present and was represented by Christopher Meyer and Mike Creamer. Protestants Bill Chisholm, Lee Halper and Michael Ihler were present and represented themselves. Darcy Thornborrow was represented by Pat Brown. The hearing officer allowed the city of Jerome ("city") to participate as a public witness as provided in IDAPA 37.01.01355 (Procedure Rule 355). The city did not appear as a public witness at the hearing, but on August 13, 1999, submitted written comments for consideration. On August 31, 1999, the applicant responded to the public witness comments of the city.

7. Exhibits premarked, offered or accepted as a part of the record are as follows:

- a. Applicant's Exhibit 1 - Schematic generally showing water flow through cheese plant
- b. Applicant's Exhibit 2 - Schematic titled Jerome Cheese Economic Factors in Magic Valley
- c. Applicant's Exhibit 3 - Bar chart titled Jerome Cheese Company Water Conservation Measures
- d. Applicant's Exhibit 4 - Snake Plain Aquifer
- e. Applicant's Exhibit 5 - Jerome Cheese Water Right Transfers Annual Water Budget Comparisons
- f. Applicant's Exhibit 6 - Jerome Cheese Co. Water Use Schematic
- g. Applicant's Exhibit 7 - NOT OFFERED
- h. Applicant's Exhibit 8 - NOT OFFERED
- i. Applicant's Exhibit 9 - Well Interference Analysis Proposed Jerome Cheese Well(s) $Q = 0.66$ cfs
- j. Applicant's Exhibit 10 - Well Interference Analysis Proposed Jerome Cheese Well(s) $Q = 3.2$ cfs

- k. Applicant's Exhibit 11 - Well Interference Analysis Proposed Jerome Cheese Well(s) Q = 3.86 cfs (Sandy and Hincks Transfers)
- l. Applicant's Exhibit 12 - NOT OFFERED
- m. Applicant's Exhibit 13 - Summary of Jerome Cheese Water Transfers
- n. Applicant's Exhibit 14 - Blue line print - Site Plan for Jerome Cheese
- o. Applicant's Exhibit 15 - Blue line print - Wellhouse Water Supply Plan and Elevations for Jerome Cheese
- p. Applicant's Exhibit 16 - Second Addendum to Agreement for Sale of Water Right
- q. Applicant's Exhibit 17 - First Addendum to Agreement for Sale of Water Right
- r. Applicant's Exhibit 18 - GIS shape file
- s. Applicant's Exhibit 19 - GIS shape file - Sandy Property
- t. Protestant's Exhibit A - Letter dated July 20, 1999 to Robert E. Williams from Gary G. Allen together with a draft Complaint for Declaratory Relief

8. The applicant presently receives ground water from the city for the plant. The applicant wants to obtain its own water supply due to concerns about water quality (sediment), water pressure and the cost of water provided by the city. Water available from the city may be used as a backup source of supply. The water sought for transfer under this application is in addition to that sought under Application for Transfer No. 5401 which also was submitted in the name of Jerome Cheese Company.

9. The proposed new wells are located down gradient of the licensed well a distance of approximately 90 miles. The well design for one well proposes a 12" diameter bore to a total depth of about 400 feet. The proposed surface seal is a 20" diameter initial bore to a depth of 80 feet with a 16" diameter casing to be installed in the 20" hole. The design discharge is 1,000 gallons per minute. The design has been reviewed and approved by the Division of Environmental Quality, Idaho Department of Health and Welfare. The second well has not been designed yet.

10. The applicant's expert testified that the "majority" of water not pumped at the Hincks well is tributary to springs which enter the Snake River in the Blackfoot to Neeley reach or below Neeley. He also stated that "some" of the unpumped water will

go west in the aquifer and that ground water reaching the Snake River would not again be available as ground water in the Snake Plain Aquifer.

11. The protestants allege that dairies are not in the local public interest, and that since the cheese plant uses milk originating from dairies, the cheese plant is not in the local public interest. The protestants also allege that nitrates from dairy waste contaminate groundwater.

12. In its public witness comments, the city alleges that the application is not in the public interest, since the applicant might cease using water provided by the city and might cease using the wastewater treatment system of the city, thus depriving the city of user fees. The city also alleges there will be an expansion in use of water by the applicant, if the applicant uses its own well and still uses water provided by the city in the cheese plant or uses city water as a backup source of water for the cheese plant.

13. On May 15, 1992, the Director issued a moratorium order curtailing the use of surface and ground water within the Snake River Basin upstream from the USGS gauge on the Snake River near Weiser, Idaho ("Snake Plain Aquifer"). The moratorium was issued to prevent further development of water resources in the Snake Plain Aquifer to ensure compliance with provisions of chapter 2, title 42, Idaho Code. The Director subsequently amended the moratorium order on January 6, 1993 and April 30, 1993.

CONCLUSIONS OF LAW

1. Section 42-222, Idaho Code, provides in pertinent part as follows:

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, and 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 42-203A(5), Idaho Code;

2. Section 42-1805(7), Idaho Code, and IDAPA 37.03.08055 (Water Appropriation Rule 55) provide for the establishment of a moratorium preventing further development of a water resource in a designated area to ensure compliance with provisions of chapter 2, title 42, Idaho Code.

3. The applicant carries the burden of coming forward with evidence that the proposed change will not injure other water right holders, that it will not constitute an enlargement of the use and will be consistent with principles of conservation of the

water of the state of Idaho.

4. Both the applicant and the protestants have the responsibility of coming forward with evidence regarding matters of public interest of which they are each most cognizant.

5. The applicant has the ultimate burden of persuasion for all of the criteria of Section 42-222, Idaho Code.

6. The moratorium designated by the Department on May 15, 1992 for the Snake Plain Aquifer was issued to prevent further development of water sources on the plain in order to protect prior 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 Hincks 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.

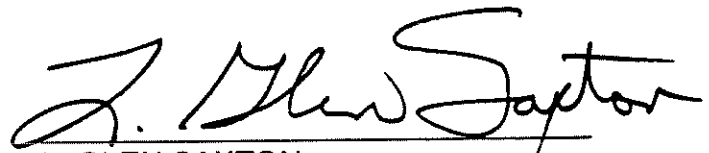
8. It is not in the local public interest to approve a transfer that would essentially be a new appropriation of water which would otherwise be prevented by the moratorium.

9. The Department should deny the application.

ORDER

IT IS THEREFORE, hereby ORDERED that Application for Transfer No. 5436 in the name of Jerome Cheese Company is **DENIED**.

Signed this 12th day of November, 1999.


L. GLEN SAXTON
Hearing Officer

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY that on this 20th day of November, 1999, the above and foregoing document was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

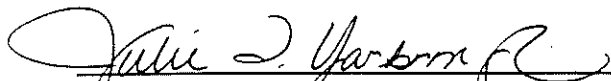
CHRISTOPHER H MEYER
MICHAEL C CREAMER
GIVENS PURSLEY LLP
277 N 6TH ST STE 200
PO BOX 2720
BOISE ID 83701-2720

LEE HALPER
331 S 230 W
JEROME ID 83338

BILL CHISHOLM
19073 E HWY 30
BUHL ID 83316

MICHAEL IHLER
2635A E 3100 N
TWIN FALLS ID 83301

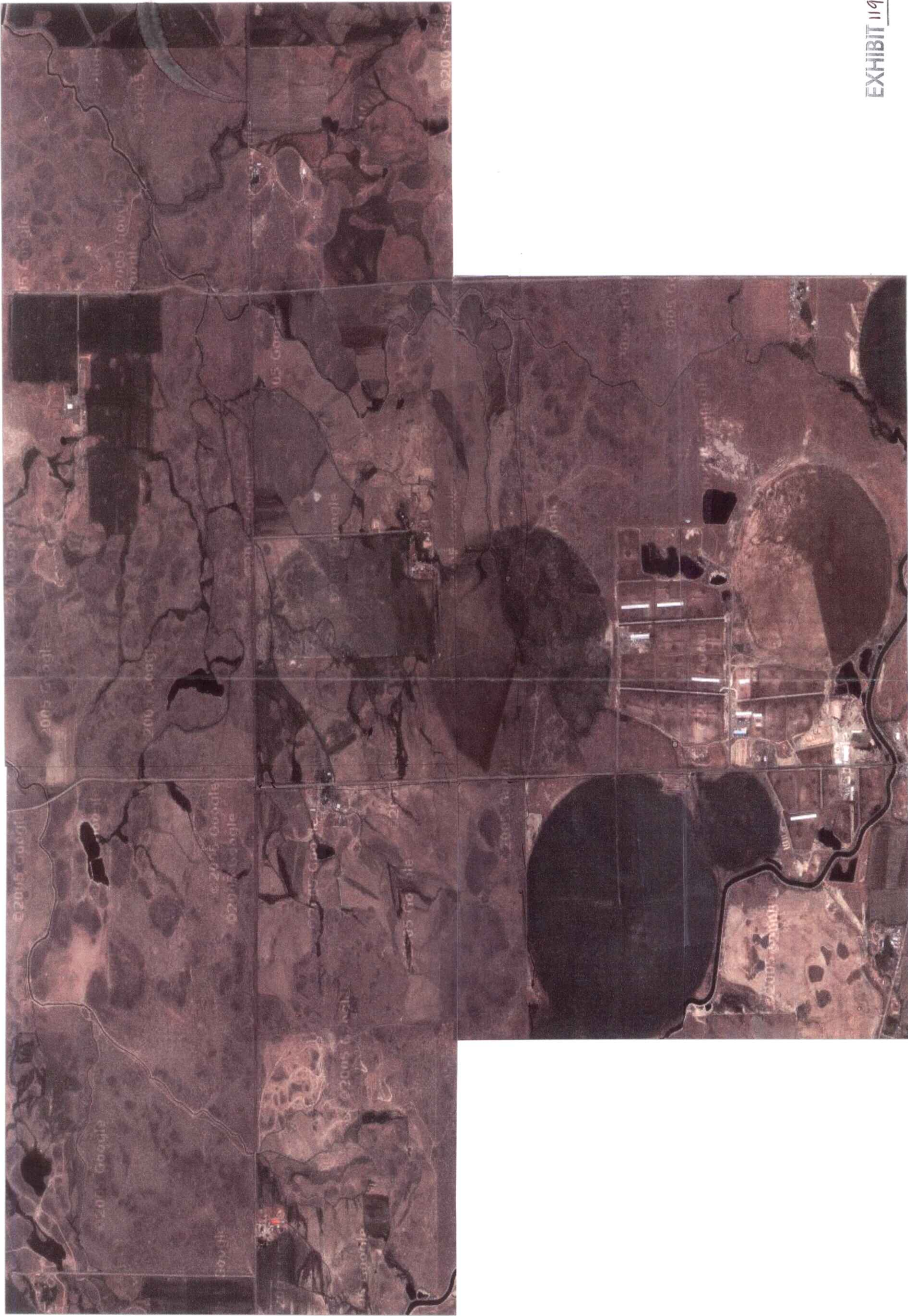
DARCY THORNBORROW
1676 E 3800 N
BUHL ID 83616



JULIE L. YARBROUGH, Administrative Assistant
Water Allocation Bureau



Drag the map with mouse, or double-click to center



120

**NEW APPLICATION
CONFINED ANIMAL FEEDING OPERATION
GRANDFATHER SITING PERMIT APPLICATION**

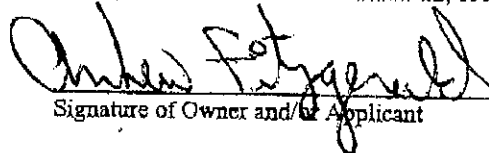
DATE: 6-16-97
NAME: 4-BROS. DAIRY INC. TELEPHONE 208-886-7716
ADDRESS: 425 N 250 W SHOSHONE, ID. 83352
GENERAL LOCATION (directions) 4m N, 2.5 W of SHOSHONE
LEGAL DESCRIPTION: Section 5.89 Township 5 South, Range 17 EBM
Total amount of land held: 944
Total amount of land where CAFO is located: 944
Existing Use: Ab.
Zoning District: Ab
Total Combined Animal Unit: (Transfer from worksheet) 2300

This permission is granted under Lincoln County Zoning Ordinance 96-04. The application must be submitted with the following: A full written description of the operation and facilities used including the maximum capacities of the facilities in regards to the number of animals per acre. The numbers and type of Animal Units currently located on the parcel.

A complete site plan (may be hand drawn). The site plan shall include, the dimensions, size and location of existing buildings on the lot, feed storage areas, animal confinement areas, waste storage areas, water wells, canals, ditches, injection wells, traffic access, public thoroughfares and building heights.

TRANSFER OF SITING PERMIT: A CAFO siting permit may be transferred to a new owner or operator upon written notification to the Administrator by the holder of the existing permit.

LINCOLN COUNTY ZONING ORDINANCE 96-04, EFFECTIVE DATE - MAY 22, 1996

 **SEC-TRES.**
Signature of Owner and/or Applicant

LINCOLN COUNTY PLANNING AND ZONING
ADMINISTRATOR
Carol A. Boudreau (208)886-2406 (208)886-7672 FAX

LINCOLN COUNTY PLANNING & ZONING COMMISSION
NOTICE OF DECISION
ON APPLICATION FOR
GRANDFATHER SITING PERMIT

NAME: 4-Brothers Dairy, Inc. (Andrew Fitzgerald)

ADDRESS: 425 N 250 West Shoshone, ID 83352

YOUR APPLICATION FOR A GRANDFATHER SITING PERMIT FOR 2300 head of dairy
cattle, 1800 Milking, 500 Dry

HAS BEEN:
APPROVED XXXX DISAPPROVED BECAUSE

DATED July 21, 1997 SIGNED Carol A. Boudreau
PLANNING & ZONING ADMINISTRATOR

PLEASE RE-SUBMIT THIS DOCUMENT ACCORDING TO THE INSTRUCTIONS SET OUT
ABOVE. THE DOCUMENT HAS TO BE FILLED OUT COMPLETELY ACCORDING TO THE
INSTRUCTIONS, FAILURE TO DO SO WILL JUST DELAY THE PROCESSING OF YOUR
REQUEST.

ATTACHED PLEASE FIND A NEW GRANDFATHER SITING PERMIT FOR YOU TO FILL OUT
AND EITHER MAIL OR DELIVER TO THIS OFFICE.

MAIL TO:

LINCOLN COUNTY PLANNING & ZONING ADMINISTRATOR
LINCOLN COUNTY OFFICES
P.O. BOX 608
115 W 'A' STREET
SHOSHONE, IDAHO 83352
(208)886-2406
(208)886-7672 FAX

4-BROS. DAIRY, INC.
427 North 250 West
Shoshone, ID 83352

April 18, 2000

Supplement to Application for Conditional Use to Increase Grandfather Siting Permit
dated July 21, 1997 from 2300 head of dairy cattle to 3450 head.

On July 22, 1997, Lincoln County Commissioners had a public hearing on a Conditional Use Permit submitted by 4-Bros. Dairy, Inc. 4-Bros. Dairy testified that the project would be done in two phases one-half in 1997 and one-half the following year. The Conditional Use Permit was granted with approximately one-half of the animal units

4-Bros. Dairy, Inc. is requesting to have a Grandfather Siting Permit for the full capacity of the facility. Thirteen corrals at 265 head in each corral equals 3450 animal units.

LINCOLN COUNTY PLANNING & ZONING COMMISSION
NOTICE OF DECISION
ON APPLICATION
FOR CONDITIONAL USE PERMIT

NAME: 4 Brothers Dairy - Andrew Fitzgerald
ADDRESS: 427 North 250 West Shoshone, ID 83352
YOUR APPLICATION FOR A CONDITIONAL USE PERMIT FOR increasing the milk
cows in barn number two 3450 AU

HAS BEEN: APPROVED xxx DISAPPROVED xxxx ~~BECAUSE~~ must put in writing the
plan for odor, dust and fly management.

DATED May 15, 2000 SIGNED Pat Riley
CHAIRMAN, PLANNING & ZONING COMMISSION

NOTICE: If significant work as described in the permit has not begun within 365 days from the date this document was signed, said permit shall expire and be considered revoked by the Commission. No written notice of expiration or revocation need be given to the affected party by the Lincoln County Planning and Zoning Commission.

When work has been started on the project, please complete the form below, detach and mail to the Lincoln County Planning & Zoning Commission, C/O Carol A. Boudreau, P & Z Administrator, P.O. Box Drawer 'D', Shoshone, ID 83352. Please also state how far the project has progressed.

If an extension is needed, please fill out that portion of the form below, detach, and mail to the above address no later than 30 days prior to the expiration date of this permit. If the request for an extension is not received prior to the expiration date, an entirely new application for a Conditional Use Permit will be required.

NAME OF APPLICANT _____
ADDRESS _____
TYPE OF PROJECT FOR WHICH THE PERMIT WAS ISSUED _____

WORK ON THE PROJECT WAS STARTED _____
STATEMENT AS TO HOW FAR ALONG THE PROJECT HAS PROGRESSED _____

WORK ON THE PROJECT HAS NOT BEEN STARTED BECAUSE _____

AND A REQUEST IS HEREBY MADE TO THE Lincoln County Planning & Zoning Commission to grant an extension.

DATE _____ SIGNED _____

RIGHT OF APPEAL - The applicant or any affected person who appeared in person or in writing before the Commission may appeal the decision of the Commission to the Board of County Commissioners provided that the appeal is submitted in writing along with a Seventy Five dollar (\$75.00) appeal fee, to the Board within forty-five (45) days from the Commission's action.

An affected person aggrieved by a decision may within sixty (60) days after all remedies have been exhausted under local ordinances seek judicial review under the procedures provided by Sections 67-5215 (b) through (g) and 67-5216, Idaho Code

4-BROS. DAIRY, INC.

427 North 250 West
Shoshone, ID 83352

July 31, 2000

Lincoln County Planning and Zoning Commission

RE: Application for Conditional Use Permit Plan

The plans that 4-Bros. Dairy, Inc. has for controlling odor, dust and flies are as follows:

- I Dairy Odor
 - A. 4-Bros. Dairy applies a microbial agent to the lagoon waters monthly to control its odor.
 - B. In the summer months corrals are harrowed or scraped to keep corrals dry.
 - C. 4-Bros. Dairy applies a bentonite, molasses mix on silage pits as a sealant to prevent odor seepage.
 - D. Corrals are completely cleaned each spring and fall to prevent decomposing smells.
- II Dust Control
 - A. 4-Bros. Dairy applies magnesium chloride to gravel roads to stop dust.
 - B. 4-Bros. Dairy applies straw in new dirt pens for dust control.
- III. Flies
 - A. 4-Bros. Dairy is contracted with H.I.D. Pest Control to fog all corrals once a week, all calf areas twice a week and residual spraying on buildings every two weeks during the summer months.
 - B. Bedding material is removed from corrals each spring and fall.
 - C. Dry up all moist areas on dairy during fly season.
 - D. 4-Bros. Dairy feeds a product called Mix-30 to animals, which claims to inhibit fly larva production in fecal material.
 - E. 4-Bros. Dairy uses systemic control on the animals themselves.


4-Bros. Dairy, Inc.
Andrew W. Fitzgerald, Secretary/Treasurer

ANIMAL UNITS WORKSHEET

INSTRUCTIONS: In column 2, enter the number of each animal type present on the operation. Multiply that number by the animal equivalency factor found in column 1. This will give you the single animal unit number to be entered in column 3 (col. 1 x col. 2 = col. 3). The total of all numbers in column 3 is the total number of animal units present on the CAFO.

ANIMAL TYPE	ANIMAL EQUIVALENCY FACTOR AU (1)	NO. ON THE OPERATION (2)	EQUIVALENT ANIMAL UNITS (3)
CATTLE OVER 700 LBS. (SLAUGHTER, FEEDER, DAIRY, ETC.)	1.0		
CATTLE FROM 400 TO 700 LBS	.7		
CALVES UNDER 400 LBS	.2		
COW/CALF PAIR	1.2		
MATURE DAIRY CATTLE (WET OR DRY) ... 1.0 1800 milking 500 dry		2300	2300
SWINE, OVER 55 LBS. EACH	.4		
HORSE	1.0		
SHEEP OR LAMBS	.2		
TURKEY	.02		
LAYING HEN/BROILER	.01		
GOAT	.2		

For species not specified in this list, 750 pounds of livestock are equivalent to one animal unit. For example: Bison, Llamas, Donkeys, etc., shall use the above weight equivalency unit.

COMMENTS OR NOTES:

NEW FACILITY

CONFINED ANIMAL FEEDING OPERATION
GRANDFATHER SITING PERMIT APPLICATION

DATE: 1-10-03

NAME: 4-BROS. DAIRY, INC. TELEPHONE: 208-886-7716

ADDRESS: 427W 250W SHOSHONE, IDAHO 83352

GENERAL LOCATION (directions) 4W of TOWN 2.5W of TOWN

LEGAL DESCRIPTION: Sec. 5, 7, 8, 9, 12, 31, Township 5, South, Range 17 EBM

Total Amount of land held: 3,000 ACRES

Total amount of land where CAFO is located: 1872 ACRES

A site plan showing the following:

- a. Dimensions, size and location of existing improvements on the CAFO.
- b. Property lines and setbacks.
- c. Feed storage areas within the confined area.
- d. Containment areas.
- e. Waste Storage Areas
- f. Wells

All additional information called for under section VI of the Lincoln County CAFO Ordinance number 2002-03.

A written description of the waste management system, (i.e.) collection, storage, handling and disposal including nutrient management plan. Please attach sheet if not enough room.

BARN #1, COW WASTE IS SCRAPED FROM CORRALS
AND STOCKPILED IN CORRAL, OR COMPOSTED ON
DAIRY THEN SHIPPED TO DIETRICH, OR
BOODING PROPERTY. NON COMPOSTED MATERIAL
IS LAND APPLIED
BARN #2, SAME AS ABOVE, BUT FEED STANDS ARE
FISHED & SEPERATED.
BARN #3 SAME AS ABOVE, WITH NO FISH system

Four Brothers Dairy, Inc.
Dairy Inventory-Livestock

4th Q 12-31-02
 Quarter

	Quantity	#	Unit Value	Total
Dairy Cows	✓ 4863			
Springers	✓ 402			
Preg Heifers	✓ 401			
Bulls	✓ 145			
Total	5811 HD			

Heifers:				
750 lbs	✓ 370			
600 lbs	✓ 352			
400 lbs	✓ 419			
300 lbs	✓ 510			
250 lbs	✓ 400			
Less than 250 lbs	✓ 438			
Total	2489 HD			

STEERS: BULLS 800-1000	✓ 82			
500-700 Bulls	✓ 97			
400 lbs	✓ 110			
250 lbs	✓ 106			
Less than 250 lbs	✓ 95			
Total	490 HD			

Cull Rate	28%
Average Milking	4055
Average Dry	826
Average Bulls	130
Dead Cows	49

ANIMAL UNITS WORKSHEET

INSTRUCTIONS: In column 2, enter the number of each animal type present on the operation. Multiply that number by the animal equivalency factor found in column 1. This will give you the single animal unit number to be entered in column 3 (col. 1 x col. 2 = col. 3). The total of all numbers in column 3 is the total number of animal units present on the CAFO.

ANIMAL TYPE	ANIMAL EQUIVALENCY FACTOR AU (1)	NO. ON THE OPERATION (2)	EQUIVALENT ANIMAL UNITS (3)
CATTLE OVER 700 LBS. (SLAUGHTER, FEEDER, DAIRY, ETC.).....	1.0	1255	1255
CATTLE FROM 400 TO 700 LBS.....	.7	978	685
CALVES UNDEDR 400 LBS.....	2	1549	310
COW/CALF PAIR.....	1.2		
MATURE DAIRY CATTLE (WET OR DRY) ...	1.0	5008	5008
SWINE, OVER 55 LBS. EACH.....	4		
HORSE.....	1.0		
SHEEP OR LAMBS.....	2		
TURKEY.....	02		
LAYING HEN/BROILER.....	01		
GOAT.....	2		

402
401
105
370
878

1400

4863

For species not specified in this list, 750 pounds of livestock are equivalent to one animal unit. For example: Bison, Llamas, Donkeys, etc., shall use the above weight equivalency unit.

X 160
10887

COMMENTS OR NOTES:

SEE INVENTORY SHEET

LINCOLN COUNTY PLANNING AND ZONING ADMINISTRATOR
Carol A. Boudreau (208) 886-9827 (208) 886-2027 FAX

Water right permits or license from the State of Idaho

Existing Use: AG

Zoning District: AG

Total Combined Animal Units: (Transfer from worksheet) 7258 A.U.

This permission is granted under Lincoln County Zoning Ordinance 96-04. The application must be submitted with the following: A full written description of the operation and facilities used including the maximum capacities of the facilities in regards to the number of animals per acre. The numbers and type of Animal Units currently located on the parcel.

THE MAXIMUM CAPACITY OF 4-BROS DAIRY IS 7000 MATURE DAIRY ANIMALS AND 6000 DAIRY CATTLE 900 lbs AND UNDER. THE DAIRY HAS 3 MILKING BARS, AND APPROX 3200 ACRES OF FARM GROUND LOCATED IN NORTH SHOSHONE, NORTH GOODING AND DIETRICH, HAS 4 FAMILY MEMBERS AS MANAGERS, AND 50 EMPLOYEES. 4-BROS DAIRY IS TRULY A FAMILY BUSINESS.

TRANSFER OF SITING PERMIT: A CAFO siting permit may be transferred to a new owner or operator upon written notification to the Administrator by the holder of the existing permit.

LINCOLN COUNTY ZONING ORDINANCE 96-04, EFFECTIVE DATE - MAY 22, 1996

Andrew Fitzgerald SEC-TRES
Signature of Owner and/or Applicant
4-BROS DAIRY INC.

LINCOLN COUNTY SITING REGISTRATION

4 Bros. Dairy Inc.

HAS BEEN REGISTERED FOR 7258 ANIMAL UNITS.
YOU MAY INCREASE YOUR ANIMAL UNITS TO A TOTAL OF
10,887. BEYOND THIS NUMBER WILL REQUIRE A SITING
PERMIT.

LOCATED AT THE FOLLOWING LEGAL DESCRIPTION:

E 1/2 E 1/2 § NWNE

Sec 8, T5S, R17E, B1N

May 4, 2005

DATE

WENDELL JOHNSON

P&Z ADMINISTRATOR

REGISTRATION # 2002001

RECEIVED

AUG 22 2005

Department of Water Resources

RICHARD A. CARLSON
Attorney at Law
ISB#5971 OSB# 79-180

P.O. Box 21
Filer ID 83328

Telephone and fax: 208-326-3686
E-mail: carlsonr@filertel.com

August 19, 2005

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

Re: Four Bros. Dairy Transfer

Dear Rob:

Please find enclosed a copy of the Supplemented Lincoln County Rural Council's List of Potential Witnesses and Exhibits along with a copy of the extra proposed exhibits.

I called Victoria Wigle this past Monday when I learned our hearing had been postponed to accommodate Dr. Brockway's schedule. The purpose of my call was to let her know that I would not be available during the month of September or between Oct. 13th and 18th. I don't know Norm Young's or Paul Drury's schedules but will have to check with them before a new hearing date is set to avoid future conflicts. Some of the individual protestants may also have potential schedule conflicts which we won't know about without some kind of communication with Ms. Wigle or Peter Anderson.

Sincerely,



Richard A. Carlson

cc: Peter Anderson (w/ encl.) ✓
Henry Blake/Janene Buckway
Bev Ashton
Elizabeth Tews
Doug Albright
Susan & Jerry Westendorf
Russell & Pamela Pantone
Rusty & Carla Tews

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	)	SUPPLEMENTED
Transfer No. 71607 in the name of	)	LINCOLN COUNTY RURAL
4 Bros. Dairy, Inc.,	)	COUNCIL'S LIST OF
Applicant,	)	POTENTIAL WITNESSES
	)	AND EXHIBITS
Lincoln County Rural Council,	)	
Protestant.	)	

The protestant Lincoln County Rural Council, through its attorney, Richard A. Carlson, submits the following supplemented list of potential witnesses and exhibits for the transfer hearing:

POTENTIAL WITNESSES:

Bev and/or Val Ashton
Elizabeth, Carla, and/or Rusty Tews
Jerry and/or Susan Westendorf
Janene and/or Henry Buckway
Doug Albright
Russell and/or Pamela Pantone
Paul Drury and/or Norm Young (ERO RESOURCES- expert testimony)
Andrew, Jerome, and/or Clem Fitzgerald
Marv Patten – Idaho State Department of Agriculture

POTENTIAL EXHIBITS:

- 100- IDWR map depicting Ground Water Districts*
- 101- IDWR map depicting ground water elevations in ESPA (dated Jan.-05')*
- 102- IDWR map depicting ground water flow directions (dated Jan.- 05')*
- 103- IDWR map depicting ground water elevations in ESPA (enhanced ESRP Model 1.1)
- 104- Various water right records of neighboring properties
- 105- Various well driller's logs of 4 Bros. wells and neighboring wells
- 106- Exhibits A-F (misc. exhibits concerning transfer impacts)
- 107- Response to Public Records Request by Watermaster- Water District 130

- 108- Charles Brockway Applications to Rent Water to Water Bank and from Water Bank
- 109- IDWR Memo and misc. correspondence re: Black Butte Transfer
- 110- ISDA Siting Team Report to Lincoln Co. (w/color map)
- 111- Lincoln County Prosecuting Attorney Memo re: withdrawal of application for new dairy
- 112- 4 Bros. Nutrient Management Plan
- 113- ISDA Response to Public records Request/ Excerpts from ISDA-EPA- Idaho Dairy Association Memorandum of Understanding report -2004
- 114- Water quality test report from 4 Bros. neighbor(s)
- 115- IDEQ "Cumulative Impacts Assessment" -2000
- 116- NASS/USDA crop statistics for Idaho 1990- most recent available at www.nass.usda.gov
- 117- IDWR Orders re: Transfers Nos. 5804 and 5436
- 118- Satellite photo of area
- 119- Satellite photo of area
- 120- Various documents from Lincoln Co. Planning and Zoning re: permits
- 121- ESRP Ground Water Level Change Map
- 122- ISDA Response to Public Records Request (July 29, 2005)
- * indicates that copy already provided applicant in discovery

The protestant reserves the right to supplement its evidence with additional exhibits or oral testimony to rebut evidence the applicant provides up to and during the hearing. The protestant will also ask the hearing officer to take official notice of all orders issued by the Director of IDWR concerning calls for water made by spring and surface water users in the past 3 years.

DATED this 19th day of August, 2005



Richard A. Carlson
Attorney for Lincoln County Rural Council

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of August, 2005, I served a true copy of the foregoing document along with copies of the proposed exhibits referenced above on the person listed below, by the method indicated below:

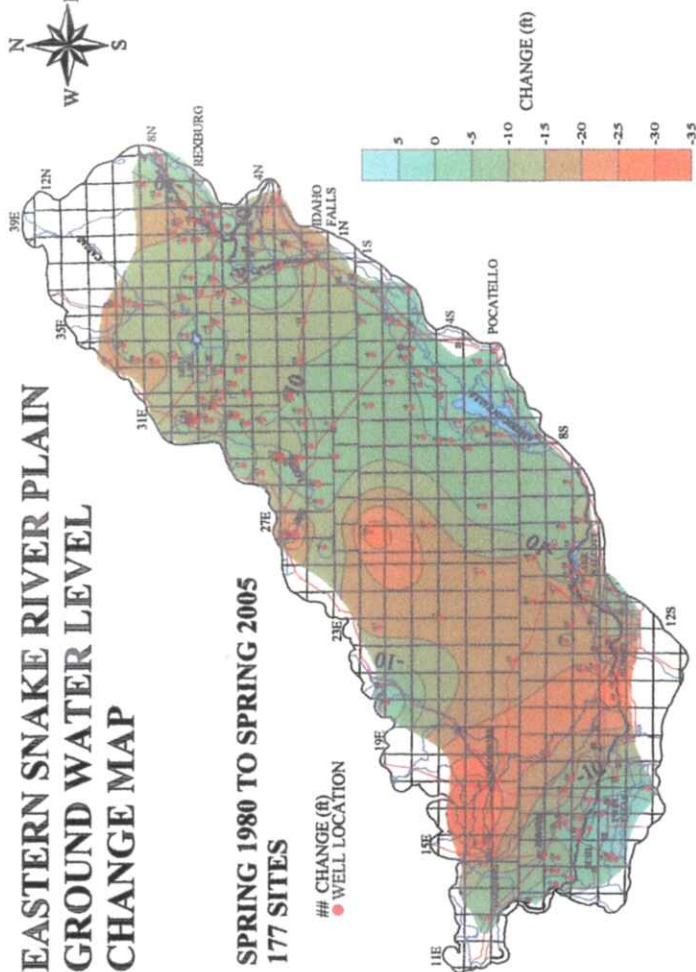
Robert E. Williams U.S. Mail
Attorney at Law
P.O. Box 168
Jerome, ID 83338



Richard A. Carlson

**SPRING 1980 TO SPRING 2005
177 SITES**

CHANGE (ft)
● WELL LOCATION



PREPARED BY THE IDAHO DEPARTMENT OF WATER RESOURCES JULY 05 SB



STATE OF IDAHO

DEPARTMENT OF AGRICULTURE

DIRK KEMPTHORNE

Governor

PATRICK A. TAKASUGI

Director

July 29, 2005

Rich Carlson
PO Box 21
Filer, Id 83328

Re: Public Records Request

Dear Mr. Carlson:

On July 15, 2005, the Idaho State Department of Agriculture, Dairy Bureau, received your facsimile request for, "(1) Any studies, reports, summaries, data compilations etc. ISDA has showing the number of acres in Jerome, Gooding, Twin Falls, Cassia, Lincoln, Canyon, Owyhee Counties (the "counties") which have been identified as having reached a phosphorus level where application of dairy manure is not appropriate...(2) Any studies, reports, summaries, data compilations, etc. showing the percentage of manure produced at dairy facilities which dairy facilities in the above referenced counties are "exporting" from their facilities based on reports in their Nutrient management plans...(3) Current statistics on the number of number of dairy facilities in the above referenced counties, the number of NMPs which have been "approved" by the department, the number of NMPs which have not been approved, the number of NMPs which have been "ground truthed", the percentage of facilities where the department has done regulatory soil samples for NMP compliance purposes, and the percentage of facilities which have been checked or audited for compliance with the soil testing the operator is required to do under the NMP...."

Regarding #2 of your request, at this time our computer programs are unable to tabulate "the percentage of manure produced at dairy facilities..."consequently, this information is not available.

Regarding #3 of your request, all dairy farms in the referenced counties have approved nutrient management plans. "Ground truthing" or NMP inspection review is an on going process. NMP's are continually updated to reflect changes made on dairy facilities, i.e. additional fields, field combining, renaming, irrigation changes, herd size changes, cropping changes etc.

Enclosed please find the other documents you requested.

	DATE	INFORMATION	NUMBER OF PAGES
1.	4/22/03	Dairy Resource Exportation	1
2.	7/18/05	Summary ISDA Soil Testing	28
3.	7/28/05	Waste inspection - Mature Animal Summary	1
4.	Undated	Nutrient Management Summary 2003	1
TOTAL			31

122-

If you have any questions, please call.

Sincerely,

A handwritten signature in cursive script that reads "Marv Patten".

Marv Patten, Chief
Bureau of Dairying

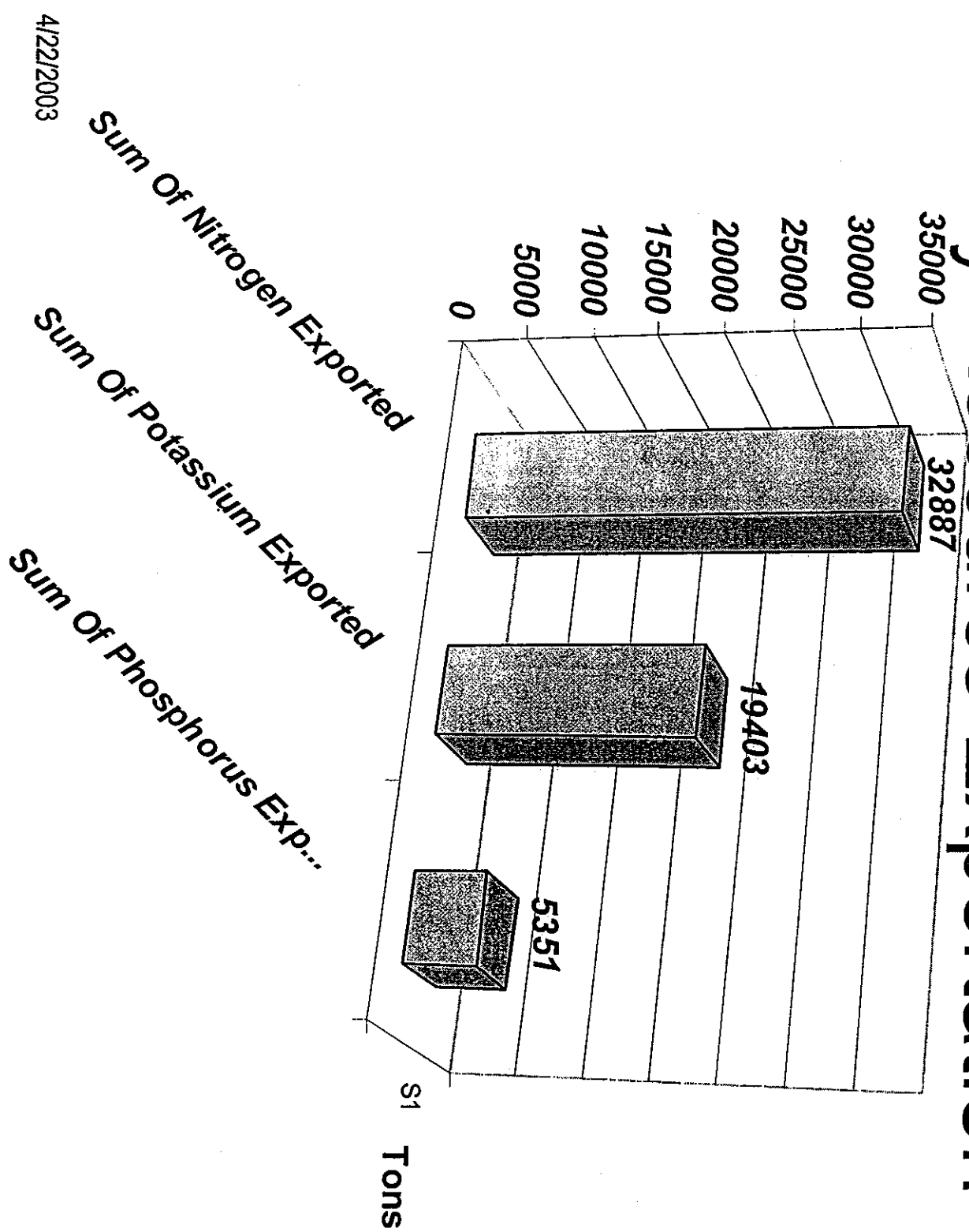
Certificate of Mailing

I hereby certify that the original of this letter was deposited in the United States mail, postage prepaid, this 29th day of July, 2005.

A handwritten signature in cursive script that reads "Martha Walbey".

Martha Walbey
Administrative Assistant

Dairy Resource Exportation



4/22/2003

Soil Samples Query

7/18/2005

26

46

DYNumber	County	FieldName	FieldAcreage	SampleDate	SWSampleP	GWSampleP
DY16310988	Cassia	22	130	11/13/2002		9
DY16310988	Cassia	46	53	2/6/2003		7
DY16310988	Cassia	49	126	1/31/2003		4
DY16310988	Cassia	32	151	11/6/2002		12
DY16310988	Cassia	45	72	2/6/2003		4
DY16310988	Cassia	34	147	11/6/2002		8
DY16310988	Cassia	28	134	10/29/2002		9
DY16310988	Cassia	29	134	10/29/2002		13
DY16310988	Cassia	43.44	151	1/29/2003		5
DY16310988	Cassia	26	134	10/29/2002		12
DY16310988	Cassia	23	129	10/31/2002		10
DY16310988	Cassia	38	152	1/14/2003		20
DY16310988	Cassia	31	149	11/6/2002		10
DY16310387	Cassia	Desert West	139	11/26/2002		28
DY16310988	Cassia	24	133	11/13/2002		13
DY16310988	Cassia	4	83	2/4/2003		12
DY16310988	Cassia	15	132	1/8/2003		10
DY16310988	Cassia	35	151	1/13/2003	22	
DY16310988	Cassia	26	129	10/23/2002		12
DY16310988	Cassia	14	64	1/13/2003	18	
DY16310988	Cassia	13	65	1/13/2003	19	
DY16310988	Cassia	12	144	1/13/2003	32	
DY16310988	Cassia	15	132	1/8/2003		10
DY16310988	Cassia	16	134	1/8/2003		5
DY16310988	Cassia	17, 17A	76	12/5/2002		31
DY16310988	Cassia	18	71	12/5/2002	68	
DY16310988	Cassia	39	151	1/14/2003		14
DY16310459	Cassia	HP 1	15	6/2/2005	54	0
DY16310988	Cassia	27	62	11/13/2002		11
DY16310988	Cassia	25	131	10/23/2002		7
DY16310448	Cassia	22	28	6/16/2005	35	0
DY16310448	Cassia	Bowers 40	37	6/16/2005	44	0
DY16310450	Cassia	4	27	6/15/2005	50	0

Soil Samples Query

7/18/2005

DY Number	County	Field Name	Field Acreage	Sample Date	SW Sample	GW Sample
DY16310450	Cassia	9	58	6/16/2005	0	21
DY16310465	Cassia	8	26	6/2/2005	0	15
DY16310465	Cassia	12	21	6/2/2005	50	0
DY16310988	Cassia	20	133	10/31/2002		12
DY16310988	Cassia	1	70	7/29/2002		8
DY16310988	Cassia	33	31	1/14/2003		15
DY16310988	Cassia	42	27	1/27/2003	22	
DY16310988	Cassia	40	143	1/27/2003	21	
DY16310988	Cassia	41	37	1/22/2003	16	
DY16310988	Cassia	7	53	2/4/2003		6
DY16310988	Cassia	19D	51	1/22/2003	14	
DY16310988	Cassia	5	136	2/4/2003		11
DY16310988	Cassia	19A	52	1/22/2003	13	
DY16310988	Cassia	28	0	10/31/2002		9
DY16310988	Cassia	50	23	1/31/2003		6
DY16310988	Cassia	30	146	1/14/2003		20
DY16310988	Cassia	10	72	1/31/2003		5
DY16310988	Cassia	19C	78	1/22/2003	16	
DY16310988	Cassia	48	28	2/3/2003		5
DY16310988	Cassia	8	63	2/3/2003		4
DY16310988	Cassia	3	129	2/3/2003		13
DY16310988	Cassia	52	12	2/3/2003		11
DY16310988	Cassia	47	22	2/3/2003		4
DY16310988	Cassia	6	128	2/4/2003		9
DY16310988	Cassia	9	122	1/31/2003		3
DY16310988	Cassia	19B	85	1/22/2003	12	
DY16310387	Cassia	Field Pump 6 East	51	3/17/2003	25	
DY16310387	Cassia	Tram HL	150	3/20/2003	22	
DY16310387	Cassia	Field Pump 1 West	130	3/17/2003	14	
DY16310387	Cassia	Meyer 4	160	12/10/2002	21	
DY16310387	Cassia	Field Pump 6 West	139	3/17/2003	34	
DY16310387	Cassia	Interstate Handline North	57	12/12/2002	12	
DY16310387	Cassia	Field Pump 5 East	135	3/17/2003	32	

Soil Samples Query

7/18/2005

DYNumber	County	FieldName	FieldAcreage	SampleDate	SW Sample	GW Sample
DY16310387	Cassia	Hendricksen	46	2/21/2003	20	
DY16310387	Cassia	Fairchild	26	2/21/2003		9
DY16310387	Cassia	Lloyd	35	2/21/2003		9
DY16310387	Cassia	Interstate 3	134	2/21/2003	14	
DY16310387	Cassia	Interstate 2	126	12/12/2002	12	
DY16310387	Cassia	Interstate 4	83	12/12/2002	23	
DY16310387	Cassia	Tram Pivot 280A	282	3/20/2003	21	
DY16310387	Cassia	Neilson 96A	99	3/21/2003		27
DY16310463	Cassia	B.P. 108	126	6/13/2005	21	0
DY16310464	Cassia	Dad's Canal Piece	24	4/7/2005	0	17
DY16310464	Cassia	Dad's South of 700 East	60	4/7/2005	0	18
DY16310464	Cassia	Glaysman	102	4/19/2005	0	13
DY16310464	Cassia	Burn	98	6/2/2005	0	11
DY16310464	Cassia	Laurence	72	4/7/2005	0	37
DY16310463	Cassia	B.P. 109	127	6/13/2005	0	8
DY16310463	Cassia	B.P. 112	122	6/14/2005	0	12
DY16310444	Cassia	14 S	22	6/10/2005	41	0
DY16310444	Cassia	14N	10	6/10/2005	0	9
DY16310444	Cassia	9	27	6/10/2005	36	0
DY16310387	Cassia	Meyer1	177	11/25/2002		9
DY16310988	Cassia	2	70	7/29/2002		7
DY16310387	Cassia	Interstate 1	161	12/12/2002	14	
DY16310387	Cassia	Robins	77	12/4/2002		13
DY16310387	Cassia	Meyer 3	165	12/10/2002	28	
DY16310387	Cassia	Canal South	51	12/10/2002	26	
DY16310463	Cassia	B.P. 101	228	6/14/2005	28	0
DY16310387	Cassia	Anderson South Pivot	125	3/20/2003	16	
DY16310387	Cassia	Canal East	56	12/10/2002	39	
DY16310387	Cassia	Canal West	47	12/10/2002	33	
DY16310387	Cassia	Meyer 2	167	12/4/2002	25	
DY16310387	Cassia	River Pivot	141	12/4/2002	27	
DY16310387	Cassia	River Pivot Corners	20	12/4/2002	26	
DY16310387	Cassia	Tram West	72	11/26/2002	20	

DYNumber	County	FieldName	FieldAcres	SampleDate	SWSampleP	GWSampleP
DY16310387	Cassia	Tram East	149	11/26/2002	33	
DY16310387	Cassia	Terry East wheeline	32	11/25/2002	49	
DY16310387	Cassia	Interstate Handline South	37	12/12/2002	22	
DY16310387	Cassia	Terry West	135	11/25/2002		12
DY16310387	Cassia	Desert East	137	11/26/2002	40	
DY16310387	Cassia	Kennedy	58	3/21/2003		25
DY16310387	Cassia	Orton	130	11/21/2002		11
DY16310387	Cassia	Canal	28	3/21/2003	32	
DY16310387	Cassia	Pump 1 East	131	3/21/2003	41	
DY16310387	Cassia	Field Pump 5 West	132	3/17/2003	27	
DY16310387	Cassia	Neilson 129A	130	3/20/2003	18	
DY16310387	Cassia	Nielson 129	129	5/26/2005	25	0
DY16310387	Cassia	Tram East	148	5/26/2005	0	6
DY16310387	Cassia	Anderson North Pivot	130	3/20/2003	18	
DY16310387	Cassia	Marriot	67	11/21/2002		15
DY16310387	Cassia	Mortensen Pivot	111	5/31/2005	0	27
DY16310387	Cassia	Mortensen East	76	5/31/2005	0	18
DY16310387	Cassia	Mortensen East	65	8/5/2002		10
DY16310387	Cassia	Mortensen Pivot	127	8/5/2002		15
DY16470587	Gooding	Box Canyon Pivot & Handline	100	7/5/2002		13
DY16470587	Gooding	Sandy Mini Pivot	33	10/1/2002		21
DY16470587	Gooding	Madalena West	124	10/1/2002	67	
DY16470587	Gooding	Durfee Pivot	32	9/26/2002		18
DY16470587	Gooding	Mini West	30	12/20/2002	40	
DY16470587	Gooding	Pikington East	67	9/30/2002	123	
DY16470587	Gooding	AFOP	37	9/30/2002		31
DY16470620	Gooding	2	65	7/25/2002		32
DY16470587	Gooding	Smallhorne	7	11/1/2002	51	
DY16470620	Gooding	5	120	7/25/2002		18
DY16470587	Gooding	Pikington West	125	9/30/2002		23
DY16470587	Gooding	Mini East	27	12/20/2002	32	
DY16470587	Gooding	N17	138	9/27/2002	71	
DY16470587	Gooding	Clark	59	9/27/2002	112	

Soil Samples Query

7/18/2005

DYNumber	County	FieldName	FieldAcres	SampleDate	SW/SampleP	GW/SampleP
DY16470587	Gooding	Prins	72	9/26/2002		41
DY16470587	Gooding	Lawton	31	9/26/2002		47
DY16470587	Gooding	Madalena East	147	11/1/2002		26
DY16470587	Gooding	N18A,N18	125	11/1/2002		35
DY16470587	Gooding	Durfee Mini Pivot	32	9/26/2002		25
DY16470620	Gooding	2A	16	12/23/2002		28
DY16470640	Gooding	6	45	10/9/2003		19
DY16470587	Gooding	Sandy Pivot	121	10/1/2002	115	
DY16470570	Gooding	1	14	5/27/2003		37
DY16470643	Gooding	Benson Mini	28	5/20/2003	40	
DY16470587	Gooding	N19, N19A, N19B	165	9/26/2002		32
DY16470640	Gooding	East Big Pivot	138	5/23/2003		13
DY16470563	Gooding	2+1 Wheeline	11	10/25/2002		11
DY16470563	Gooding	Dairy East Pivot, Dairy West Pivot	45	9/23/2002	174	
DY16471024	Gooding	BSN25	13	12/27/2002	17	
DY16470643	Gooding	Benson Big Pivot	96	3/15/2004	64	0
DY16470563	Gooding	2+1	146	10/25/2002		37
DY16470563	Gooding	2+2	133	10/28/2002		41
DY16470566	Gooding	Field 4	79	4/10/2003		34
DY16470566	Gooding	Pivot 2	21	4/10/2003		50
DY16470566	Gooding	Pivot 1	119	5/19/2003		54
DY16470566	Gooding	Field 3	203	4/10/2003		30
DY16470640	Gooding	8	131	10/20/2003	43	
DY16470640	Gooding	4,5	109	5/27/2003		11
DY16470620	Gooding	1	34	12/23/2002	25	
DY16470640	Gooding	9	38	10/15/2003		13
DY16470640	Gooding	2,3	92	10/9/2003	43	
DY16470640	Gooding	7	100	10/20/2003	73	
DY16470640	Gooding	Lagoon Pivot	13	5/23/2003		43
DY16470639	Gooding	A	46	5/27/2003	47	
DY16470639	Gooding	B	38	10/9/2003	24	
DY16470639	Gooding	Field # C	16	3/15/2004	8	0
DY16470620	Gooding	P3-P5	121	10/9/2002		7

Soil Samples Query

7/18/2005

DYNumber	County	FieldName	FieldAcreage	SampleDate	SWSampleP	GWSampleP
DY16470620	Gooding	P1,P2	69	10/10/2002		11
DY16470620	Gooding	3	64	12/19/2002	39	
DY16470620	Gooding	4 "is now other field that has not been sampled.	96	12/19/2002	58	
DY16470640	Gooding	19	26	10/9/2003		10
DY16471024	Gooding	NW53	31	12/27/2002	17	
DY16471024	Gooding	CV14	47	3/4/2003	8	
DY16471024	Gooding	HV5,HV6	107	3/7/2003	9	
DY16471024	Gooding	HV7	33	3/6/2003	5	
DY16471024	Gooding	E40	51	12/27/2002	23	
DY16471024	Gooding	May West Pivots	81	3/13/2003	32	
DY16471024	Gooding	HV10	117	3/6/2003	10	
DY16471024	Gooding	CV13	60	3/4/2003	4	
DY16471024	Gooding	CV10	25	3/4/2003	13	
DY16471024	Gooding	CV12	86	3/4/2003	4	
DY16471024	Gooding	May East Pivots	119	3/7/2003	9	
DY16471024	Gooding	HV9	26	3/6/2003	9	
DY16471024	Gooding	N40	31	12/26/2002	40	
DY16471024	Gooding	Blick 3/4	89	12/20/2002	25	
DY16471024	Gooding	HV3	146	3/7/2003	7	
DY16471024	Gooding	N42	33	12/26/2002	16	
DY16471024	Gooding	CV20	49	3/4/2003	5	
DY16471024	Gooding	W160	127	12/26/2002	43	
DY16471024	Gooding	NW130	112	12/26/2002	18	
DY16471024	Gooding	CV11	26	3/4/2003	16	
DY16471024	Gooding	HV1, HV4	114	3/7/2003	7	
DY16530525	Gooding	Field 13	28	10/7/2003	36	
DY16471024	Gooding	Blick 1/2	28	12/27/2002	22	
DY16470669	Gooding	5 & west 1/2 of 4	70	5/25/2005	0	23
DY16470995	Gooding	J12 & J12A	172	8/20/2002	49	
DY16471024	Gooding	CV2	128	2/27/2003	13	
DY16471024	Gooding	CV21	73	7/12/2002	20	
DY16471024	Gooding	CV4	122	7/3/2002	11	
DY16471024	Gooding	M160	149	9/25/2002		15

Soil Samples Query

7/18/2005

DYNumber	County	FieldName	FieldAcres	SampleDate	SWSampleP	GWSampleP
DY16471024	Gooding	CV17	38	7/3/2002	8	
DY16471024	Gooding	CV16	133	7/3/2002	9	
DY16471024	Gooding	CV24&CV25	105	7/3/2002	14	
DY16471024	Gooding	HV8	53	7/3/2002	7	
DY16471024	Gooding	CV26&CV27	85	7/10/2002	22	
DY16471024	Gooding	CV18	32	7/2/2002	6	
DY16471024	Gooding	CV1	127	7/8/2002	8	
DY16471024	Gooding	CV3	21	7/9/2002	19	
DY16471024	Gooding	HV2	125	3/7/2003	11	
DY16471024	Gooding	CV6	51	7/9/2002	26	
DY16471024	Gooding	E160	138	9/25/2002		14
DY16471024	Gooding	CV23	147	7/9/2002	17	
DY16471024	Gooding	CV28&CV30	139	7/10/2002	18	
DY16471024	Gooding	CV31	133	7/12/2002	29	
DY16471024	Gooding	CV32	132	7/12/2002	20	
DY16471024	Gooding	CV29	26	7/12/2002	17	
DY16471024	Gooding	CV22	74	7/12/2002	20	
DY16471024	Gooding	CV19	59	7/9/2002	13	
DY16471024	Gooding	CV9	22	7/12/2002	19	
DY16471024	Gooding	CV5	118	7/9/2002	11	
DY16471024	Gooding	CV8	150	3/4/2003	10	
DY16471024	Gooding	CV15	109	3/6/2003	20	
DY16471024	Gooding	CV7	148	7/9/2002	24	
DY16470995	Gooding	G-3	28	11/19/2002	9	
DY16470995	Gooding	Rock Creek 27	147	10/14/2003	51	
DY16470995	Gooding	C-3	137	11/15/2002		12
DY16470995	Gooding	C-4	134	11/15/2002	18	
DY16470995	Gooding	C-2	117	11/15/2002		8
DY16470995	Gooding	C-1	152	11/15/2002		19
DY16470995	Gooding	A-24,A-24A	125	11/18/2002		13
DY16470995	Gooding	G-1	139	11/18/2002		13
DY16470995	Gooding	A-21,A-21A	144	11/18/2002		28
DY16470995	Gooding	A-mini 1,2	47	11/18/2002	87	

Soil Samples Query

7/18/2005

DY Number	County	FieldName	FieldAcreage	SampleDate	SW Sample	GW Sample
DY16470995	Gooding	A-mini 3,4	44	11/19/2002		23
DY16470995	Gooding	C-5	80	7/22/2002	46	
DY16470995	Gooding	now shown as part of A-mini 1,2	3	11/19/2002		8
DY16470995	Gooding	J-11, J-11A	175	12/2/2002	90	
DY16470995	Gooding	G-4	124	11/19/2002		11
DY16470995	Gooding	J13B	64	12/3/2002	91	
DY16470995	Gooding	Rock Creek 24	148	10/14/2003	15	
DY16470569	Gooding	Pature 2	29	5/28/2003		65
DY16470995	Gooding	J25, J25A	128	12/19/2002	26	
DY16470569	Gooding	Pasture 1	15	5/28/2003	46	
DY16470995	Gooding	J3	117	12/11/2002		27
DY16470995	Gooding	J4	14	12/11/2002		18
DY16470995	Gooding	H-4	93	11/19/2002		8
DY16470995	Gooding	J7	165	12/11/2002	39	
DY16470995	Gooding	J26	69	12/13/2002	21	
DY16470995	Gooding	A-wheels	8	11/19/2002		7
DY16470564	Gooding		54	9/19/2002	93	
DY16470564	Gooding	12	70	9/19/2002		27
DY16470564	Gooding	15	96	10/30/2002		33
DY16470564	Gooding	20	119	10/30/2002		62
DY16470564	Gooding	6	130	6/21/2002		17
DY16470564	Gooding	3&5	80	6/24/2002		19
DY16470564	Gooding	19&21	138	6/27/2002		27
DY16470564	Gooding	14	67	6/18/2002		22
DY16470564	Gooding	9	138	6/18/2002		18
DY16470564	Gooding	8,10,11	143	9/20/2002	86	
DY16470564	Gooding	1&4	140	6/10/2002		14
DY16470995	Gooding	H-2	142	11/20/2002	63	
DY16470564	Gooding	16	21	10/28/2002	139	
DY16470995	Gooding	J8	29	12/6/2002		10
DY16470564	Gooding	13	128	10/9/2002		33
DY16470564	Gooding	24	7	9/1/1902	86	
DY16470564	Gooding	22 & 23	98	9/19/2002		47

Soil Samples Query

7/18/2005

DYNumber	County	FieldName	FieldAcres	SampleDate	SWSampler	GWSampler
DY16470564	Gooding	18	95	10/8/2002		30
DY16470995	Gooding	H3	125	7/19/2002		13
DY16470995	Gooding	Rock Creek # 1&2	235	3/15/2004	40	0
DY16470995	Gooding	P1	40	7/19/2002		21
DY16470995	Gooding	P3	40	7/17/2002		19
DY16470995	Gooding	P2&P2A	133	7/17/2002		16
DY16470995	Gooding	Arch-23	205	7/24/2002		15
DY16470995	Gooding	P4&P5	75	7/17/2002		21
DY16470564	Gooding	17	47	10/9/2002	120	
DY16470642	Gooding	Pasture	31	5/5/2003	22	
DY16470995	Gooding	H-1	146	11/20/2002	73	
DY16470995	Gooding	Rock Creek 17	175	5/8/2003	51	
DY16470995	Gooding	Rock Creek 13	155	5/13/2003	50	
DY16470995	Gooding	Rock Creek 14	20	5/13/2003	35	
DY16470995	Gooding	Rock Creek 20	22	5/7/2003	17	
DY16470995	Gooding	Rock Creek 21	38	5/7/2003	17	
DY16470995	Gooding	Rock Creek 16	55	5/13/2003	20	
DY16470995	Gooding	Rock Creek 28	35	6/2/2003	15	
DY16470995	Gooding	Rock Creek 18	132	5/8/2003	28	
DY16470642	Gooding	1	17	5/2/2003		34
DY16470995	Gooding	Rock Creek 30	128	6/2/2003	16	
DY16470642	Gooding	5	93	5/2/2003		31
DY16470995	Gooding	Rock Creek 29	37	6/2/2003	14	
DY16470642	Gooding	14	115	10/8/2003	68	
DY16471004	Gooding	16	32	3/12/2004	0	20
DY16471004	Gooding	10	88	5/16/2003	70	
DY16471004	Gooding	15	89	10/9/2003	25	
DY16471004	Gooding	7	122	5/22/2003		27
DY16471004	Gooding	10 1/2	15	5/16/2003		28
DY16471004	Gooding	12	35	5/5/2003	26	
DY16471004	Gooding	13	23	5/5/2003		12
DY16471004	Gooding	3	122	5/5/2003		32
DY16471004	Gooding	2	64	5/5/2003		20

Soil Samples Query

7/18/2005

DYINumber	County	FieldName	FieldAcres	SampleDate	SW Sampler	GW Sampler
DY16471004	Gooding	8,9	70	5/5/2003		33
DY16470642	Gooding	6	17	5/2/2003		28
DY16470995	Gooding	Rock Creek 12	150	5/6/2003	19	
DY16470995	Gooding	J13A	51	12/3/2002	77	
DY16470995	Gooding	A-22	120	12/2/2002		61
DY16470995	Gooding	H-5	65	12/2/2002	80	
DY16470995	Gooding	J13 & J13C	85	8/20/2002		21
DY16470995	Gooding	J5,J6	92	12/11/2002		17
DY16470995	Gooding	J-14,15	72	3/24/2003		23
DY16470995	Gooding	Rock Creek 25	25	6/3/2003	14	
DY16470995	Gooding	Rock Creek 26	66	6/3/2003	19	
DY16470995	Gooding	Rock Creek 11	47	5/6/2003	28	
DY16470995	Gooding	Rock Creek 3	17	5/6/2003	12	
DY16470995	Gooding	Rock Creek 23	38	5/7/2003	19	
DY16470995	Gooding	Rock Creek 8	35	6/3/2003	20	
DY16471004	Gooding	11	118	5/15/2003		30
DY16470995	Gooding	Rock Creek 4	131	6/5/2003	16	
DY16470995	Gooding	Rock Creek 10	57	6/3/2003	14	
DY16470995	Gooding	K-1	128	3/24/2003	75	
DY16470995	Gooding	K-2	34	3/24/2003		27
DY16470995	Gooding	K-4	34	3/24/2003		21
DY16470995	Gooding	K-3	136	3/24/2003		27
DY16470995	Gooding	Rock Creek 5	153	6/5/2003	22	
DY16470995	Gooding	Rock Creek 6,6A	110	6/5/2003	18	
DY16470995	Gooding	Rock Creek 7	47	6/3/2003	16	
DY16470995	Gooding	Rock Creek 22	34	5/7/2003	19	
DY16470995	Gooding	Rock Creek 19	20	5/7/2003	25	
DY16470995	Gooding	Rock Creek 9	157	6/3/2003	14	
DY16471024	Gooding	S40	34	12/26/2002	13	
DY16530499	Jerome	Pasture	61	4/22/2004	64	0
DY16530517	Jerome	1	92	4/11/2003	43	
DY16530490	Jerome	B3	134	6/20/2002		22
DY16530507	Jerome	37	39	8/5/2003		11

Soil Samples Query

7/18/2005

DYNumber	County	FieldName	FieldAcreage	SampleDate	SWSampleP	GWSampleP
DY16530490	Jerome	CV1 Pivot 4	50	7/16/2002	26	
DY16530490	Jerome	CV1-3	150	6/20/2002		11
DY16530490	Jerome	B1	90	6/20/2002		10
DY16530490	Jerome	CV1-2	33	6/20/2002		14
DY16530521	Jerome	East Pasture	20	4/18/2003		7
DY16530521	Jerome	West Pasture	23	4/18/2003		45
DY16530521	Jerome	120 Pivot	86	4/18/2003		50
DY16530561	Jerome	Handline	19	11/7/2002		18
DY16530561	Jerome	Reinke Pivot	36	7/15/2002	54	
DY16530562	Jerome	Pivot 10	34	5/6/2003		41
DY16530490	Jerome	CV1 Pivot 1	114	7/16/2002	61	
DY16530490	Jerome	SC2	30	6/13/2002		8
DY16530532	Jerome	Field C	26	5/20/2003	101	
DY16530532	Jerome	Field B	35	5/27/2003		37
DY16530532	Jerome	Field A	64	9/24/2003	47	
DY16530490	Jerome	SC3	133	7/16/2002	51	
DY16530490	Jerome	CV1 Pivot 2	90	7/18/2002	26	
DY16530490	Jerome	S-103	102	7/23/2002	38	
DY16530490	Jerome	B2	96	7/18/2002	47	
DY16530562	Jerome	Zimmerman	144	4/30/2003		16
DY16530490	Jerome	SC5	152	6/18/2002		11
DY16530490	Jerome	SC4	129	7/16/2002	24	
DY16530490	Jerome	CV2E	140	7/23/2002	58	
DY16530490	Jerome	S-80	80	7/23/2002	53	
DY16530490	Jerome	SC1	6	6/13/2002		17
DY16530490	Jerome	CV1 Pivot 3	132	6/20/2002		7
DY16530490	Jerome	CV2W + sw corner	140	7/23/2002	49	
DY16530504	Jerome	E	34	11/12/2002	25	
DY16530552	Jerome	1	34	10/10/2003		27
DY16530559	Jerome	3,4,5	75	11/30/2004	23	0
DY16530559	Jerome	Field #6	27	9/1/2004	10	0
DY16530559	Jerome	New Pivot	145	11/30/2004	42	0
DY16530559	Jerome	7,8,9	151	11/30/2004	15	0

Soil Samples Query

7/18/2005

DY Number	County	Field Name	Field Acreage	Sample Date	SW Sample P	GW Sample P
DY16530562	Jerome	Hills South Pivot	65	4/29/2003		3
DY16530504	Jerome	D	134	11/7/2002	19	
DY16530541	Jerome	West Pasture	4	4/1/2003		18
DY16530504	Jerome	C	22	11/7/2002		8
DY16530504	Jerome	A	32	7/8/2002	21	
DY16530520	Jerome	Field 1	76	1/28/2003		39
DY16530520	Jerome	Field 3	135	1/28/2003		13
DY16530520	Jerome	Field 2	36	1/28/2003		32
DY16530517	Jerome	3	76	4/11/2003		11
DY16530504	Jerome	B	11	7/8/2002	11	
DY16530562	Jerome	8.9	154	4/28/2003		17
DY16530501	Jerome	Pivot West 1/2	54	6/7/2004	0	8
DY16530562	Jerome	Hills North Pivot	148	4/29/2003		11
DY16530562	Jerome	Pivot 1	90	4/24/2003		11
DY16530562	Jerome	Pivot 2	112	4/24/2003		31
DY16530562	Jerome	Red's Pasture	66	4/28/2003		6
DY16530562	Jerome	Pivot 4	93	4/24/2003		38
DY16530552	Jerome	2	15	5/15/2003	14	
DY16530562	Jerome	7	72	4/28/2003		8
DY16530541	Jerome	Dairy Pivot	65	4/1/2003		32
DY16530562	Jerome	Pardue Pasture	34	5/6/2003		41
DY16530530	Jerome	1	72	10/10/2003		29
DY16530530	Jerome	2	52	5/22/2003	49	
DY16531010	Jerome	1	58	4/10/2003	63	
DY16530541	Jerome	East Pasture	7	4/1/2003		21
DY16530562	Jerome	11	193	4/28/2003		8
DY16530562	Jerome	Pivot 5,6	132	4/28/2003		13
DY16530502	Jerome	Barrymore NE	12	10/22/2002		6
DY16530502	Jerome	2	89	7/2/2002		17
DY16530502	Jerome	1&1B	135	7/2/2002		12
DY16530502	Jerome	Big Dairy Pivot	127	6/26/2002	62	
DY16530502	Jerome	6 & 6B	227	10/1/2002		12
DY16530502	Jerome	Shill 1/2 Pivot	63	11/27/2002		37

Soil Samples Query

7/18/2005

DYNumber	County	FieldName	FieldAcres	SampleDate	SWSampleP	CWSampleP
DY16530509	Jerome	4&7	61	7/15/2002		48
DY16530502	Jerome	3,4 solid set	69	10/9/2002	35	
DY16530539	Jerome	East Field	7	5/16/2003		28
DY16530502	Jerome	Barrmore N	21	10/22/2002	10	
DY16530502	Jerome	Barrmore SE	37	10/22/2002	9	
DY16530502	Jerome	Barrmore W	50	10/22/2002	13	
DY16530526	Jerome	2	17	12/2/2002		58
DY16530526	Jerome	1	151	7/11/2002	109	
DY16530501	Jerome	Pivot East 1/2	74	3/17/2004	0	8
DY16530502	Jerome	5	15	10/9/2002	32	
DY16530529	Jerome	5-2 + Corner	114	10/18/2002		6
DY16530522	Jerome	2	35	10/31/2003		3
DY16530522	Jerome	1	85	10/31/2003		43
DY16530531	Jerome	Dairy Mini	34	5/15/2003		45
DY16530529	Jerome	Riley Wheeline	107	6/10/2002		5
DY16530529	Jerome	Riley Pivot	118	6/10/2002		4
DY16530529	Jerome	Dairy Mini	35	12/2/2002	167	
DY16530502	Jerome	Dairy Mini	17	11/27/2002		50
DY16530529	Jerome	S-4	33	1/30/2003		7
DY16530500	Jerome	Mini Pivot	38	6/26/2002	36	
DY16530529	Jerome	S-5	132	1/30/2003		6
DY16530529	Jerome	Grandma Middle Pivot	105	6/11/2002		4
DY16530529	Jerome	S-1	134	1/15/2003		10
DY16530529	Jerome	South Grandma Pivot	95	10/18/2002		12
DY16530539	Jerome	Pivot	33	5/19/2003	99	
DY16530509	Jerome	6	16	9/12/2002		47
DY16530529	Jerome	5-3	94	1/15/2003		9
DY16530498	Jerome	4	10	2/7/2003		48
DY16530534	Jerome	South Pasture	6	5/20/2003		72
DY16530534	Jerome	Meyers	33	9/24/2003		51
DY16530534	Jerome	Wiegley Full Pivot	125	6/2/2003		17
DY16530534	Jerome	Gunning East	185	5/29/2003	13	
DY16530534	Jerome	Gunning Swing	154	8/5/2003	20	

Soil Samples Query

7/18/2005

DYNumber	County	FieldName	FieldAcreage	SampleDate	SWSample	GWSample
DY16530526	Jerome	3	38	1/7/2003	67	
DY16530555	Jerome	1	29	6/2/2003	18	
DY16530534	Jerome	Home Mini	35	10/8/2003		19
DY16530498	Jerome	2	4	2/7/2003	44	
DY16530498	Jerome	1	19	2/7/2003	40	
DY16530498	Jerome	5	21	2/7/2003	28	
DY16530498	Jerome	6	35	2/7/2003		73
DY16530498	Jerome	3	9	2/7/2003	34	
DY16530490	Jerome	B5	90	7/18/2002	79	
DY16530534	Jerome	Pivot Corner Pasture	6	5/21/2003		72
DY16530535	Jerome	A	42	5/19/2003		32
DY16530509	Jerome	1	147	9/12/2002		61
DY16530509	Jerome	3	26	9/13/2002		83
DY16530509	Jerome	20	134	10/1/2002	91	
DY16530509	Jerome	5	109	11/8/2002	95	
DY16530509	Jerome	21	151	10/7/2002	46	
DY16530990	Jerome	10	30	2/20/2003		47
DY16530534	Jerome	Weigle 1/2 Pivot	29	9/25/2003		19
DY16530535	Jerome	B+C	56	4/22/2003		17
DY16530534	Jerome	Edwards	65	10/8/2003		26
DY16530534	Jerome	Dairy East Pivot	126	5/20/2003		13
DY16530534	Jerome	Childers	41	5/20/2003		8
DY16530534	Jerome	Desert	131	9/24/2003	106	
DY16530534	Jerome	Pasture Pivot	54	9/25/2003	155	
DY16530534	Jerome	Johnson	133	6/4/2003		26
DY16530501	Jerome	West Field	45	4/9/2004	42	0
DY16530990	Jerome	9	37	2/20/2003		38
DY16530556	Jerome	1	124	11/15/2002	9	
DY16530963	Jerome	6	85	7/1/2002	21	
DY16530553	Jerome	4	9	4/1/2003	15	
DY16530553	Jerome	1	10	4/1/2003	72	
DY16530508	Jerome	1 & 4	39	10/7/2002		41
DY16530508	Jerome	5	18	10/7/2002		30

DYNumber	County	FieldName	FieldAcres	SampleDate	SWSample	GWSample
DY16530548	Jerome	3	33	5/7/2004	0	21
DY16530508	Jerome	8 & 9	103	10/7/2002		30
DY16530536	Jerome	Gulley	36	5/6/2004	0	19
DY16530556	Jerome	5	15	6/12/2002		26
DY16530556	Jerome	9	59	6/12/2002		32
DY16530556	Jerome	10	18	6/12/2002		12
DY16530556	Jerome	13	61	6/11/2002		8
DY16530556	Jerome	7	21	6/12/2002		25
DY16530556	Jerome	11	141	6/12/2002		11
DY16530508	Jerome	2,3	72	12/3/2002		75
DY16530963	Jerome	16	63	9/3/2002	22	
DY16530963	Jerome	9	54	9/25/2002		11
DY16530963	Jerome	7	94	11/22/2002		9
DY16530963	Jerome	10	65	11/4/2002		7
DY16530963	Jerome	15	130	11/4/2002	31	
DY16530963	Jerome	3	86	9/25/2002		8
DY16530553	Jerome	2	11	4/1/2003	45	
DY16530963	Jerome	1	139	11/7/2002		10
DY16530556	Jerome	4	148	6/12/2002		17
DY16530963	Jerome	2	164	10/3/2002		5
DY16530963	Jerome	8	140	8/2/2002	9	
DY16530993	Jerome	4	280	5/7/2004	0	28
DY16530536	Jerome	Tibaults	75	4/23/2004	86	0
DY16530536	Jerome	IDA West	70	8/2/2004	29	0
DY16530536	Jerome	Little Stinky	27	4/23/2004	0	37
DY16530963	Jerome	5	140	8/2/2002		6
DY16530511	Jerome	2	145	6/21/2002		47
DY16530507	Jerome	29,30	28	5/22/2003	40	
DY16530507	Jerome	35	64	9/23/2003		26
DY16530507	Jerome	27	41	8/5/2003	70	
DY16530511	Jerome	12 & 12A	73	9/14/2002	93	
DY16530511	Jerome	13 & 14	74	10/7/2002	45	
DY16530556	Jerome	8	26	6/12/2002		23

Soil Samples Query

7/18/2005

DYINumber	County	FieldName	FieldAcreage	SampleDate	SW Sample	GW Sample
DY16530511	Jerome	A-1	90	12/9/2002	70	
DY16530490	Jerome	B4	103	7/23/2002	69	
DY16530511	Jerome	10 & 11	70	9/19/2002		31
DY16530507	Jerome		65	10/30/2003		33
DY16530507	Jerome		122	8/5/2003		23
DY16530507	Jerome		131	10/30/2003	34	
DY16530507	Jerome	31	33	9/23/2003		176
DY16530507	Jerome	36,38	43	8/5/2003	27	
DY16530511	Jerome	A-2	25	12/9/2002	59	
DY16530514	Jerome	Home Place Handline	8	4/16/2003	39	
DY16530518	Jerome	2 & 3	74	10/2/2002	154	
DY16530556	Jerome		62	11/12/2002	39	
DY16530556	Jerome		139	6/12/2002		32
DY16530556	Jerome	12	37	6/11/2002		9
DY16530514	Jerome	Home Place Pivot	40	4/16/2003	27	
DY16530514	Jerome	Heifer Place	63	10/25/2002	95	
DY16530507	Jerome	28	25	9/23/2003	75	
DY16530514	Jerome	South Pasture	4	4/16/2003	5	
DY16530554	Jerome	1	32	4/22/2003	11	
DY16530514	Jerome	Fite	102	4/16/2003	5	
DY16530514	Jerome	Jacky	69	4/16/2003		44
DY16530528	Jerome		13	5/15/2003	62	
DY16530517	Jerome		34	4/11/2003		14
DY16530518	Jerome	1	14	10/2/2002		99
DY16530556	Jerome	2	37	11/14/2002	16	
DY16530514	Jerome	North Pasture	2	4/16/2003	5	
DY16530533	Jerome		56	10/8/2003	24	
DY16531015	Jerome	Truck Shop 11 acre corner	12	6/29/2004	15	0
DY16531021	Jerome		91	6/26/2002	15	
DY16531021	Jerome		140	6/26/2002	12	
DY16530497	Jerome		5	7/20/2004	37	0
DY16530497	Jerome		8	7/20/2004	42	0
DY16531021	Jerome	Field by House	36	6/26/2002	13	

Soil Samples Query

7/18/2005

DYNumber	County	FieldName	FieldAcreage	SampleDate	SWSample	GWSample
DY16530497	Jerome	2	3	7/20/2004	0	17
DY16531021	Jerome	1	50	6/26/2002	11	
DY16530516	Jerome	1	35	2/12/2003		61
DY16530533	Jerome	South East Pivot	25	6/4/2003	33	
DY16530533	Jerome	2	30	9/24/2003		19
DY16531015	Jerome	Truck Shop 1/2 Pivot	65	4/30/2004	30	0
DY16531015	Jerome	2 South Half	72	6/30/2004	0	12
DY16531015	Jerome	2B	20	6/30/2004	0	7
DY16530497	Jerome	1	24	7/20/2004	34	0
DY16530519	Jerome	Mogensen	120	8/6/2002		21
DY16530554	Jerome	2	74	4/22/2003		45
DY16530517	Jerome	2	44	4/11/2003		7
DY16530517	Jerome	6	36	5/12/2003		34
DY16530495	Jerome	16	7	4/29/2004	29	0
DY16530495	Jerome	17	7	11/17/2004	100	0
DY16531021	Jerome	4	110	6/26/2002	24	
DY16530519	Jerome	Watson	33	1/2/2003		23
DY16530533	Jerome	1	25	9/23/2003		24
DY16530519	Jerome	Dairy Pivot	54	1/3/2003	59	
DY16530519	Jerome	Blessing	32	1/2/2003		31
DY16531021	Jerome	3	142	9/10/2002	25	
DY16531021	Jerome	6	137	9/12/2002	15	
DY16531021	Jerome	8	120	9/10/2002	21	
DY16531021	Jerome	2	140	6/26/2002	12	
DY16530519	Jerome	Meyer	49	1/3/2003		26
DY16531005	Jerome	Field 1	39	4/23/2004	25	0
DY16530560	Jerome	8	37	3/25/2003		33
DY16530560	Jerome	6,7	24	3/25/2003		30
DY16530560	Jerome	5A	13	3/26/2003		19
DY16531015	Jerome	Truck Shop Handline	43	6/29/2004	23	0
DY16530560	Jerome	1	35	3/31/2003		15
DY16530533	Jerome	4,5	25	9/23/2003		19
DY16530560	Jerome	2A	7	3/31/2003		11

Soil Samples Query

7/18/2005

DY Number	County	FieldName	FieldAcreage	SampleDate	SW Sample	GW Sample
DY16530546	Jerome	M&C Big Pivot NW 1/4	52	2/22/2005	41	0
DY16530560	Jerome	9,10,11	113	3/25/2003		17
DY16530516	Jerome	6	141	2/12/2003		38
DY16530516	Jerome	8	37	2/12/2003	21	
DY16530516	Jerome	7	96	2/10/2003		16
DY16530516	Jerome	3	148	2/10/2003	84	
DY16530516	Jerome	5	16	2/10/2003		14
DY16530516	Jerome	4	41	2/10/2003		30
DY16530546	Jerome	MC Big Pivot South 1/2	70	8/2/2004	21	0
DY16530543	Jerome	3	287	6/27/2002	23	
DY16531015	Jerome	3	91	4/29/2004	0	9
DY16531015	Jerome	Truck Shop Full Pivot	141	4/30/2004	40	0
DY16530546	Jerome	SS Big Pivot	138	8/3/2004	66	0
DY16530560	Jerome	4A	3	3/31/2003		3
DY16530496	Jerome	Pivot 1 South	12	6/24/2002	0	16
DY16530543	Jerome	2	148	7/1/2002	49	
DY16530496	Jerome	Pivot 1 North	19	6/24/2002		16
DY16530543	Jerome	1	82	7/1/2002		12
DY16530543	Jerome	4	142	1/7/2003	25	
DY16530543	Jerome	5	32	6/29/2004	0	12
DY16530550	Jerome	2	30	4/10/2003	26	
DY16530550	Jerome	1	16	5/28/2003		27
DY16530560	Jerome	2	125	3/31/2003	16	
DY16530560	Jerome	3,4	124	3/31/2003	19	
DY16531015	Jerome	Suter 3 Mini Pivots	110	5/7/2004	0	15
DY16630302	Lincoln	Robin's Pivot	158	7/14/2004	14	0
DY16630288	Lincoln	NW5	13	7/23/2004	10	0
DY16630288	Lincoln	NW11	4	8/9/2004	27	0
DY16630302	Lincoln	Spud Cellar Pivot	151	8/11/2004	46	0
DY16630302	Lincoln	West Wheeline	65	8/11/2004	0	8
DY16630302	Lincoln	Prestion Pivot	148	8/11/2004	11	0
DY16630302	Lincoln	North Pivot	142	7/14/2004	16	0
DY16630302	Lincoln	East Wheeline	62	7/14/2004	35	0

Soil Samples Query

7/18/2005

DYNNumber	County	FieldName	FieldAcreage	SampleDate	SW/Sample	GW/Sample
DY16630302	Lincoln	Randy Pivot	170	7/15/2004	15	0
DY16630291	Lincoln	NW23	6	7/23/2004	5	0
DY16630288	Lincoln	NW24	22	7/24/2004	8	0
DY16630291	Lincoln	NW4	11	7/23/2004	5	0
DY16630302	Lincoln	MgNauty Pivot	157	7/15/2004	15	0
DY16630308	Lincoln	Zimmaic	93	7/20/2004	0	53
DY16630288	Lincoln	NW22	8	8/9/2004	16	0
DY16630288	Lincoln	NW13&NW14	24	7/22/2004	99	0
DY16630308	Lincoln	Pierce	146	7/21/2004	0	42
DY16630308	Lincoln	Buckwald	75	7/21/2004	0	49
DY16630308	Lincoln	Mini Pivot	23	7/20/2004	0	63
DY16630308	Lincoln	26	15	7/20/2004	0	103
DY16630296	Lincoln	# 1 Middle Field	20	6/21/2004	0	6
DY16630296	Lincoln	# 1 South	15	7/15/2004	0	6
DY16630296	Lincoln	7	39	7/15/2004	0	8
DY16630296	Lincoln	6	19	7/15/2004	0	5
DY16630296	Lincoln	2	14	6/21/2004	0	14
DY16630296	Lincoln	4	37	7/15/2004	0	6
DY16630296	Lincoln	3	15	7/15/2004	0	6
DY16630308	Lincoln	Hubbs	44	7/21/2004	0	12
DY16630380	Twin Falls	Bean 3,4,5,6	74	3/29/2004	19	0
DY16630380	Twin Falls	B7	21	4/5/2004	17	0
DY16630380	Twin Falls	B2	22	4/5/2004	0	10
DY16630380	Twin Falls	Denny North	21	4/12/2004	0	21
DY16630380	Twin Falls	Kevern North	52	4/12/2004	7	0
DY16630380	Twin Falls	B8	14	4/12/2004	11	0
DY16630380	Twin Falls	Kevern South	50	4/5/2004	22	0
DY16630380	Twin Falls	SS17,SS18	73	4/12/2004	34	0
DY16630380	Twin Falls	G2,G3,G4	113	4/9/2004	34	0
DY16630380	Twin Falls	Stanger 3	79	3/29/2004	0	16
DY16630380	Twin Falls	SS1,2,4	102	3/25/2004	57	0
DY16630380	Twin Falls	SS8	75	10/16/2003	24	0
DY16630380	Twin Falls	K1,K2	101	10/17/2003	13	0

Soil Samples Query

7/18/2005

DY Number	County	Field Name	Field Acreage	Sample Date	SW Sampler	GW Sampler
DY16830380	Twin Falls	D4	29	4/12/2004	11	0
DY16830962	Twin Falls	North Pivot	188	12/23/2003	22	6
DY16830380	Twin Falls	Thesch Pivot	109	4/7/2004	17	0
DY16830380	Twin Falls	Stanger 1	143	3/29/2004	0	12
DY16830380	Twin Falls	SS15	38	3/22/2004	0	15
DY16830380	Twin Falls	G1	8	4/7/2004	0	6
DY16830380	Twin Falls	Denny Pivot	145	4/7/2004	0	7
DY16830962	Twin Falls	South 40	38	12/22/2003	15	4
DY16830380	Twin Falls	D2	179	3/23/2004	26	0
DY16830962	Twin Falls	Dairy Pivot	129	12/22/2003	44	11
DY16830380	Twin Falls	Stanger 1-2	154	3/29/2004	0	25
DY16830962	Twin Falls	Wheeline Field	126	12/23/2003	32	
DY16830380	Twin Falls	D3	42	3/24/2004	0	6
DY16830962	Twin Falls	North 40	35	11/6/2003		3
DY16830380	Twin Falls	SS12	97	10/17/2003	12	
DY16830962	Twin Falls	East 120	113	11/6/2003		6
DY16830380	Twin Falls	17 West	24	3/22/2004	21	0
DY16830380	Twin Falls	Thesch East	48	4/7/2004	20	0
DY16830962	Twin Falls	South Pivot	196	11/7/2003		7
DY16830381	Twin Falls	8	22	5/14/2003	13	
DY16830380	Twin Falls	Stanger 2	110	3/25/2004	0	23
DY16830376	Twin Falls	2	23	5/13/2003	76	
DY16830376	Twin Falls	1	15	5/14/2003		13
DY16830376	Twin Falls	7	6	5/14/2003	51	
DY16830376	Twin Falls	6	17	5/13/2003		15
DY16830714	Twin Falls	1 & 2	31	11/29/2004	34	0
DY16830376	Twin Falls	5	17	5/13/2003		13
DY16830378	Twin Falls	F-2	156	10/16/2003	33	
DY16830381	Twin Falls	#1 Middle Field	77	3/18/2004	0	7
DY16830381	Twin Falls	5	65	5/14/2003	32	
DY16830381	Twin Falls	# 9 East Field	48	3/18/2004	22	0
DY16830381	Twin Falls	#7 Southeast Field	36	3/18/2004	23	0
DY16830381	Twin Falls	6	12	5/14/2003	25	

Soil Samples Query

7/18/2005

DY Number	County	Field Name	Field Acreage	Sample Date	SW Sampler	GW Sampler
DY16830381	Twin Falls	4	46	5/14/2003	22	
DY16830376	Twin Falls	3.4	36	5/13/2003	39	
DY16830380	Twin Falls	SS9	88	3/22/2004	0	16
DY16830380	Twin Falls	SS13	16	10/17/2003		4
DY16830380	Twin Falls	SS14	78	3/22/2004	0	12
DY16830380	Twin Falls	SS3	41	3/24/2004	29	0
DY16830380	Twin Falls	SS6	41	3/24/2004	35	0
DY16830380	Twin Falls	SS5	12	3/24/2004	19	0
DY16830962	Twin Falls	Angle Field	10	11/6/2003	23	
DY16830380	Twin Falls	SS16	56	6/5/2003	23	
DY16830380	Twin Falls	SS10	49	10/17/2003		9
DY16830380	Twin Falls	D1	46	3/23/2004	0	7
DY16830380	Twin Falls	Gordon Egbert Pivot	124	4/9/2004	0	34
DY16830380	Twin Falls	SS11	34	3/22/2004	25	0
DY16830380	Twin Falls	Thesch Southwest	21	4/6/2004	0	6
DY16830380	Twin Falls	Thesch Northwest	38	4/6/2004	13	0
DY16830378	Twin Falls	F-1	71	5/30/2003	30	
DY16830380	Twin Falls	SS7	93	3/24/2004	0	9

DY Number	County	FieldName	FieldAveage	SampleDate	SWSample	GWSample
DY16270827	Canyon	1, 2	0	10/8/2002	26	0
DY16270827	Canyon	3	0	10/8/2002	32	0
DY16270828	Canyon	3	0	10/25/2002	41	0
DY16270828	Canyon	2	0	10/25/2002	56	0
DY16270828	Canyon	1	0	10/25/2002	27	0
DY16270833	Canyon	2	0	10/22/2003	8	0
DY16270833	Canyon	9, 10	0	10/22/2003	9	0
DY16270833	Canyon	1, 4	0	10/22/2003	13	0
DY16270833	Canyon	8	0	10/22/2003	7	0
DY16270833	Canyon	11, 3	0	10/22/2003	7	0
DY16270833	Canyon	5, 6	0	10/22/2003	19	0
DY16270833	Canyon	12	0	10/22/2003	21	0
DY16270835	Canyon	2	15	4/20/2005	50	0
DY16270835	Canyon	3	10	4/20/2005	64	0
DY16270835	Canyon	4	63	4/20/2005	37	0
DY16270835	Canyon	6	22	4/20/2005	113	0
DY16270835	Canyon	7	16	4/20/2005	61	0
DY16270835	Canyon	8	17	4/20/2005	115	0
DY16270835	Canyon	1 & 5	47	4/20/2005	51	0
DY16270839	Canyon	8	0	1/11/2002	33	0
DY16270839	Canyon	9	0	1/11/2002	33	0
DY16270839	Canyon	11	0	1/11/2002	15	0
DY16270839	Canyon	12	0	1/11/2002	8	0
DY16270839	Canyon	13	0	1/11/2002	54	0
DY16270839	Canyon	14	0	1/11/2002	14	0
DY16270839	Canyon	15	0	1/11/2002	14	0
DY16270839	Canyon	10	0	1/11/2002	15	0
DY16270839	Canyon	7	0	1/11/2002	32	0
DY16270839	Canyon	6	0	1/11/2002	47	0
DY16270839	Canyon	5	0	1/11/2002	47	0
DY16270839	Canyon	4	0	1/11/2002	27	0
DY16270839	Canyon	1	0	1/11/2002	47	0
DY16270839	Canyon	3	0	1/11/2002	21	0

DY#Number	County	Field#Name	Field#Acres	SampleDate	SW Sample	GW Sample
DY16270839	Canyon	2	0	1/11/2002	20	0
DY16270840	Canyon	3	0	4/3/2002	51	0
DY16270840	Canyon	6	0	4/3/2002	74	0
DY16270840	Canyon	4	0	4/3/2002	62	0
DY16270840	Canyon	1	0	4/3/2002	49	0
DY16270840	Canyon	2	0	4/3/2002	71	0
DY16270840	Canyon	5	0	4/3/2002	63	0
DY16270841	Canyon	3	0	12/3/2001	6	0
DY16270841	Canyon	2	0	12/3/2001	3	0
DY16270841	Canyon	1	0	12/3/2001	11	0
DY16270842	Canyon	3B & 3C	0	12/4/2003	52	0
DY16270842	Canyon	3A	0	12/4/2003	43	0
DY16270842	Canyon	2	0	12/4/2003	35	0
DY16270842	Canyon	1	0	12/4/2003	37	0
DY16270842	Canyon	12	0	1/5/2004	19	0
DY16270848	Canyon	9	0	11/13/2003	19	0
DY16270848	Canyon	7	0	11/13/2003	75	0
DY16270848	Canyon	5	0	11/13/2003	69	0
DY16270848	Canyon	6	0	11/13/2003	111	0
DY16270848	Canyon	2	0	11/13/2003	112	0
DY16270848	Canyon	1	0	11/13/2003	22	0
DY16270848	Canyon	3 & 4	0	11/13/2003	102	0
DY16270848	Canyon	10	0	11/13/2003	48	0
DY16270848	Canyon	11	0	11/18/2003	42	0
DY16270848	Canyon	8	0	11/18/2003	11	0
DY16270856	Canyon	3	0	4/3/2002	15	0
DY16270856	Canyon	5	0	4/3/2002	13	0
DY16270856	Canyon	6	0	4/3/2002	12	0
DY16270856	Canyon	1	0	4/3/2002	15	0
DY16270856	Canyon	8	0	4/3/2002	12	0
DY16270856	Canyon	2	0	4/3/2002	7	0
DY16270856	Canyon	9	0	4/3/2002	8	0
DY16270856	Canyon	10	0	4/3/2002	2	0

DY Number	County	Field Name	Field Acreage	Sample Date	SW Sampler	EW Sampler
DY16270856	Canyon	11	0	4/3/2002	2	0
DY16270856	Canyon	7	0	4/3/2002	8	0
DY16270856	Canyon	4	0	4/3/2002	7	0
DY16270859	Canyon	10	0	6/15/2002	18	0
DY16270859	Canyon	2	0	6/15/2002	50	0
DY16270859	Canyon	3	0	6/15/2002	32	0
DY16270859	Canyon	7	0	6/15/2002	39	0
DY16270859	Canyon	8	0	6/15/2002	26	0
DY16270859	Canyon	13	0	6/15/2002	22	0
DY16270859	Canyon	15	0	6/15/2002	18	0
DY16270906	Canyon	1, 3	0	11/26/2002	25	0
DY16270906	Canyon	2	0	11/26/2002	51	0
DY16270906	Canyon	15	0	11/26/2002	74	0
DY16270906	Canyon	13	0	11/26/2002	44	0
DY16270906	Canyon	7&8	0	11/26/2002	39	0
DY16270906	Canyon	11	0	11/26/2002	61	0
DY16270906	Canyon	10&12	0	11/26/2002	34	0
DY16270906	Canyon	4	0	11/26/2002	29	0
DY16270906	Canyon	5	0	11/26/2002	34	0
DY16270906	Canyon	14	0	11/26/2002	24	0
DY16270906	Canyon	16	0	11/26/2002	26	0
DY16270906	Canyon	6&9	0	11/26/2002	28	0
DY16270907	Canyon	1	0	5/9/2001	60	0
DY16270911	Canyon	F	0	5/6/2003	10	0
DY16270911	Canyon	C	0	5/6/2003	17	0
DY16270911	Canyon	A, 3	0	5/6/2003	15	0
DY16270911	Canyon	2A	0	5/6/2003	13	0
DY16270911	Canyon	E	0	5/6/2003	13	0
DY16270911	Canyon	B, D	0	5/6/2003	41	0
DY16270911	Canyon	2B	0	5/6/2003	56	0
DY16270911	Canyon	1	0	5/6/2003	44	0
DY16270919	Canyon	4	0	10/14/2002	24	0
DY16270919	Canyon	3	0	10/14/2002	43	0

DY Number	County	FieldName	FieldAcreage	SampleDate	SWSample	GWSample
DY16270919	Canyon	2	0	10/14/2002	71	0
DY16270919	Canyon	R1, R2	0	12/7/2002	14	0
DY16270919	Canyon	1	0	12/7/2002	11	0
DY16270919	Canyon	2	0	12/7/2002	16	0
DY16270919	Canyon	3	0	12/7/2002	31	0
DY16270919	Canyon	M	0	12/7/2002	16	0
DY16270919	Canyon	MW, ME	0	12/7/2002	15	0
DY16270920	Canyon	1	0	12/17/2002	18	0
DY16270920	Canyon	7, 8	0	12/17/2002	25	0
DY16270920	Canyon	6	0	12/17/2002	16	0
DY16270920	Canyon	4, 5	0	12/17/2002	23	0
DY16270920	Canyon	3	0	12/17/2002	21	0
DY16270920	Canyon	2	0	12/17/2002	11	0
DY16270921	Canyon	YELP	0	12/17/2002	0	19
DY16270921	Canyon	40	0	12/17/2002	18	0
DY16270921	Canyon	Long	0	12/17/2002	46	0
DY16270921	Canyon	Pvt 2	0	12/17/2002	31	0
DY16270921	Canyon	Ind	0	12/17/2002	18	0
DY16270921	Canyon	Wh1	0	12/17/2002	20	0
DY16270921	Canyon	GRVL	0	12/17/2002	16	0
DY16270921	Canyon	Pvt 1	0	12/17/2002	73	0
DY16270996	Canyon	7	0	5/8/2002	4	0
DY16270996	Canyon	2	0	5/8/2002	6	0
DY16270996	Canyon	5	0	5/8/2002	4	0
DY16270996	Canyon	4	0	5/8/2002	7	0
DY16270996	Canyon	8	0	5/8/2002	7	0
DY16270996	Canyon	9	0	5/8/2002	4	0
DY16270996	Canyon	10	0	5/8/2002	3	0
DY16270996	Canyon	11	0	5/8/2002	5	0
DY16270996	Canyon	13	0	5/8/2002	11	0
DY16270996	Canyon	3	0	5/8/2002	7	0
DY16270996	Canyon	6	0	5/8/2002	4	0
DY16270996	Canyon	1	0	5/8/2002	29	0

DY Number	County	FieldName	FieldAcreage	SampleDate	SWSampleP	GWSampleP
DY16270997	Canyon	1	0	4/16/2003	13	0
DY16270997	Canyon	2, 3, 4, 5	0	4/16/2003	15	0
DY16271023	Canyon	2E	0	2/5/2003	12	0
DY16271023	Canyon	5, 6, 7	0	2/5/2003	6	0
DY16271023	Canyon	4	0	2/5/2003	6	0
DY16271023	Canyon	3S	0	2/5/2003	12	0
DY16271023	Canyon	3N	0	2/5/2003	22	0
DY16271023	Canyon	2W	0	2/5/2003	31	0
DY16271023	Canyon	10	0	2/5/2003	11	0
DY16271023	Canyon	8	0	2/5/2003	14	0
DY16271023	Canyon	1	0	2/5/2003	11	0
DY16271023	Canyon	11	0	2/5/2003	6	0
DY16271023	Canyon	9 Pivot	0	2/5/2003	15	0
DY16271023	Canyon	12	0	2/5/2003	10	0
DY16271036	Canyon	4	157	5/2/2005	28	0
DY16271036	Canyon	3	153	5/2/2005	29	0
DY16271036	Canyon	7	34	5/3/2005	33	0
DY16271036	Canyon	2	156	5/3/2005	26	0
DY16271036	Canyon	6A	11	5/3/2005	28	0
DY16271036	Canyon	6	9	5/3/2005	29	0
DY16271036	Canyon	9	42	5/3/2005	20	0
DY16271036	Canyon	5	36	5/3/2005	12	0
DY16271036	Canyon	8	47	5/3/2005	28	0
DY16271036	Canyon	1	141	6/3/2005	19	0
DY16730871	Owyhee	T&M	0	12/6/2002	8	0
DY16730871	Owyhee	P	0	12/6/2002	20	0
DY16730877	Owyhee	1	0	2/5/2002	29	0
DY16730877	Owyhee	2	0	2/5/2002	29	0
DY16730877	Owyhee	3	0	2/5/2002	47	0
DY16730877	Owyhee	4	0	2/5/2002	12	0
DY16730883	Owyhee	A & DP	0	12/11/2002	40	0
DY16730883	Owyhee	A & C	0	12/11/2002	8	0
DY16730883	Owyhee	E & P	0	12/11/2002	14	0

DY Number	County	Field Name	Field Acreage	Sample Date	SW Sample	GW Sample
DY16730883	Owyhee	A & B	0	12/11/2002	6	0
DY16730933	Owyhee	11A	0	6/3/2003	10	0
DY16730933	Owyhee	50	0	6/3/2003	9	0
DY16730933	Owyhee	35	0	6/3/2003	7	0
DY16730933	Owyhee	41A	0	6/3/2003	14	0
DY16730933	Owyhee	2, 6	0	6/3/2003	10	0
DY16730933	Owyhee	5	0	6/3/2003	17	0
DY16730933	Owyhee	11B	0	6/3/2003	8	0
DY16730933	Owyhee	13, 14, 15	0	6/3/2003	20	0
DY16730933	Owyhee	17	0	6/3/2003	13	0
DY16730933	Owyhee	19	0	6/3/2003	25	0
DY16730933	Owyhee	21	0	6/3/2003	7	0
DY16730933	Owyhee	23	0	6/3/2003	9	0
DY16730933	Owyhee	27	0	6/3/2003	20	0
DY16730933	Owyhee	29	0	6/3/2003	38	0
DY16730933	Owyhee	32	0	6/3/2003	10	0
DY16730933	Owyhee	34	0	6/3/2003	11	0
DY16730933	Owyhee	16	0	6/3/2003	12	0
DY16730933	Owyhee	40	0	6/3/2003	12	0
DY16730933	Owyhee	47	0	6/3/2003	8	0
DY16730933	Owyhee	49	0	6/3/2003	25	0
DY16730933	Owyhee	3, 4, 7, 8	0	6/3/2003	59	0
DY16730933	Owyhee	12	0	6/3/2003	9	0
DY16730933	Owyhee	18	0	6/3/2003	9	0
DY16730933	Owyhee	20	0	6/3/2003	10	0
DY16730933	Owyhee	22	0	6/3/2003	10	0
DY16730933	Owyhee	26	0	6/3/2003	7	0
DY16730933	Owyhee	28	0	6/3/2003	28	0
DY16730933	Owyhee	30, 31	0	6/3/2003	9	0
DY16730933	Owyhee	33	0	6/3/2003	9	0
DY16730933	Owyhee	36, 37	0	6/3/2003	7	0
DY16730933	Owyhee	39	0	6/3/2003	9	0
DY16730933	Owyhee	41	0	6/3/2003	28	0

Query1

7/19/2005

DY Number	County	Field Name	Field Acceage	Sample Date	SW Sampler	GW Sampler
DY16730933	Owyhee	38	0	6/3/2003	10	0

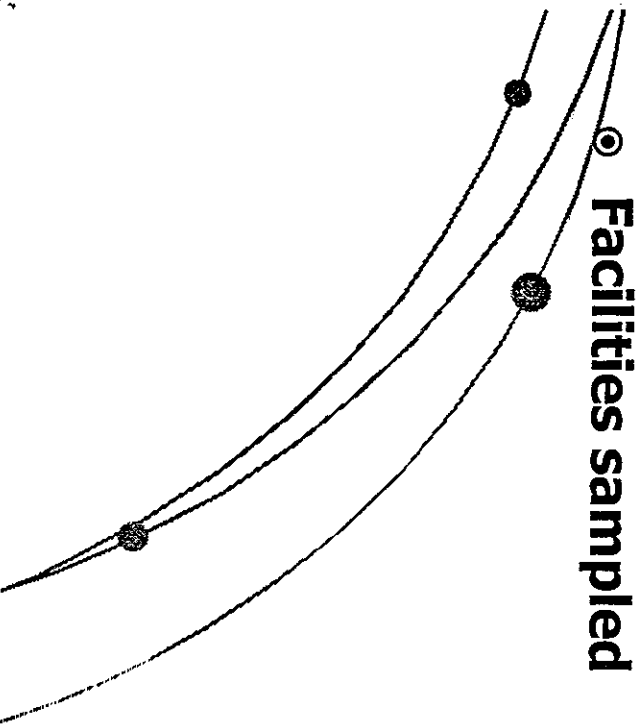
Waste Inspection - Mature Animal Summary

County / Producer	Dairies 1-200 Animals	Dairies 201-500 Animals	Dairies 501-750 Animals	Dairies 751-1000 Animals	Dairies 1001-2000 Animals	Dairies 2000+ Animals	Total Animals
ADA COUNTY	10	11	1	3	4	3	20,702
BANNOCK COUNTY	7	1	0	0	0	0	755
BEAR LAKE COUNTY	20	0	0	0	0	0	931
BINGHAM COUNTY	23	8	4	1	0	1	10,548
BLAINE COUNTY	2	0	0	0	0	0	60
BONNER COUNTY	2	0	0	0	0	0	201
BONNEVILLE COUNTY	7	2	0	0	0	0	931
BOUNDARY COUNTY	3	0	0	0	0	0	162
BUTTE COUNTY	0	2	0	0	0	0	500
CANYON COUNTY	22	9	6	2	7	5	32,442
CARIBOU COUNTY	12	1	0	0	0	0	923
CASSIA COUNTY	20	8	2	0	7	8	41,052
ELMORE COUNTY	1	1	0	0	1	1	7,410
FRANKLIN COUNTY	60	11	1	0	0	1	10,623
FREMONT COUNTY	6	0	0	0	0	0	474
GEM COUNTY	11	4	0	0	0	0	2,182
GOODING COUNTY	14	24	12	20	18	14	113,511
IDAHO COUNTY	4	0	0	0	0	0	238
JEFFERSON COUNTY	23	2	2	0	1	0	5,546
JEROME COUNTY	9	15	13	12	12	8	65,519
LATAH COUNTY	1	0	0	0	0	0	100
LEMHI COUNTY	4	0	0	0	0	0	350
LINCOLN COUNTY	15	8	3	0	2	2	18,074
MADISON COUNTY	6	0	0	0	0	0	453
MINIDOKA COUNTY	17	0	3	1	0	2	8,523
ONEIDA COUNTY	5	0	0	0	0	0	217
OWYHEE COUNTY	9	3	2	1	0	3	15,655
PAYETTE COUNTY	14	10	0	2	1	1	12,329
POWER COUNTY	0	0	1	0	0	0	605
TETON COUNTY	11	0	0	0	0	0	775
TWIN FALLS COUNTY	20	19	10	4	8	11	63,346
WASHINGTON COUNTY	2	1	0	0	0	0	390
OTHER COUNTY	0	0	0	0	0	0	0
727 Total Producer(s)	360	140	60	46	61	60	435,527

Nutrient Management

Status of Other NMP Activities – End of 2003

- Total Acres to Sample 213,988
- Total Acres Sampled 81,412
- Percent of Acres Sampled to date 38%
- Percent of Acres Sampled above Threshold 25%
- Facilities sampled 107



We are participating in this process for one reason and one reason only – to protect our well, which in turn means to protect our property and small livestock operation, our home, and our family.

As already testified to and documented in the exhibits, our domestic and stock water well is approximately ½ mile north of the proposed site of the two new TO wells. Our concerns include both water quality and water quantity.

Our well has a 1945 priority right date as determined by the Snake River Water Adjudication process. As has already been testified to, the well was redrilled in 1993 to a depth approximately 90 feet deeper than the original depth. The well went dry in Nov 1992 but snow conditions prevented redrilling until March 1993.

Expert testimony given Nov 17 in this proceeding by Dr. Brockway and Mr. Drury has substantiated some of our basic concerns: I am not sure what the fact that Mr. Drury has not offered expert testimony in an IDWR water transfer hearing or in District Court on water matters prior to this proceeding has to do with the validity of his testimony, but I have not offered such testimony prior to these proceedings either and I hope that fact will not be used to invalidate our concerns.

We believe that, just as the applicant has every right to make this application for transfer, we have every right to state our objections to it and also to expect that the IDWR will honor its statutory obligation to prevent injury to our existing priority date water right.

Our concerns as substantiated by Nov 17 testimonies include:

1. All parties, Dr. Brockway, Mr. Drury, and the IDWR Eastern Snake River Aquifer new enhanced model 1.1 clearly agree that the water presently being pumped for irrigation at the **from** well in Dietrich will, if not used at that site, flow to the southwest, not to the northwest.

It would appear then that all parties agree that the water being used in Dietrich, southeast of the proposed **TO** site, will not – in fact- be available at the **TO** site and there can be no finding that this transfer request is simply changing the point of diversion so that the same water can be used in a different place.

It would appear that Nov 17 testimony substantiates the idea that these are two new wells, in a significantly different aquifer, or portion of the aquifer and drying up the Dietrich acres will not serve to mitigate the impact of these wells on the water sources and supply that feeds the proposed **TO** site.

We have contended from the beginning that transferring the “right” does not guarantee the water will be available at the new site and the idea that the Dietrich water will NOT be available in north Shoshone has been clearly demonstrated.



2. The IDWR's charts (exhibit) and the expert testimony also clearly demonstrated that the area from Shoshone north to the proposed new well site and beyond is an area of critical concern where water supplies have been – as Dr Brockway testified “generally declining.”

Hot Zone for declining water supply was one of the terms applied to this area. Since the water 4 Brothers now uses at Dietrich cannot be shown to help mitigate the proposed use at the new site, and since the IDWR “Bendixon” determination indicates that the new wells will have to be curtailed by 25% to mitigate impact on the Snake River spring flows, we cannot see how a finding that draw down in neighboring wells would be so small as to be undetectable by well owners can be made.

It does not seem credible, or even logical that these 2 new wells will so seriously impact spring flows in the Snake River reach and at the same time have no noticeable impact on existing priority date wells within ½ mile of the pumping site. That Snake River impact finding added to the finding that the Dietrich water will not flow north into this well site seems to negate a finding of negative impact from this new commercial use.

3. Mr. Drury's testimony and Dr. Brockway's testimony were considerably dis-separate on the question of local aquifer conditions and lithology. But those very dis-separate views point to one very clear finding –

The TO site is located in North Shoshone, an area that is located on the northern up gradient fringe of the Eastern Snake River aquifer. An area that appears to be, as both gentlemen indicated, something of an anomaly, compared to the deeper more basin-like structure found in other areas of the aquifer. An area that is documented to be experiencing a general decline in available water.

Testimony indicated It is an area that contains a blend of water sources not necessarily relative to other areas of the aquifer, contains to one degree or another confined, partially confined, or artesian systems as opposed to water table systems and therefore cannot be expected to respond in the same way as areas with fewer anomalies.

At the very least – expert testimony from all parties clearly points out that this specific, isolated section of the aquifer is poorly understood, contains a wide diversity of lithology and water related structures, and cannot be neatly fitted into a simple textbook analysis.

We believe that these two wells constitute a potential danger to surrounding existing wells, ours included. Questions were raised yesterday concerning reasonable pumping depth. We have already had to drill our well deeper and are satisfied that neither the 4-Brother's or the IDWR would be interested in mitigating our losses if we are forced to re-establish our well at still deeper pumping depth. For us, a reasonable pumping depth is the depth where the well is already established, unaltered and unaffected by draw down from these two new wells ½ a mile from us.

There needs to be much more study done on this specific section of the aquifer before changes in commercial, consumptive use of the size requested are allowed. Sufficient data to categorically rule out injury under the conditions represented as applying to this portion of the aquifer has not been presented-- but there has been significant reasonable doubt introduced to the applicant's claim that minimal or no injury is posed by this new use.

In matters of water quality we would like to point first to the protestant exhibit 110, the siting permit report for the applicant's now abandoned application for a new 4000 head CAFO. The bottom line of the first page says that nitrate levels in the area where the 4-Brother's Dairy is located do not exceed 1 or 2 mil per million.

We would now turn to Exhibit #114, copies of Idaho Department of Agriculture test data on our well. We were specifically requested by the Department of Agriculture to participate in an annual well testing project and have done so for several years. Again – let it be stipulated that these tests are done by the Department of Agriculture.

You will note that the test for 2002 shows a nitrate level of 10, which is significantly above the 1 or 2 noted on the siting permit and represents the highest limit allowed by law. You will also note that the nitrate level declined, but has consistently been above 2. In 2004 the nitrate levels in our well were 6.9. The report for this year was not available from the Department of Agriculture at the time exhibits for this hearing were due. It has now been sent to us and shows a level of 4.5 – down from last year but still elevated beyond what the siting committee claimed.

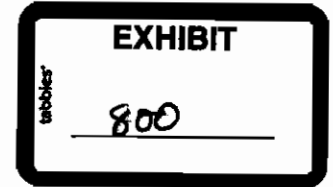
While we are not prepared to demonstrate an absolute link between these elevated nitrate levels and the dairy, it is instructive to note these things – 4 Brothers is the largest producer of animal waste and potential nitrate contamination in the immediate area, the increase in nitrates did not begin to occur until the dairy began to expand its exports of solid waste, and the Idaho Department of Agriculture's own test well data was not referenced in the Ag Department's approval of the siting permit raising serious questions about why not.

We understand the Department's statutory limitations in matters controlled by other state and local agencies but still contend that the IDWR has an obligation to protect the Waters of America from potential sources of contamination.

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

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

**IDWR STAFF
MEMORANDUM**



On May 20, 2005, the hearing officer in the above-captioned matter requested that the Idaho Department of Water Resources (Department) submit a staff memorandum as authorized by IDAPA 37.01.01.600.

This document with attachments is a response to that request.

List of Attachments

1. Administrator's Memorandum "Transfer Processing No. 24" dated October 30, 2002.
2. Memorandum from Shane Bendixsen, Technical Hydro-geologist, to Allen Merritt, Southern Region Manager.
3. Memorandum from Gary Spackman to staff regarding Public Interest dated April 15, 2005.

Historical Perspective for Reviewing of Attachments

Transfers of water rights are processed pursuant to § 42-222 of the Idaho Code. On October 30, 2002, the Director issued an Administrator's Memorandum, identified above as "Transfer Processing No. 24" (hereafter referred to as "transfer memo"). Among other things, when a transfer proposes a change in point of diversion of a water right on the Eastern Snake Plain Aquifer (ESPA) this transfer memo calls for the applicant to submit an analysis of the impacts the proposed change in point of diversion will have on reaches of the Snake River that are hydraulically-connected to the ESPA. Shortly after issuance of the transfer memo the "Eastern Snake River Plain Hydrologic Effects Spreadsheet" developed by the University of Idaho, was made public. This spreadsheet (hereafter referred to as "transfer tool") is a tool to aid in analysis of the impacts to the Snake River. This transfer tool employed the most current response functions used in the Department's ESPA computer model of that time. The transfer memo calls for a mitigation plan to be submitted by the applicant if it is determined that a change in point of diversion will increase depletions to any reach of the Snake River by more than 5%. Normally a mitigation plan describes a plan for reduction of use for a specified time period at the new point of diversion so as to bring the specific negatively impacted reach to within 5% of what

would be expected without the transfer.

Transfer no. 71607 (4 Bros. Dairy) includes an analysis and mitigation plan submitted by the applicant based on this transfer tool. (Note that the transfer memo has been tempered by further direction from Department Administration and the Director regarding reasonable use and interpretation of the transfer tool. An example of this type of guidance is to discount predictions of more than a 5% impact on a river reach for moves of short distances across one cell boundary. Another example is to not use cells on the perimeter of the model for analysis. Please also note that other types of hydraulic analysis are not precluded from being considered by the Department if they are equivalent or scientifically credible and found acceptable to the Department.)

Since 2002 the Department, the University of Idaho, and others have cooperated in developing a new ground water model for the ESPA. This newer version of the ESPA ground water model and associated transfer tool has limited distribution, but it represents the current state of art in analysis of the ESPA. Currently the Department is in a period of transition and is beginning to use the "new" model. A spreadsheet or transfer tool similar to the one described above has recently been developed that is based on response functions of the "new" model. This "new" transfer tool will eventually be made available for public distribution. The Department envisions that the transfer memo described above will be amended or supplemented to provide revised guidance to staff in processing transfers using the "new" model and "new" transfer tool. The attached memorandum from Gary Spackman is an example of such a supplemental memorandum that modifies the guidance found in the original transfer memo.

Included in the Memorandum from Shane Bendixsen is an analysis of the predicted impacts of this transfer on reaches of the Snake River using both the transfer tool based on the "old" model and the transfer tool developed from the "new" model. Note that the "old" model predicted impacts to four (4) hydraulically connected Snake River reaches within the ESPA. The "new" model predicts impacts to eleven (11) hydraulically connected Snake River reaches. These 11 reaches are refinements or further subdivisions of the original 4.

Dated this 7th day of July, 2005.



Allen Merritt
Southern Region Manager

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of July, 2005, the above and foregoing document 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:

PETER ANDERSON, HEARING OFFICER
IDAHO DEPARTMENT OF WATER RESOURCE
322 E FRONT STREET
PO BOX 83720
BOISE ID 83720-0098

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

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

BEV ASHTON
685 N 250 W
SHOSHONE, ID 83352

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

JERRY & SUSAN WESTENDORF
707 W 470 N
SHOSHONE, ID 83352

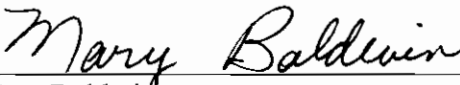
ELIZABETH TEWS
680 N 350W
SHOSHONE, ID 83352

RUSSELL & PAMELA PANTONE
745 N 550 W
SHOSHONE, ID 83352

DOUG ALBRIGHT
675 N 150 W
SHOSHONE, ID 83352

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

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



Mary Baldwin
Administrative Assistant
IDWR-Southern Region

RECEIVED

JUL 08 2005

DEPARTMENT OF
WATER RESOURCES

MEMORANDUM

July 7, 2005

To: Allen Merritt, Manager IDWR Southern Office

From: Shane Bendixsen, Technical Hydrogeologist

Reviewed By: Rick Raymondi, Bureau Chief, Technical Services

Subject: **Transfer 71607, 4 Bros Dairy**

It is my understanding the above-mentioned transfer proposes to convert all of water right 37-20613 (used to irrigate 77.4 acres from point of diversion in T06S R18E sec 20 NESE) to a new dairy in T05S R17E sec 5 SESE. This will move the point of diversion approximately 12 miles to the northwest (see Attachment #1). The following is a brief hydrologic review.

To assess the impact on flow in the Snake River, the applicant used the Eastern Snake River Plain Aquifer Ground-Water Rights Transfer Spreadsheet, Version 1.3 ("old" transfer tool). The spreadsheet will calculate the change in flow for four reaches of the Snake River. It is based on the IDWR Model for the Eastern Snake Plain Aquifer (ESPA)

The analysis in the application for transfer was performed by Idaho Water Company. For consumptive use, alfalfa was chosen as the main crop. Based on work by Allen and Brockway, consumptive use is approximately 2.99 afa. For 77.4 acres, this equates to 231.4 afa. It was assumed the full amount would be transferred and used.

Their analysis concluded that the upper three reaches all gain in flow from the transfer and the one lower reach, Milner to King Hill, would decline. The decline would begin in the year 2046, and a cutback of five percent would mitigate the problem.

Using Version 1.3, IDWR staff was able to verify these results (see attached graphs 3 thru 6).

To further assess the impact on flow in the Snake River, the Eastern Snake River Plain Ground Water Rights Transfer Spreadsheet (a "new" transfer tool) based on Enhanced Snake Plain Aquifer Model, Version 2.0 was used. The new version is considered more accurate with more extensive calibration and much better resolution. The spreadsheet will calculate the change in flow for 11 reaches of the Snake River (five above Milner Dam and six below). The reaches are presented in Attachment #2. It is based on the new ESPA model completed by the University of Idaho for IDWR with guidance from the

Eastern Snake Plain Hydrologic Modeling Committee. Different scenarios can be run for any one transfer.

The analysis by IDWR using transfer tool Version 2.0 for 231 afa suggested that all reaches above Milner gain, while the reaches below all lose with exception of Devil's Washbowl to Buhl (see attachments 7 thru 17). Values for reach losses range from 0.3 to 6 afa. The effects of the transfer on flows are immediate and a cutback of five percent has limited effect.

A cutback of approximately 25 percent will probably be needed. Attachments 18 thru 28 present the 25 percent reduction. With the reduction, all the reaches gain with the exception of Malad to Bancroft and the Malad. These two initially lose but then reach equilibrium or stay within five percent.

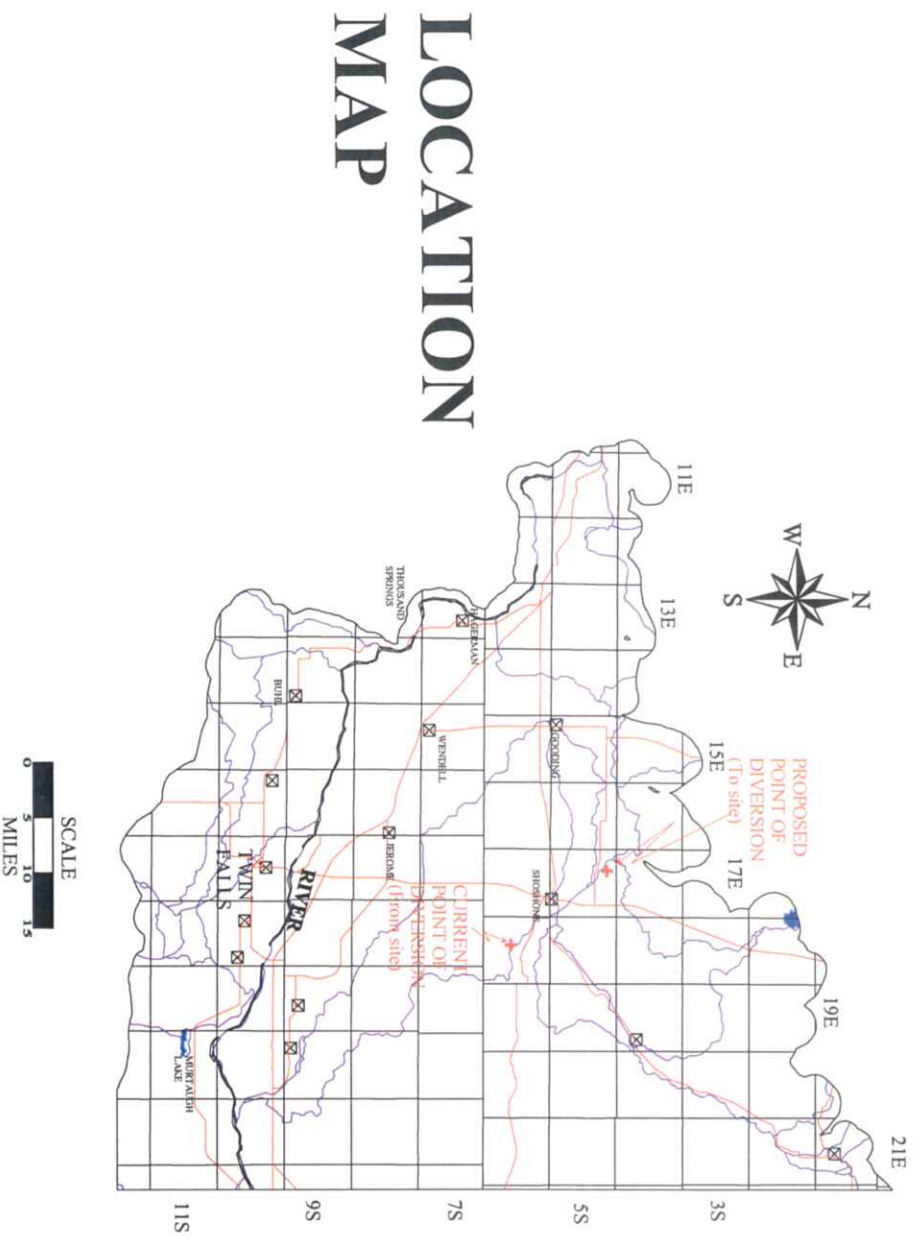
Since the reaches affected contain the majority of the springs, spring flow will definitely be affected without mitigation. It is not possible at this time to estimate the amount using the transfer tool, but it can be assumed spring flow will decrease without some form of mitigation.

In closing, there are some discrepancies between the two versions of the model. It can be assumed that the newest version is probably the most accurate based on more extensive calibration and better data.

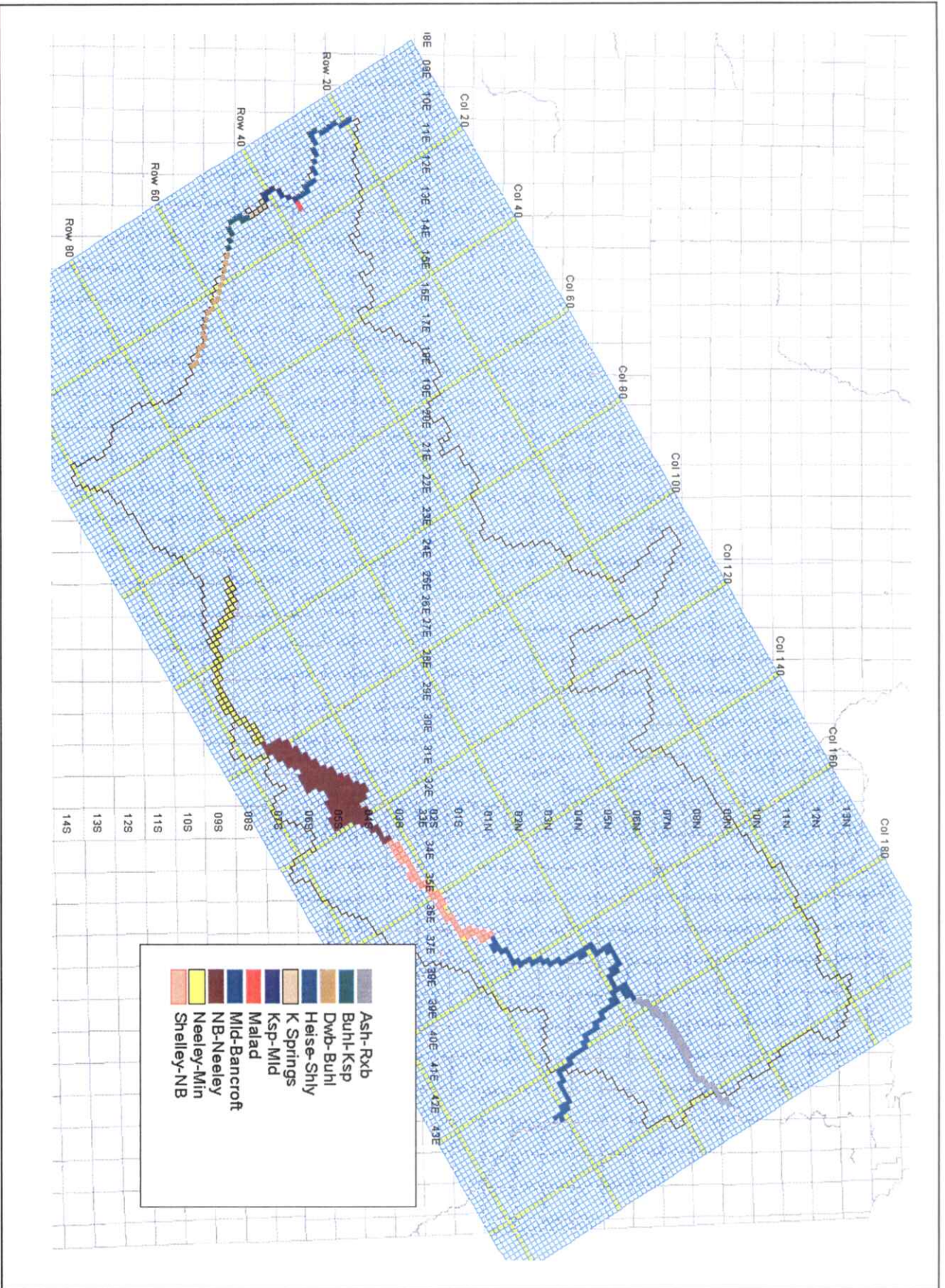
REFERENCES

Allen R.G. and Brockway C. E., 1983, Estimating Consumptive Irrigation Requirements for Crops in Idaho, Idaho Water and Energy Resources Research Institute, University of Idaho, Moscow, Idaho.

EASTERN SNAKE RIVER PLAIN WESTERN PORTION



LOCATION MAP

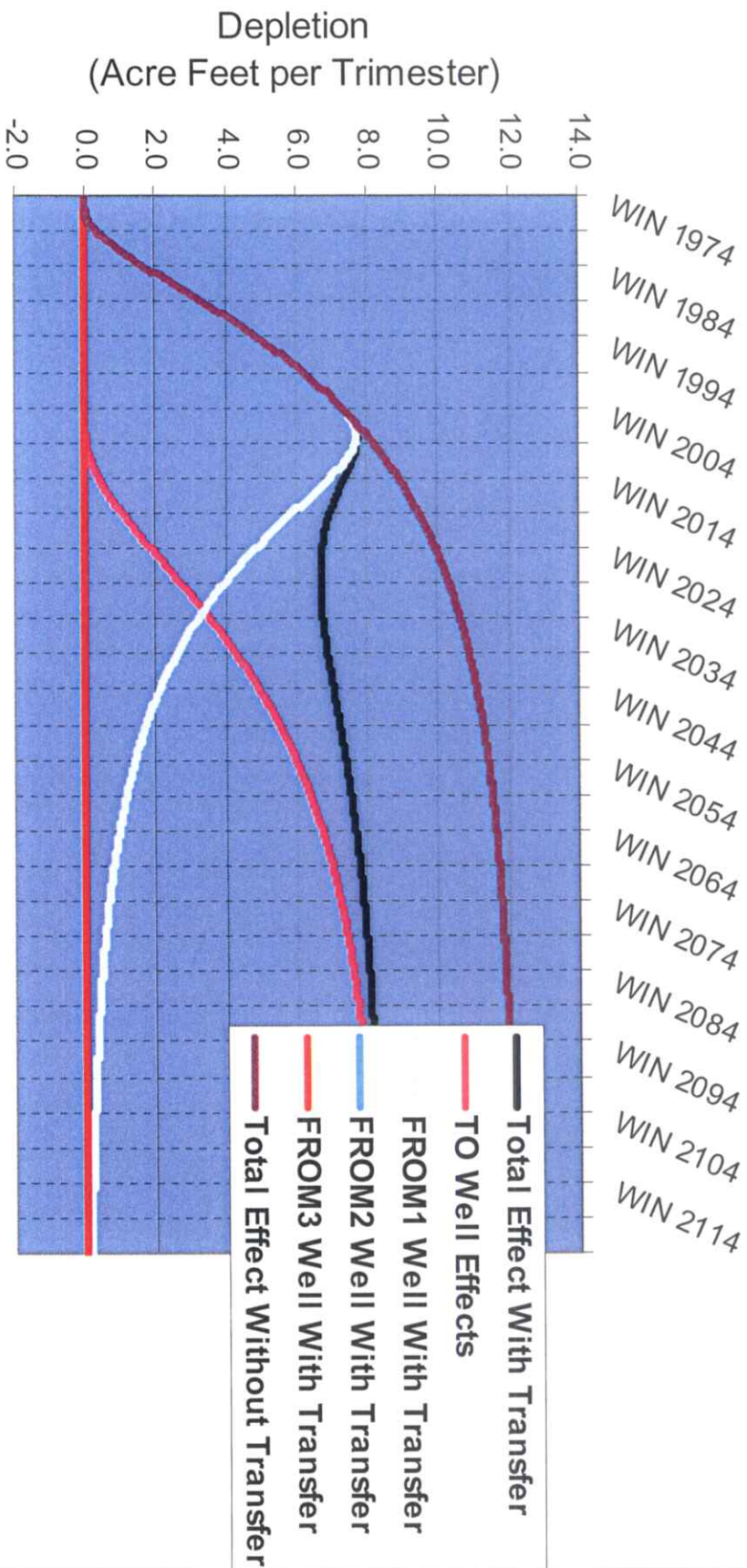


ATTACHMENT #2

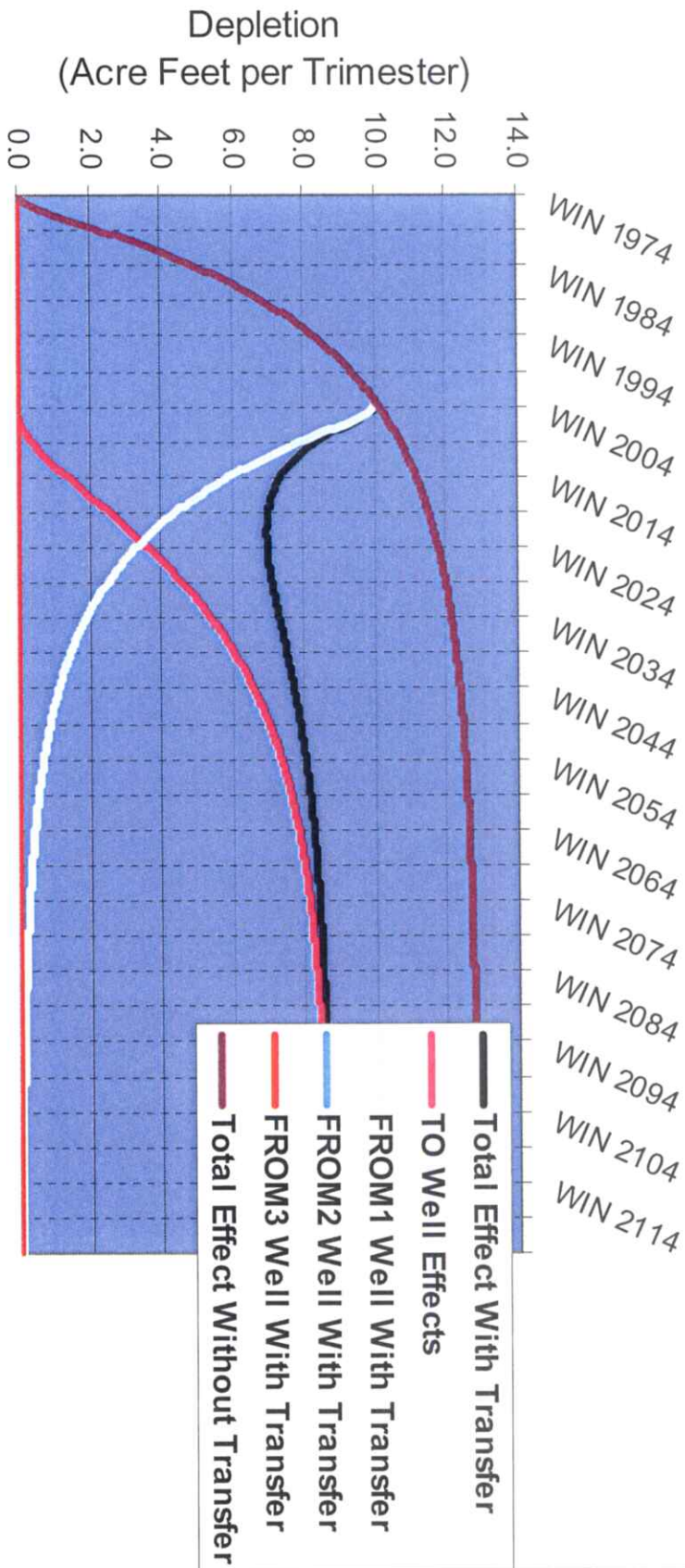
Hydrologic Response--Near Shelley to Neeley Reach

Customer Name:

Transfer No:



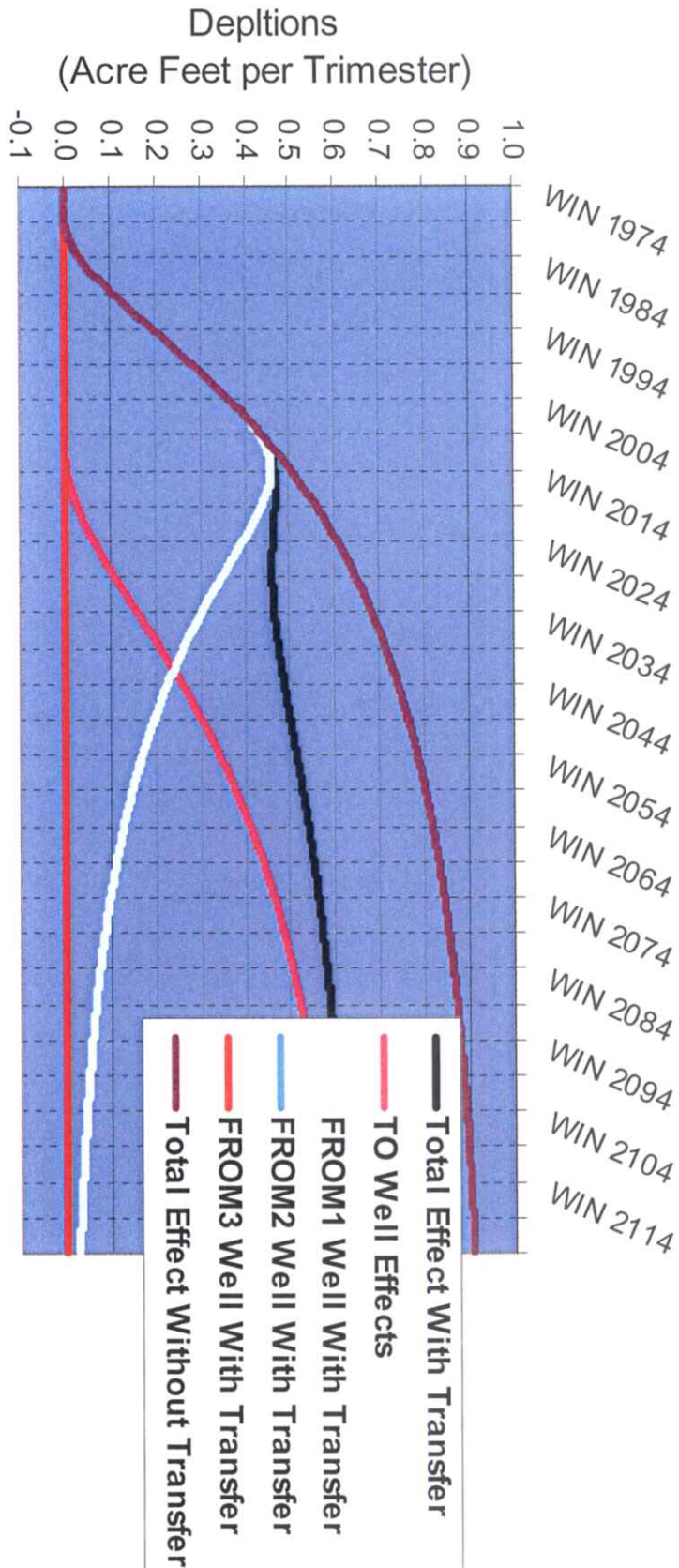
Hydrologic Response--Neeley to Minidoka Reach
Customer Name: Transfer No:



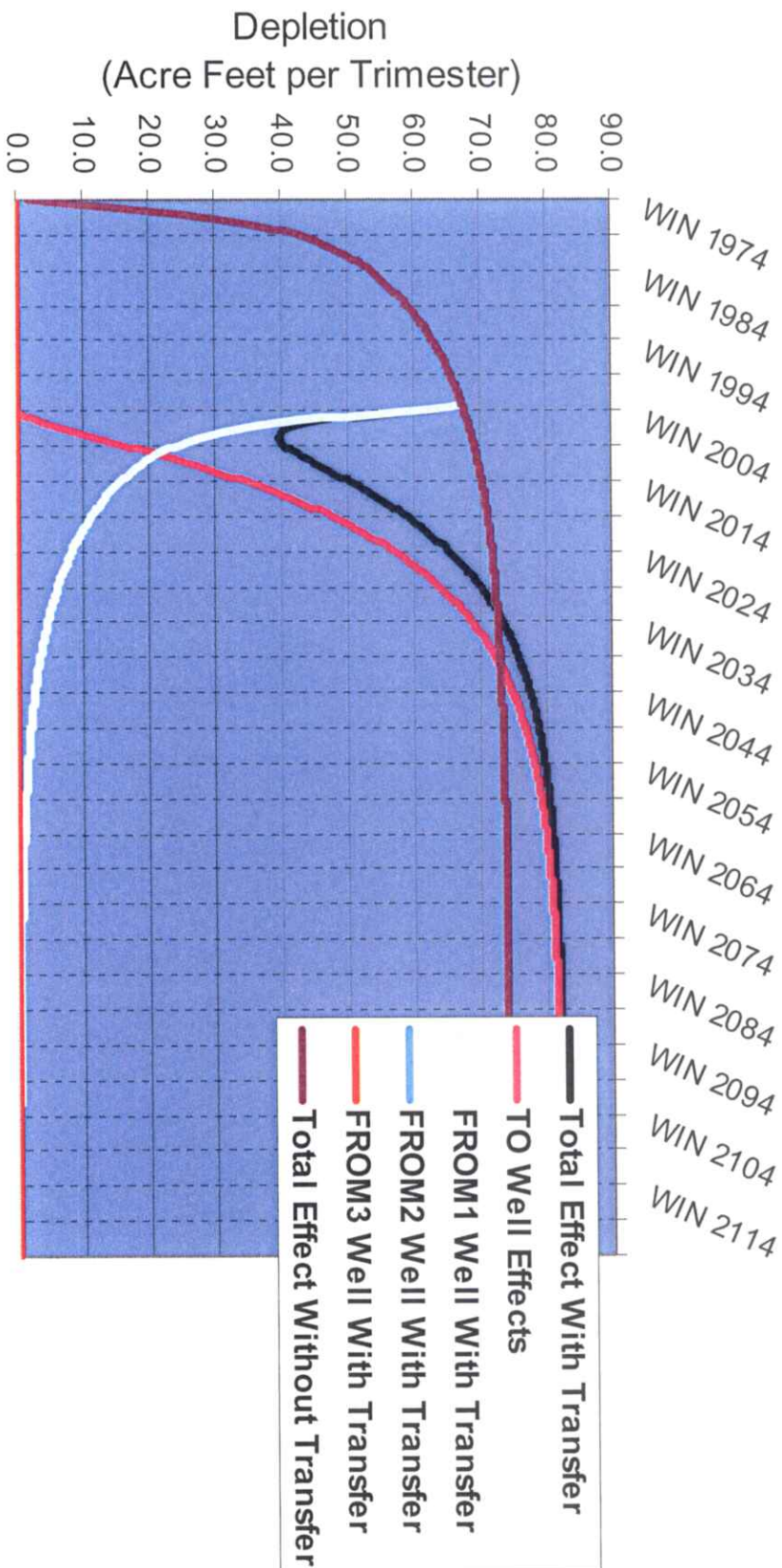
Hydrologic Response--Heise/Ashton to Lewisville

Customer Name:

Transfer No:



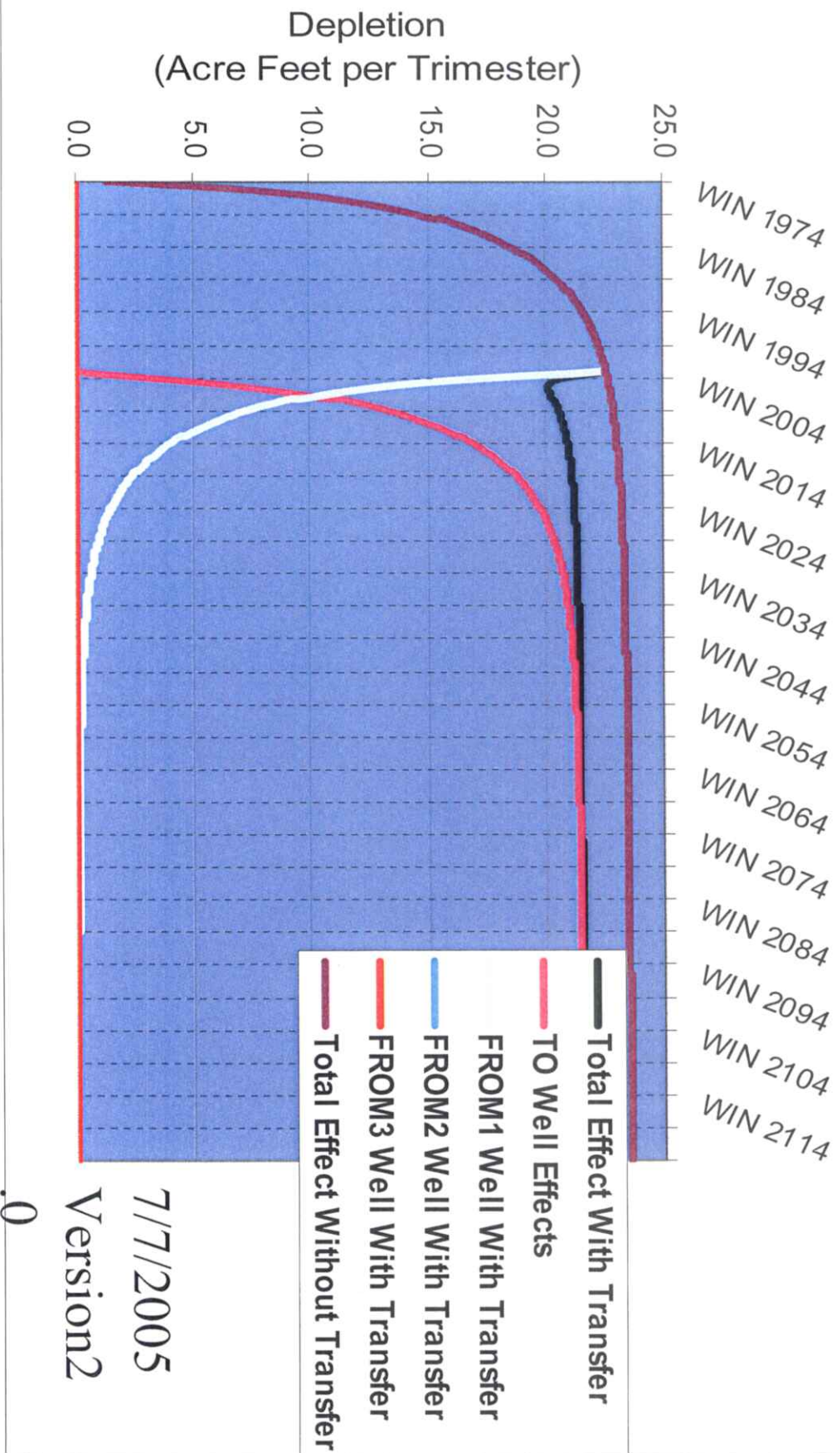
Hydrologic Response-- Milner to King Hill Reach
Customer Name: Transfer No:



Hydrologic Response--Devil's Washbowl to Buhl

Customer Name: 4 Bros Dairy Transfer No: 7160

7

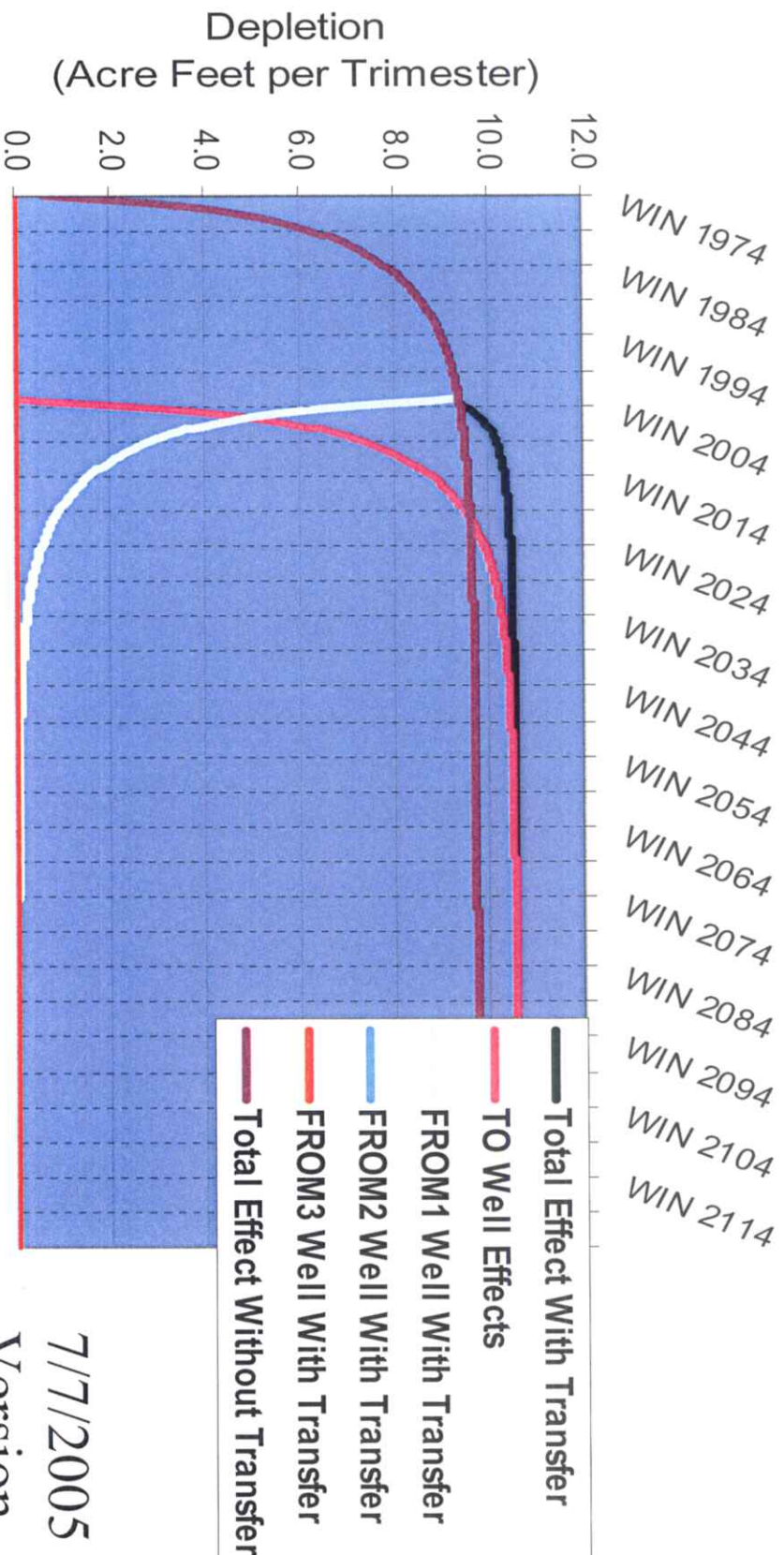


Hydrologic Response--Buhl to Thousand Springs

Customer Name: 4 Bros Dairy

Transfer No: 7160

7



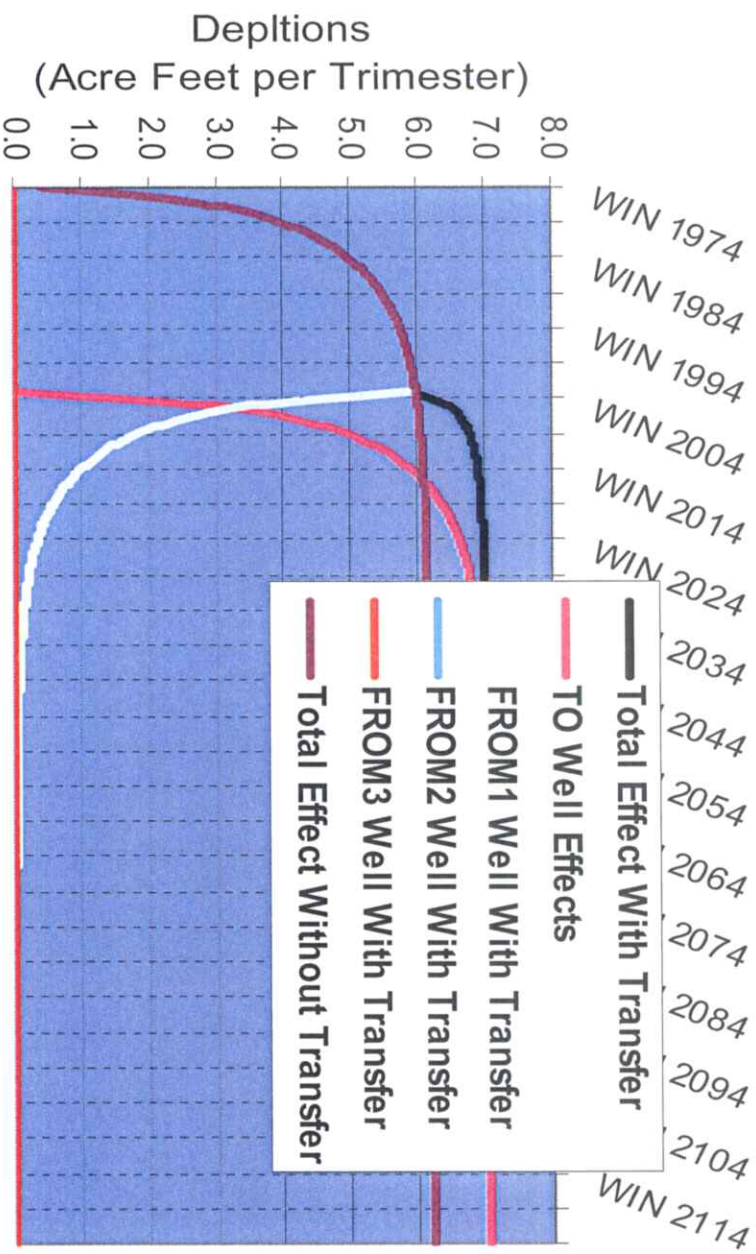
Hydrologic Response--Thousand Springs

Customer Name: 4 Bros Transfer No:

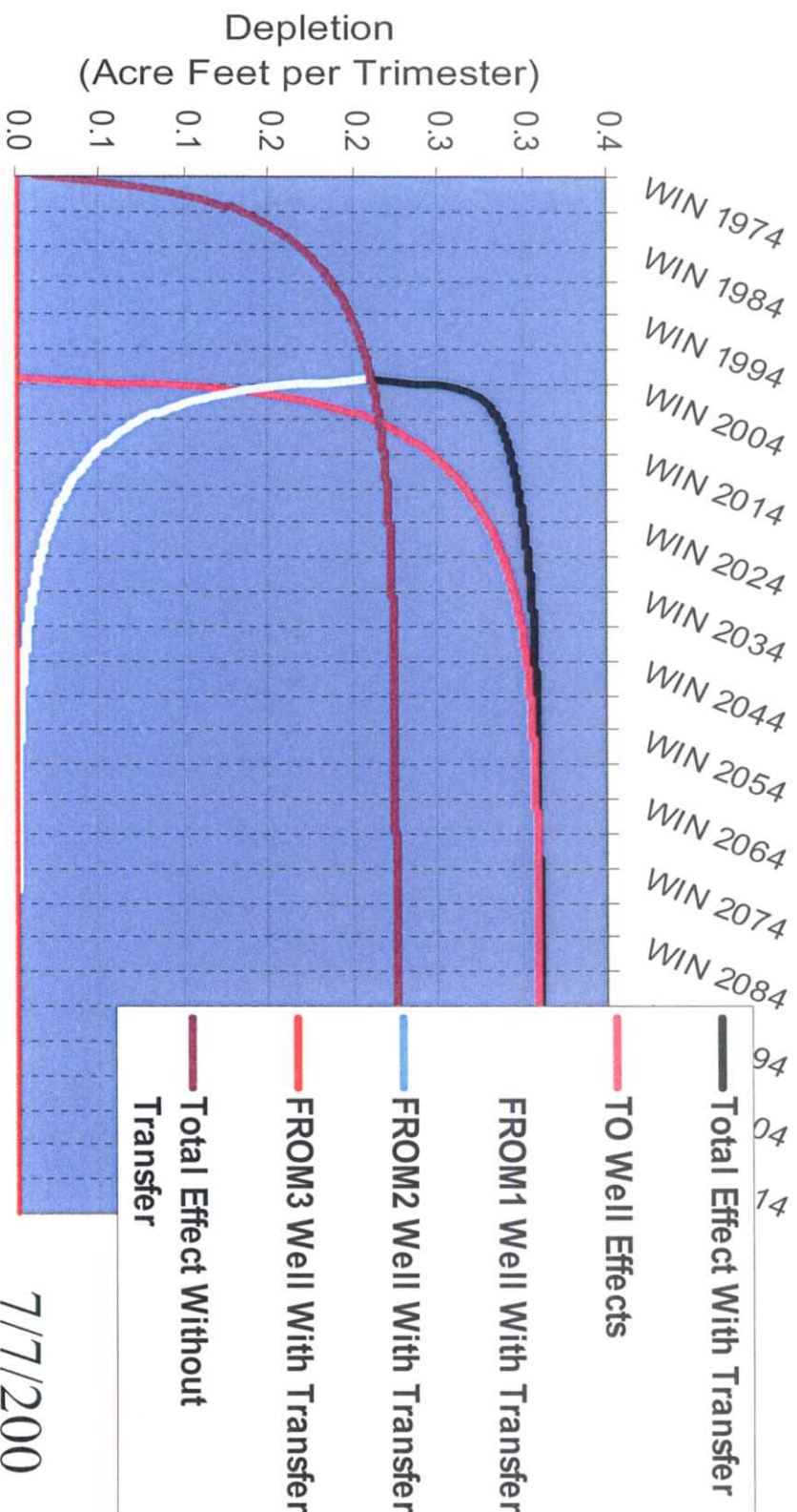
Dairy

7160

7

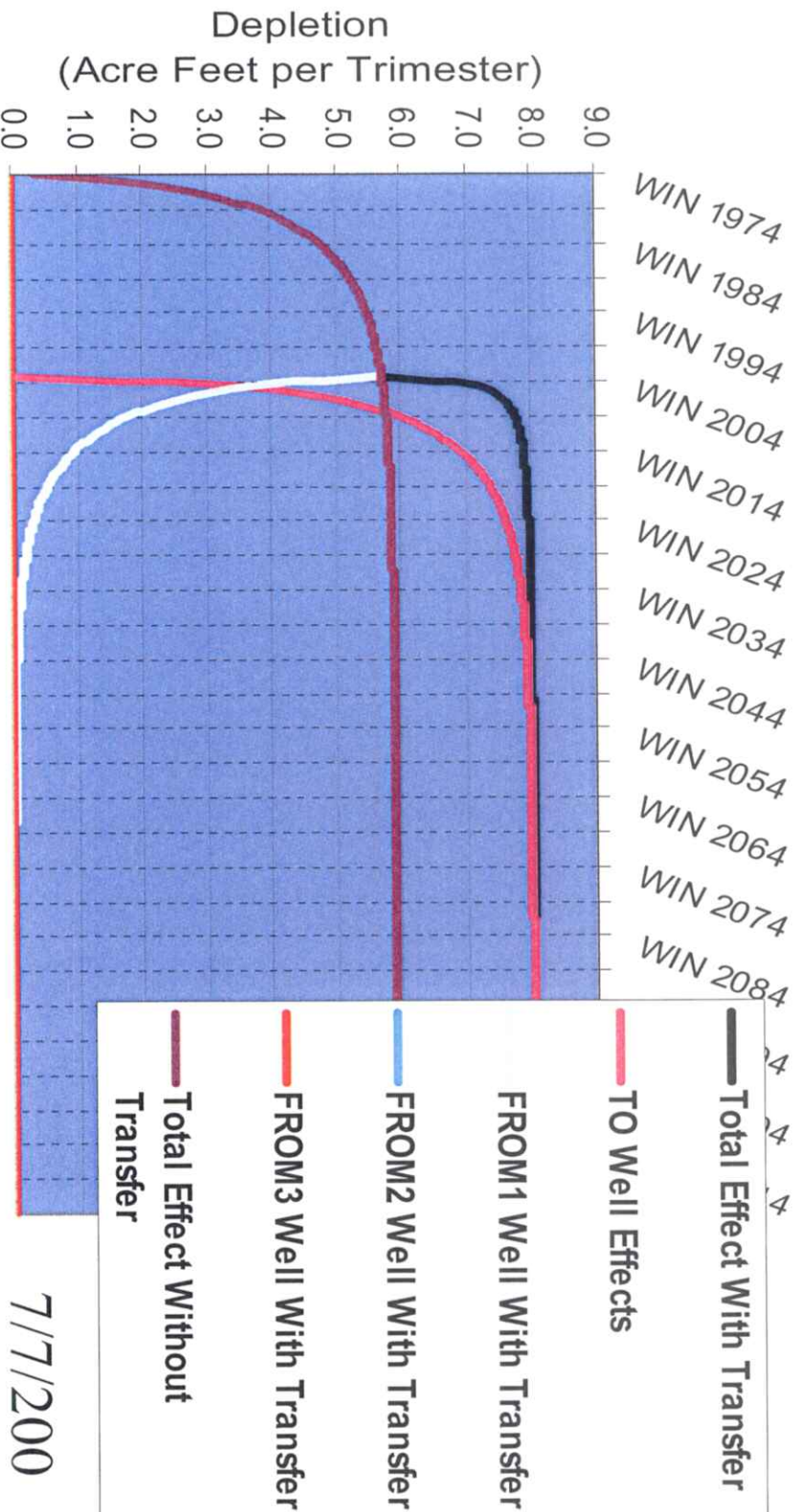


Hydrologic Response-- Malad to Bancroft
Customer Name: 4 Bros Transfer No: 7160
Dairy 7



Hydrologic Response-- Malad

Customer Name: 4 Bros Transfer No: 7160
Dairy 7



ATTACHMENT #11

Version

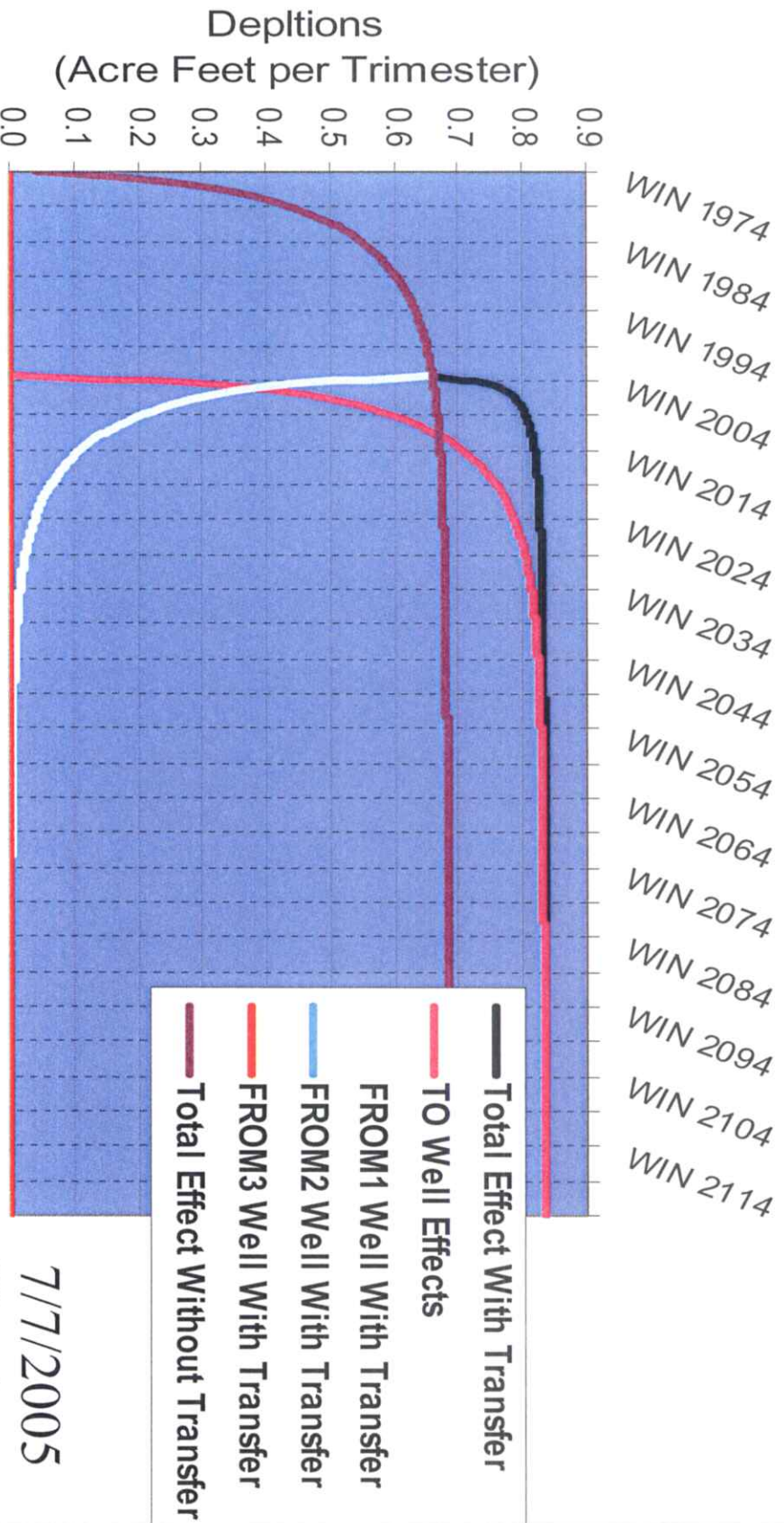
7/7/200

2.0

Hydrologic Response--Thousand Springs to Malad

Customer Name: 4 Bros Transfer No: 7160

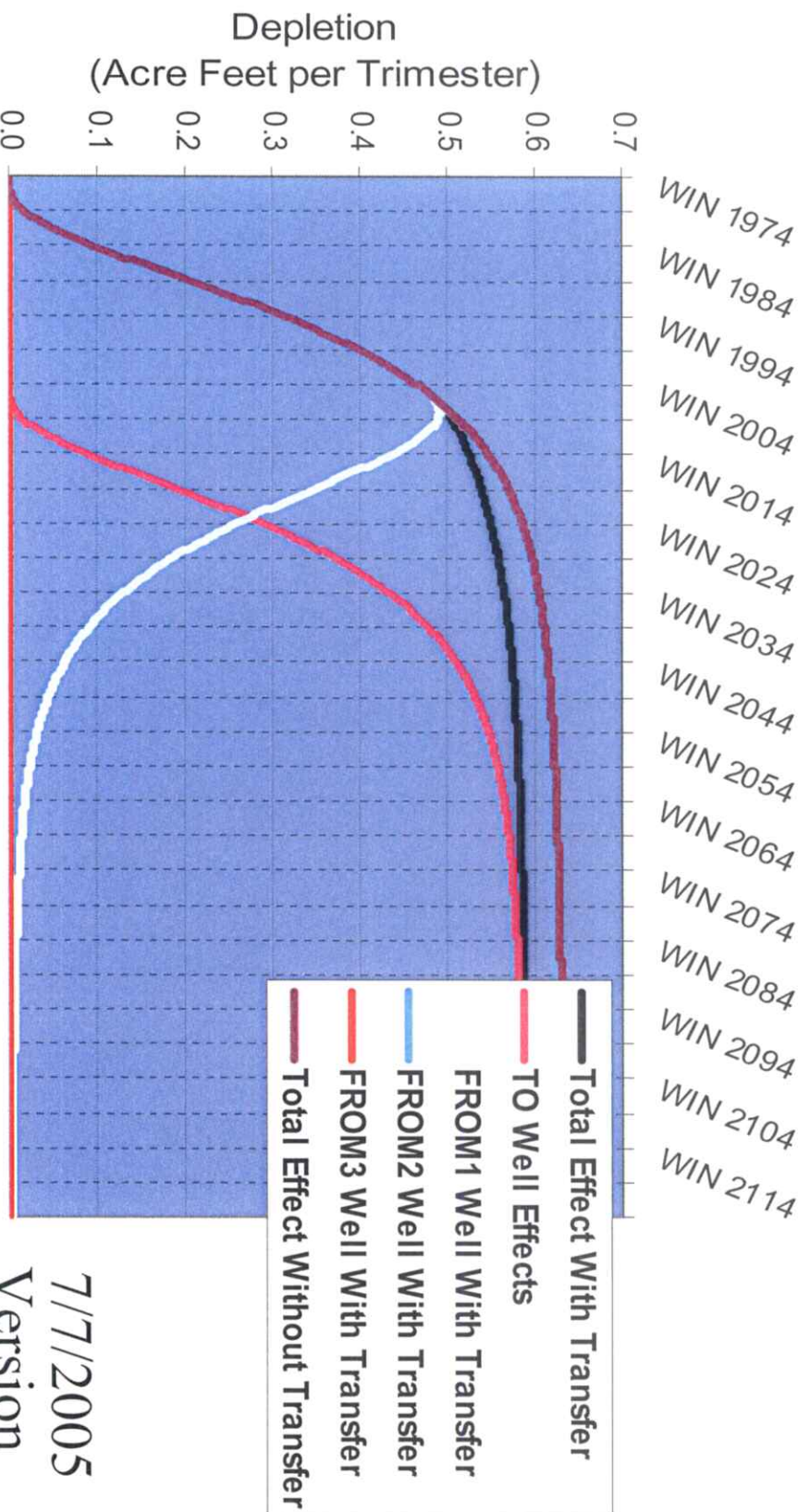
Dairy 7



Hydrologic Response--Ashton to Rexburg

Customer Name: 4 Bros Dairy Transfer No: 7160

7

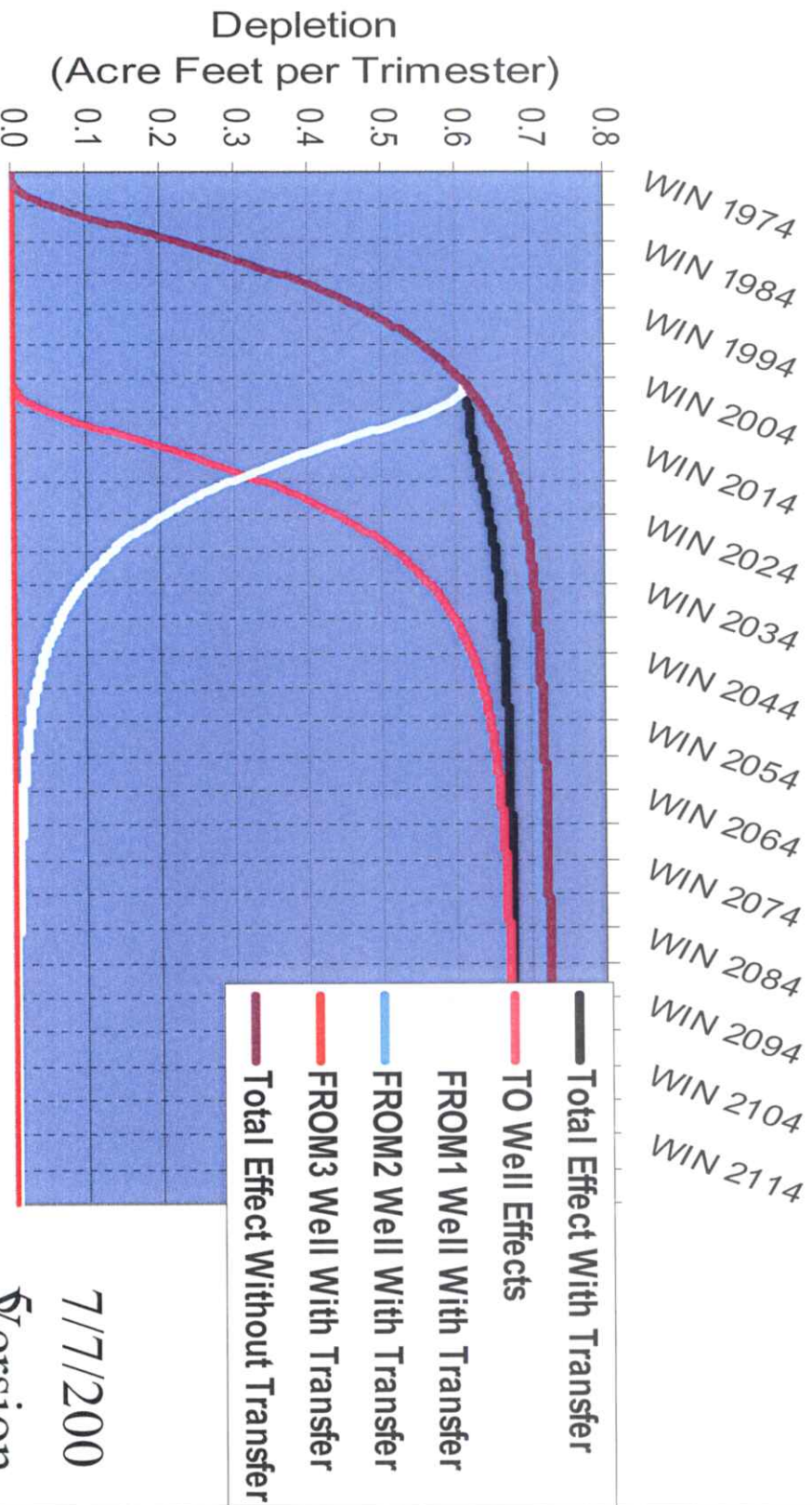


7/7/2005
Version
2.0

Hydrologic Response--Heise to Shelley

Customer Name: 4 Bros Dairy Transfer No: 7160

7

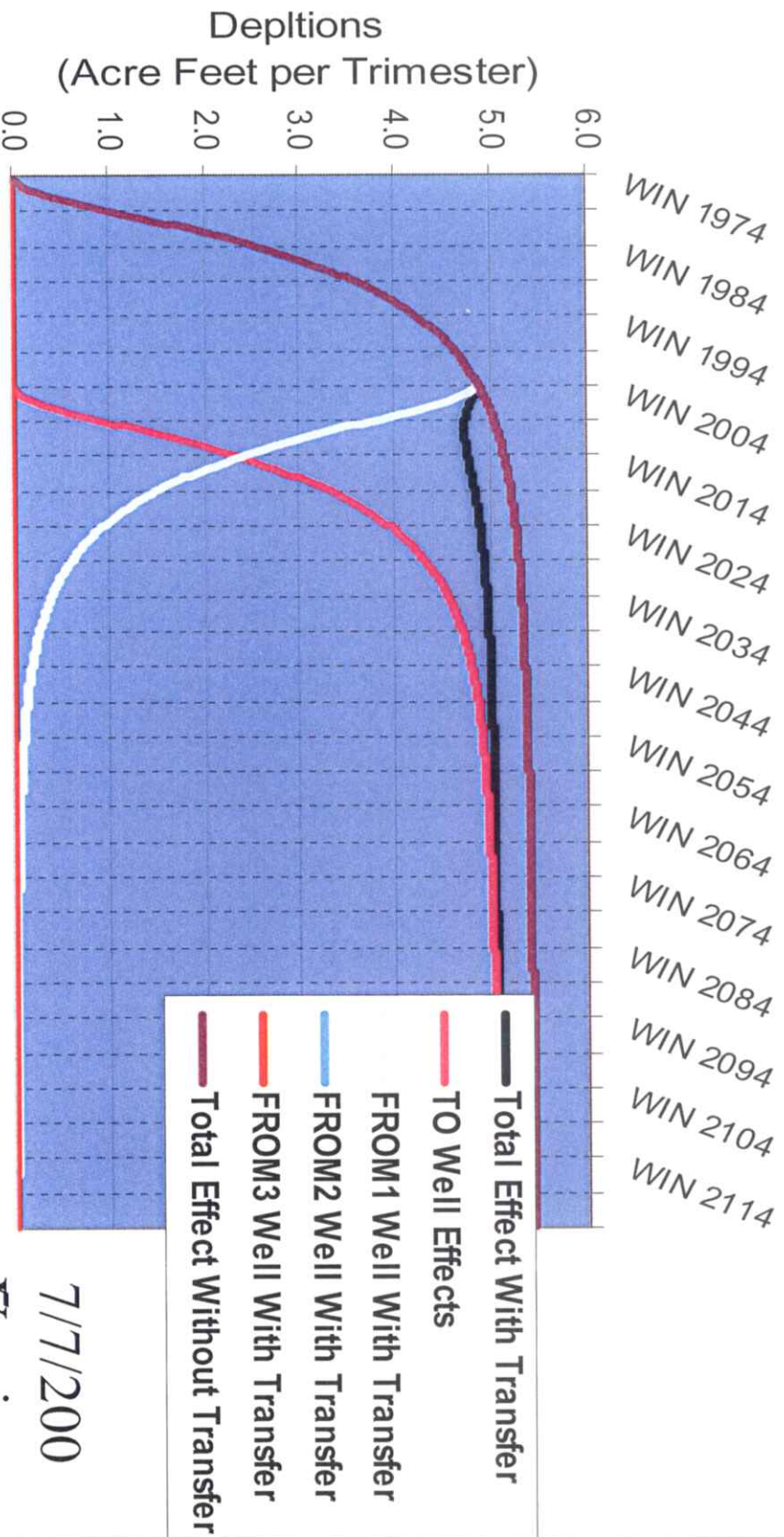


ATTACHMENT #14

7/7/200
Version
2.0

Hydrologic Response--Shelley to Near Blackfoot

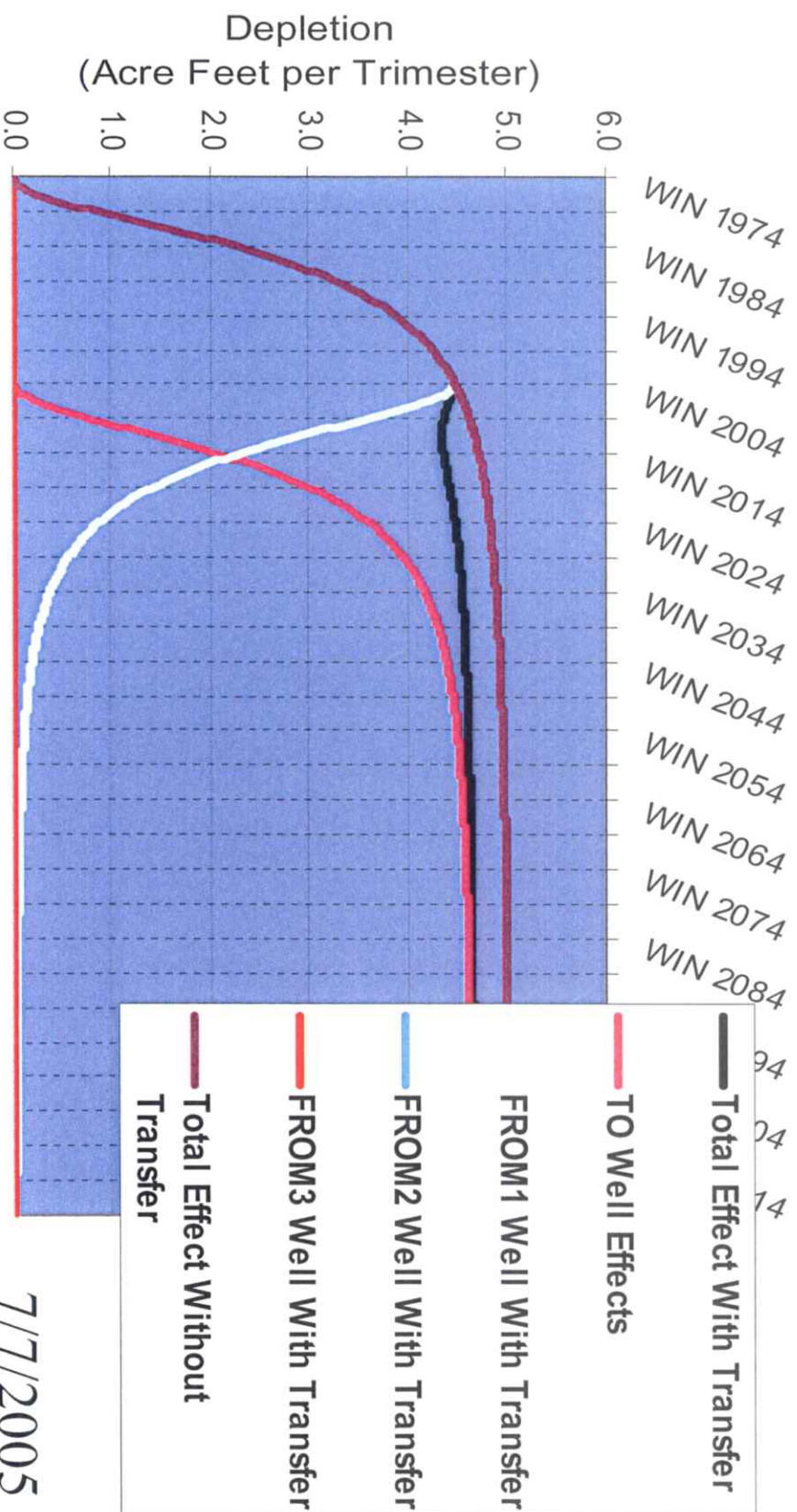
Customer Name: 4 Bros Transfer No: 7160
Dairy 7



Hydrologic Response-- Neeley to Minidoka

Customer Name: 4 Bros Transfer No: 7160

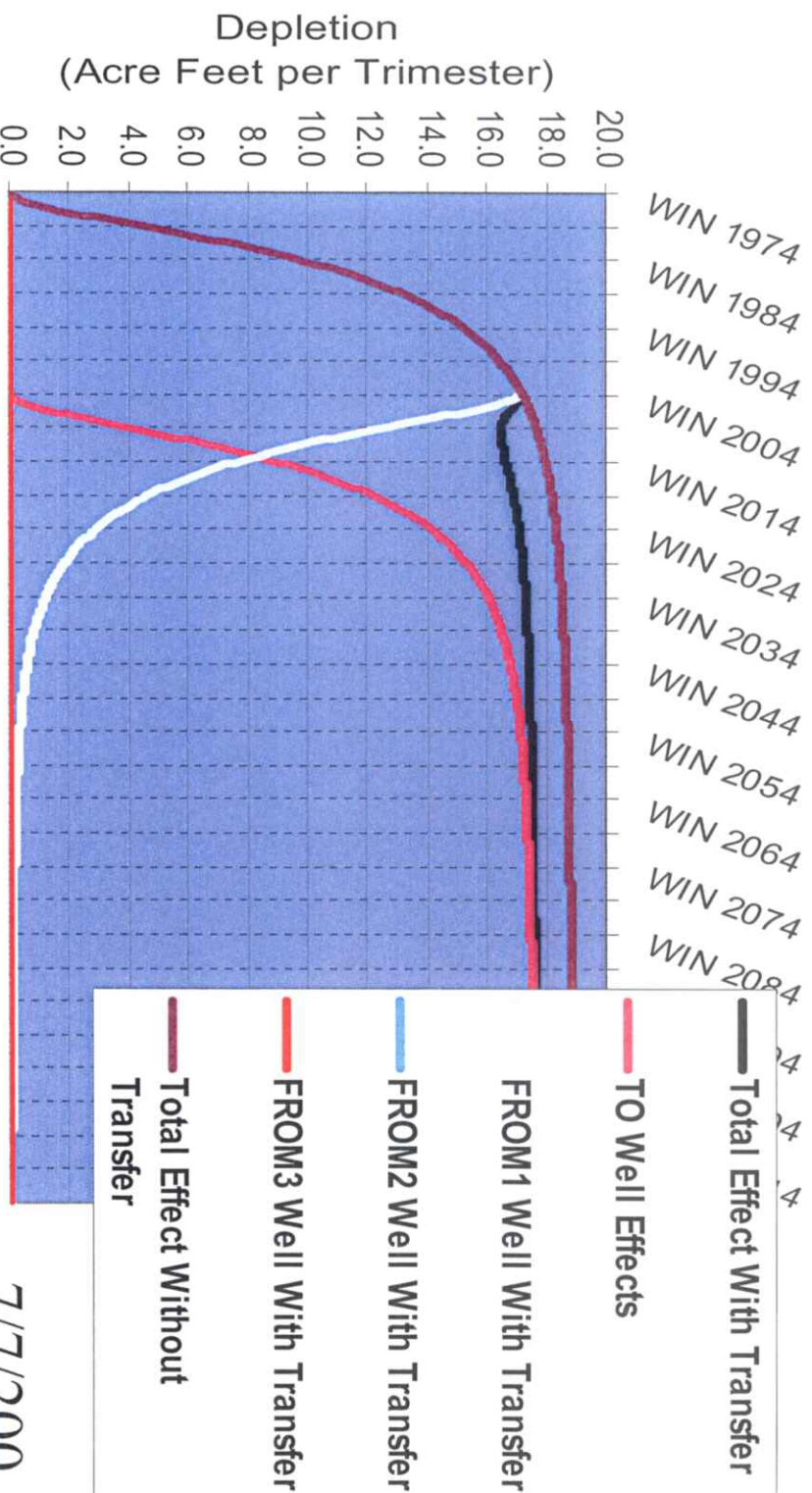
Dairy 7



Hydrologic Response-- Near Blackfoot to Neeley

Customer Name: 4 Bros Transfer No: 7160

Dairy 7

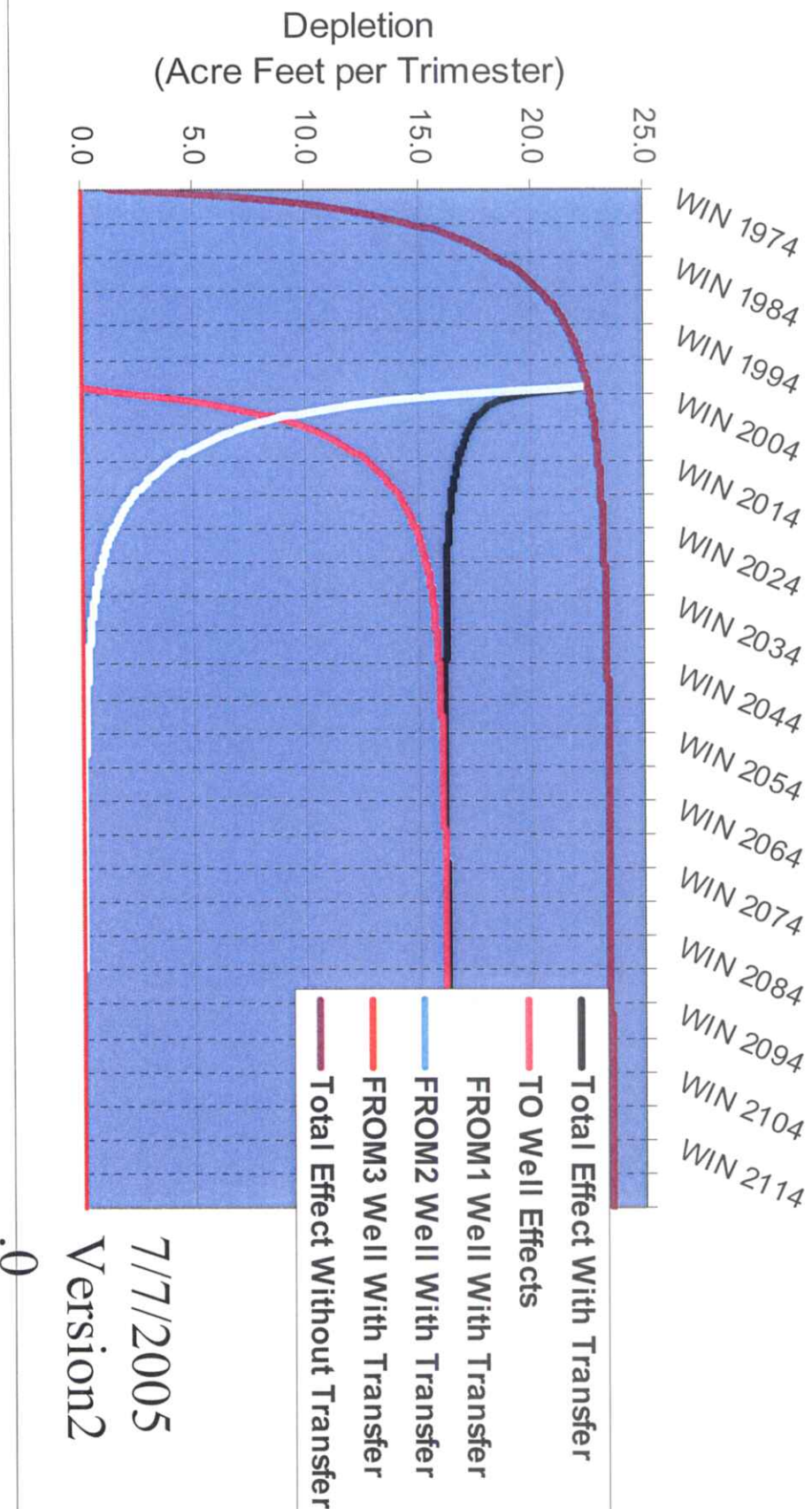


Hydrologic Response--Devil's Washbowl to Buhl

Customer Name: 4 Bros Dairy

Transfer No: 7160

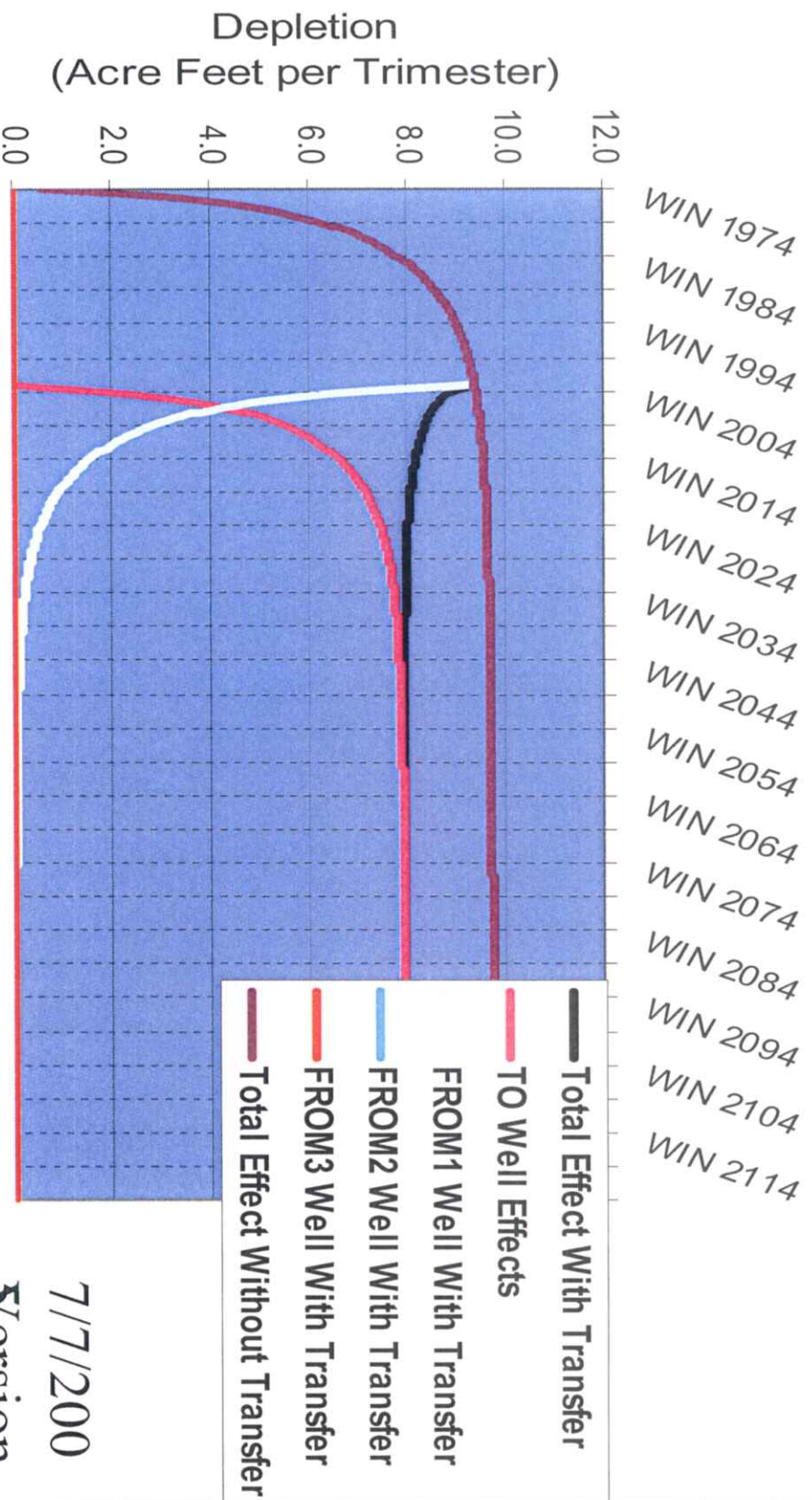
7



Hydrologic Response--Buhl to Thousand Springs

Customer Name: 4 Bros Dairy Transfer No: 7160

7

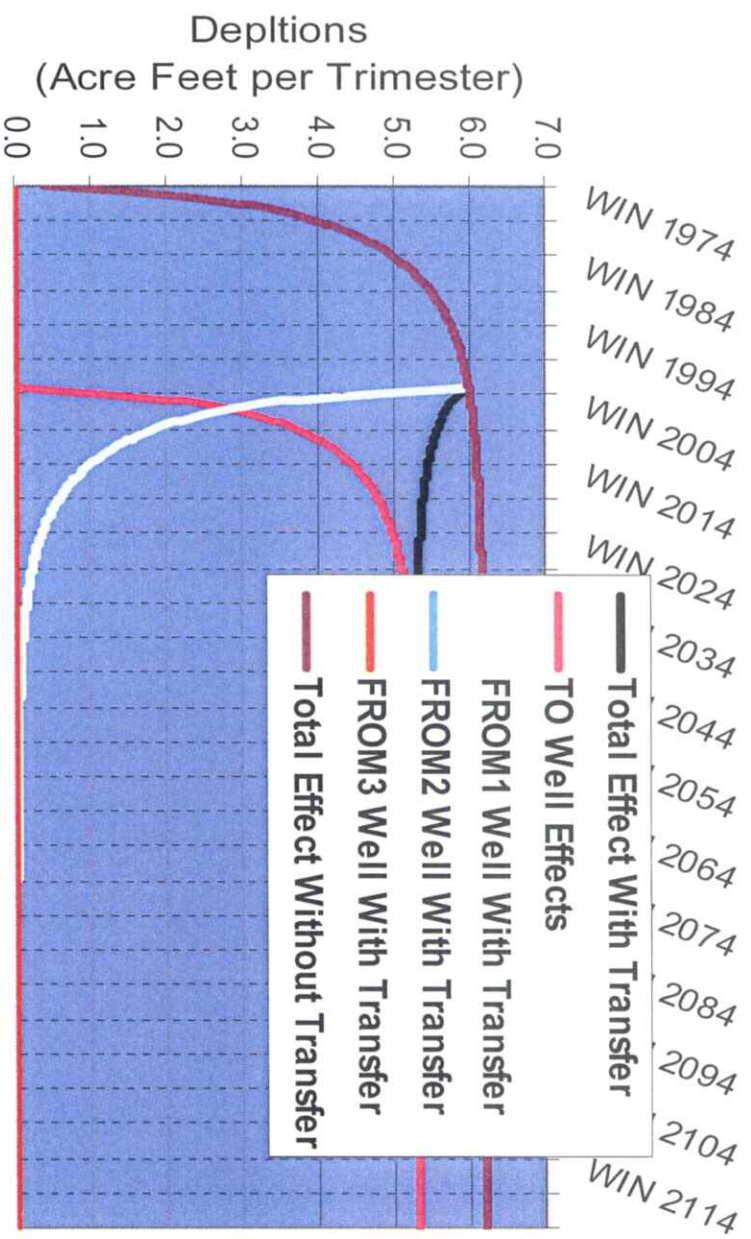


Hydrologic Response--Thousand Springs

Customer Name: 4 Bros Transfer No: 7160

Dairy

7



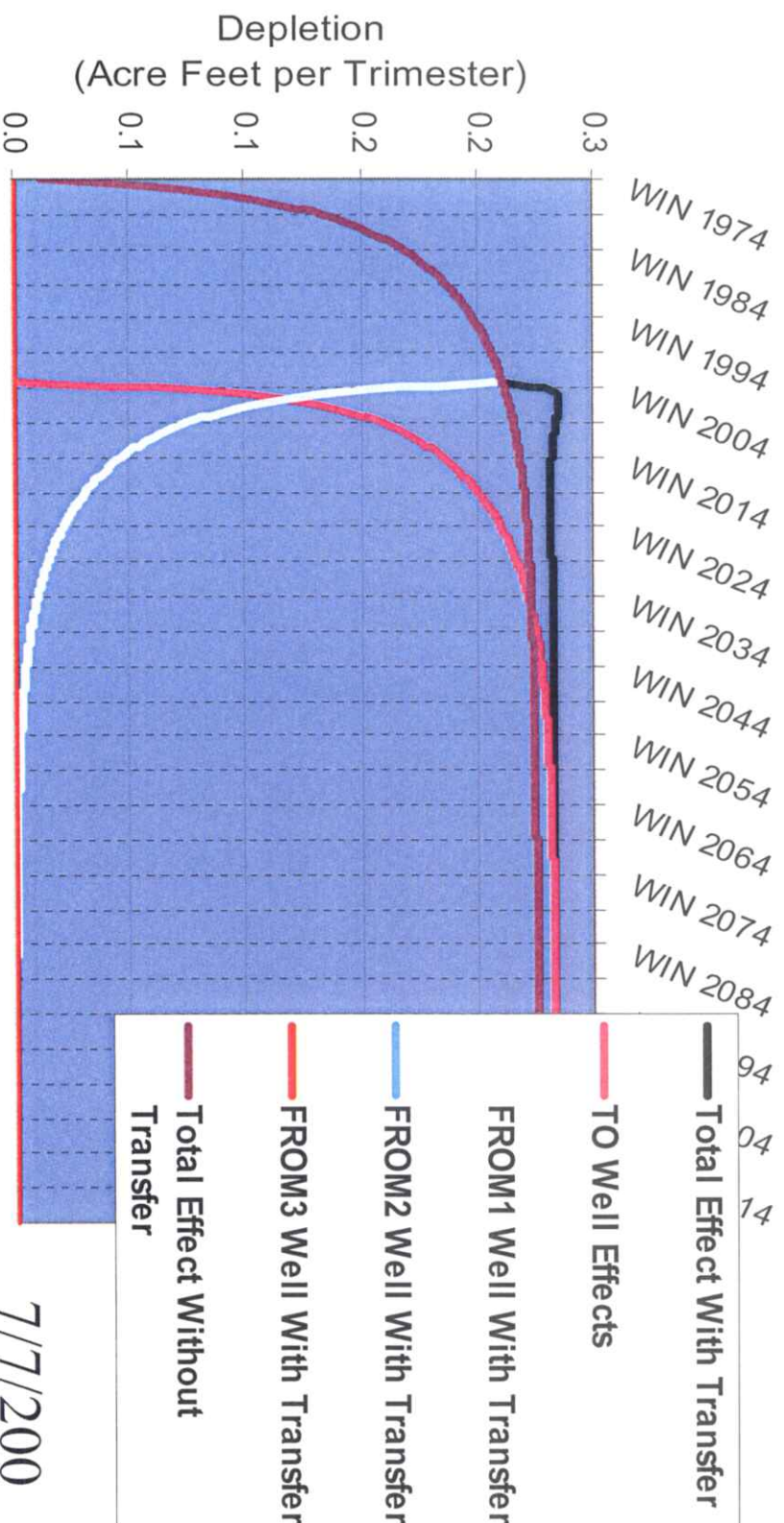
Hydrologic Response-- Malad to Bancroft

Customer Name: 4 Bros Transfer No:

7160

Dairy

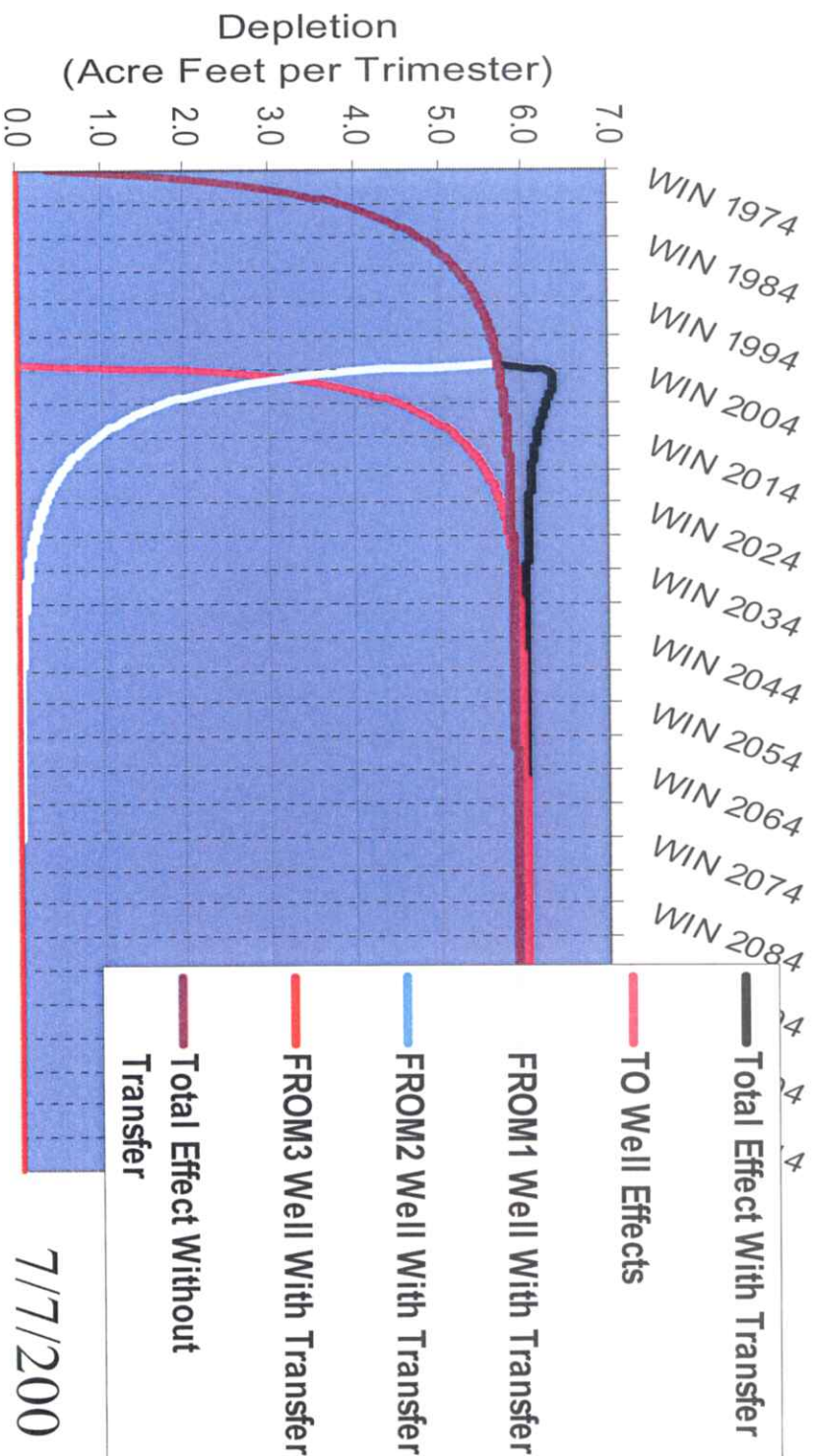
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Hydrologic Response-- Malad

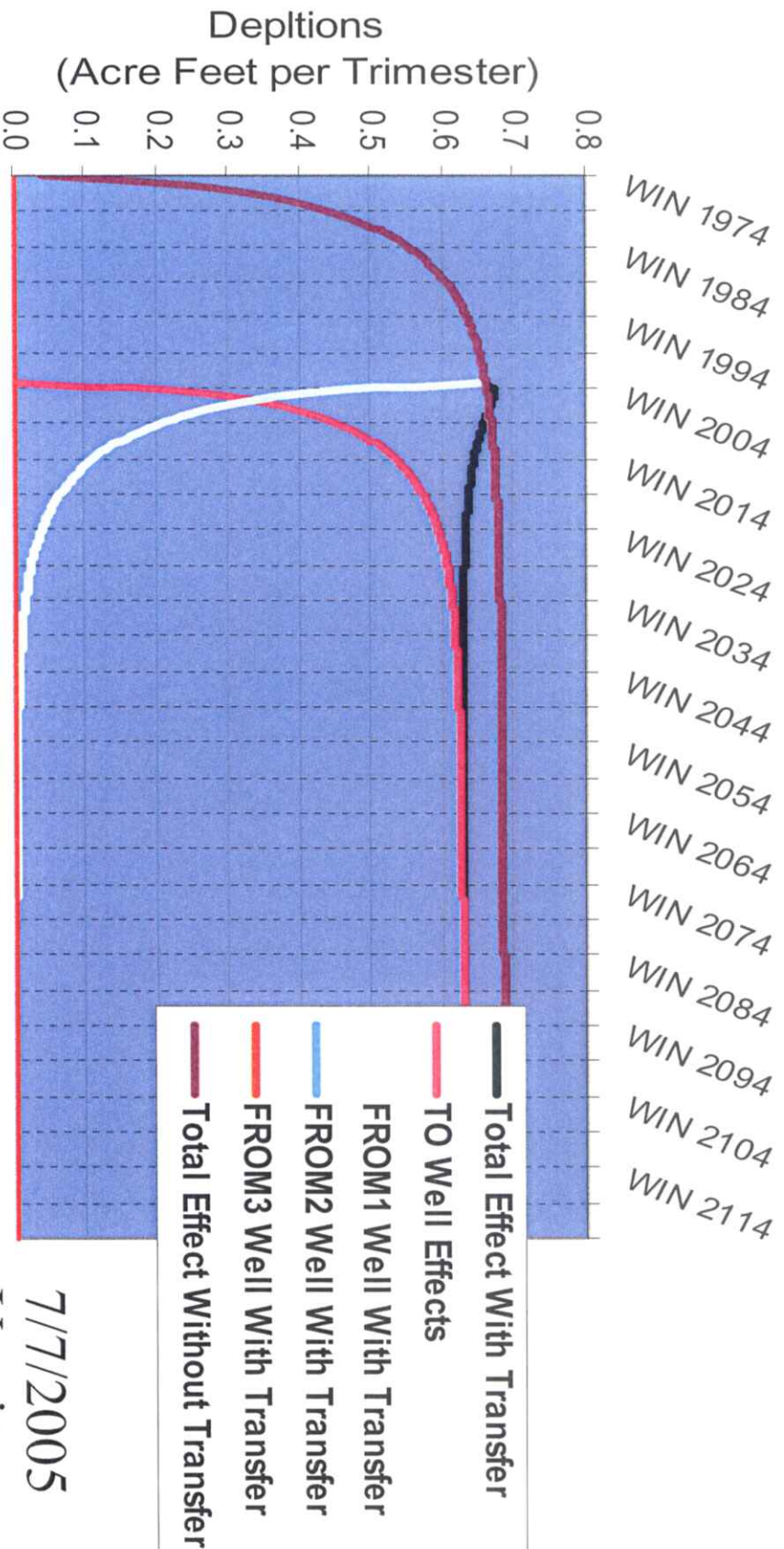
Customer Name: 4 Bros Transfer No: 716

Dairy 07



Hydrologic Response--Thousand Springs to Malad

Customer Name: 4 Bros Transfer No: 7160
Dairy 7



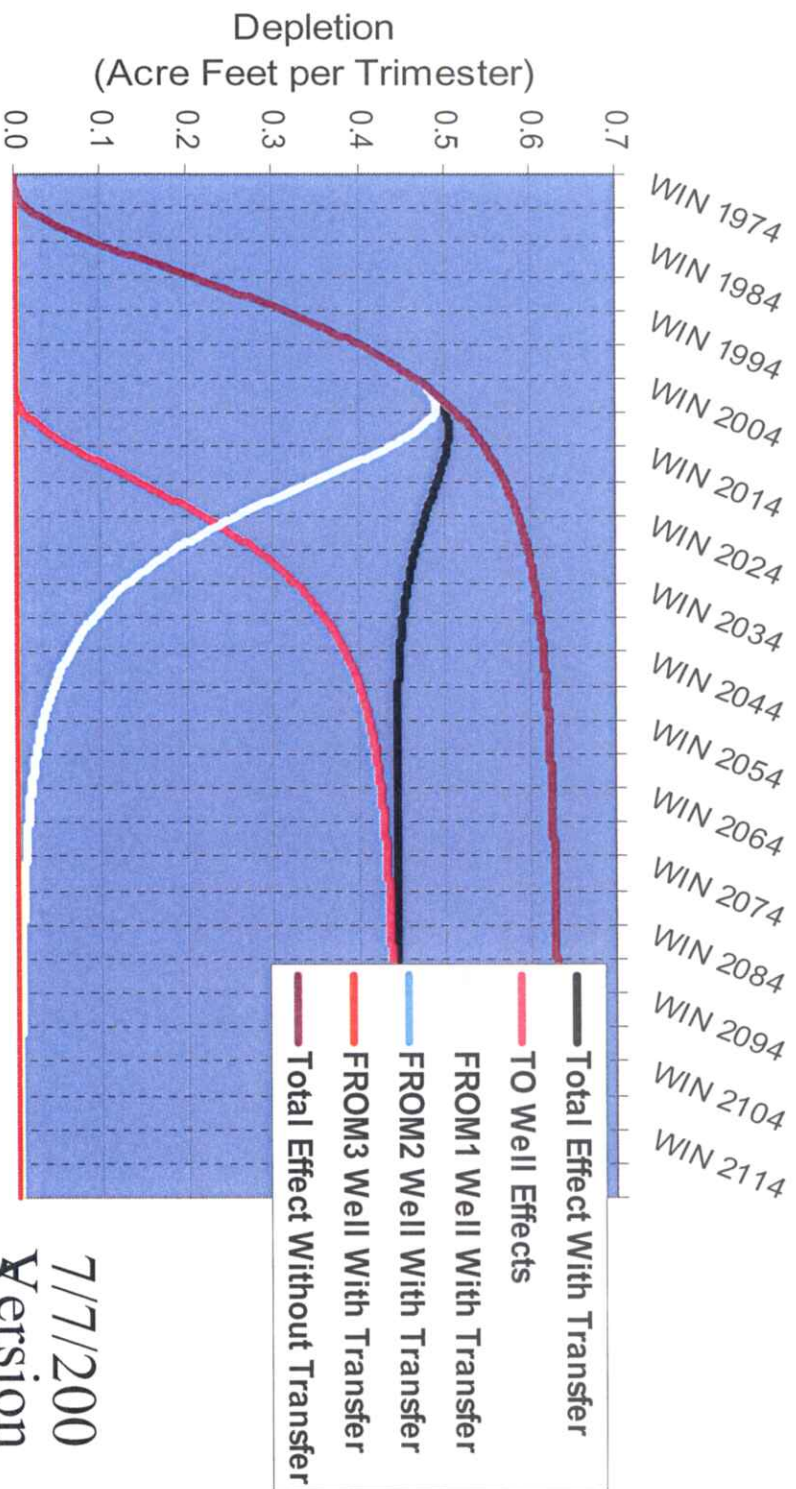
Hydrologic Response--Ashton to Rexburg

Customer Name: 4 Bros

Transfer No: 716

Dairy

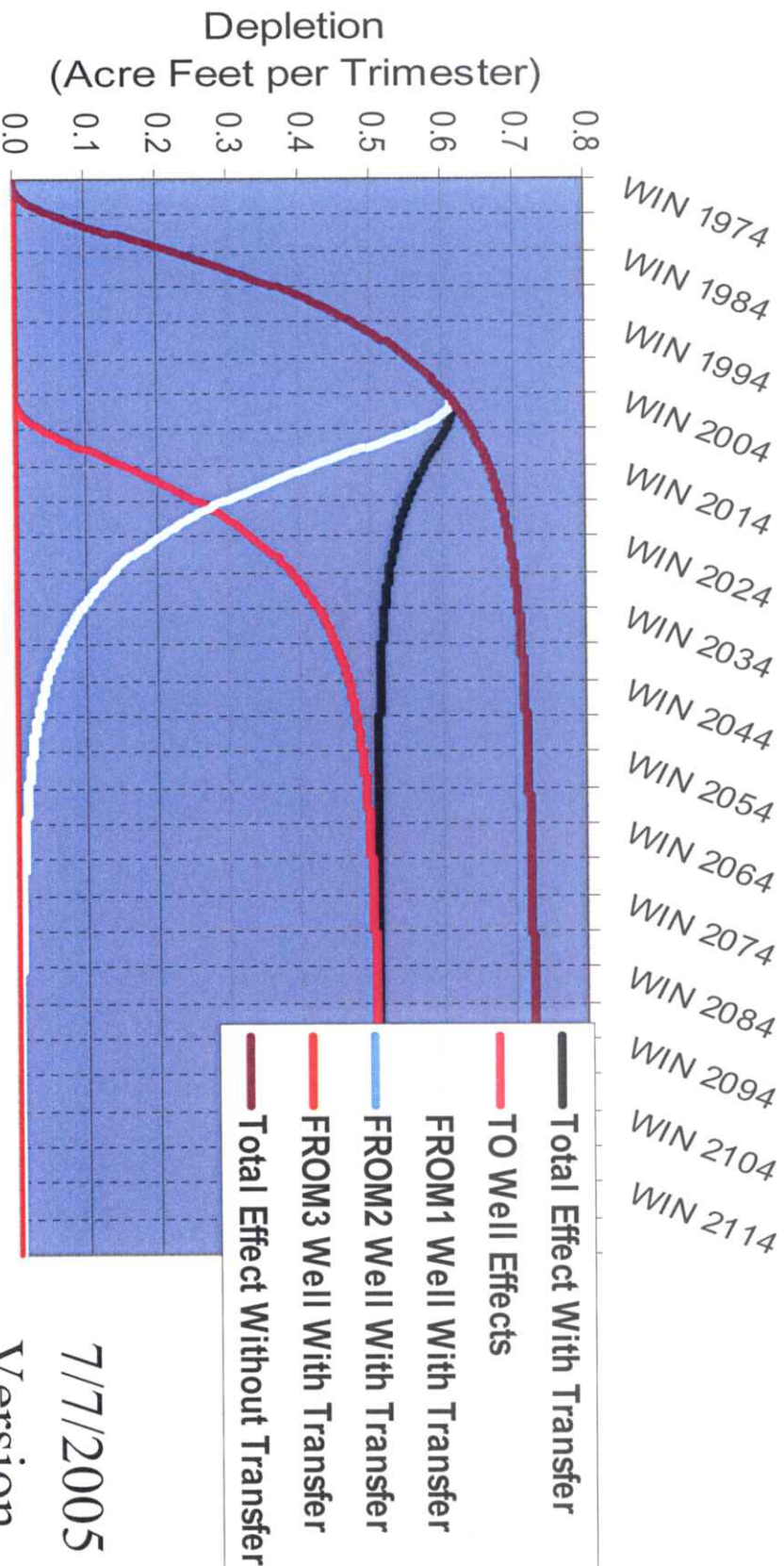
07



Hydrologic Response--Heise to Shelley

Customer Name: 4 Bros Dairy Transfer No: 7160

7



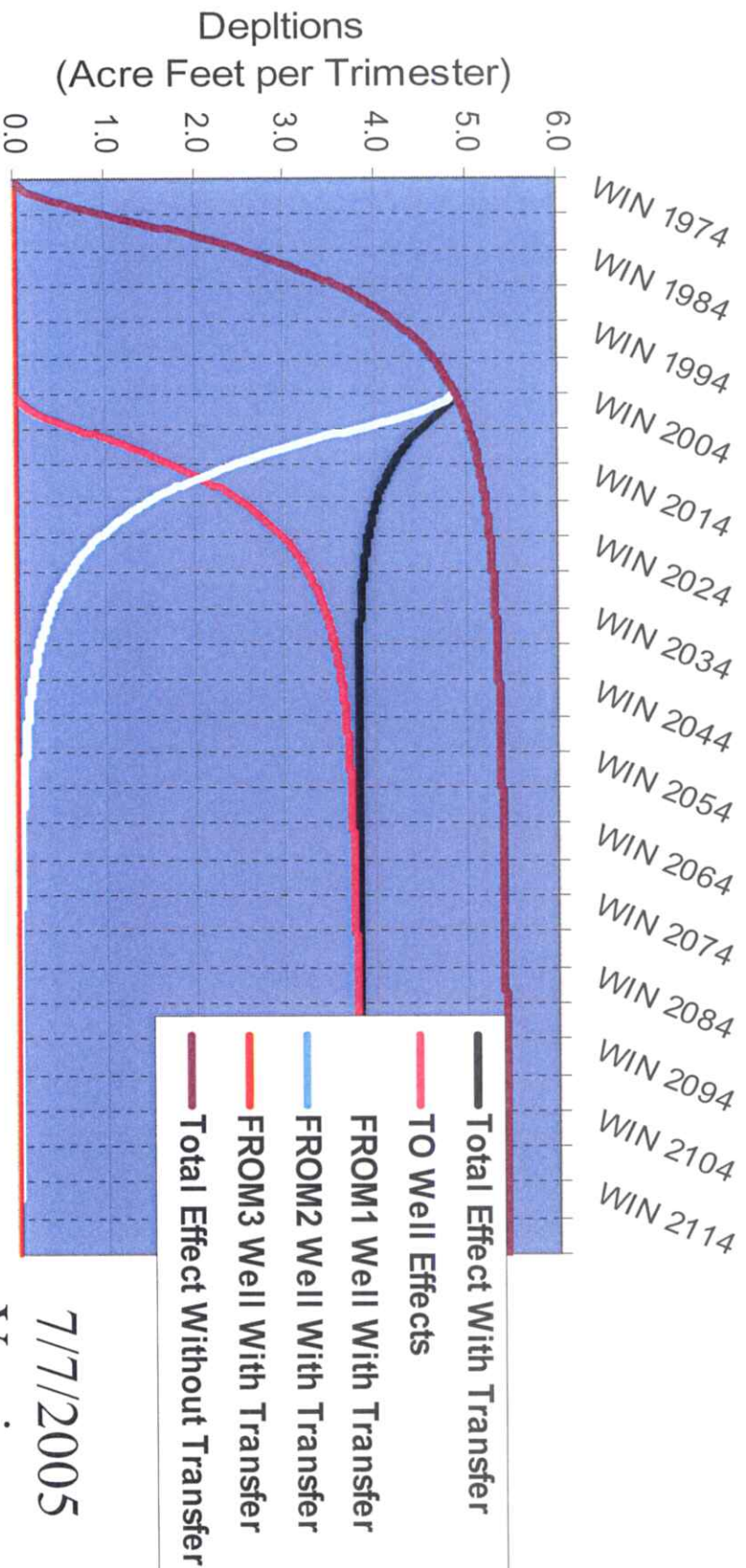
ATTACHMENT #25

7/7/2005
Version
2.0

Hydrologic Response--Shelley to Near Blackfoot

Customer Name: 4 Bros Transfer No: 7160

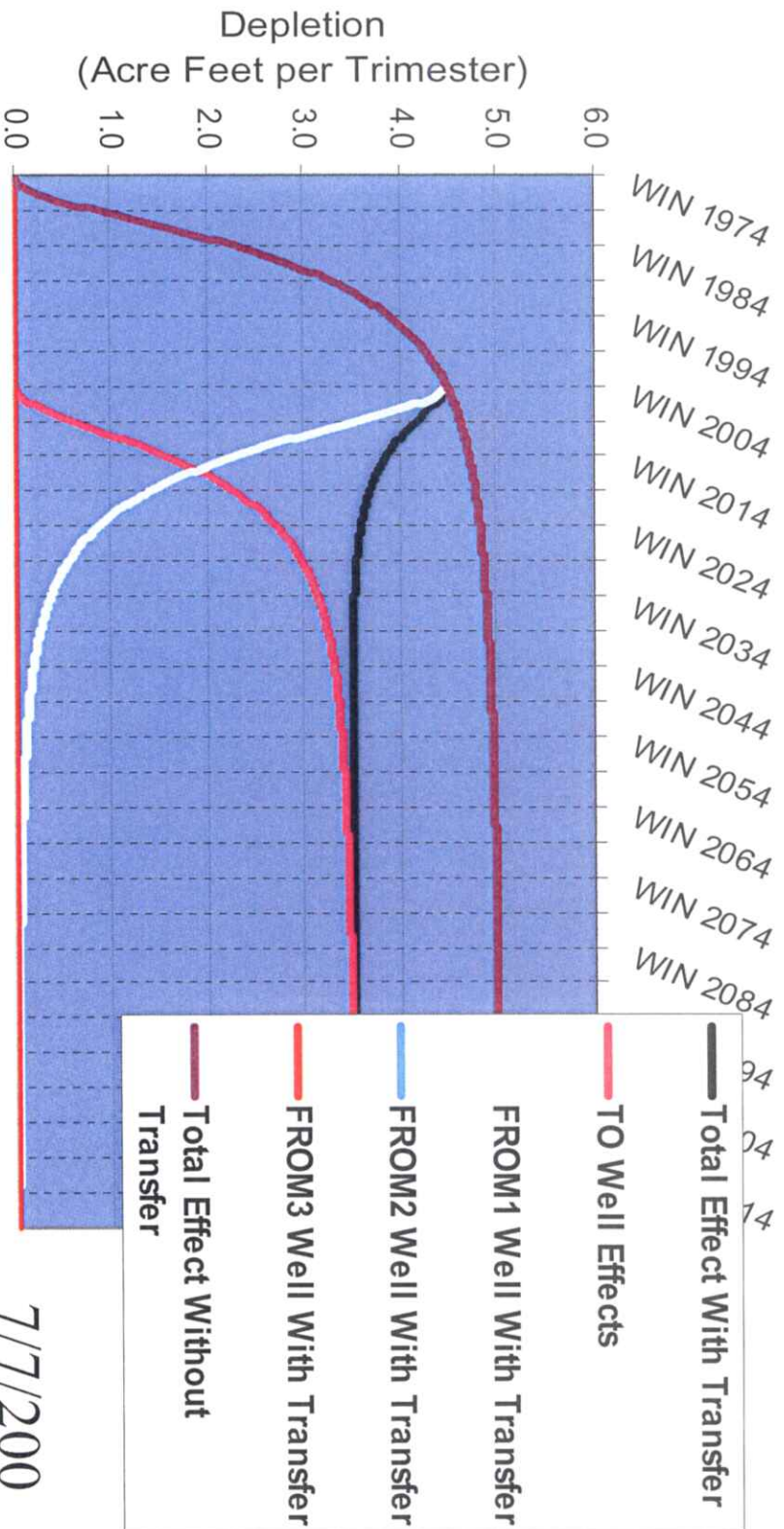
Dairy 7



Hydrologic Response-- Neeley to Minidoka

Customer Name: 4 Bros Transfer No: 7160

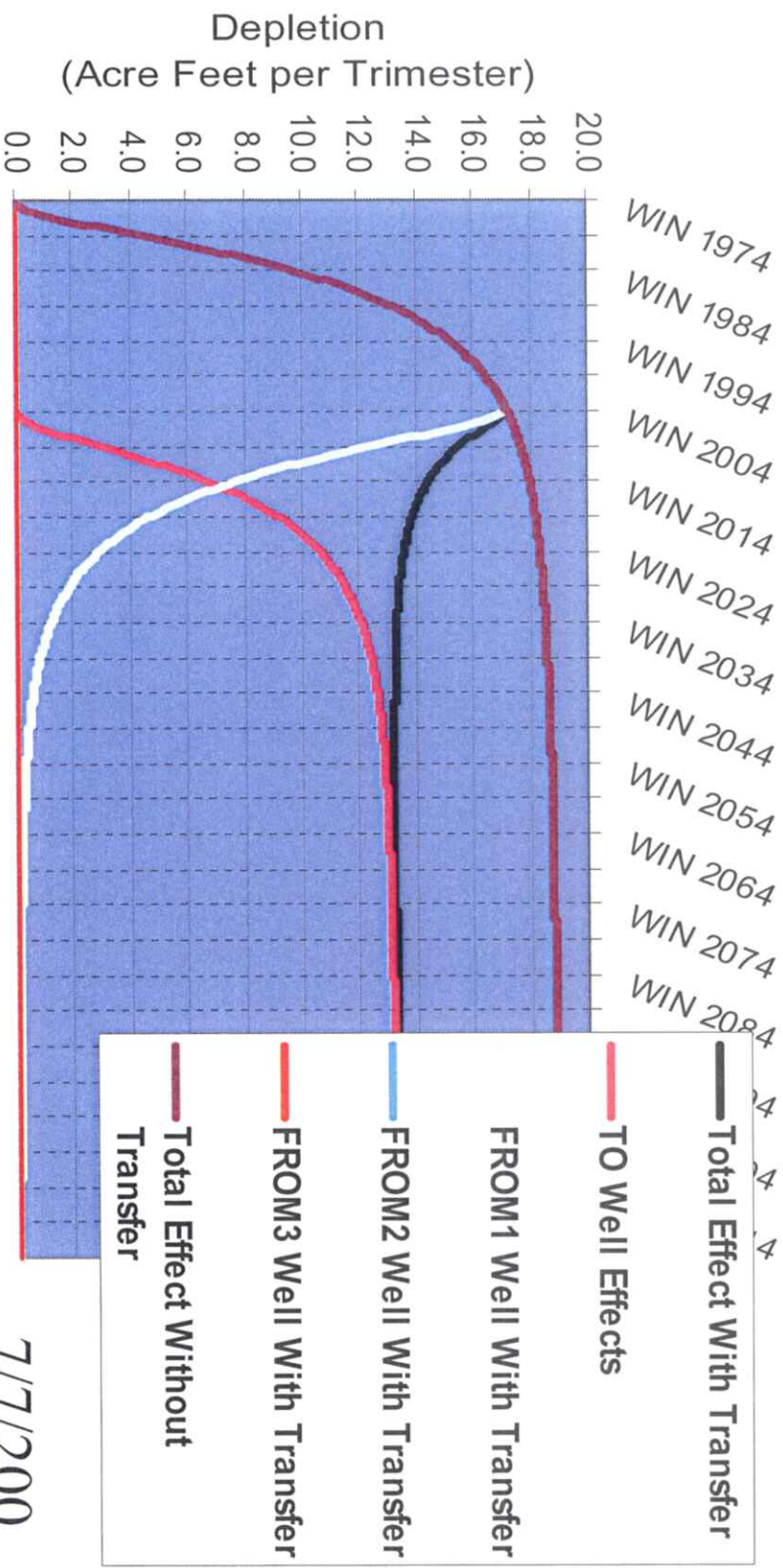
Dairy 7



Hydrologic Response-- Near Blackfoot to Neeley

Customer Name: 4 Bros Transfer No: 7160

Dairy 7



Southern
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JUL 08 2005
DEPARTMENT OF
WATER RESOURCES
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APR 20 2005
Department of Water Resources
Southern Region

MEMORANDUM

To: Water Allocation Bureau and Regions
From: Gary Spackman *Gary*
Date: April 15, 2005

Re: Information Required to Satisfy Public Interest Requirements

When processing applications to appropriate water (Idaho Code § 42-203A), applications for amendment (Idaho Code § 42-211), and applications for transfer (Idaho Code § 42-222), the Idaho Dept. of Water Resources (IDWR) must consider the local public interest. In 2003, the Idaho Legislature enacted House Bill no. 284. The act expressly defines 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.” See Idaho Code § 42-202B(3). The legislation narrowed the previous scope of the public interest review of IDWR to the “effects of such use on the public water resource.” Previous interpretations of the scope of the public interest review are contained in an Administrator’s Memorandum, identified as Transfer Processing No. 24, and titled “Transfer Processing Policies & Procedures” (hereinafter referred to as “the transfer memo”), signed by the Director on October 30, 2002, and in the Water Appropriation Rules. A discussion of these previous interpretations can be found at the end of this memorandum. The legislative limitation to the local public interest criterion supercedes previous broader instructions contained in the transfer memo and the Water Appropriation Rules.

For new water right applications, applications for amendment, and applications for transfer, if there is reason to believe that the proposed use would affect any of the following subjects and other subjects not listed related to the local water resource, IDWR should seek information about the local public water resource subject:

- Recreation
- Fish and Wildlife Impacts
- Water Quality and Hazardous Substance Standards
- State Water Plan
- Flood Control
- Relationship of water delivery organizations (canal companies, irrigation districts)
- Highest and best use of a limited resource

For applications for transfer and new water right applications, IDWR should not seek information about the following subjects:

- Economic Impacts
- Recreation unrelated to water
- Air Quality
- Planning & zoning considerations
- Land use considerations unrelated to water (traffic, noise, lights, flies, etc.)

IDWR should not always seek comment from cities, counties, or other local governing entities for applications for a new water right, applications for amendment, and applications for transfer. Local governments have limited decision-making authority over the “public water resource.” There are instances, however, when IDWR might seek input from a local jurisdiction as a measure of the public’s concern about the public water resource.¹ This is particularly true if we are aware of local governing entities that have enacted ordinances or voiced policies about various uses of water.

For each new application for water right seeking appropriation of water from a surface water source, staff should continue to send a letter to the Idaho Dept. of Fish & Game seeking input.

If IDWR staff determines that information related to public interest must be gathered, staff should inform the applicant that he has the responsibility to provide the information to IDWR. In most cases, the applicant should gather the information and submit it to IDWR rather than staff sending letters seeking comment that may never be answered.

Finally, the transfer memo grants flexibility to IDWR staff to determine the level of detail of information needed to satisfy the public interest considerations. At the end of section 5 on page 15, the transfer memo states:

Department staff has discretion to adapt the requirements set forth herein according to the nature and complexity of a proposed transfer. While it is important that the information and documentation requirements are consistently applied, staff is to use sound judgement to avoid asking the applicant for unnecessary information or seeking unnecessary review and comment from other state or local governmental entities as these guidelines are applied.

IDWR must review facts about the proposed use against the criteria of Idaho Code § 42-203A for new applications to appropriate water, Idaho Code § 42-111 for applications for amendment, and Idaho Code § 42-222 for applications for transfer. Each of the criteria should be supported by evidence in the file. On the other hand, IDWR must be cautious not to require or to gather excessive information. The “discretion to adapt the requirements” and “sound judgment” described in the quote above are bounded at the bottom by the minimum requirements of the law and at the top by the excessive or unnecessary information directive.

¹When someone applies to appropriate water, IDWR must determine whether the application is filed in good faith, and determine whether the application is filed for purposes of speculation or delay. Some proposed uses of water require a specific approval from the local government. If the local government has denied a special use permit or other related zoning application, seeking approval of a water right would be speculative because the proposed use cannot be implemented. If IDWR is aware that a separate approval from a local government is required, IDWR may require submittal of information showing that the applicant for a new water right is pursuing necessary approval with the local government entity to demonstrate good faith and non-speculation.

Discussion of Superceded Local Public Interest Instructions

The following interpretations of the scope of the local public interest review have been superceded by the legislative definition of the local public interest contained in Idaho Code § 42-202B(3).

The transfer memo describes information that must be gathered for IDWR to determine if an application is in the local public interest. Subsection 5e., located on page 26 of the transfer memo, and titled “Local Public Interest,” states the following:

Consistent with earlier guidance herein regarding use of discretion and sound judgement, department staff is to address the following items, as well as other issues that are pertinent to specific circumstances, in considering whether sufficient information has been provided regarding local public interest issues. When there are one or more significant questions about whether a particular transfer would be in the local public interest, additional information from the applicant or comments from other state or local governmental entities that have germane expertise on local public interest issues must be sought. The applicant shall be informed when written comments regarding an application are solicited or received from another agency.

This preliminary discussion is followed by subparagraphs with the following subject headings: Economic Impacts; Recreation, Fish, and Wildlife Impacts; Agricultural Base; Air, Water, and Hazardous Substance Standards; Local and State Requirements; Neighboring Jurisdiction; and State Water Plan. These subjects span a very broad cross section of the local public interest issues that could be raised.

In addition, Water Appropriation Rules promulgated in 1993, interpret statutes that authorize and describe the process for appropriation of water in Idaho. Rule 45.01.e. states the following:

- e. Criteria for determining whether the project conflicts with the local public interest. The director will consider the following, along with any other factors he finds to be appropriate, in determining whether the project will conflict with the local public interest;
 - i. The effect the project will have on the economy of the local area affected by the proposed use as determined by the changes to various sectors of the economy, short and long term, and the stability of revenue and employment gains;
 - ii. The effect the project will have on recreation, fish and wildlife resources in the local area affected by the proposed use; and

- iii. Compliance with applicable air, water and hazardous substance standards, and compliance with planning and zoning ordinances of local or state government jurisdictions.

Finally, Rule 40.05 of the Water Appropriation Rules requires submittal of additional information for applications seeking large appropriations of water, or “the director may specifically request submittal of any of the . . . information for any filing, as he determines necessary.” Rule 40.05.g. states:

Information Relative to Conflict with the Local Public Interest, Section 42-203A(5)(e), Idaho Code, shall be submitted as follows: The applicant shall seek comment and shall submit letters of comment on the effects of the construction and operation of the proposed project from the governing body of the city and /or county and tribal reservation within which the point of diversion and place of use are located, the Idaho Department of Fish and Game, the Idaho Department of Health and Welfare, Division of Environmental Quality, and any irrigation district or canal company within which the proposed project is located and from other entities as determined by the director.

Rules are promulgated and directive memorandums are issued to interpret laws enacted by the legislature. When the legislature changes an existing law, the interpretations of the old law are no longer effective if they conflict with the legislative change. To the extent the transfer memo and the Water Appropriation Rules conflict with the more narrow interpretation of the local public interest, the rules and the transfer memo should not be followed.

RECEIVED

JUL 08 2005

DEPARTMENT OF
WATER RESOURCES

ADMINISTRATOR'S MEMORANDUM

Transfer Processing No. 24

To: Water Management Division Staff

From: Karl J. Dreher and Norman C. Young

RE: TRANSFER PROCESSING POLICIES & PROCEDURES

(Interim Policies & Procedures Currently Applicable for Applications to Transfer Ground Water in the Eastern Snake River Plain Only)

Date: October 30, 2002

The purpose of this memorandum is to provide policy guidance for processing applications for transfers of water rights pursuant to Section 42-222, *Idaho Code*, and other applicable law. These policies and procedures are to be followed until rescinded or amended, or superseded by statute or rule or court decision, to assure that applications are processed efficiently and with consistency.

Regardless of whether or not an application for transfer is protested, Section 42-222, *Idaho Code*, requires that the department evaluate whether there would be injury to other water rights, there would be an enlargement in use of the original right, the proposed use would be a beneficial use, the proposed use would be in the local public interest, the proposed use would be consistent with the conservation of water resources within the State of Idaho, and whether the proposed change would impact the agricultural base of the local area. The department must also evaluate the validity of the right (or part thereof) being changed and must assure that the applicant owns the right or otherwise has the authority to apply for the transfer.

1. When a Transfer is Required.

Section 42-222, *Idaho Code*, requires the holder of a water right to obtain approval from the department prior to changing: (1) the point of diversion, (2) the place of use, (3) the period of use, or (4) the nature of use of an established water right. An established water right is a licensed right, a decreed right, or a right established by diversion and beneficial use for which a claim in an adjudication or a statutory claim has been filed. Approval is sought by filing an application for transfer with the department.

Changes to Elements of a Water Right. An application for transfer is required if a proposed change would alter any of the four elements of the water right listed above.

that can be changed pursuant to Section 42-222, *Idaho Code*, as recorded with the department or by decree. If a proposed change has the potential to injure other rights or the potential to enlarge the right, even when there would be no change in any of the recorded elements of the right, an application for transfer should be filed to provide for evaluation of injury and enlargement issues before the change is made. For example, if the point of diversion from a fully appropriated creek is proposed to be moved where additional water would be available for diversion or if the proposed point of diversion as changed would move upstream of the points of diversion for other rights, the change can not be made unless other conditions are imposed, such as mitigation, to prevent injury. As another example, a proposed change of use under a water right for an industrial use, which includes a limitation on the quantity of water that can be consumptively used, to an industrial use that would increase the quantity of water that would be consumptively used can not be made unless enlargement is prevented.

Changes in Consumptive Use. Unless there is a specific condition of the water right limiting the amount of consumptive use, the amount of consumptive use of water under a water right is not an element of the water right, and changes in water use under a water right for the authorized purpose of use that simply change the amount of consumptive use do not require an application for transfer provided that no element of the water right is changed and there is no potential for injury or enlargement. However, when determining the amount of water that can be transferred pursuant to an application for transfer proposing to change the nature or purpose of use, and for certain other circumstances as described herein, historical consumptive use is considered.

Changes to Points of Diversion. If a point of diversion is proposed to be moved to a different tract than described as an element under an established water right, then a transfer application is required. This includes a change from one 10-acre legal subdivision to another if the point of diversion has been previously described as a 10-acre legal subdivision. An application for transfer is also required when a point of diversion is proposed to be added for a water right, even when the existing authorized point of diversion is recorded as a 10-acre legal subdivision and the additional diversion would be within the same 10-acre legal subdivision.

If a point of diversion is proposed to be moved from a tributary to a location downstream from the confluence of the tributary and the surface water stream to which the tributary is joined, then an application for transfer is required. If a point of diversion is proposed to be moved from a stream to the stream to which it is tributary at a location upstream of the confluence between them, or moved from one tributary to another tributary, an application for exchange is required rather than an application for transfer.

Changes in Place of Use. An application for transfer is required if a change in the location of use between 40-acre legal subdivisions is proposed that would result in use of water at a new 40-acre subdivision that is not included within the recorded place of use element for the right. An application for transfer is also required for a proposed change in location of use under a water right for irrigation, with or without a proposed change in purpose of use, where the place of use is defined as an area within

prescribed boundaries or by a GIS "shape file," except for those rights held by irrigation districts, municipal providers, and others included under the provisions of Sections 42-202B or 42-219, *Idaho Code*, even when the change in location would be included within the same 40-acre legal subdivisions existing prior to the proposed change. A proposed change to any water right held for irrigation involving a change in the number of irrigated acres of less than one acre at the original place of use or at a proposed new place of use is not approvable unless the proposed change involves a new purpose of use within the original place of use or the applicant provides a verification procedure approved by the Director that can be practically administered to prevent injury or enlargement.

Consolidation of Acreage. An application for transfer is required for proposed consolidation of water use for irrigation by permanently reducing the number of acres authorized for irrigation under a water right, while maintaining the original diversion rate or annual diversion volume.

Land Application of Wastewater. An application for transfer is required for a proposed change in the place of use under a water right for industrial use, dairy use, or confined animal feeding operation that would allow land application of wastewater from that use or change the location of lands used for application of wastewater, except for wastewater from non-industrial uses when there is a full existing water right for irrigation of the place of use receiving wastewater. See Application Processing Memorandum No. 61 for additional information concerning wastewater from industrial uses.

Correction of Errors. An application for transfer may also be required to correct errors in licenses or decrees. For example, a transfer application may be required to correct the location of the place of use of a water right decreed by a court if the decree is later determined to be in error. However, a transfer action is not always required to correct such errors. For example, if a water right claim is determined to be in error, the claim can be amended to correct the error. Similarly, some clerical errors in a license or decree may be corrected by issuance of an amended license or decree (by the jurisdictional court) without using the transfer process. Also, a change to a description of the location of the place of use or point of diversion, as used by the Department for administration of water rights, resulting from improved methodology does not require an application for transfer, as described below. In addition, conditions that are no longer applicable may be modified or removed from a license without a transfer, provided other rights are not materially affected. For decrees, conditions that are no longer applicable should be noted in comments on the Department's electronic record for the right. However, a change to any element of a decreed water right requires filing an application for transfer, unless the appropriate court makes the change by amending the decree.

2. When a Transfer is not Required.

An application for transfer is not required if a proposed change will not alter any of the elements of a water right as licensed or decreed, except that even when the elements of a water right are not changed an application should be filed under such circumstances

described in Section 1 above. In addition, an application for transfer is not needed when an accomplished change to a water right or an enlargement of a right has been claimed in an adjudication in accordance with the provisions of Sections 42-1425 or 42-1426, *Idaho Code*.

Change in Ownership. An application for transfer is not required to change the owner of record for a water right or address of record for a right holder. Changes in ownership or address are to be filed in accordance with Section 42-248, *Idaho Code*, or for adjudication claims in accordance with Section 42-1409(6), *Idaho Code*. However, a transfer application filed pursuant to Section 42-222, *Idaho Code*, accompanied by evidence documenting a change in ownership for a water right, or showing a change in the address of the owner of a water right, satisfies the requirements of Section 42-248, *Idaho Code*.

Split Rights. An application for transfer is not required when a water right for irrigation is proposed to be split, with notice to the department pursuant to the provisions of Section 42-248, *Idaho Code*, such that a disproportionate per acre share of the right would be conveyed to another party provided that the resulting diversion rates do not exceed 0.02 cfs per acre, the amount of water historically applied per acre, or the amount of water diverted at a particular point of diversion, whichever is greater, for that part of the right conveyed or retained, and provided no other changes are made.

Replacement of Point of Diversion. An application for transfer is not required to replace a point of diversion if the new point of diversion is constructed at the same location as described in the license or decree for the water right, and the change will not injure other rights.

Refined Descriptions. An application for transfer is not required when a change in the description of the location of the point of diversion or place of use is only the result of improved methodology for referencing and displaying the location, which results in a more accurate description of the same physical location.

Generally Described Place of Use. As provided in Section 42-219, *Idaho Code*, an application for transfer is not required to change the place of use within a generally described place of use. A generally described place of use may be by court decree or as provided in Section 42-219(5) and (6). Pursuant to Section 42-219(7), any change within a generally described place of use can not result in an increase in the diversion rate, or in the total number of acres irrigated under the water right, and can not cause injury to other water rights. Any change to the boundaries of a generally described place of use requires an application for transfer, except for an irrigation district where changes in boundaries must be documented by a map of the revised boundaries filed with the department in accordance with Section 43-323(2), *Idaho Code*.

Municipal Places of Use. An application for transfer is not required to change or add a place of use for "municipal purposes" within the "service area" of a "municipal provider." See Sections 42-202B and 42-222(1), *Idaho Code*, for appropriate definitions and provisions governing use of municipal water rights. The ownership of a portion of a

municipal water right held by a municipal provider for reasonably anticipated future needs can be changed to a different municipal provider subject to the provisions of Section 42-248, *Idaho Code*. However, the right can not be changed to a place of use outside the service area of a municipal provider or to a new nature of use, and an application filed for such a change is to be returned together with any associated application fee.

In-stream Stock Watering An application for transfer is not required to divert water away from a stream for stock watering purposes provided the diversion is added and used in conjunction with an in-stream stockwater right and provided the diversion meets certain conditions pursuant to Section 42-113(3), *Idaho Code*. See guidance memorandum for in-stream stock diversions dated June 26, 2000, for additional information.

Intensified Use of Water An application for transfer is not required to increase production under an authorized use of water, unless the proposed change would also result in a change to one or more of the elements of the water right(s) as licensed or decreed. For example, an application for transfer is not required to increase the number or volume of raceways in a fish propagation facility, increase the number of cows at a dairy, change irrigation to a more water consumptive crop, or increase the generating capacity of hydroelectric generators, so long as none of the elements of the associated water rights are changed.

3. Requirements for an Acceptable Application for Transfer.

The department is a public service oriented agency, and department employees traditionally have helped applicants complete transfer application forms. The existing transfer backlog, together with the increasing number and complexity of new applications for transfer, requires that staff focus their time on processing existing acceptable applications. Department employees are encouraged to provide general assistance to applicants but should refrain from completing application forms on behalf of applicants.

An applicant or qualified consultant must prepare and submit an application for transfer in accordance with the minimum requirements enumerated below to be acceptable for initiating the processing of the application by the department. An application that does not comply with these minimum requirements is to be considered incomplete and is to be returned to the applicant along with a letter or checklist identifying the deficiencies. The letter shall state that unless the application is resubmitted within 30 days of its return, the application fee will be refunded upon written request. An application for transfer that satisfies the minimum requirements will be processed in accordance with Section 5, Information Needed to Complete Processing of a Transfer Application.

- (1) Application Forms. An application for transfer must be submitted on a current form provided by the department entitled, "Application for

Transfer of Water Right." An electronic version of the current form can be used, such as the form available from the department's Internet homepage at:

<http://www.idwr.state.id.us/info/forms/wrf3.pdf>

- (2) Name and Address. An application for transfer must include the name and address of the applicant. In addition, the application must include the name and address of any new right holder(s) for the water rights (or parts thereof) being transferred, if different than the applicant. The applicant's name must match the department's current record of ownership for the water rights (or parts thereof) being transferred. Otherwise, adequate documentation must be included to show that a change in ownership or authority to make the change has legally occurred. Adequate documentation can be a warranty deed, title policy, contract of sale or option for purchase by applicant (if the contract or option allows the transfer), or other similar document confirming ownership of the water right(s) or the authority to change the water right.
- (3) List of Water Rights to be Changed. An application for transfer must list all water rights for use in a common system of diversion and distribution for which the point of diversion, place of use, period of use, or nature of use are proposed to be changed (the water rights to be transferred). A proposed change, which involves separate diversion and distribution systems, must be filed as separate applications. A proposed change to the remaining portion of an existing water right subsequent to a proposed transfer requires a separate application for transfer.
- (4) Associated Water Rights or Water Supply. The application must include a separate list of individual water rights, other than those proposed to be changed, and a description of water supplied by a canal company, irrigation district, or municipality, that provide water currently used in the same diversion system or at the same place of use as the right(s) proposed to be transferred (associated water rights or water supply). In addition, the application must include a separate list of associated water rights or water supply proposed to be used in the same system or at a new place of use. If the associated water rights or water supply are not owned by the applicant and changes to conditions for those rights are necessary, documentation must be submitted confirming that the applicant has the legal authority to make such changes on behalf of the current owner of the other rights.

Changes to conditions or remarks for associated water rights that are necessary as a result of an approved transfer and that do not affect the rights of other persons or entities can be made without a separate transfer application or process. Such changes usually result from a

division in ownership and should be included in the transfer approval document.

- (5) Reason for Change. The application must list the purpose for and a general statement of the reason for the proposed change.
- (6) Description of Proposed Change. The application must describe in writing the proposed changes, which must include the following:
 - a. The right number(s) assigned by the department for the right(s) proposed to be changed must be identified. If the right was established by a beneficial use for which a claim has not been filed, a claim must be filed before or together with the transfer application. If the right is represented by a decree and the department has not assigned a number to the right, a copy of the decree must be included with a description of the right that is proposed to be changed.
 - b. The amount of water proposed to be diverted, as a rate of flow in cubic feet per second and as acre-feet per year, if the transferred water right has a volume limitation, for natural flow and ground water rights must be set forth. The amount of any stored water involved in a transfer must be identified in terms of acre-feet per year for each purpose of use listed.
 - c. The proposed nature or purpose of use must be stated. For proposed uses such as "industrial" or "commercial," a more detailed description of the proposed use(s) must be provided under the "Remarks" section of the application, or as an attachment to the application.
 - d. The period of each year during which water is proposed to be diverted, or diverted and stored, and beneficially used must be set forth for each use listed.
 - e. The source of water for the proposed changes must be listed. An application proposing a diversion, injection, and re-diversion of water must list the source for the original diversion as the source for the injection and re-diversion.
 - f. The legal description of the point(s) of diversion must be described. The description must be to the nearest 40-acre subdivision or U. S. Government Lot of the Public Land Survey System. The point(s) of diversion should be described to the nearest 10-acre tract, if based on a previously recorded 10-acre description or other accurate means such as GPS or a detailed and accurate map. The

location of springs must be described to the nearest 10-acre tract. Subdivision names, lot and block numbers, and any name in common usage for the point of diversion should be included in the "Remarks" section of the application form

- g Except as provided herein, the legal description of the place of use must be set forth to the nearest 40-acre subdivision or U. S. Government Lot of the Public Land Survey System. Subdivision names, block and lot numbers, and any name in common usage for the place of use should be included in the "Remarks" section of the application form. For water rights held by irrigation districts, municipal providers, and others included under the provisions of Sections 42-202B or 42-219, *Idaho Code*, the place of use may be generally described even if previously described to the nearest 40-acre subdivision or lot.
 - i. If irrigation is a purpose of use, the number of acres in each 40-acre tract of the place of use or within a generally described place of use must be shown. The location of uses, other than for municipal providers or for irrigation, must be identified in the appropriate 40-acre tract(s).
 - ii. Except for wastewater from non-industrial uses when there is a full existing water right for irrigation of the place of use receiving wastewater, if a proposed change includes disposal or use of wastewater by land application to growing crops the application must identify the location of the waste disposal area by legal description under the use from which the wastewater originates.
 - h. An adequate description of the proposed diversion, delivery, application system(s), and measuring devices must be provided. This should include preliminary sizes and dimensions of pumps, pipelines, headgates, ditches, dams, impoundments, and application equipment. The type and location of measuring devices must also be provided. For large existing systems, such as those owned by municipal providers, irrigation districts, and canal companies, only those features proposed to be added or modified need to be described.
- (7) Map of System. A map corresponding to the written description above must be included showing the location of points of diversion, reservoirs, dams, canals, ditches, pipelines, and other works proposed to be used

in the diversion and conveyance of water. The map must clearly show the location of the place of use including lands to be irrigated, if any. If only a part of the water right(s) is proposed to be changed, the map must include the location of the part of the existing recorded right(s) proposed to be removed (or changed). Legal descriptions including townships, ranges, sections, quarter-quarters, and government lots must be evident or labeled. In lieu of creating a map, a copy of a published map, such as a U. S. Geological Survey quadrangle map, or an aerial photograph, can be attached to the application with the required identification shown thereon. For large existing systems, such as those owned by municipal providers, irrigation districts, and canal companies, only those features proposed to be added or modified need to be shown.

- (8) Response to Questions on the Form. The application for transfer must include responses to the questions on the application form concerning the validity of the right, the proposed use of the land from which the right is proposed to be removed (if applicable) and the existence of mortgages or liens
- (9) Changes to Part of a Right. If only a part of a right is being changed, the application for transfer must define that part by describing each of the elements, as currently licensed or decreed or otherwise recorded, for the part of the right being changed.
- (10) Signature. The application for transfer must include the notarized signature of the applicant or the applicant's authorized representative. If a representative signs the application, evidence of authority to sign for the applicant must accompany the application. An application in more than one name must be signed by each applicant unless the right is held in the name of one joint owner "or" other joint owner(s), or the right is held in the name of one joint owner "and/or" other joint owner(s).
- (11) Filing Fee. The filing fee provided in Section 42-221, *Idaho Code*, must be submitted with the application for transfer. If the applicant is a governmental agency, a purchase order for the required amount is acceptable (See the memorandum titled "Guidance on SB 1337 Amending Section 42-221, I.C.," dated June 26, 2000, and Transfer Processing Memorandum No. 23 for further guidance on application fees.)
- (12) Changes to Point of Diversion from Eastern Snake Plain Aquifer. Except as provided below, if the application for transfer proposes to move the point of diversion for a water right to divert and use ground water from one location to another within the Eastern Snake Plain Aquifer (ESPA), the applicant must submit an attachment to the application that sets forth the time history of calculated depletions

(transient to steady-state) to reaches of the Snake River that are hydraulically-connected to the ESPA using or based on the department's current ground water model for the ESPA, or other equivalent analysis acceptable to the department. When using results from the department's ground water model, the time history of calculated depletions must be for the cells containing the points of diversion both before and after the proposed transfer, if different. The most current response functions from the ground water model must be used, which as of the date of this memorandum can be obtained by contacting Dr. Donna M. Cosgrove (at cosgrove@if.uidaho.edu) and then manipulating the "Eastern Snake River Plain Hydrologic Effects Spreadsheet," which can be downloaded from the following web site:

<http://www.if.uidaho.edu/~johnson/ifiwrri/effects.html>

Alternatively, a copy of the department's ESPA ground water model can be obtained by the applicant and used by a qualified person to directly calculate the time history of depletions. A copy of the current ground water model can be obtained by contacting Mr. John Lindgren at jlindgren@idwr.state.id.us.

The purpose of this attachment is to provide a basis for evaluating whether the proposed transfer will increase depletions to hydraulically-connected reaches of the Snake River. Increases in such depletions are presumed to cause injury to existing water rights because all of the hydraulically-connected reaches of the Snake River (including tributary springs) have water rights that are not fully satisfied at certain times. Absent an analysis of injury, increased depletions must be mitigated (within 5 percent for transient increases in depletion, reflecting the confidence intervals for the ground water model) for the proposed transfer to be approvable, assuming the other criteria set forth in Section 42-222, *Idaho Code*, can be satisfied. If mitigation for the proposed transfer is proposed by the applicant, which consists of reduced ground water withdrawals, then any proposed schedule for adjusting reduced withdrawals must also be set forth in the application for transfer.

If the application for transfer proposes to move or add a point of diversion within the existing place of use for the water right, the attachment described above is not required when the application is submitted. However, if the department determines that the proposed change may increase depletions to a hydraulically-connected reach of the Snake River (including tributary springs), the attachment will be required to complete processing of the application for transfer.

- (13) Historic Beneficial Use. If the application for transfer proposes to change the nature or purpose of use, season of use, or for a

supplemental water right, the place of use, the applicant must include an attachment documenting the historic extent of beneficial use under the right. For a transfer seeking to change a water right from irrigation, the attachment must provide sufficient data and information to determine historic consumptive water use. This can be satisfied by submitting records of cropping pattern or rotation, or records of water diverted and system efficiency, for at least the most recent, five consecutive years.

- (14) Electronic Shape Files or Photographs Documenting Place of Use Changes. If the application for transfer proposes to change the purpose of use for a water right from irrigation to another use, or change the place of use for a water right for irrigation to another location, either of which requires the drying up of acres at the original place of use, the applicant must submit an attachment to the application for transfer. The attachment must provide a clear delineation of the location and extent of the irrigated acres prior to the proposed transfer, and must also provide a clear delineation of the location and extent of the irrigated acres after the transfer, if it is approved. This attachment may either consist of two electronic shape files in a format that is compatible with the department's GIS system or two aerial photographs of sufficient detail acceptable to the department with the boundaries of the irrigated areas clearly shown and referenced to the Public Land Survey System. Applications for transfer proposing to move irrigated acres to another location must submit an attachment that provides a clear delineation of the location and extent of the irrigated acres prior to the proposed transfer at the proposed new place of use, if any, and the location and extent of the irrigated acres at the new place of use after the transfer, if it is approved. This attachment may also consist of either two electronic shape files in a format that is compatible with the department's GIS system or two aerial photographs of sufficient detail acceptable to the department with the boundaries of the irrigated areas clearly shown and referenced to the Public Land Survey System. If a place of use involved with the application for transfer currently consists of a permissible place of use, then the applicable attachment is not required provided the application contains a clear statement that the boundaries for that permissible place of use are not proposed to be changed by the transfer and the total number of irrigated acres within that permissible place of use before and after the transfer is clearly set forth.
- (15) Applications Involving Water Rights Based Upon Domestic Exemption. If an application for transfer involving one or more water rights having priority dates of March 25, 1963, or later, that relied on the domestic exemption set forth in Section 42-227, *Idaho Code*, for domestic purposes defined in Section 42-111, *Idaho Code*, even when evidenced by a decree, that proposes to establish a use, which itself would not be included within the scope of the definition for domestic purposes in

Section 42-111, *Idaho Code*, is not approvable. *Idaho Code* specifically prohibits the diversion and use of water under one or more exempt, domestic uses to provide a supply of water for a use that does not meet the exemption of Section 42-227, *Idaho Code*, and is required to comply with the mandatory application and permit process for appropriating a right to the use of water pursuant to Chapter 2, Title 42, *Idaho Code*. An application for transfer filed for such a change is to be returned together with any associated application fee submitted.

4. Changes to Applications for Transfer.

Amendment of Application. An applicant may revise or amend an acceptable application for transfer to clarify or correct information on the application. Significant changes to the place, period, or nature of the proposed use, amount of water, method or location of diversion, or other substantial changes from those shown on a pending application for transfer, will require filing a new application for transfer to replace the original application. If the revisions are not substantial, the application may be revised or amended with an initialed, dated endorsement by the applicant, or by the applicant's representative, on the original application, or by a notarized letter describing the amendments in sufficient detail. Changes to the application or supporting information are not to be made by staff under any circumstances. A replacement application must be identified as "changed" or "revised" on its face so that it can be distinguished from the original application, and the original application must be marked as "superseded." An additional filing fee may be required if the revised or replacement application involves more water than proposed in the original application for transfer. A re-advertisement fee, as provided in Section 42-221F, *Idaho Code*, will be required if notice of the original application has been published and changes to the original application are significant and warrant re-notice. (See Transfer Processing Memorandum No. 20 for additional information regarding changes to applications.)

Assignment of Application. An applicant may assign, in writing (must be notarized), an application for transfer to another entity while the application is pending before the department. An assignment does not require additional notice of the application to be published, and there is no fee for an assignment of an application. The assignment will change the name of the transfer applicant, but ownership of the water right(s) involved in the transfer cannot be changed without proper notice and documentation. Section 42-248, *Idaho Code*, provides that a transfer application can substitute for a notice of change in water right ownership if adequate documentation is provided with the application.

5. Processing an Application for Transfer Prior to Hearing.

Processing of an application for transfer consists of the following steps:

- (1) Initiating Processing – Data Entry Once an application has been accepted and the application fee receipted pursuant to Section 3, Requirements for an Acceptable Application for Transfer, the Regional Office shall complete data entry of the basic information contained in the application and initiate working in parallel with the State Office to process the application.
- (2) Parallel Processing Working in parallel, the Regional Office and the State Office will determine what, if any, additional information is necessary to complete or supplement the application, and the Regional Office will correspond with the applicant to obtain the additional information as well as perform any field review that is also necessary in coordination with staff from the Adjudication Bureau if the water right is claimed in a pending adjudication.
- (3) Administrative, Hydrologic, and Legal Review The Regional and State Offices will complete a review of all information submitted, in coordination with the Adjudication Bureau as needed, and forward appropriate information to the Hydrology Section and Administration for additional hydrologic, policy, and legal review as necessary.
- (4) Preparation of Staff Memorandum Once the review is complete, the Regional Office will prepare a memorandum, with the concurrence of the State Office and using the department's computerized Work Flow process, that documents the joint review and evaluation by the Regional and State Offices of the sufficiency of the information submitted and whether processing of the application can continue because there is no clear inconsistency with the criteria set forth in Section 42-222, *Idaho Code*. If it is determined that processing of the application can continue, the Regional Office will complete necessary GIS descriptions, finalize data entry, and draft conditions for entry into Work Flow.
- (5) Rejection or Denial of Application If it is determined that the application for transfer should be rejected or can not be approved pursuant to Section 42-222, *Idaho Code*, the State Office will prepare and issue a preliminary order rejecting or denying the application. An application for transfer is to be rejected if the applicant fails to provide additional or adequate information pursuant to the requirements in this Section 5. An application for transfer that clearly does not meet the criteria set forth in Section 42-222, *Idaho Code*, must be denied. A rejected application may be re-filed when adequate information can be provided; a denied application can not generally be re-filed for substantially the same proposed transfer, unless a showing is made that substantial changes have subsequently occurred such that the criteria set forth in Section 42-222, *Idaho Code*, can potentially be satisfied. In either case, application fees will be retained.

- (6) Applicant Contest of Rejection or Denial. If the applicant contests the preliminary order rejecting or denying the application and requests a hearing pursuant to Section 42-1701A, *Idaho Code*, the Regional Office will provide notice of the application for transfer pursuant to Section 42-222, *Idaho Code*, including notice of the contested case, and provide opportunity to protest the application and intervene in the contested case.
- (7) Public Notice. If it is determined that processing of the application can continue consistent with the criteria set forth in Section 42-222, *Idaho Code*, the Regional Office will provide notice of the application for transfer pursuant to Section 42-222, *Idaho Code*.
- (8) Preparation of Approval Document. If no protest to the application for transfer is filed under step (7) above, or all protests filed are withdrawn prior to hearing, the Regional Office will finalize an electronic approval document and forward the document to the State Office. The State Office will issue an approved transfer, subject to appropriate conditions, as a preliminary order. The State Office will also complete data updates in Work Flow.
- (9) Contested Case Proceedings. If protest to the application for transfer is filed under either step (6) or (7) above, a contested case process will be completed. The hearing officer will forward electronically any final order that results from the contested case and the State Office will complete data updates in Work Flow.

Gathering Information Needed for Processing. In completing the steps outlined above, additional information may be needed for clarification of the purpose and intent of the proposed change, to further document the information on the application, or to provide a sufficient basis for determining whether the proposed change satisfies the statutory criteria for approval. **The burden of providing sufficient information is borne by the applicant.** However, staff should locate and assemble information available in the department's records that does not require compilation, interpretation, or analysis by an engineer, geologist, or other technical specialist.

Requests for Additional Information. Correspondence shall be prepared requesting any additional information needed and providing a reasonable period of time for response (generally 30 days). When additional information is requested from the applicant, the applicant shall be informed of the need for a timely response to avoid delays in processing. The applicant shall also be informed that the application may be rejected if the additional information requested from the applicant is not timely received or is inadequate. The department can grant additional time to submit the required information if the applicant requests additional time and sufficient justification is provided.

Watermaster Recommendation. Section 42-222, *Idaho Code*, requires that the department shall advise the watermaster of any water district in which the water is used

of any proposed change. The department shall not take final action on an application for transfer until the watermaster's recommendation has been received and considered. If the watermaster does not respond to the department's initial request for a recommendation, a second request should be sent seeking a recommendation and informing the watermaster that a non-response will be considered by the department to be the watermaster's recommendation not objecting to approval of the proposed transfer.

Staff to Exercise Judgement. Department staff has discretion to adapt the requirements set forth herein according to the nature and complexity of a proposed transfer. While it is important that the information and documentation requirements are consistently applied, **staff is to use sound judgement to avoid asking the applicant for unnecessary information or seeking unnecessary review and comment from other state or local governmental entities as these guidelines are applied.**

5a. Evaluation of Authority to File an Application for Transfer.

- (1) **Presumption Based Upon Department Ownership Records.** For any application for transfer, the department must have sufficient information to determine that the applicant has the authority to seek the proposed change in use of the water right(s). The department can presume, absent information to the contrary, that the applicant is the owner of the right(s) if the department's ownership records maintained pursuant to Sections 42-248 or 42-1409(6), *Idaho Code*, list the applicant as the current owner. The department may need to seek documentation regarding ownership if there is reason to believe that the department's ownership records may be inaccurate.
- (2) **Other Acceptable Documentation.** If the applicant's name does not match the name in the department's records for the current owner of the right(s) sought to be transferred, the applicant must provide evidence of current ownership or authority to make the proposed change(s). Adequate documentation can be a warranty deed, title policy, contract of sale or option for purchase by applicant (if contract or option allows the transfer), or other similar document confirming ownership of the water right(s).
- (3) **Applicant Does Not Own New Place of Use.** If the application for transfer proposes to change the place of use authorized under the water right(s), and the applicant does not own the land at the proposed new place of use, then the applicant must provide documentation that authorizes the change on behalf of the current owner of the proposed new place of use, except when the applicant is a municipal provider, irrigation district, canal company, or other similar entity. Such entities may only need to provide evidence of their authority to provide water for

the proposed place of use in instances where evidence of such authority is necessary.

- (4) Conditions on Associated Rights. If an application for transfer proposes a change from or to a system where there is an associated water right that is not listed on the application as a right being transferred, a change to conditions for that right is required, and the right is not owned by the applicant, then the applicant must provide documentation authorizing the change on behalf of the current owner of the associated right.
- (5) Authority to Sign on Behalf of an Applicant. If the application for transfer is signed by someone other than the applicant(s) as listed on the application, documentation is needed to establish that the signatory is a representative of the applicant and is authorized to sign on the applicant's behalf. The documentation can be a copy of a current "power of attorney" authorizing signature on behalf of the applicant, or other similar documentation. An application could also be signed by an officer of a corporation or company, an elected official of a municipality, or any individual authorized by an organization to sign the application for a corporation, company, or municipality (if accompanied by documentation confirming authorization). The signatory's title must be shown with the signature.
- (6) Corporation, Partnership, Joint Venture, or other Business Entity. If the application for transfer is in the name of a corporation, partnership, joint venture, or other business entity, department staff must verify that the entity is authorized to do business in the State of Idaho by completing a Business Entity Status Search at: <http://www.idsos.state.id.us/>. If the Business Entity Status Search does not confirm that the corporation, partnership, joint venture, or other business entity is authorized to do business in the State of Idaho, department staff is to request further clarification from the applicant.
- (7) Approval of Irrigation Entity or Legislature. Section 42-108, *Idaho Code*, requires that if the right(s), diversion works, or irrigation system is represented by shares in a corporation, or owned by an irrigation district, no change can be made without the consent of such corporation or irrigation district. This includes the use of such right(s), diversion works, or irrigation system for mitigation purposes related to a proposed transfer. Any permanent or temporary change in period of use or nature of use, in or out-of-state, involving a quantity of water greater than fifty (50) cfs or a storage volume greater than five thousand (5,000) acre-feet must also be approved by the legislature if approved by the department, except that any temporary change within the State of Idaho for a period of less than three (3) years does not require legislative approval.

- (8) Liens, Mortgages, or Contract Restrictions. If the land from which the water right is proposed to be transferred is subject to liens, mortgages, or other contract restrictions affecting the right to transfer the water, a notarized statement is required from the holder of each such lien, mortgage, or contract (see Transfer Processing Memorandum No. 10).
- (9) Municipal Provider. If an application for transfer proposes to change the nature of use of a water right to municipal purposes in the name of a municipal provider for reasonably anticipated future needs, the applicant must provide documentation to establish its qualifications as a municipal provider as defined in Section 42-202B, *Idaho Code*.

5b. Evaluation of Water Right Validity.

For any application for transfer, the department must determine the validity of the water right(s), or part thereof, proposed to be changed. The following factors must be considered when processing an application for transfer and may require additional information from the applicant.

- (1) Department Records. For any application for transfer, the department must determine that a right, or part thereof, proposed to be transferred is valid and has not been lost by forfeiture or partial forfeiture. The department will presume, absent other information indicating forfeiture, that the right has not been forfeited if the department's water measurement records, aerial photography, remote sensing, or other information, shows use of water during the previous, consecutive, five-year period. The department will also presume that the right has not been forfeited when it is claimed in a pending adjudication or initially decreed in an adjudication within the previous five-year period. If staff makes a field inspection (all transfers seeking a change to a right evidenced only by a claim are to be field inspected, see Transfer Processing Memorandum No. 1), information must be gathered concerning the current status of diversion and delivery facilities and the apparent recent use of water.
- (2) Other Acceptable Documentation. If the records available to the department do not establish that a right has been used within the previous, consecutive, five-year period (except as provided in (1) above or for a right held by a municipal provider for reasonably anticipated future needs pursuant to Section 42-223(2), *Idaho Code*), the applicant must be asked to provide written documentation demonstrating that the right has been used within that time period. Examples of appropriate documentation include power records for pumps used to divert water under the right, Farm Service Agency (FSA) crop production records, receipts or other evidence of expenditures or revenue from the use of water under the right, and adequate affidavits of objective persons

having actual knowledge of the uses of water under the right. Alternatively, if the right has not been used within the previous, consecutive, five-year period, then the applicant must be asked to provide information showing that exceptions or defenses to forfeiture are applicable. Exceptions or defenses to forfeiture include those set forth in Section 42-223, *Idaho Code*; extensions provided for in Section 42-222, *Idaho Code*; and case law relating to factors such as resumption of use, unavailability of water when needed, or non-use when other water is available

- (3) Validity of Unchanged Parts of a Water Right. For applications for transfer proposing to change part of a water right or rights, the remaining part(s) of the right(s) that are not involved in the proposed transfer are subject to a finding of forfeiture as part of the transfer action by the department. However, department staff is not required to perform a comprehensive forfeiture analysis for the remaining part(s) of the right(s), unless the information submitted by the applicant or gathered by the department clearly shows that forfeiture of the remaining part(s) has occurred. In addition, the remaining part(s) of the right(s) are not subject to any additional conditions beyond the requirements of the original right(s). When there has not been a comprehensive forfeiture analysis performed for the remaining, unchanged part(s) of the right(s), a remark will be included for any remaining part(s) of the right(s) to indicate that an approved transfer does not confirm the validity of the remaining, unchanged part(s) of the right(s).
- (4) Statutory or Beneficial Use Claims. Applications for transfer proposing to change a water right based on a statutory or beneficial use claim must be reviewed to determine the validity of the claim. Review must include field verification as required in Transfer Processing Memorandum No. 1. In addition, the applicant must be asked to provide information confirming the priority date of the claim. Adjudication staff must also be consulted for questions regarding review of the priority date if the claim is filed in a pending adjudication. A transfer approval for the water right (or part thereof) based on a claim shall incorporate the department's findings regarding the validity of the right. If a statutory or beneficial use claim is the basis for a pending claim in an adjudication, adjudication staff shall be notified of the results of the validity review, and the claimant shall be informed of the findings.

5c. Injury to Other Water Rights

For any application for transfer, the department must determine whether the proposed change will injure any other rights, whether junior or senior in priority to the right being changed. The following factors must be considered when processing a transfer and may require additional information from the applicant

- (1) Reduction in Quantity of Water Available to Other Water Rights. Whether the amount of water available under an existing water right, senior or junior in priority, will be reduced below the amount recorded by permit, license, decree, or valid claim, or the historical amount beneficially used by the right holder, whichever is less
- (2) Unreasonable Effort or Expense. Whether the holder of an existing water right will be forced to an unreasonable effort or expense to divert water under the existing water right.

Existing ground water rights are subject to reasonable pumping level provisions of Section 42-226, *Idaho Code*, as well as applicable court decisions (e.g., *Parker v. Wallentine*, 103 Idaho 506, 650 P.2d 648 (1982), regarding in part the obligation to pay increased costs to divert an existing right).

- (3) Unusable Water Quality. Whether the quality of water available to the holder of an existing water right would be made unusable for the purposes of the existing right.
- (4) Mitigation. Whether mitigation would be needed to prevent injury to an existing water right that would be injured otherwise.

Unless agreed to in writing by the holder of an existing right, the only mitigation that can be considered acceptable by the department is the provision of replacement water in the full amount of the injury, at the same time injury would otherwise occur, and of acceptable water quality at the point of diversion for the existing right. For applications that propose to move the point of diversion for a water right to divert and use ground water from the ESPA, the transfer is not approvable if the transfer would result in increased depletions to any hydraulically-connected reach of the Snake River, within 5 percent for transient increases in depletion (reflecting the confidence intervals for the current ground water model). When increases in such depletions would occur, acceptable mitigation includes reduction in the quantity of ground water diverted and depleted such that there is no increase in depletions, within 5 percent for transient increases, to any hydraulically-connected reach of the Snake River. When this form of mitigation is proposed, the quantity of ground water diverted may be increased periodically (no more frequently than annually) if supported by an analysis of the timing of calculated depletions (transient to steady-state) to reaches of the Snake River that are hydraulically-connected to the ESPA for the points of diversion both before and after the proposed transfer. However, the proposed schedule for increased diversions must be set forth in the application for transfer, and if approved, the applicant may not increase ground water diversions under the transfer without first filing notice of

intent to increase the annual diversion volume with the department each time an increase in diversion volume is sought *

- (5) Ground Water Management Area or Critical Ground Water Area. Whether the point of diversion for a ground water right would move from outside the boundaries of a critical ground water area (CGWA) or ground water management area (GWMA) to within the boundaries of a CGWA or GWMA, or whether the point of diversion would move from within the boundaries of a GWMA to within the boundaries of a CGWA.

An application for transfer proposing such a change in the location of the point of diversion for a ground water right is not approvable unless the applicant proposes acceptable mitigation to prevent injury to other water rights. For cold water (less than 85° F) GWMAs over the ESPA, mitigation beyond that satisfying condition (4) above will not be required at this time as a condition of approval, unless injury would occur to a water right to divert ground water or injury would occur to a water right to divert surface water that has not been offset by stipulated agreement or through a mitigation plan approved by the Department,

- (6) Change of Source. Whether the source would be changed from ground water to surface water, or from surface water to ground water.

An application for transfer proposing such a change in source is not approvable unless the ground water and surface water sources have a direct and immediate hydraulic connection (at least 50 percent depletion in original source from depletion at proposed point of diversion in one day). The existing point of diversion and proposed point of diversion must be proximate such that diversion and use of water from the proposed point of diversion would have substantially the same effect on the hydraulically-connected source as diversion and use of water from the original point of diversion. If such application for transfer is approved, the changed water right shall be administered no differently than any other water right from the surface water source. If approved, the source for a change from a surface water source to a ground water source should be listed as ground water tributary to the surface water source.

- (7) Changing Aquifer Source. Whether a proposed change in point of diversion for a ground water right is from one aquifer to another aquifer.

* If the transfer is approved with mitigation by reducing the amount of ground water withdrawn, and as a result the reach gains to one or more other hydraulically-connected reaches of the Snake River increase, then the applicant shall retain the right to receive credit for the increased reach gains. Such credits can not currently be used because there is no administrative system in place to recognize such credits. In the event that an administrative system is created in the future whereby such credits available at that time can be recognized, the applicant shall retain the right to the possible future use of such credits, which shall be reflected in a condition of approval for the transfer.

An application for transfer proposing to change the point of diversion from one distinct aquifer to a totally separate aquifer is not approvable, just as an application for transfer proposing to change the point of diversion for a surface water right from one distinct surface water source to a totally separate surface water source is not approvable.

- (8) Conveyance Losses. Whether the proposed change would move part or all of a right from a canal impacting conveyance losses associated with the delivery of multiple water rights in the canal.

If such application for transfer is otherwise approvable, the approval must require that the applicant retain an appropriate amount of water in the canal to prevent any additional reduction in the amount of water available from the canal to fill other water rights because of the portion of the conveyance losses that, prior to the transfer, were attributable to the right being transferred.

Additional Considerations. In addition to the considerations above, the following information may be needed to evaluate injury involving an application for transfer for a ground water right, depending on the specific circumstances of the proposed transfer. If the information is not available in the department's records, the applicant must provide the following information that department staff determines is necessary:

- (1) Location of Nearby Wells. The location of the nearest production well, including domestic wells, to the proposed point of diversion, and if different, the nearest production well down gradient from the proposed point of diversion (the location of other nearby production wells may also be required);
- (2) Location of Nearby Springs. The location of nearby springs from which water is diverted under existing rights, including domestic uses, that could be affected by ground water diversions from the proposed point of diversion;
- (3) Ground Water Levels. The depth to water, the stability of ground water levels, or the stability of confined aquifer pressures, in the area of the proposed point of diversion; and
- (4) Water-Bearing Zones. The depth and thickness of water-bearing zones, including identification of the zone or zones sought for the proposed use.

5d. Enlargement of Use

For any application for transfer, the department must determine whether the proposed change will enlarge the use of water under the water right(s). Enlargement will occur if

the total diversion rate, annual diversion volume, or extent of beneficial use (except for nonconsumptive water rights), exceeds the amounts or beneficial use authorized under the water right(s) prior to the proposed transfer. The following factors must be considered when processing an application for transfer, which may require that additional information be provided by the applicant:

- (1) Diversion Rate, Annual Diversion Volume, and Number of Acres Licensed or Decreed. The authorized diversion rate, annual diversion volume (ground water rights only and certain surface water rights), and number of acres authorized for irrigation (if applicable), as licensed or decreed for the water right, shall not be increased. If the annual diversion volume is not specifically stated on the license or decree for a ground water right, then the amount will be based on the most current standards adopted by the department.
- (2) Beneficial Use. An application for transfer proposing to change the place of use or nature of use for all or part of a water right or water rights, which change would not result in an equivalent reduction in beneficial use under the original right(s), will be presumed to enlarge the water right(s). For example, hydropower use cannot be added to a right used for irrigation, even though no additional water would be diverted for the hydropower use. The irrigation use, or part thereof, could be changed to hydropower use by reducing the irrigation use by an equivalent amount, or the new use could be provided without reducing the irrigation use by obtaining a new permit to appropriate water for hydropower use.
- (3) Stacked Water Rights. Water rights are "stacked" when two or more water rights, generally of different priorities and often from different sources, are used for the same use and overlie the same place of use. Water rights for irrigating a permissible place of use are not stacked when the water rights in total provide for irrigating up to the maximum acreage authorized within a permissible place of use. An application for transfer proposing to "unstack" one or more water rights used for irrigation or other use, without changing all the rights for the same use, is presumed to enlarge the water right. However, the place of use for a supplemental irrigation right may be changed for continued use as a supplemental irrigation right at a different place of use without, by definition, enlarging the original right or the supplemental right proposed for transfer, so long as the primary rights at the original and proposed places of use provide comparable water supplies. In other words, use of the supplemental right at the proposed place of use can not materially exceed use of the supplemental right at the current place of use.
- (4) Changing Supplemental Right to Primary Water Right. An application for transfer proposing to change a supplemental irrigation right to a use

as a primary water right for irrigation or other use constitutes an enlargement. An exception is when the applicant can demonstrate there would be no enlargement of the water right being changed or other related water rights because the supplemental right has been used on a regular basis and the extent of beneficial use under all associated rights prior to the transfer will be proportionately reduced.

(5) Historic Beneficial Use. For an application for transfer seeking to change the nature or purpose of use, season of use, or for a supplemental water right, the place of use, the historic extent of beneficial use under the right must not be enlarged. The extent of historic beneficial use may also have to be considered for other proposed changes in the place of use under some circumstances when there are other sources of water, such as natural subirrigation, even when the purpose of use or period of use are not proposed to be changed. For a transfer seeking to change a water right for irrigation, the consumptive water use based on the cropping pattern or rotation, or estimated from records of water diverted and system efficiency, for the most recent, five consecutive years is presumed to provide a reasonable basis to establish historic use under the water right proposed for transfer, unless information provided by the applicant supports using a longer historic period. Exceptions or defenses to forfeiture may also justify extending the time period considered in establishing the historic use prior to the proposed transfer. The highest-year historic consumptive use, except for supplemental rights, will be the basis for the annual volume of consumptive use available for transfer. When it is necessary to determine the historic consumptive use under a supplemental right, the average annual historic consumptive use, over an appropriately representative time period that may be greater than five years, will be the basis for the volume available for transfer. In some rare instances, the diversion rate, the annual diversion volume, and season of use could also be limited based on the extent of historic use.

- (6) Period of Use. An application for transfer, which proposes an increased period of use in connection with a changed nature of use for ground water, is presumed not to be an enlargement in use if the rate of diversion, total annual volume diverted, and annual volume of consumptive use are not increased. However, a change to an increased period of use for a surface water right is presumed to be an enlargement and would cause injury where there are junior priority rights that rely on surface water during the time period outside of the historic period of use for the right proposed to be changed.
- (7) Confined Animal Feeding Operations. For the purpose of quantifying the amount of water needed or used in connection with a confined

animal feeding operation, such as a feedlot or dairy, the water use will be considered fully (100 percent) consumptive.

- (8) Fish Propagation An application for transfer, which proposes to increase the number or volume of raceways in a fish propagation facility, will not be presumed to be an enlargement of the water right, unless the diversion rate or annual volume of water diverted are proposed to be increased.
- (9) Disposal of Waste Water An application for transfer filed to provide for the disposal of wastewater, by land application on cultivated fields or other beneficial use disposing of the wastewater, resulting from use of water under "commercial," "municipal," or "industrial" water rights where the use of water is considered to be fully consumptive, is not considered an enlargement of the commercial, municipal, or industrial water right. While not an enlargement of the water right, such use of wastewater must not injure other water rights (see Application Processing Memorandum No. 61) and must comply with best management practices required by the Idaho Department of Environmental Quality, the U. S. Environmental Protection Agency, or other state or federal agency having regulatory jurisdiction.
- (10) Enhanced Water Supply An application for transfer, which proposes to change a point of diversion from a surface water source to a new location where the water available is greater or more reliable, such as moving from the tributary of a stream downstream to the mainstem of the stream, is presumed to enlarge the water right, unless the proposed change is subject to conditions limiting diversion of water at the proposed new point of diversion to times when water is available and the water right is in priority at the original point of diversion.
- (11) Water Held for Reasonably Anticipated Future Needs Section 42-222, *Idaho Code*, provides that when a water right, or part thereof, to be changed is held by a municipal provider for municipal purposes, that portion of the right held for reasonably anticipated future needs can not be changed to a new place of use outside the service area of the municipal provider or to a new nature of use. See Section 42-202B, *Idaho Code* for applicable definitions related to municipal water use.
- (12) Changing the Purpose of Use for a Water Right to Municipal Purposes An application for transfer, which proposes to convey an established water right to a municipal provider and change the nature of use to municipal purposes, as defined in Section 42-202B, *Idaho Code*, shall not be approved without limiting the volume of water divertible under the right to the historic consumptive use under the water right prior to the proposed change. If the proposed transfer involves a surface water

right, the transfer shall not be approved without also limiting the right to the historic period of use under the right prior to the proposed change

- (13) Historic Use Recognized for Municipal Purposes. An application for transfer, which proposes to change the nature of use to municipal purposes for an established water right held by a municipal provider that lists the purpose(s) of use as domestic, commercial, industrial, irrigation, or any combination of those uses, where those uses have historically been essentially for municipal purposes, as defined in Section 42-202B, *Idaho Code*, will not be presumed to be an enlargement of the right.
- (14) Stored Water. Section 42-222(1), *Idaho Code*, provides that a transfer of a water right for the use of stored water for irrigation purposes does not constitute an enlargement in the use of the original water right, even when more acres are irrigated, provided that no other water rights are injured.
- (15) Conveyance Losses. An application for transfer, which proposes to change the purpose of use for a portion of a water right covering conveyance losses to a use that would provide for irrigating additional acres, or other additional use, is presumed to be an enlargement of the water right.
- (16) Measuring Requirements for Ground Water Diversions. Any water right transfer authorizing one or more changes to the diversion and use of ground water approved subsequent to the date of this memorandum shall include a condition of approval that requires the installation and maintenance of one or more measuring devices or means of measurement approved by the department. Until and unless changed pursuant to Section 42-701, *Idaho Code*, the following flow meter installation is required for the transferred right prior to diverting and using ground water under the transferred right:
 - a. One or more magnetic flow meters shall be installed, as required by the department, having an accuracy of 0.5 percent of rate of flow for flow velocities between 0.1 and 33 ft/sec in pipe sizes up to 4 inches in diameter and for flow velocities between 0.1 and 20 ft/sec in pipe sizes greater than 4 inches in diameter;
 - b. Each magnetic flow meter must be installed and maintained in accordance with the manufacture's specifications and equipped with an LCD backlit display unit that displays instantaneous flow rate and total volume of water diverted in accordance with the department's requirements;

- c. Each magnetic flow meter must provide analog output for flow rate, scaled pulse frequency for total volume of water diverted, and an RS232 port for communications; and
- d. Each magnetic flow meter must be equipped with a data logger specified by the department and capable of storing 120 days of data including dates and cumulative volume of ground water diverted updated daily, as a minimum

Detailed specifications for the above requirements will be provided by the Water Distribution Section of the department upon request. A municipal provider subject to other measurement provisions that satisfy the department's measuring and reporting requirements are exempt from the above condition. Holders of ground water rights approved for transfer for diversion through existing systems may request a variance from the above requirements, which may or may not be granted.

5e. Local Public Interest

For any application for transfer, the department must consider whether the proposed change(s) are in the local public interest as defined in Section 42-203A(5), *Idaho Code*. Consistent with earlier guidance herein regarding use of discretion and sound judgement, department staff are to address the following items, as well as other issues that are pertinent to specific circumstances, in considering whether sufficient information has been provided regarding local public interest issues. When there are one or more significant questions about whether a particular transfer would be in the local public interest, additional information from the applicant or comments from other state or local governmental entities that have germane expertise on local public interest issues must be sought. The applicant shall be informed when written comments regarding an application are solicited or received from another agency.

- (1) Economic Impacts. The positive and negative impacts the proposed transfer could have on the economy of the local area, indicated by changes in short-term and long-term employment, short-term and long-term changes in economic activity, and the stability of economic activity;
- (2) Recreation, Fish, and Wildlife Impacts. The effect the proposed transfer could have on recreation, fish, and wildlife resources in the local area that would be affected by the proposed change (Transfer Processing Memoranda Nos. 19 and 21 provide guidance related to state protected river reaches and minimum stream flow reaches);
- (3) Agricultural Base. The effect the proposed transfer could have on the agricultural base of the local area (Section 42-222(1), *Idaho Code*, provides that a change in nature of use from agricultural use shall not be approved if it would significantly affect the agricultural base of the local area);

- (4) Air, Water, and Hazardous Substance Standards. Whether the proposed transfer would comply with applicable air, water, and hazardous substance standards;
- (5) Local and State Requirements. Whether the proposed transfer would comply with local government and state government, if any, planning and zoning ordinances, regulations, and records of decisions;
- (6) Neighboring Jurisdictions. Whether the proposed transfer would comply with existing land use and other uses of natural resources, if any, adjacent to the place of use proposed by the transfer but beyond the jurisdiction of the local government having authority or control over the proposed place of use; and
- (7) State Water Plan. Whether the proposed transfer would be compatible with the objectives and policies of the State Water Plan pertaining to the local public interest.

5f. Beneficial Use and Conservation of Water Resources

For any application for transfer, the department must consider whether the proposed use of water is a beneficial use consistent with the conservation of water resources within the State of Idaho. The following factors must be considered when processing a transfer and may require additional information from the applicant:

- (1) Efficiency of Diversion and Use. Whether the water delivery and distribution/application systems for the use proposed by the transfer would be consistent with contemporary standards for reasonably efficient use of water.
- (2) Diversion Rates for Irrigation Use. Whether the proposed transfer, if involving irrigation, proposes a diversion rate in excess of 0.02 cfs per acre of land irrigated (see Section 42-220, *Idaho Code*), and if the application for transfer proposes a higher diversion rate, whether the higher rate would be justified based on soils, crop types, irrigation system, climate, and reasonable conveyance losses from the point of diversion to the place of use. A higher diversion rate may also be justified for irrigating lands that because of public access can only be irrigated during certain times of the day (see Application Processing Memorandum No. 60). For the irrigation of five acres or less, justification is not necessary for a diversion rate of up to 0.03 cfs per acre (see Application Processing Memorandum No. 17). If the right proposed for transfer is based on a decree or license authorizing a diversion rate greater than 0.02 cfs per acre, then additional justification is not necessary unless:

- a. The proposed transfer would change the place of use to a new place of use, rather than simply rearranging acreage at the general location of the existing place of use;
 - b. The proposed transfer would change the point of diversion with the intent to abandon the existing conveyance system and replace it with a new conveyance system that would reduce conveyance losses; or
 - c. The proposed transfer would add additional rights to an existing place of use from the same source as the existing water right(s) at the place of use.
- (3) State Water Plan. Whether the proposed transfer would be compatible with the objectives and policies of the State Water Plan pertaining to beneficial use and conservation of water resources.

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

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NOV 11 2005

Department of Water Resources

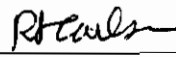
Attorney for Lincoln County Rural Council

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

In the Matter of Application for	)	
Transfer No. 71607 in the name of	)	MOTION FOR
4 Bros. Dairy, Inc.,	)	ISSUANCE OF SUBPOENA
Applicant,	)	
	)	
Lincoln County Rural Council,	)	
Protestant.	)	

The protestant Lincoln County Rural Council, through its attorney, Richard A. Carlson, hereby moves the agency for the issuance of a subpoena requiring the attendance of Marv Patten, Idaho Department of Agriculture Dairy Bureau Chief, at the hearing in this matter scheduled for November 17 and 18, 2005. This MOTION is based on IDAPA 37.01.01.525.

DATED this 31st day of October, 2005



Richard A. Carlson
Attorney for Lincoln County Rural Council

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of October, 2005, I served a true copy of the foregoing document the persons listed below, by U.S. Mail, postage pre-paid:

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

Elizabeth Tews
680 N 350 W
Shoshone, ID 83352

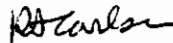
Doug Albright
675 N 150 W
Shoshone, ID 83352

Henry Blake
JaNene 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



Richard A. Carlson

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.)
_____)

**ORDER TO VACATE
HEARING AND NOTICE
OF HEARING**

The hearing currently set for October 20 and 21, 2005 in this matter has been

VACATED.

The Department of Water Resources has rescheduled this matter for a formal hearing as follows:

Date: Thursday, November 17, 2005 and Friday, November 18, 2005
Location: Bureau of Land Management
Conference Room
400 West F Street
Shoshone, Idaho 83352
(208) 732-7200
Time: 9:00 a.m.

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 within five (5) days 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 6th day of October, 2005.


Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of October, 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

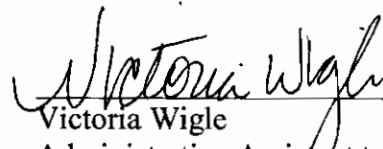
• HENRY BLAKE
JA NENE BUCKWAY
585 N 250 W
SHOSHONE ID 83352

• 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

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OCT 03 2005

**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

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.

MOTION TO VACATE
AND RESET HEARING

COMES NOW, the Applicant, 4 Bros. Dairy, Inc., by and through their attorney of record, Robert E. Williams of the firm Fredericksen, Williams, Meservy & Lothspeich, LLP, and moves the Hearing Officer, pursuant to IDAPA 37.01.01.260, for an order vacating the hearing in this matter now set for October 20 and October 21, 2005. This motion is brought for the reason that Applicant's counsel, Robert E. Williams, has a prior commitment scheduled in Chicago, Illinois, for those dates and will be unavailable for the hearing. Applicant suggests that the hearing be rescheduled for any consecutive two (2) days in the month of November after November 6, 2005, in order to accommodate Norm Young, one of the Protestant's witnesses. The only two (2) day period after November 6, 2005 unavailable to Applicant is November 14 and November 15, 2005.

Counsel for Applicant has spoken with Richard Carlson, counsel for the Lincoln County Rural Council who advised that he has spoken to all other Protestants and that the Lincoln County Rural Council and all other Protestants join in this motion and request that it be granted.

Dated this 30th day of September, 2005.

FREDERICKSEN, WILLIAMS, MESERVY
& LOTHSPREICH, LLP



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 30th day of September, 2005, 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

RECEIVED

AUG 27 2005

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

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 NO. 17607 IN THE
NAME OF 4 BROS. DAIRY, INC.

**1ST SUPPLEMENTAL
WITNESS AND EXHIBIT
LIST OF APPLICANT,
4 BROS. DAIRY, INC.**

The Applicant, 4 Bros. Dairy, Inc., through its attorney, Robert E. Williams of Fredericksen, Williams, Meservy & Lothspeich, LLP, hereby supplements its Witness and Exhibit List as follows:

EXHIBIT LIST:

21 2004 Measurement Field Form District - 3 pages

Dated this 19th day of August, 2005.

FREDERICKSEN, WILLIAMS, MESERVY
& LOTH SPEICH, LLP

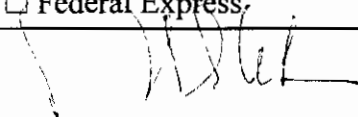


ROBERT E. WILLIAMS
Attorney for 4 Bros Dairy, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 19th day of August, 2005, 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
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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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AUG 27 2005

Water Well Consultants

2004

MEASUREMENT FIELD FORM

Department of Water Resources District NS

POINT OF DIVERSION #700069

GPS Site ID Tag: A0004995Legal Description: 06S 18E 20 SENESE

Diversion Name: _____

Tag Location: Meter PoleOwner: 4-Brothers Dairy, Inc.

Operator: _____

PCC DATA

<u>KWH Meter</u>	<u>Standard Meter (Fuji)</u>	<u>Qualifier (circle one)</u>
Utility: <u>IPCO</u>	Pipe Material: <u>Steel</u>	A - single condition
Pole Number: <u>06S 18E 20 20</u>	Outside Diameter: <u>8.67</u> inches	B - multiple conditions
Service Number: _____	Wall Thickness: <u>.349</u> inches	C - Flowmeter & PCC
Meter Manufacturer: <u>ABB</u>	Upstream Straight: _____ feet	D - complex system/ timeclock or flowmeter would be more accurate
Serial Number: <u>01834 442</u>	Downstream Straight: _____ feet	Z - zero pumpage
Disk Constant: <u>21.6</u>	Meter Type: <u>ultrasonic</u>	
Multiplier: <u>1</u>	Rate Units: <u>gallons</u>	

PCC Calculations

Cond.#1 Date: 6-15-04 Examiner: BAK Fuji #: 2

No. of Disk Revolutions 1900 (N) Time (sec.): 22.50 + 22.32 + 22.51 = 22.44 Avg.

3.6 x 21.6 (kh) x 0.161 (mult.) x 19 (N) / 22.44 Time = 66 KW

(66 kw) (5431) / 528 gpm = 679 PCC Check: 66

Demand 66.37 CTR _____ Bars 4 Power 4 x PSI: _____

Description: 1 Pivot

(crops) Corn

Cond.#2 Date: _____ Examiner: _____ Fuji #: _____

No. of Disk Revolutions _____ (N) Time (sec.): _____ + _____ + _____ = _____ Avg.

3.6 x _____ (kh) x _____ (mult.) x _____ (N) / _____ Time = _____ KW

(_____ kw) (5431) / _____ gpm = _____ PCC Check: _____

Demand _____ CTR _____ Bars _____ Power _____ x PSI: _____

Description: _____

(crops) _____

Cond.#3 Date: _____ Examiner: _____ Fuji #: _____

No. of Disk Revolutions _____ (N) Time (sec.): _____ + _____ + _____ = _____ Avg.

3.6 x _____ (kh) x _____ (mult.) x _____ (N) / _____ Time = _____ KW

(_____ kw) (5431) / _____ gpm = _____ PCC Check: _____

Demand _____ CTR _____ Bars _____ Power _____ x PSI: _____

Description: _____

(crops) _____

MEASUREMENT FIELD FORMWELL

Pump Manufacturer: Aurora
 Pump Serial Number: _____
 Head: _____
 GPM: _____
 Motor Manufacturer: GG
 Motor Serial Number: MKS1204578
 Horsepower: 75
 Volts: 230/460
 Amps: 180/90

BOOSTER

Pump Manufacturer: _____
 Pump Serial Number: _____
 Head: _____
 GPM: _____
 Motor Manufacturer: _____
 Motor Serial Number: _____
 Horsepower: _____
 Volts: _____
 Amps: _____

FLOWMETER DATA

Date: _____ Examiner: _____ Fuji #: _____

Meter Reading	Time	Total	Installed Meter	Standard Meter	Percentage

Comments: _____

Date: _____ Examiner: _____ Fuji #: _____

Meter Reading	Time	Total	Installed Meter	Standard Meter	Percentage

Comments: _____

Installed Meter (inline)

Meter Type: _____ Rate Units: gpm _____ cfs _____
 Manufacturer: _____ Rate Mult.: _____
 Model: _____ Volume Units: gal _____ af _____ cf _____
 Serial Number: _____ Volume Mult.: _____
 Location: Poor _____ Satisfactory _____ Good _____ Very Good _____ Excellent _____
 Other Wells: _____ Other Meters: _____
 Comments: _____

DIAGRAM ON BACK

40004995

04-06-15 21:10:51
+3.385E+0 ft/s
+5.267E+2 gal/min
0000091 gal +TOTAL
0000000 gal -TOTAL
NORMAL

04-06-15 21:15:50
+3.379E+0 ft/s
+5.257E+2 gal/min
0002745 gal +TOTAL
0000000 gal -TOTAL
NORMAL

5289PMV

04-06-15 21:20:50
+3.391E+0 ft/s
+5.276E+2 gal/min
0005360 gal +TOTAL
0000000 gal -TOTAL
NORMAL

06S18E 20SENESE

**RICHARD A. CARLSON**

Attorney at Law
ISB #5971 OSB #79-180

P.O. Box 21
Filer, ID 83328

Telephone and fax: (208) 326-3686
E-mail: carlsonr@filertel.com

FACSIMILE TRANSMITTAL

TO: Peter Anderson
c/o Victoria Wigle – IDWR
Rob Williams

FAX NO.: 208-287-6700

324-3135

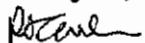
FROM: R.A. Carlson
DATE: 819-05
RE: Four Bros. transfer
PAGES (incl. cover): 3

Dear Ms. Wigle:

Please find attached the SUPPLEMENTED LINCOLN COUNTY RURAL COUNCIL'S LIST OF POTENTIAL WITNESSES AND EXHIBITS for filing. The original will be going into today's mail along with the exhibits.

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	)	SUPPLEMENTED
Transfer No. 71607 in the name of	)	LINCOLN COUNTY RURAL
4 Bros. Dairy, Inc.,	)	COUNCIL'S LIST OF
Applicant,	)	POTENTIAL WITNESSES
	)	AND EXHIBITS
Lincoln County Rural Council,	)	
Protestant.	)	

The protestant Lincoln County Rural Council, through its attorney, Richard A. Carlson, submits the following supplemented list of potential witnesses and exhibits for the transfer hearing:

POTENTIAL WITNESSES:

Bev and/or Val Ashton
Elizabeth, Carla, and/or Rusty Tews
Jerry and/or Susan Westendorf
Janene and/or Henry Buckway
Doug Albright
Russell and/or Pamela Pantone
Paul Drury and/or Norm Young (ERO RESOURCES- expert testimony)
Andrew, Jerome, and/or Clem Fitzgerald
Marv Patten – Idaho State Department of Agriculture

POTENTIAL EXHIBITS:

100- IDWR map depicting Ground Water Districts*
101- IDWR map depicting ground water elevations in ESPA (dated Jan.-05')*
102- IDWR map depicting ground water flow directions (dated Jan.- 05')*
103- IDWR map depicting ground water elevations in ESPA (enhanced ESRP Model
1.1)
104- Various water right records of neighboring properties
105- Various well driller's logs of 4 Bros. wells and neighboring wells
106- Exhibits A-F (misc. exhibits concerning transfer impacts)
107- Response to Public Records Request by Watermaster- Water District 130

- 108- Charles Brockway Applications to Rent Water to Water Bank and from Water Bank
 - 109- IDWR Memo and misc. correspondence re: Black Butte Transfer
 - 110- ISDA Siting Team Report to Lincoln Co. (w/color map)
 - 111- Lincoln County Prosecuting Attorney Memo re: withdrawal of application for new dairy
 - 112- 4 Bros. Nutrient Management Plan
 - 113- ISDA Response to Public records Request/ Excerpts from ISDA-EPA- Idaho Dairy Association Memorandum of Understanding report -2004
 - 114- Water quality test report from 4 Bros. neighbor(s)
 - 115- IDEQ "Cumulative Impacts Assessment" -2000
 - 116- NASS/USDA crop statistics for Idaho 1990- most recent available at www.nass.usda.gov
 - 117- IDWR Orders re: Transfers Nos. 5804 and 5436
 - 118- Satellite photo of area
 - 119- Satellite photo of area
 - 120- Various documents from Lincoln Co. Planning and Zoning re: permits
 - 121- ESRP Ground Water Level Change Map
 - 122- ISDA Response to Public Records Request (July 29, 2005)
- * indicates that copy already provided applicant in discovery

The protestant reserves the right to supplement its evidence with additional exhibits or oral testimony to rebut evidence the applicant provides up to and during the hearing. The protestant will also ask the hearing officer to take official notice of all orders issued by the Director of IDWR concerning calls for water made by spring and surface water users in the past 3 years.

DATED this 19th day of August, 2005



Richard A. Carlson
Attorney for Lincoln County Rural Council

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of August, 2005, I served a true copy of the foregoing document along with copies of the proposed exhibits referenced above on the person listed below, by the method indicated below:

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



Richard A. Carlson

FREDERICKSEN, WILLIAMS, MESERVY & LOTH SPEICH, LLP

117 South Adams Street
PO Box 168
Jerome, Idaho 83338
Telephone: 208.324.2303
Fax: 208.324.3135

FAX COVER SHEET

FAX NUMBER TRANSMITTED TO:

To: Peter Anderson
IDWR Hearing Officer
Attn: Victoria
Fax No.: 208.287.6700
From: Robert E. Williams
Subject: In re: Transfer No. 71607, in the name of 4 Bros Dairy, Inc.
Date: August 19, 2005

Here is the Applicant's 1st Supplemental Witness and Exhibit List. Thank you.

THE DOCUMENTS ACCOMPANYING THIS TELECOPY TRANSMISSION CONTAIN INFORMATION WHICH IS CONFIDENTIAL AND/OR PRIVILEGED. THE INFORMATION IS INTENDED FOR THE USE OF THE INDIVIDUAL/ENTITY NAMED ABOVE. IF YOU ARE NOT THE INTENDED RECIPIENT, BE AWARE THAT ANY DISCLOSURE, COPYING, DISTRIBUTION, OR USE OF THE CONTENTS OF THIS TELECOPIED INFORMATION IS STRICTLY PROHIBITED. IF YOU'VE RECEIVED THIS TELECOPY IN ERROR, PLEASE NOTIFY US BY TELEPHONE WITHOUT DELAY.

6 COUNTING COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE Brenda IMMEDIATELY AT 208.324.2303.

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 NO. 17607 IN THE
NAME OF 4 BROS. DAIRY, INC.

**1ST SUPPLEMENTAL
WITNESS AND EXHIBIT
LIST OF APPLICANT,
4 BROS. DAIRY, INC.**

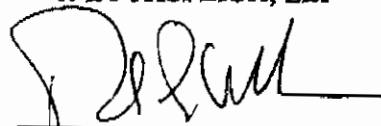
The Applicant, 4 Bros. Dairy, Inc., through its attorney, Robert E. Williams of Frederickson, Williams, Meservy & Lothspeich, LLP, hereby supplements its Witness and Exhibit List as follows:

EXHIBIT LIST:

21 2004 Measurement Field Form District - 3 pages

Dated this 19th day of August, 2005.

**FREDERICKSEN, WILLIAMS, MESERVY
& LOTHSPREICH, LLP**

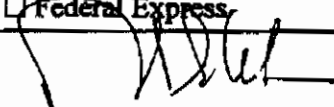


ROBERT E. WILLIAMS
Attorney for 4 Bros Dairy, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 19th day of August, 2005, 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

Water Well Consultants

2004

District NS

MEASUREMENT FIELD FORM

POINT OF DIVERSION #700069
 GPS Site ID Tag: A0004995 Legal Description: 06S18E20SENESE
 Diversion Name: _____
 Tag Location: Meter Pole
 Owner: 4-Brothers Dairy Inc
 Operator: _____

PCC DATA

KWH Meter		Standard Meter (Full)		Qualifier (circle one)
Utility:	<u>IPCQ</u>	Pipe Material:	<u>Steel</u>	A - single condition
Pole Number:	<u>06S18E2020</u>	Outside Diameter:	<u>9.67</u> inches	B - multiple conditions
Service Number:	_____	Wall Thickness:	<u>.349</u> inches	C - Flowmeter & PCC
Meter Manufacturer:	<u>ARB</u>	Upstream Straight:	_____ feet	D - complex system/ timeclock or flowmeter would be more accurate
Serial Number:	<u>01584 142</u>	Downstream Straight:	_____ feet	Z - zero pumpage
Disk Constant:	<u>21.6</u>	Meter Type:	<u>ultrasonic</u>	
Multiplier:	<u>1</u>	Rate Units:	<u>gallons</u>	

PCC Calculations

Cond.#1 Date: 6-15-04 Examiner: BAK Fuji #: 2
 No. of Disk Revolutions 1900 (N) Time (sec.): 22.50 + 22.37 + 22.51 = 22.44 Avg.
 $3.6 \times \frac{21.6}{(kh)} \times \frac{1900}{(mult.)} \times \frac{19}{(N)} \div \frac{22.44}{Time} = \frac{66}{KW}$
 (66 kw) (5431) / 529 gpm = 6.79 PCC Check: 66
 Demand 66.37 CTR _____ Bars 4 Power 4 x PSI: _____
 Description: 1 Pivot

(crops) Corn

Cond.#2 Date: _____ Examiner: _____ Fuji #: _____
 No. of Disk Revolutions _____ (N) Time (sec.): _____ + _____ + _____ = _____ Avg.
 $3.6 \times \frac{\quad}{(kh)} \times \frac{\quad}{(mult.)} \times \frac{\quad}{(N)} \div \frac{\quad}{Time} = \frac{\quad}{KW}$
 (_____ kw) (5431) / _____ gpm = _____ PCC Check: _____
 Demand _____ CTR _____ Bars _____ Power _____ x PSI: _____
 Description: _____

(crops) _____

Cond.#3 Date: _____ Examiner: _____ Fuji #: _____
 No. of Disk Revolutions _____ (N) Time (sec.): _____ + _____ + _____ = _____ Avg.
 $3.6 \times \frac{\quad}{(kh)} \times \frac{\quad}{(mult.)} \times \frac{\quad}{(N)} \div \frac{\quad}{Time} = \frac{\quad}{KW}$
 (_____ kw) (5431) / _____ gpm = _____ PCC Check: _____
 Demand _____ CTR _____ Bars _____ Power _____ x PSI: _____
 Description: _____

(crops) _____

Water Well Consultants

2004

District NS**MEASUREMENT FIELD FORM**WELL

Pump Manufacturer: Aurora
 Pump Serial Number: _____
 Head: _____
 GPM: _____
 Motor Manufacturer: GEG
 Motor Serial Number: MKS1204578
 Horsepower: 7.5
 Volts: 230/460
 Amps: 150/90

BOOSTER

Pump Manufacturer: _____
 Pump Serial Number: _____
 Head: _____
 GPM: _____
 Motor Manufacturer: _____
 Motor Serial Number: _____
 Horsepower: _____
 Volts: _____
 Amps: _____

FLOWMETER DATA

Date: _____ Examiner: _____ Fuji #: _____

Meter Reading	Time	Total	Installed Meter	Standard Meter	Percentage

Comments: _____

Date: _____ Examiner: _____ Fuji #: _____

Meter Reading	Time	Total	Installed Meter	Standard Meter	Percentage

Comments: _____

Installed Meter (Inline)

Meter Type: _____ Rate Units: gpm _____ cfs _____
 Manufacturer: _____ Rate Mult: _____
 Model: _____ Volume Units: gal _____ sf _____ cf _____
 Serial Number: _____ Volume Mult: _____
 Location: Poor _____ Satisfactory _____ Good _____ Very Good _____ Excellent _____
 Other Wells: _____ Other Meters: _____
 Comments: _____

DIAGRAM ON BACK

40004995

04-06-15 21:19:51
+3.20E+0 fl/s
+3.20E+2 gal/min
000000 gal +TOTAL
000000 gal -TOTAL
NORMAL

04-06-15 21:15:50
+3.17E+0 fl/s
+3.17E+2 gal/min
000000 gal +TOTAL
000000 gal -TOTAL
NORMAL

5289PMV

04-06-15 21:20:50
+3.20E+0 fl/s
+3.20E+2 gal/min
000000 gal +TOTAL
000000 gal -TOTAL
NORMAL

06S18E 20SENESE



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

August 12, 2005

Interested Parties

Re: 4 Brothers Dairy – Transfer No. 71607

Dear Parties:

Please be advised that the hearing date in this matter, tentatively set for September 1 and 2, 2005, will be vacated. At the request of the Director, Dr. Brockway, the expert for the petitioner, will be attending the ESPA Hydrological Modeling Committee meeting in Boise on those days. As soon as another hearing date has been selected, you will be notified. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Victoria Wigle". The signature is written in a cursive, flowing style.

Victoria Wigle
Administrative Assistant to the Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of August, 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

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.)
_____)

AMENDED PREHEARING ORDER

This Amended Prehearing Order issues pursuant to IDAPA 37.01.01.513, and shall control the course of these proceedings.

IT IS HEREBY ORDERED that the following shall apply to proceedings in this matter. Documents to be filed with the Department of Water Resources ("IDWR") and served on the parties must be filed and served in accordance with the rules of the IDWR on or before the days listed below.

Amended Discovery Authorization.

Discovery is authorized in this matter pursuant to IDAPA 37.01.01.521 and shall be completed pursuant to the schedule provided below. The authorized forms of discovery are written interrogatories (written questions) and production requests (written requests for documents or other potential exhibits) and depositions (questioning witnesses under oath). Discovery requests need not conform with the format normally utilized in civil lawsuits. Parties should respond to all reasonable requests for information submitted by an opposing party. Failure to respond to reasonable requests for information may lead to delays in the hearing in this matter and/or the exclusion of the withheld information from the hearing. Motions to limit testimony based upon failure to disclose must be made at the hearing.

Amended Schedule

The following schedule shall apply to this matter:

August 19, 2005: Written discovery completed.

August 19, 2005: Parties shall exchange on or before this date witness and exhibit lists, and copies of pre-marked exhibits. The parties shall use the following exhibit numbers:

4 Brothers Dairy, Inc: 1-99.

Lincoln Co. Rural Council: 100-199

Tews: 200-299

Blake/Buckway: 300-399

Westendorf: 400-499

Ashton: 500-599

Pantone: 600-699

Allbright: 700-799

August 26, 2005: Depositions completed.

September 1-2, 2005: Tentative date for a two day hearing in Shoshone, Idaho.

The precise times and locations of the September 1-2 hearing will be provided to the parties by notice from IDWR.

Dated this 4th day of August, 2005.

A handwritten signature in black ink, appearing to read "Peter R. Anderson", written over a horizontal line.

Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of August, 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
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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

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 this matter for a formal hearing as follows:

Date: Thursday, October 20, 2005 and Friday, October 21, 2005
Location: Bureau of Land Management
Conference Room
400 West F Street
Shoshone, Idaho 83352
(208) 732-7200
Time: 9:00 a.m.

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.

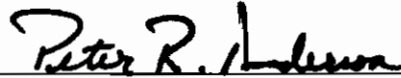
If you plan to offer exhibits for the record, note that Rule 606 of the department's Rules of Procedure requires that a copy be provided to each party and to the presiding officer.

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 within five (5) days 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 07th day of September, 2005.

A handwritten signature in black ink, reading "Peter R. Anderson", written over a horizontal line.

Peter R. Anderson
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of September, 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
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SHOSHONE ID 83352

DOUG ALBRIGHT
675 N 150 W
SHOSHONE ID 83352

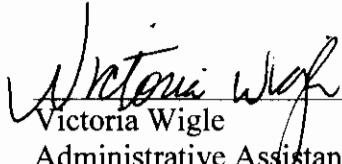
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SHOSHONE ID 83352

LINCOLN CO RURAL COUNCIL
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FILER ID 83328


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