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JUL 29 2005

DEPARTMENT OF
WATER RESOURCES

ROBERT E. WILLIAMS

IDAHO STATE BAR NO. 1693

FREDERICKSEN, WILLIAMS, MESERVY & LOTH SPEICH, LLP

117 South Adams Street

P.O. Box 168

Jerome, ID 83338

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Attorney for Applicant 4 Bros. Dairy, Inc.

RECEIVED

JUL 27 2005

Department of Water Resources
Southern Region

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.,

MOTION FOR ORDER STRIKING
RESPONDENT'S EXHIBITS OR,
ALTERNATIVELY, FOR VACATION
OF HEARING OTHER SANCTIONS

The Applicant, 4 Bros. Dairy, Inc., through its attorney, Robert E. Williams, hereby moves the Hearing Officer for an order striking Respondent's Exhibits Nos. 103 - 120 or, alternatively, for an order vacating the hearing now set to commence Thursday, July 28, 2005, and for sanctions. This motion is made pursuant to IDWR Rule of Practice and Procedure No. 260 and is supported by the Affidavit of Charles E. Brockway.

On May 20, 2005, the Hearing Officer entered the prehearing order in this matter. Among other things, the Prehearing Order authorized discovery to be conducted pursuant to IDAPA 37.01.01.521. Initial discovery requests were to be submitted by June 3, 2005, with initial responses due by June 17, 2005. Supplemental responses were due July 8, 2005.

MOTION FOR ORDER STRIKING PROTESTANT'S EXHIBITS OR, ALTERNATIVELY, FOR VACATION
OF HEARING AND SANCTIONS - 1

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In response to the order, the Applicant submitted initial discovery requests consisting of Interrogatories and Requests for Production to all Protestants on June 3, 2005. Initial and supplemental discovery responses were timely received from most of the Protestants. None of the Protestants elected to make discovery requests of their own.

In response to Request for Production No. 1, promulgated by the Applicant to the effect that:

"Please identify and produce an exact copy thereof of every exhibit you intend to introduce into evidence at the hearing on the Application."

the Respondents produced copies of what are now marked as Exhibits Nos. 100, 101 and 102 in their disclosure dated July 22, 2005. On July 22, 2005, for the first time, Protestants disclosed that they intended to introduce exhibits which have now been marked as Exhibits Nos. 103 - 120. Protestant's Exhibits 103 - 120 had not been previously disclosed in the Protestant's discovery responses.

As shown by the accompanying Affidavit of Charles E. Brockway, attached hereto as **EXHIBIT "A"**, the failure of the Respondents to disclose the exhibits in discovery has resulted in a situation whereby Applicant's expert cannot adequately prepare for the hearing now scheduled to commence July 28, 2005.

IDAPA 37.01.01.531 provides that:

"The agency may impose all sanctions recognized by statute or rules for failure to comply with an order compelling discovery."

Respondents failed to comply with the agency's order for discovery by not identifying Exhibits Nos. 103 - 120 as documents they intended to introduce into evidence at the hearing of this matter, or to attach copies of them in timely discovery responses. The prehearing order of May 20, 2005 states that:

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 26th day of July, 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

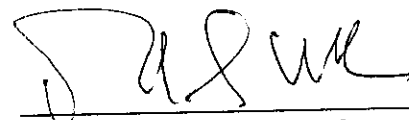
- ☒ U.S. Mail, postage prepaid
☐ Hand Delivery ☐ Court Folder
☐ Facsimile
☐ Federal Express

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 - 326-3686 w/Exch Aonly
☐ Federal Express



ROBERT E. WILLIAMS

ROBERT E. WILLIAMS
IDAHO STATE BAR NO. 1693
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117 South Adams Street
P.O. Box 168
Jerome, ID 83338
Telephone: (208) 324-2303
Facsimile: (208) 324-3135
Attorney for Applicants 4 Bros. Dairy, Inc.

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.,

AFFIDAVIT OF CHARLES
E. BROCKWAY

STATE OF IDAHO)
 :ss
County of Twin Falls)

CHARLES E. BROCKWAY, being first duly sworn, deposes and says as follows:

1. I have been retained as an expert witness by the Applicant in this matter.
2. On Monday, July 25, 2005, I was provided Exhibits 103 - 120, proposed to be introduced into evidence in the hearing of this matter now set to commence Thursday, July 28, 2005. I was told by Robert E. Williams, attorney for Applicant that the same exhibits had been provided to him at approximately 4:00

AFFIDAVIT OF CHARLES E. BROCKWAY - 1
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EXHIBIT

A

p.m. Friday, July 22, 2005 and that they had not been produced in response to earlier discovery requests.

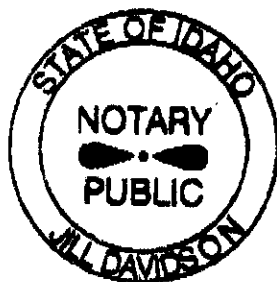
3. I spent several hours examining the proposed exhibits on Monday, July 25, 2005. In order that I may fully digest the exhibits, do the necessary research and corroboration and otherwise fully prepare expert testimony in response to those exhibits, several days of my time will be required.

4. I do not have sufficient time between the date of this affidavit and the commencement of the hearing now scheduled in this matter to fully prepare my expert testimony in light of the bulk of the exhibits recently provided. I am scheduled to give testimony in two (2) other matters prior to the commencement of this hearing and will necessarily have to devote my time to them.

5. Without the new exhibits produced by the Protestants recently, my testimony was ready to present Thursday, July 28, 2005.


CHARLES E. BROCKWAY

SUBSCRIBED AND SWORN To before me this 26th day of July, 2005.




Notary Public for Idaho
Residing at: Twin Falls
Comm. Expires: November 18, 2010

ROBERT E. WILLIAMS

IDAHO STATE BAR NO. 1693

FREDERICKSEN, WILLIAMS, MESERVY & LOTH SPEICH, LLP

117 South Adams Street

P.O. Box 168

Jerome, ID 83338

Telephone: (208) 324-2303

Facsimile: (208) 324-3135

Attorney for Applicants 4 Bros. Dairy, Inc.

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.,

FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION
OF DOCUMENTS DIRECTED
TO PROTESTANT LINCOLN COUNTY
RURAL COUNCIL

TO: Lincoln County Rural Council
c/o Rich Carlson
Post Office Box 21
Filer, Idaho 83328

Pursuant to IDAPA 37.01.01.521, and the Prehearing Order entered in this matter, the Applicant hereby issues its initial discovery requests, consisting of written Interrogatories and Requests for Production to Protestant.

YOU WILL PLEASE TAKE NOTICE that the Applicant requires you to answer under oath the following interrogatories and production requests within fifteen (15) days from the service hereunder, and in conformance with all provisions of Rule 26, 33 and 34 of the Idaho Rules of Civil Procedure, and Rules 520 through 524 of the Idaho Department of Water Resources Practice and Procedure Rules and Regulations.

APPLICANT'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION

Page 1 of 8

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INTERROGATORIES: In answering these interrogatories, furnish all information available to you, including information in the possession of your attorneys and investigators, experts, etc., retained by you or your attorneys, not merely information known of your own personal knowledge.

If you cannot answer the following interrogatories in full, after exercising due diligence to secure the information to do so, so state, and answer to the extent possible, specifying your inability to answer the remainder, and stating whatever information and knowledge you have concerning the unanswered portion.

REQUEST FOR PRODUCTION: Request is hereby made by the undersigned that you produce each document and thing identified in your Responses to Requests for Production in the following manner:

(1) either by copying such items for production and then mailing or delivering such copies to the undersigned so that such copies are received by the undersigned not less than five days before the date specified in subparagraph (2) hereof in which case the undersigned will forthwith reimburse you through your counsel for such copies at the rate of ten cents per page;

(2) or, (if at your option you elect not to produce the items for production in the manner specified in subparagraph (1) hereof) by producing such items for production and permitting the undersigned, or someone acting on behalf of the undersigned, to inspect by reading and examining the same and to copy and photograph the same at the time and place hereinafter designated.

These interrogatories and requests for production are deemed continuing and your answers thereto are to be supplemented as additional information, knowledge, and/or material becomes available or known to you.

DEFINITIONS: In these discovery requests, some terms have meanings subscribed to them as follows:

(a) "Applicant" means 4 Bros. Dairy, Inc., an Idaho corporation

(b) "Transfer" or "Transfer proceeding" means the matter now pending before the Idaho Department of Water Resources filed under Transfer No. 71607.

INTERROGATORY NO. 1: Please identify by name, address, telephone number and occupation each person known to you who has information relevant to this action.

INTERROGATORY NO. 2: As to each individual identified by and within Protestant's response to the immediately preceding Interrogatory, please state:

- (a) the substance of the facts and/or opinions known or claimed to be known by said individual;
- (b) the grounds for each fact and/or opinion;
- (c) whether there is in existence any written statements or written memoranda setting forth the alleged facts and/or opinions of said individual; and
- (d) the identity and address of the custodian thereof.

INTERROGATORY NO. 3: Please identify by name, address and educational and vocational qualification each individual who has conducted an investigation with regard to the above transfer proceeding and, for each individual, please state said individual's finding, if any, relevant to such investigation; please state whether said individual was retained by you and/or is to be compensated thereby and, whether there is in existence any written memoranda, findings or reports prepared by or upon behalf of said individual and relating to such inspection and/or investigation and identify the current custodian thereof by name, address, telephone number and occupation.

INTERROGATORY NO. 4: For each expert witness to be called by you or expected to be called by you as a witness in the transfer proceeding, please state:

- (a) the subject matter of the expected testimony;

- (b) the substance of the facts to which it is believed the witness will testify;
- (c) whether there are in existence any written opinions, findings, memoranda and/or reports regarding said findings, opinions and/or beliefs;
- (d) each and every qualification, whether academic or vocational, qualifying or tending to qualify said individual as an expert with respect to that subject upon which said individual is expected to testify.

INTERROGATORY NO. 5: Please give the name or other means of identification, address, telephone number and occupation of each person not heretofore mentioned who has personal knowledge of facts material or relevant to this transfer proceeding and whether such person intends to be called to testify at the hearing in this transfer proceeding or not.

INTERROGATORY NO. 6: As to all persons whose names are set forth in the answers to these preceding Interrogatories, have you, your agents or investigators, or anyone acting on your behalf, obtained statements of any kind, whether written, recorded, stenographically transcribed, oral or otherwise, from any of the persons so named in these Answers to Interrogatories?

INTERROGATORY NO. 7: If your answer to the preceding Interrogatory is in the affirmative, please state, separately for each such person:

- (a) Their name, address and occupation;
- (b) The type of statement which was taken (whether written, recorded or transcribed);
- (c) The name and address of the present custodian of each statement so taken;
- (d) The date on which the statement was taken; and

- (e) Please attach a copy of each statement to your Answers to these Interrogatories, or in the alternative, indicate your willingness to allow Applicant's attorney to inspect and copy each such statement.

INTERROGATORY NO. 8: Please identify by names, addresses and telephone numbers each and every witness you intend to call to testify on your behalf at the hearing of this matter.

INTERROGATORY NO. 9: Please identify each and every letter, writing, document or thing that you intend to offer as an exhibit at the hearing on the transfer proceeding, and provide such identification by giving the names of the parties to the document, the date of the document, who has possession of a copy or the original of the document and a summary of the facts, statements or opinions contained in any such letter, writing or other document. In lieu of answer to this Interrogatory, you may attach copies of such items to your Answer hereto.

INTERROGATORY NO. 10: Do you contend the water transfer proposed by the Applicant will injure another water right within the meaning of Idaho Code § 42-222?

INTERROGATORY NO. 11: If your answer to the preceding interrogatory is in the affirmative, please state:

- a. Every water right by water right number, in which you have an interest that you believe will be injured on account of the transfer.
- b. The exact nature of each injury.
- c. Every fact which supports each claim of injury.

INTERROGATORY NO. 12: Do you claim that the applicant's transfer would cause an enlargement in use of the original water right from which the transfer is sought, in violation of Idaho Code § 42-222?

INTERROGATORY NO. 13: If your answer to the preceding interrogatory is in the affirmative, please state:

a. Each element of the initial water right that will be enlarged by the proposed transfer.

b. Every fact which supports each claim of enlargement.

INTERROGATORY NO. 14: Do you contend that Applicant's transfer is inconsistent with conservation of water resources within the State of Idaho as set forth in Idaho Code § 42-222?

INTERROGATORY NO. 15: If your answer to the preceding interrogatory is in the affirmative, please state:

a. Every aspect of the proposed transfer which you contend is inconsistent with the conservation of water resources within the State of Idaho.

b. Every fact upon which you base each such contention.

INTERROGATORY NO. 16: Do you contend that the Applicant's transfer is not in the local public interest as defined at Idaho Code § 42-202(b)(3), Idaho Code which provides that:

"42-202(b)(3). 'Local public interest' is defined as the interest that the people in the area directly affected by a proposed water use has on the effect of such use on the public water resource."

INTERROGATORY NO. 17: If your answer is in the affirmative, please state:

(a) every element of the local public interest, as previously defined which you claim is violated by the transfer.

(b) every fact upon which your contentions in your response to Part B of this interrogatory are based.

INTERROGATORY NO. 18: Do you contend that the Applicant's transfer would create a new use which is not a beneficial use within the meaning of Idaho Code § 42-222?

INTERROGATORY NO. 19: If your answer to the preceding interrogatory is in the affirmative, please state

(a) The basis of your contention that the proposed use is not a beneficial use and

(b) Every fact upon which you base such contention.

REQUEST FOR PRODUCTION NO. 1: Please identify, and produce an exact copy thereof, of every exhibit you intend to introduce into evidence at ht hearing on the application.

REQUEST FOR PRODUCTION NO. 2: Please attach a copy of every document or writing used by you in preparation of your responses to the discovery requests.

INTERROGATORY NO. 20: With respect to the documents identified in your response to Request for Production No. 1 above, please state:

(a) The name of the witness through which you will seek introduction of that exhibit into the record;

(b) Whether such witness is the author of the exhibit;

(c) If the witness through whom admission of the exhibit to the record is sought is not the author, every qualification of such witness which will allow the witness to lay a proper foundation for the admissibility of such exhibit

(d) Every fact or opinion in the exhibit that makes it relevant to the transfer proceeding.

DATED this 3 day of June, 2005.

FREDERICKSEN, WILLIAMS, MESERVY
& LOTH SPEICH, LLP



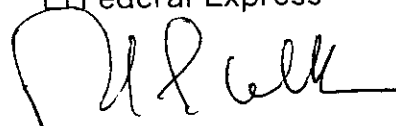
ROBERT E. WILLIAMS
Attorney for Applicant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 3 day of June, 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:

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

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	)	
Transfer No. 71607 in the name of	)	LINCOLN COUNTY RURAL
4 Bros. Dairy, Inc.,	)	COUNCIL'S RESPONSE TO
Applicant,	)	INTERROGATORIES AND
	)	REQUEST FOR PRODUCTION
Lincoln County Rural Council,	)	
Protestant.	)	

The protestant Lincoln County Rural Council, through its attorney, Richard A. Carlson, submits the following Responses to the Interrogatories and Request for Production:

INTERROGATORY NO.1: Please identify by name, address, telephone number and occupation each person known to you who has information relevant to this action.

RESPONSE:

Doug Albright 675 N 150 W Shoshone, ID 83352 Rancher
Bev Ashton 680 N 350 W Shoshone, ID 83352 District Liaison
Henry and Janene Buckway 585 N 250 W Shoshone, ID 83352 Lead Mechanic/
Educator
Russell and Pamela Pantone 745 N 550 W Shoshone, ID 83352 Unknown
Elizabeth Tews 680 N 350 W Shoshone, ID 83352 Rancher/Realtor
Carla and Rusty Tews 675 N 350 W Shoshone, ID 83352 Farmer
Susan and Jerry Westendorf 420 N 705 W Gooding, ID 83330 Farmer/Educator

INTERROGATORY NO.2: As to each individual identified by and within Protestant's response to the immediately preceding Interrogatory, please state:

- (a) the substance of the facts and/or opinions known or claimed to be known by said individual;
- (b) the grounds for each fact and/or opinion;
- (c) whether there is in existence any written statements or written memoranda setting forth the alleged facts and/or opinions of said individual; and
- (d) the identity and address of the custodian thereof.

RESPONSE: All of the people named above live in the immediate vicinity of the 4 Bros. Dairy. Based on problems with their own wells, reports from neighbors, well publicized reports in the media, admissions by government officials etc. they all know

LINCOLN COUNTY RURAL COUNCIL'S
RESPONSE TO INTERROGATORIES AND REQUEST FOR PRODUCTION - 1

EXHIBIT
C

(a) The basis of your contention that the proposed use is not a beneficial use and

(b) Every fact upon which you base such contention.

REQUEST FOR PRODUCTION NO. 1: Please identify, and produce an exact copy thereof, of every exhibit you intend to introduce into evidence at the hearing on the application.

REQUEST FOR PRODUCTION NO. 2: Please attach a copy of every document or writing used by you in preparation of your responses to the discovery requests.

INTERROGATORY NO. 20: With respect to the documents identified in your response to Request for Production No. 1 above, please state:

(a) The name of the witness through which you will seek introduction of that exhibit into the record;

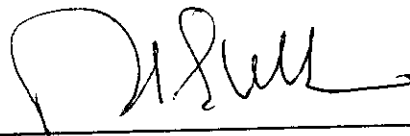
(b) Whether such witness is the author of the exhibit;

(c) If the witness through whom admission of the exhibit to the record is sought is not the author, every qualification of such witness which will allow the witness to lay a proper foundation for the admissibility of such exhibit

(d) Every fact or opinion in the exhibit that makes it relevant to the transfer proceeding.

DATED this 3 day of June, 2005.

FREDERICKSEN, WILLIAMS, MESERVY
& LOTH SPEICH, LLP



ROBERT E. WILLIAMS
Attorney for Applicant

and believe that there is a shrinking supply of groundwater in their area which applicants want more of.

INTERROGATORY NO.3: Please identify by name, address and educational and vocational qualification each individual who has conducted an investigation with regard to the above transfer proceeding and, for each individual, please state said individual's finding, if any, relevant to such investigation; please state whether said individual was retained by you and/or is to be compensated thereby and, whether there is in existence any written memoranda, findings or reports prepared by or upon behalf of said individual and relating to such inspection and/or investigation and identify the current custodian thereof by name, address, telephone number and occupation.

RESPONSE: The Lincoln County Rural Council has consulted briefly with Norm Young of ERO Resources Corp., 1106 N. Cole Rd. Suite C, Boise, ID 83704 (208)373-7983. Mr. Young was formerly a senior official with the Idaho Department of Water Resources. The LCRC expects that Mr. Young will review the applicant's expert's reports and conclusions regarding the possibility of injury, enlargement etc. in this matter but has not yet done so. LCRC expects to pay Mr. Young for any work he does.

INTERROGATORY NO.4: For each expert witness to be called by you or expected to be called by you as a witness in the transfer proceeding, please state:

- (a) the subject matter of the expected testimony;
- (b) the substance of the facts to which it is believed the witness will which testify;
- (c) whether there are in existence any written opinions, findings, memoranda and/or reports regarding said findings, opinions and/or beliefs;
- (d) each and every qualification, whether academic or vocational, qualifying or tending to qualify said individual as an expert with respect to that subject upon which said individual is expected to testify.

RESPONSE: See Response to Int.#3 above. We don't know what Mr. Young will say until he has completed his work. Mr. Young will be provided as much information about current ground water conditions as we can gather, in addition to those obtained from the applicant.

INTERROGATORY NO.5:

Please give the name or other means of identification, address, telephone number and occupation of each person not heretofore mentioned who has personal knowledge of facts material or relevant to this transfer proceeding and whether such person intends to be called to testify at the hearing in this transfer proceeding or not.

RESPONSE: We would expect to call as witnesses one or more of the "4 Bros.". It is also likely that LCRC will call Cindy Yenter to testify about the applicant's current use of water which her office keeps some records and reports of. Her address and phone number is IDWR, 1341 Fillmore St. Suite 200, Twin Falls, ID 83301 (208)736-3033.

INTERROGATORY NO.6: As to all persons whose names are set forth in the answers to these preceding Interrogatories, have you, your agents or investigators, or anyone acting on your behalf, obtained statements of any kind, whether written, recorded, stenographically transcribed, oral or otherwise, from any of the persons so named in these Answers to Interrogatories?

RESPONSE: No.

INTERROGATORY NO.7: If your answer to the preceding Interrogatory is in the affirmative, please state, separately for each such person:

- (a) Their name, address and occupation;
- (b) The type of statement which was taken (whether written, recorded or transcribed);
- (c) The name and address of the present custodian of each statement so taken;
- (d) The date on which the statement was taken; and
- (e) Please attach a copy of each statement to your Answers to these Interrogatories, or in the alternative, indicate your willingness to allow Applicant's attorney to inspect and copy each such statement.

RESPONSE: Not applicable.

INTERROGATORY NO.8: Please identify by names, addresses and telephone numbers each and every witness you intend to call to testify on your behalf at the hearing of this matter.

RESPONSE: See answer to Int.# 1, 3 and 5 above.

INTERROGATORY NO.9: Please identify each and every letter, writing, document or thing that you intend to offer as an exhibit at the hearing on the transfer proceeding, and provide such identification by giving the names of the parties to the document, the date of the document, who has possession of a copy or the original of the document and a summary of the facts, statements or opinions contained in any such letter, writing or other document. In lieu of answer to this Interrogatory, you may attach copies of such items to your Answer hereto.

RESPONSE: Will attach documents.

INTERROGATORY NO. 10: Do you contend the water transfer proposed by the Applicant will injure another water right within the meaning of Idaho Code 42-222?

RESPONSE: Yes.

INTERROGATORY NO. 11: If your answer to the preceding interrogatory is in the affirmative, please state:

- a. Every water right by water right number, in which you have an interest that you believe will be injured on account of the transfer.
- b. The exact nature of each injury.
- c. Every fact which supports each claim of injury.

RESPONSE: All of the water rights of those people identified in Int.#1 will likely be injured. Copies of documents identifying the water rights are attached or will be provided as soon as they are available. Many other water rights may be injured by the proposed

transfer but producing a list would be unduly burdensome and costly since they number in the hundreds, if not thousands.

INTERROGATORY NO. 12: Do you claim that the applicant's transfer would cause an enlargement in use of the original water right from which the transfer is sought, in violation of Idaho Code 42-222?

RESPONSE: Yes.

INTERROGATORY NO. 13: If your answer to the preceding interrogatory is in the affirmative, please state:

a. Each element of the initial water right that will be enlarged by the proposed transfer.

b. Every fact which supports each claim of enlargement.

RESPONSE: Every element of the current water right will be enlarged will likely be enlarged if the transfer is allowed. The current and widely acknowledged depletion of the aquifer as well as the distance between the present place of use and the proposed place of use are the primary basis for this claim. Copies of several IDWR maps are attached showing groundwater elevations, flow directions etc.

INTERROGATORY NO. 14: Do you contend that Applicant's transfer is inconsistent with conservation of water resources within the State of Idaho as set forth in Idaho Code 42-222?

RESPONSE: The LCRC is still evaluating this issue so can only say that any use of water which encourages the production of the most water intensive crops grown in Idaho is not consistent with the conservation of our water resources.

INTERROGATORY NO. 15: If your answer to the preceding interrogatory is in the affirmative, please state:

a. Every aspect of the proposed transfer which you contend is inconsistent with the conservation of water resources within the State of Idaho.

b. Every fact upon which you base each such contention.

RESPONSE: There has been a dramatic shift of crop production in Idaho over the past ten years toward crops used for dairy feed. These feed crops tend to use much more water than crops formerly grown in Idaho.

INTERROGATORY NO. 16: Do you contend that the Applicant's transfer is not in the local public interest as defined at Idaho Code 42-202(b)(3), which provides that:

"42.202(b)(3). 'Local public interest' is defined as the interest that the people in the area directly affected by a proposed water use has on the effect of such use on the public water resource."

RESPONSE: Yes.

INTERROGATORY NO. 17: If your answer is in the affirmative, please state:

(a) every element of the local public interest, as previously defined which you claim is violated by the transfer.

(b) every fact upon which your contentions in your response to Part B of this interrogatory are based.

RESPONSE: The LCRC maintains that water quality will be threatened by the increase in the number of livestock at the facility, given the greater quantities of manure which will be produced and will have to be disposed of. Current regulation of dairy waste management is ineffective to insure that waste is disposed of in such a manner that it will not pollute surface or ground water in our area.

INTERROGATORY NO. 18: Do you contend that the Applicant's transfer would create a new use which is not a beneficial use within the meaning of Idaho Code 9 42-222?

RESPONSE: No.

INTERROGATORY NO. 19:

If your answer to the preceding interrogatory is in the affirmative, please state:

- (a) The basis of your contention that the proposed use is not a beneficial use and
- (b) Every fact upon which you base such contention.

RESPONSE: Not applicable.

REQUEST FOR PRODUCTION NO.1: Please identify, and produce an exact copy thereof, of every exhibit you intend to introduce into evidence at the hearing on the application.

RESPONSE: Attached are:

- 1. Copies of two memos from Sherl Chapman Consulting, Inc.;
- 2. Copies of three water use measurement tests from IDWR;
- 3. Copies of three maps;
- 4. Copies of currently available water right documents from several families mentioned in response to Int.#1;
- 5. Copies of a well driller report and water test reports concerning the Buckway property;
- 6. Copy of State CAFO Siting Team Report concerning 4 Bros..

REQUEST FOR PRODUCTION NO.2: Please attach a copy of every document or writing used by you in preparation of your responses to the discovery requests.

RESPONSE: Not applicable.

INTERROGATORY NO. 20: With respect to the documents identified in your response to Request for Production NO.1 above, please state:

- (a) The name of the witness through which you will seek introduction of that exhibit into the record;
- (b) Whether such witness is the author of the exhibit;
- (c) If the witness through whom admission of the exhibit to the record is sought is not the author, every qualification of such witness which will allow the witness to lay a proper foundation for the admissibility of such exhibit
- (d) Every fact or opinion in the exhibit that makes it relevant to the transfer proceeding.

1. Memos described above- I don't expect to need any particular witness to authenticate the memos given the way the rules of evidence are applied in these hearings but intend to

ask Charles Brockway about them as well as Norm Young if we decide to use him as a witness.

2. IDWR records- the hearing officer can take official notice of IDWR records.

3. Maps- the maps were obtained from IDWR so the hearing officer can take official notice of them.

4. Water right records are official records which the hearing officer can take official notice of.

5. Mr. or Mrs. Buckway will testify about these.

6. This report is an official record in the custody of three State agencies as well as Lincoln Co. which the hearing officer can take official notice of.

DATED this 17th day of June, 2005



Richard A. Carlson
Attorney for Lincoln County Rural Council

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of June, 2005, I served a true copy of the foregoing document (with attachments) on the following by U.S. Mail, postage prepaid:

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

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



Richard A. Carlson

Sherl L. Chapman Consulting, Inc.

410 S. Orchard / Suite 144 / Boise, Idaho 83705 / Phone (208) 344-6690
Fax (208) 344-2744 / Email chapmaninc@rmci.net

April 22, 1998

Mr. Carl Pendleton
50 W. 620 N.
Shoshone, ID 83352

Dear Carl:

I've reviewed the information you and I discussed over the telephone April 20th relating to the Black Butte Properties Project. I've enclosed a modified Table 1 which has eliminated the Arensberg well and substituted the Sheer well with the appropriate numbers. Additionally, during my review I found a typographical error on the Stechelin drawdown at 0.5 cfs for 92 days, which I've corrected on this particular graph. I've enclosed five copies of the corrected graph for distribution to the protestants.

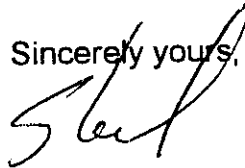
I've also reviewed the data surrounding the wells at the Black Butte Properties in order to give you some information for discussion with the applicant. During the Brockway test the well was pumped for about 50 hours at 220 gallons per minute or .49 cubic feet per second. The drawdown during that period was slightly over 36 feet. The projections set forth in the table I've provided you calculates the proposed drawdown for a period of 92 days (2,208 hours) and 182 days (4,368 hours). Based on the data we have at hand, it appears that the drawdown in the Black Butte pumping well under continuous operation for approximately 90 days at .80 cfs would result in drawdown of the pumped well in excess of 40 feet. If the well were pumped at .5 cfs the drawdown would exceed 21 feet and at .2 cfs for 92 days the drawdown would exceed 8.5 feet. In addition, the drilling of up to 20 additional wells for domestic purposes could result in an instantaneous diversion rate of an additional .4 cubic feet per second or 179 gallons per minute. This would probably result in additional drawdowns at the Black Butte site of as much as 10-15 feet depending upon how the wells were operated and whether or not pumping was simultaneous and for what duration. Unfortunately, it is very difficult to calculate those effects since domestic wells are not operated on a specific schedule. I can only say that there would be additional drawdowns, particularly close to the lake and those drawdowns may or may not be seen in the domestic wells of the protestants because of the distance involved. However, it is clear that the additional 20 wells would, in fact, withdraw water from the aquifer and cause overall depletions during times of drought. As you've indicated, the time of particular concern is during late summer and fall when recharge from canals and irrigation systems is beginning to decline and the pressure on the aquifer to maintain the lake level and for domestic purposes may increase.

Mr. Carl Pendleton
April 22, 1998
Page 2

As I indicated I would, I called Mr. Brockway back and let him know that we are discussing this issue and will be getting back to him in the near future with our thoughts on the application.

If you have any questions, please give me a call.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Sheri L. Chapman". The signature is fluid and cursive, with the first name "Sheri" being more prominent than the last name "Chapman".

Sheri L. Chapman
President

SLC:kje

TABLE 1
BLACK BUTTE PROPERTIES, LLC PROJECT
ESTIMATED IMPACTS IN FEET AT SELECTED WELLS

T = 92 DAYS CONTINUOUS PUMPING

NAME	FLOW – 0.2 CFS	FLOW – 0.5 CFS	FLOW – 0.8 CFS	DISTANCE FROM PUMPING WELL
Pendleton	3.3	8.3	13.4	16,500'
Stechelin	2.9	7.3	11.7	12,300'
Albright	4.3	10.8	17.4	8,600'
Sheer	2.8	7.1	11.3	12,600'
Tews	4.3	10.8	17.3	8,600'

T = 182 DAYS CONTINUOUS PUMPING

NAME	FLOW – 0.2 CFS	FLOW – 0.5 CFS	FLOW – 0.8 CFS	DISTANCE FROM PUMPING WELL
Pendleton	4.3	10.8	17.3	16,500'
Stechelin	3.9	9.7	15.6	12,300'
Albright	5.3	13.3	21.3	8,600'
Sheer	3.8	9.5	15.2	12,600'
Tews	5.3	13.3	21.3	8,600'

Sherl L. Chapman Consulting, Inc.

410 S. Orchard / Suite 144 / Boise, Idaho 83705 / Phone (208) 344-6690
Fax (208) 344-2744 / Email chapmaninc@rmci.net



TO: Mr. Carl Pendleton
FROM: Sherl L. Chapman, President
DATE: April 8, 1998
SUBJECT: BLACK BUTTE PROPERTIES LLC – TRANSFER APPLICATION

This office was contacted by Mr. Carl Pendleton representing a number of protestants against water right transfer application #5098 in the name of Black Butte Properties LLC late in 1997. Mr. Pendleton indicated that the applicant was wishing to transfer ground water from an existing water right to property near Shoshone to use for irrigation, recreation, and aesthetics. He and others in the area were concerned about impacts to their water wells and because of those concerns had protested the application for transfer. Mr. Charles Brockway of Twin Falls, Idaho had conducted a hydrologic investigation of the area in behalf of the applicants, which indicated that there would be no net change in consumptive use from the ground water system or aquifer underlying the area. However, regardless of whether or not there is a change in consumptive use there is a concern over whether or not water levels in existing domestic wells will be lowered with potential damage to the owners. Because of those concerns Mr. Pendleton asked me to review the application to determine whether or not a compromise could be reached that would satisfy the needs of the protestants while allowing consideration of the transfer by the Idaho Department of Water Resources. An agreement was struck between the two parties providing for independent analysis of the Brockway data and perhaps a proposal for settlement that would eliminate the need for a formal water right hearing on the issues.

The primary objectives of the analysis were to determine whether or not the Brockway investigation was accurate and conducted in accordance with accepted hydrologic techniques and to determine what potential impacts might occur to the protestants wells if the application for transfer were approved. Once these parameters were determined the goal was to determine whether or not there is a flow rate that could be recommended that would minimize the impact to the protestants and still satisfy the needs of the applicant.

Mr. Brockway provided me with hydrologic and other data relating to the water right investigation on February 9, 1998. Additional data were provided on April 1, 1998. I visited the area on March 17th and met with Mr. Pendleton. We located the protestants domestic wells in the area and examined the wells that had been drilled on the Black

Mr. Carl Pendleton
April 8, 1998
Page 2

Butte project. At least four (4) wells had been drilled around the pond that is to be used for recreation (water skiing) and aesthetics. The location of all of the wells were subsequently plotted on an orthophoto quadrangle map in order to determine relative distances and locations from the wells to be used by Black Butte Properties.

Part of the data submitted by Brockway Engineering included an analysis of a pumping well test conducted by Mr. Brockway on December 10-12, 1997. The primary well was pumped at 220 gallons per minute for approximately 50 hours and water level changes were measured in three (3) other wells on Black Butte Properties. Mr. Brockway then conducted a number of hydrologic analyses of aquifer response using standard modeling techniques and the Theis approach to aquifer analysis. The data collected by Mr. Brockway, the data tabulation, and the hydrologic analysis were reviewed and analyzed in an effort to determine whether or not they were appropriate for the area and accurately represented the expected aquifer response to pumping of the wells on the Black Butte Properties. Based upon that review it is my belief that the analysis is reasonable and the data were tabulated and analyzed correctly. 440,000

A part of the analysis included a table showing anticipated changes in water level based upon a constant pumping rate and a time period for continuous pumping out to 182 days or approximately six (6) months. Values were obtained for pumping rates of .2, .5, and .8 cubic feet per second. By using these tables and the known distances from the pumping well to the protestants wells, estimated declines in the protestants wells were predicted at three pumping rates and for 92 days and 182 days continuous pumping respectively. If necessary, expected water level declines may be calculated for other flow rates and times as well.

Table 1 shows the expected decline in water level in the protestants well for each of the pumping rates for both 92 and 182 days. The protestants should review this table and determine whether or not any of the values are acceptable. For example, it is anticipated that if the Black Butte well or wells are pumped at 0.5 cubic feet per second or 325 gallons per minute the anticipated water level decline after 92 days of continuous pumping in Carl Pendleton's well would be about 8.3 feet. The greatest decline at this rate and time would occur in the Arensberg well, which would decline about 13.1 feet. If the Black Butte wells were pumped at 225 gallons per minute for 182 days the water level decline in Carl Pendleton's well would be about 10.8 feet and 15.6 feet in the Arensberg well. It is important to note that these impacts are based on a continuous pumping rate for the entire period calculated. Generally, this does not occur and so it may be anticipated that the impact to any particular domestic well may be less than that listed on the table.

TABLE 1
BLACK BUTTE PROPERTIES, LLC PROJECT
ESTIMATED IMPACTS IN FEET AT SELECTED WELLS

T = 92 DAYS CONTINUOUS PUMPING

NAME	FLOW - 0.2 CFS	FLOW - 0.5 CFS	FLOW - 0.8 CFS	DISTANCE FROM PUMPING WELL
Pendleton	3.3	8.3	13.4	16,500'
Stechelin	2.9	~~4.9~~ 7.3	11.7	12,300'
Albright	4.3	10.8	17.4	8,600'
Arensberg	5.3	13.1	21.1	6,200'
Tews	4.3	10.8	17.3	8,600'
<i>SHEER</i>	<i>2.8</i>	<i>4.9</i> <i>7.1</i>	<i>11.3</i>	<i>12,600</i>

T = 182 DAYS CONTINUOUS PUMPING

NAME	FLOW - 0.2 CFS	FLOW - 0.5 CFS	FLOW - 0.8 CFS	DISTANCE FROM PUMPING WELL
Pendleton	4.3	10.8	17.3	16,500'
Stechelin	3.9	9.7	15.6	12,300'
Albright	5.3	13.3	21.3	8,600'
Arensberg	6.3	15.6	25.0	6,200'
Tews	5.3	13.3	21.3	8,600'
<i>SHEER</i>	<i>3.8</i>	<i>9.5</i>	<i>15.2</i>	<i>12,600</i>

TABLE 1
BLACK BUTTE PROPERTIES, LLC PROJECT
ESTIMATED IMPACTS IN FEET AT SELECTED WELLS

T = 92 DAYS CONTINUOUS PUMPING

NAME	FLOW – 0.2 CFS	FLOW – 0.5 CFS	FLOW – 0.8 CFS	DISTANCE FROM PUMPING WELL
Pendleton	3.3	8.3	13.4	16,500'
Stechelin	2.9	7.3	11.7	12,300'
Albright	4.3	10.8	17.4	8,600'
Sheer	2.8	7.1	11.3	12,600'
Tews	4.3	10.8	17.3	8,600'

T = 182 DAYS CONTINUOUS PUMPING

NAME	FLOW – 0.2 CFS	FLOW – 0.5 CFS	FLOW – 0.8 CFS	DISTANCE FROM PUMPING WELL
Pendleton	4.3	10.8	17.3	16,500'
Stechelin	3.9	9.7	15.6	12,300'
Albright	5.3	13.3	21.3	8,600'
Sheer	3.8	9.5	15.2	12,600'
Tews	5.3	13.3	21.3	8,600'

Mr. Carl Pendleton
April 8, 1998
Page 3

The directions to Chapman Consulting, Inc. were to try to determine a level of pumping between .25 cfs and .8 cfs that would be acceptable to the protestants and the applicant alike. Since the impact is directly on the protestants, it is my recommendation that the protestants review the enclosed table, determine whether or not any of these impacts are acceptable or if they would like the calculations made at different rates of flow, and then provide me with a recommendation for a proposal to the applicant. The range of flows used for the calculations should provide a reasonable basis for this analysis since the estimated impacts cover the range of available options. Additionally, the protestants may want to not only select a flow value but to recommend other conditions that the applicant could accept on an approved application for transfer. These, in addition to a flow rate, could include: 1) that the permissible place of use be allowed but that if significant changes are made in location of the 69.5 acres of ground to be irrigated a map be provided to IDWR before the irrigation season; 2) a condition that canal company water be used before any ground water is used both for filling the pond and making up evaporation and seepage whenever such water is available. This would have the net effect of restricting the ground water use for the pond generally to the non-irrigation season; 3) each discharge pipe on the well or wells to be used for makeup water for the pond must be equipped with a totalizing flow meter; 4) protestants must have access to the meter in order to determine periodically whether or not the applicant is staying within the required parameters of the approved transfer.

It is important to note also that there may be as many as 20 homes built around the pond each with its own domestic well. Under Idaho Law each well may divert up to .02 cubic feet per second for domestic and residential purposes including irrigation of up to one-half acre of ground. The combined diversion rate of these homes could have nearly the same impact as the approved application for transfer, therefore, there may be some slight increase in impacts if all the homes are developed and the transfer is approved. It is also important to remember that Idaho case law is such that if there are impacts because of new wells to domestic wells drilled prior to 1978, the pumping level of those wells are protected and transfers or other water rights cannot be issued unless there is mitigation for those impacts. If the protestants chose to continue their protest this would be an important issue for consideration.

In summary, Brockway Engineering appears to have done a credible job in conducting its hydrologic analysis of the aquifer in this area and the potential impacts for water level changes in the surrounding area. Based on my review of his analysis it appears that if the transfer is approved there will be impacts to all of the protestants wells with the magnitude of impact depending upon the flow rate and the duration of pumping. These impacts are quantified at various pumping rates and times in Table 1 for review. Since the protestants are familiar with their own pumping systems and wells

Mr. Carl Pendleton

April 8, 1998

Page 4

the decision on which flow rate to accept, if any, must be made by the protestants. If none of these flow rates are acceptable an additional flow rate impact table can be prepared very quickly for consideration. Additionally, I have recommended consideration of a number of other conditions that could be suggested as requirements of an approved transfer that would help to protect the interests of the protestants. These should be considered for advancement to the applicant as well as any flow rate that is mutually decided upon by the protestants.

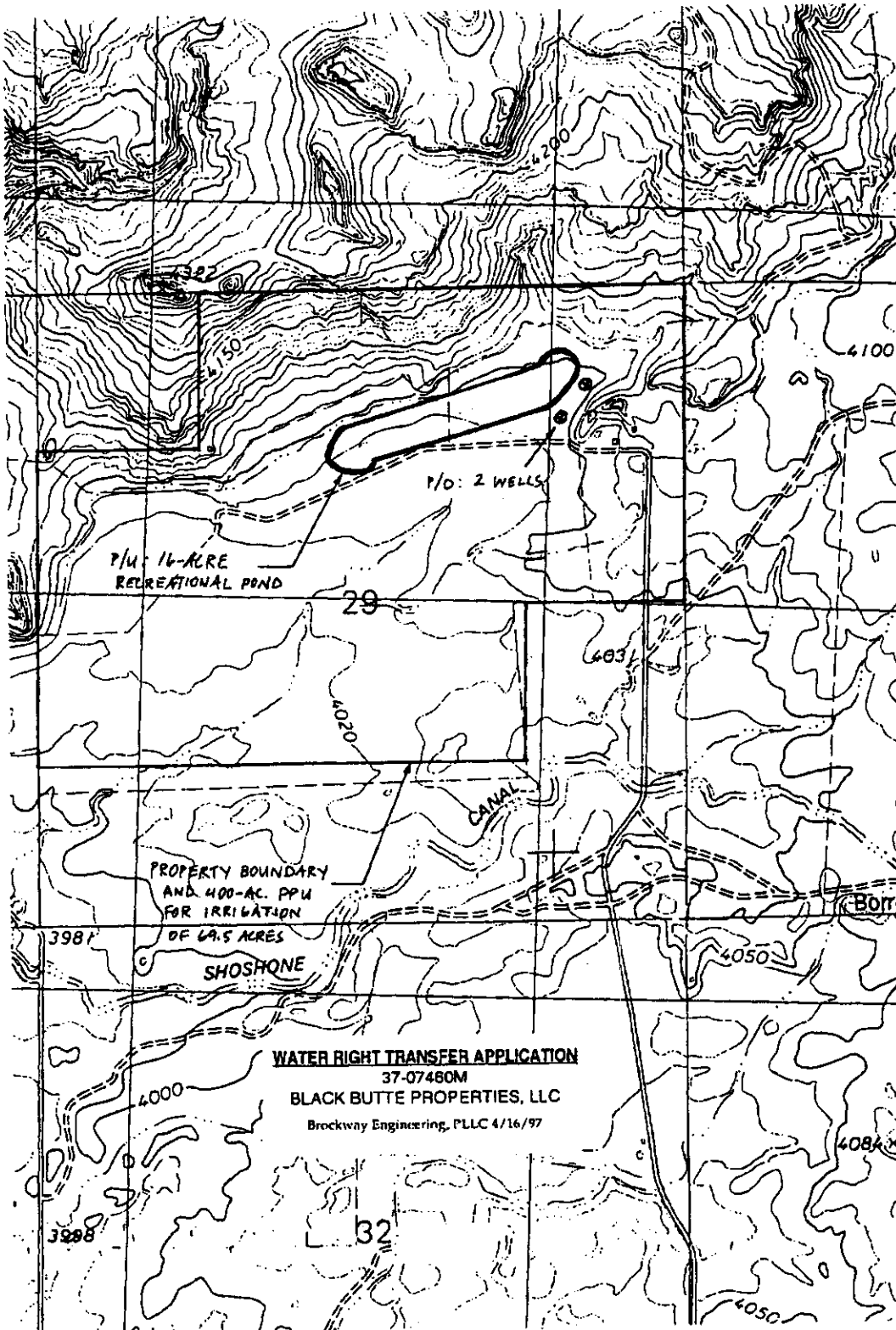
If there are any questions regarding this report or additional information is needed, please contact me at any time.

5 of 6

Transfer No. 5098

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

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



NSG

POD Data

05S 17E 08 SENESE

Legal Description	GPS Site ID	Diversion Name	Meas Option	POD
05S 17E 08 SENESE	A0002859	DAIRY #1 WEST WELL		401618
Latitude 043:00:06.016		Longitude -114:27:16.672	GPS File R101517A	
			Flowmeter (8)	
Comments One Meter, installed Feb 2000 for both wells. See also A0002868. Flow data in this record.				

Reporters

Type	Name / Address	Phone(s)
Owner	FITZGERALD, ANDREW 4 BROTHERS DAIRY INC 427 NORTH 250 WEST SHOSHONE, ID 83352	(Fax)

Flowmeter Data

Year	Date	Calibration Factor	Max CFS	Adj Max CFS	Acre-Ft	Adj Acre-Ft	Acre-Ft Qualif	Valid	Prefrd
2002	6/8/2000	0.96			33.96	32.6	NM	☐	☐
Comments IDWR audit work for reporting year. CRK 1-15-03									
2001	6/8/2000	0.96			29.63	28.44	MR	☐	☐
Comments No report received. End of year odometer from IDWR audit. Received report on 3-28-02 I									
2000	6/8/2000	0.96			30.27	29.06	PM	☐	☐
Comments Readings for the year only provided 11 months of the year. Owners End of the year readin									
1999		1					ND	☐	☐
Comments meter installed 02-01-00 (GPM 2-28-00)									

Flowmeter Calibration

Calibration Date: 6/8/2000 Calibration Factor: 0.96

401618

Installed Meter	Standard Meter	Other well(s):
Meter Type: PROPELLER	Pipe Material: STEEL	A0002868
Manufacturer: MASTER	Outside Diameter: 2.4	Other meter(s): ☐
Model:	Wall Thickness: 0.153	Comments:
Serial Number: 2659046	Upstream Straight: 0.8	two wells one meter reported on this form.
Rate Units: GPM	Downstream Straight: 1.25	Meter replaced 2/00
Rate Multiplier: 1	Meter Type: SONIC	
Volume Units: GAL	Measured Flow Units: GPM	
Volume Multiplier: 100	Measured Flow: 23.5	
Location: FAIR	Confidence: GOOD	
Indicated Flow: 24.6		Changed: 11/16/2001

Site Visits

Site Visit Date	Site Examiner	Reason
6/9/2000	GMOODY	Flowmeter Calibration

Change Date:
11/16/2001

Legal Description	GPS Site ID	Diversion Name	Meas Option	POD
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Notes: One Meter two wells. Flow data in A0002859, West Well

10/15/1997

DNELSON

Inventory

Notes: SEE EAST WELL FOR COMMENTS ON HOSTILE SITUATION! DAN 3-12-98

NSG

POD Data

05S 17E 09 NENW

Legal Description	GPS Site ID	Diversion Name	Meas Option	POD
05S 17E 09 NENW	A0007959	DAIRY #2 EAST WELL		401902
Latitude 000:00:00.000	Longitude 000:00:00.000	GPS File R060818B	Flowmeter (8)	
Comments Transfer 5183, 37-7413B				

Reporters

Type	Name / Address	Phone(s)
Owner	FITZGERALD, ANDREW 4 BROTHERS DAIRY INC 427 NORTH 250 WEST SHOSHONE, ID 83352	(Fax)

Flowmeter Data

Year	Date	Calibration Factor	Max CFS	Adj Max CFS	Acre-Ft	Adj Acre-Ft	Acre-Ft Qualif	Valid	Prefrd
2002	6/8/2000	1.08			35.87	38.74	NM	☐	☐
Comments IDWR audit work for report 2002. Gave it a 1 rollover factor. CRK 5-6-03									
2001	6/8/2000	1.08			23.36	25.23	MR	☐	☐
Comments No report received. End odometer from IDWR audit, reflects meter rollover. Report receiv									
2000	6/8/2000	1.08			19.42	20.97	MR	☐	☐
Comments This well is part of Dairy #2 with two POD's and two meters. CRK 3-21-01									
1999	6/8/2000	1.08			26.68	28.81	MR	☐	☐
Comments meter rolled this year									
1998	6/8/2000	1.08			10.57	11.42	PM	☐	☐
Comments new meter installed 6/20/98. No meter befor (GPM 2-28-00)									

Flowmeter Calibration

Calibration Date: **6/8/2000** Calibration Factor: **1.08**

401902

Installed Meter	Standard Meter	Other well(s):
Meter Type: PROPELLER	Pipe Material: STEEL	
Manufacturer: MCCROMETER	Outside Diameter: 3.53	Other meter(s): ☐
Model: 3	Wall Thickness: 0.204	Comments:
Serial Number: 9834623	Upstream Straight: 1.125	
Rate Units: GPM	Downstream Straight: 0.08	
Rate Multiplier: 1	Meter Type: SONIC	
Volume Units: GAL	Measured Flow Units: GPM	
Volume Multiplier: 10	Measured Flow: 82	
Location: FAIR	Confidence: FAIR	
Indicated Flow: 76		

Changed: 8/25/2000

Legal Description	GPS Site ID	Diversion Name	Meas Option	POD
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Site Visits

Site Visit Date	Site Examiner	Reason	Change Date:
6/8/2000	GMOODY	Flowmeter Calibration	11/16/2001

Notes:

NSG

POD Data

05S 17E 09 NENW

Legal Description	GPS Site ID	Diversion Name	Meas Option	POD
05S 17E 09 NENW	A0007958	DAIRY #2 WEST WELL		401901
Latitude 000:00:00.000 Longitude 000:00:00.000 GPS File R060818A			Flowmeter (8)	
Comments Transfer 5183, 37-07413B				

Reporters

Type	Name / Address	Phone(s)
Owner	FITZGERALD, ANDREW 4 BROTHERS DAIRY INC 427 NORTH 250 WEST SHOSHONE, ID 83352	(Fax)

Flowmeter Data

Year	Date	Calibration Factor	Max CFS	Adj Max CFS	Acre-Ft	Adj Acre-Ft	Acre-Ft Qualif	Valid	Prefrd
2002	6/8/2000	1.11			40.64	45.11	NM	☐	☐
Comments IDWR audit on 12-31-02. Gave meter a two roll over factor. CRK 5-6-03									
2001	6/8/2000	1.11			13.62	15.12	MR	☐	☐
Comments No report received. End of year odometer from IDWR audit. Report received on 3-28-02 I									
2000	6/8/2000	1.11			10.97	12.18	PM	☐	☐
Comments Only provided 11 months due to the meter being broke for the first month of the year. Own									
1999		1			24.25	24.25	FE	☐	☐
Comments meter broke near end of year. Annual volume estimated by WMD									
1998		1	0	0	8.9	0	PM	☐	☐
Comments METER WAS INSTALLED IN 1998 ARNIE 7/1/99									

Flowmeter Calibration

Calibration Date: **6/8/2000** Calibration Factor: **1.11**

401901

Installed Meter	Standard Meter	Other well(s):
Meter Type: PROPELLER	Pipe Material: STEEL	
Manufacturer: MCCROMETER	Outside Diameter: 3.54	Other meter(s): ☐
Model:	Wall Thickness: 0.213	Comments:
Serial Number: 99983525	Upstream Straight: 1.08	
Rate Units: GPM	Downstream Straight: 0.58	
Rate Multiplier: 1	Meter Type: SONIC	
Volume Units: GAL	Measured Flow Units: GPM	
Volume Multiplier: 10	Measured Flow: 21.6	
Location: FAIR	Confidence: POOR	
Indicated Flow: 19.5		Changed: 8/25/2000

Legal Description	GPS Site ID	Diversion Name	Meas Option	POD
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Site Visits

Site Visit Date	Site Examiner	Reason	Change Date:
6/9/2000	GMOODY	Flowmeter Calibration	11/16/2001

Notes: Accuracy on upper end of acceptable limit. Examiner used 20 minute average for calibration in order to get a test within range.

Sent back July 17, 2002

06/22/2002

IDAHO DEPARTMENT OF WATER RESOURCES
 PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER 19-10237

NAME AND ADDRESS: PATTY L BUCKWAY
 600 N 250 W BOX 584
 SHOSHONE ID 83352

JOSEPH J BUCKWAY
 600 N 250 W BOX 584
 SHOSHONE ID 83352

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.130 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000
 GALLONS PER DAY.

PRIORITY DATE 07/31/1945

POINT OF DIVERSION: T05S R17E S05 SHOSHONE Lot 1 within LINCOLN County

PURPOSE AND PERIOD OF USE

PURPOSE OF USE	PERIOD OF USE	QUANTITY
DOMESTIC	1/01 12/31	0.040 CFS
STOCKWATER	1/01 12/31	0.130 CFS

PLACE OF USE:

DOMESTIC within LINCOLN County
 T05S R17E S04 Lot 4 NWNW T05S R17E S05 Lot 1 NENE
STOCKWATER within LINCOLN County
 T05S R17E S04 Lot 4 NWNW T05S R17E S05 Lot 1 NENE

OTHER PROVISIONS: NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
 NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE
 EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE
 ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER
 THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6),
 IDAHO CODE.

THE QUANTITY OF WATER DECKED FOR THIS WATER RIGHT IS NOT A
 DETERMINATION OF HISTORICAL BENEFICIAL USE.

EXPLANATORY MATERIAL: BASIS OF CLAIM Beneficial Use

Sent back July 17, 2002

06/22/2002

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 37-10237

NAME AND ADDRESS: PATTY L BUCKWAY
600 N 250 W BOX 584
SHOSHONE ID 83352

JOSEPH J BUCKWAY
600 N 250 W BOX 584
SHOSHONE ID 83352

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.130 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 14,000
GALLONS PER DAY.

PRIORITY DATE: 07/31/1945

POINT OF DIVERSION: TOSSE RITE S4 SEMENE LOT 1 WITHIN LINCOLN COUNTY

PURPOSE AND PERIOD OF USE

PURPOSE OF USEPERIOD OF USEQUANTITY

DOMESTIC

1/01 12/31

0.040 CFS

STOCKWATER

1/01 12/31

0.130 CFS

PLACE OF USE:

DOMESTIC WITHIN LINCOLN COUNTY

TOSSE RITE S04 LOT 4 NW1/4

TOSSE RITE S05 LOT 1 NW1/4

STOCKWATER WITHIN LINCOLN COUNTY

TOSSE RITE S04 LOT 4 NW1/4

TOSSE RITE S05 LOT 1 NW1/4

OTHER PROVISIONS: NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE
EFFICIENT ADMINISTRATION OF THE WATER RIGHTS AS MAY BE
ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER
THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6),
IDAHO CODE.

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A
DETERMINATION OF HISTORICAL BENEFICIAL USE.

EXPLANATORY MATERIAL: BASIS OF CLAIM Beneficial Use

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

WELL OWNER Name <u>Mr. J. H. Smith</u> Address <u>123 Main St., Anytown, Pa.</u> Drilling Permit No. <u>2082-001</u> Water Right Permit No. <u>A 1-10234</u>	7. WATER LEVEL Static water level <u>7.6 ft</u> feet below land surface. Flowing? ☐ Yes ☒ No G.P.M. flow _____ Artesian closed-in pressure _____ p.s.i. Controlled by: ☐ Valve ☐ Cap ☐ Plug Temperature _____ °F. Quality _____ <i>Describe artesian or temperature zones below</i>						
NATURE OF WORK ☐ New well ☐ Deepened ☒ Replacement ☐ Well diameter increase ☐ Modification ☐ Abandoned (describe abandonment or modification procedures such as liners, screen, materials, plug depths, etc. in lithologic log, section 3)	8. WELL TEST DATA ☐ Pump ☐ Bailor ☒ Air ☐ Other _____ <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 33%;">Discharge G.P.M.</th> <th style="width: 33%;">Pumping Level</th> <th style="width: 33%;">Hours Pumped</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><u>20</u></td> <td style="text-align: center;"><u>220</u></td> <td style="text-align: center;"><u>1</u></td> </tr> </tbody> </table>	Discharge G.P.M.	Pumping Level	Hours Pumped	<u>20</u>	<u>220</u>	<u>1</u>
Discharge G.P.M.	Pumping Level	Hours Pumped					
<u>20</u>	<u>220</u>	<u>1</u>					

3. PROPOSED USE

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

4. METHOD DRILLED

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

5. WELL CONSTRUCTION

Casing schedule: ☒ Steel ☐ Concrete ☐ Other _____
 Thickness _____ Diameter _____
 _____ inches _____ inches + $1\frac{1}{2}$ feet 404 feet
 _____ inches _____ inches _____ feet _____ feet
 _____ inches _____ inches _____ feet _____ feet

Was casing drive shoe used? ☐ Yes ☒ No
 Was a packer or seal used? ☐ Yes ☒ No
 Perforated? ☐ Yes ☒ No

How perforated? ☐ Factory ☐ Knife ☐ Torch ☐ Gun
 Size of perforation? _____ inches by _____ inches

Number _____ From _____ To _____
 _____ perforations _____ feet _____ feet
 _____ perforations _____ feet _____ feet
 _____ perforations _____ feet _____ feet

Well screen installed? ☐ Yes ☒ No
 Manufacturer _____ Type _____

Top Packer or Headpipe _____
 Bottom of Tailpipe _____

Diameter _____ Slot size _____ Set from _____ feet to _____ feet
 Diameter _____ Slot size _____ Set from _____ feet to _____ feet
 Gravel packed? ☐ Yes ☒ No ☐ Size of gravel _____
 Placed from _____ feet to _____ feet

Surface seal depth ☒ Material used in seal: ☐ Cement grout
☒ Bentonite ☐ Puddling clay

Sealing procedure used: ☐ Slurry pit
☐ Temp. surface casing ☒ Overhole to seal depth

Method of joining casing: ☐ Threaded ☒ Welded
☐ Solvent Weld ☐ Cemented between strata

Describe access port _____

9. LITHOLOGIC LOG

Bore Diam.	Depth		Material	Water	
	From	To		Yes	No
8	0	1	TOP SOIL		☒
8	1	15	THICK BLACK SLT		☒
8	15	65	THICK LAVA		☒
8	65	85	RED SLT		☒
8	85	105	RED LAVA		☒
8	105	125	RED LAVA		☒
8	125	145	RED LAVA		☒
8	145	165	RED LAVA		☒
8	165	185	RED LAVA		☒
8	185	205	RED LAVA		☒
8	205	225	RED LAVA		☒
8	225	245	RED LAVA		☒
8	245	265	RED LAVA		☒
8	265	285	RED LAVA		☒
8	285	305	RED LAVA		☒
8	305	325	RED LAVA		☒
8	325	345	RED LAVA		☒
8	345	365	RED LAVA		☒
8	365	385	RED LAVA		☒
8	385	405	RED LAVA		☒
8	405	425	RED LAVA		☒
8	425	445	RED LAVA		☒
8	445	465	RED LAVA		☒
8	465	485	RED LAVA		☒
8	485	505	RED LAVA		☒
8	505	525	RED LAVA		☒
8	525	545	RED LAVA		☒
8	545	565	RED LAVA		☒
8	565	585	RED LAVA		☒
8	585	605	RED LAVA		☒
8	605	625	RED LAVA		☒
8	625	645	RED LAVA		☒
8	645	665	RED LAVA		☒
8	665	685	RED LAVA		☒
8	685	705	RED LAVA		☒
8	705	725	RED LAVA		☒
8	725	745	RED LAVA		☒
8	745	765	RED LAVA		☒
8	765	785	RED LAVA		☒
8	785	805	RED LAVA		☒
8	805	825	RED LAVA		☒
8	825	845	RED LAVA		☒
8	845	865	RED LAVA		☒
8	865	885	RED LAVA		☒
8	885	905	RED LAVA		☒
8	905	925	RED LAVA		☒
8	925	945	RED LAVA		☒
8	945	965	RED LAVA		☒
8	965	985	RED LAVA		☒
8	985	1005	RED LAVA		☒
8	1005	1025	RED LAVA		☒
8	1025	1045	RED LAVA		☒
8	1045	1065	RED LAVA		☒
8	1065	1085	RED LAVA		☒
8	1085	1105	RED LAVA		☒
8	1105	1125	RED LAVA		☒
8	1125	1145	RED LAVA		☒
8	1145	1165	RED LAVA		☒
8	1165	1185	RED LAVA		☒
8	1185	1205	RED LAVA		☒
8	1205	1225	RED LAVA		☒
8	1225	1245	RED LAVA		☒
8	1245	1265	RED LAVA		☒
8	1265	1285	RED LAVA		☒
8	1285	1305	RED LAVA		☒
8	1305	1325	RED LAVA		☒
8	1325	1345	RED LAVA		☒
8	1345	1365	RED LAVA		☒
8	1365	1385	RED LAVA		☒
8	1385	1405	RED LAVA		☒
8	1405	1425	RED LAVA		☒
8	1425	1445	RED LAVA		☒
8	1445	1465	RED LAVA		☒
8	1465	1485	RED LAVA		☒
8	1485	1505	RED LAVA		☒
8	1505	1525	RED LAVA		☒
8	1525	1545	RED LAVA		☒
8	1545	1565	RED LAVA		☒
8	1565	1585	RED LAVA		☒
8	1585	1605	RED LAVA		☒
8	1605	1625	RED LAVA		☒
8	1625	1645	RED LAVA		☒
8	1645	1665	RED LAVA		☒
8	1665	1685	RED LAVA		☒
8	1685	1705	RED LAVA		☒
8	1705	1725	RED LAVA		☒
8	1725	1745	RED LAVA		☒
8	1745	1765	RED LAVA		☒
8	1765	1785	RED LAVA		☒
8	1785	1805	RED LAVA		☒
8	1805	1825	RED LAVA		☒
8	1825	1845	RED LAVA		☒
8	1845	1865	RED LAVA		☒
8	1865	1885	RED LAVA		☒
8	1885	1905	RED LAVA		☒
8	1905	1925	RED LAVA		☒
8	1925	1945	RED LAVA		☒
8	1945	1965	RED LAVA		☒
8	1965	1985	RED LAVA		☒
8	1985	2005	RED LAVA		☒
8	2005	2025	RED LAVA		☒
8	2025	2045	RED LAVA		☒
8	2045	2065	RED LAVA		☒
8	2065	2085	RED LAVA		☒
8	2085	2105	RED LAVA		☒
8	2105	2125	RED LAVA		☒
8	2125	2145	RED LAVA		☒
8	2145	2165	RED LAVA		☒
8	2165	2185	RED LAVA		☒
8	2185	2205	RED LAVA		☒
8	2205	2225	RED LAVA		☒
8	2225	2245	RED LAVA		☒
8	2245	2265	RED LAVA		☒
8	2265	2285	RED LAVA		☒
8	2285	2305	RED LAVA		☒
8	2305	2325	RED LAVA		☒
8	2325	2345	RED LAVA		☒
8	2345	2365	RED LAVA		☒
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8	2385	2405	RED LAVA		☒
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8	2525	2545	RED LAVA		☒
8	2545	2565	RED LAVA		☒
8	2565	2585	RED LAVA		☒
8	2585	2605	RED LAVA		☒
8	2605	2625	RED LAVA		☒
8	2625	2645	RED LAVA		☒
8	2645	2665	RED LAVA		☒
8	2665	2685	RED LAVA		☒
8	2685	2705	RED LAVA		☒
8	2705	2725	RED LAVA		☒
8	2725	2745	RED LAVA		☒
8	2745	2765	RED LAVA		☒
8	2765	2785	RED LAVA		☒
8	2785	2805	RED LAVA		☒
8	2805	2825	RED LAVA		☒
8	2825	2845	RED LAVA		☒
8	2845	2865	RED LAVA		☒
8	2865	2885	RED LAVA		☒
8	2885	2905	RED LAVA		☒
8	2905	2925	RED LAVA		☒
8	2925	2945	RED LAVA		☒
8	2945	2965	RED LAVA		☒
8	2965	2985	RED LAVA		☒
8	2985	3005	RED LAVA		☒
8	3005	3025	RED LAVA		☒
8	3025	3045	RED LAVA		☒
8	3045	3065	RED LAVA		☒
8	3065	3085	RED LAVA		☒
8	3085	3105	RED LAVA		☒
8	3105	3125	RED LAVA		☒
8	3125	3145	RED LAVA		☒
8	3145	3165	RED LAVA		☒
8	3165	3185	RED LAVA		☒
8	3185	3205	RED LAVA		☒
8	3205	3225	RED LAVA		☒
8	3225	3245	RED LAVA		☒
8	3245	3265	RED LAVA		☒
8	3265	3285	RED LAVA		☒
8	3285	3305	RED LAVA		☒
8	3305	3325	RED LAVA		☒
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8	3565	3585	RED LAVA		☒
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8	3805	3825	RED LAVA		☒
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8	3925	3945	RED LAVA		☒
8	3945	3965	RED LAVA		☒
8	3965	3985	RED LAVA		☒
8	3985	4005	RED LAVA		☒
8	4005	4025	RED LAVA		☒
8	4025	4045	RED LAVA		☒
8	4045	4065	RED LAVA		☒
8	4065	4085	RED LAVA		☒
8	4085	4105	RED LAVA		☒
8	4105	4125	RED LAVA		☒
8	4125	4145	RED LAVA		☒
8	4145	4165	RED LAVA		☒
8	4165	4185	RED LAVA		☒
8	4185	4205	RED LAVA		☒
8	4205	4225	RED LAVA		☒
8	4225	4245	RED LAVA		☒
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8	4305	4325	RED LAVA		☒
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8	4425	4445	RED LAVA		☒
8	4445	4465	RED LAVA		☒
8	4465	4485	RED LAVA		☒
8	4485	4505	RED LAVA		☒
8	4505	4525	RED LAVA		☒
8	4525	4545	RED LAVA		☒
8	4545	4565	RED LAVA		☒
8	4565	4585	RED LAVA		☒
8	4585	4605	RED LAVA		☒
8	4605	4625	RED LAVA		☒
8	4625	4645	RED LAVA		☒
8	4645	4665	RED LAVA		☒
8	4665	4685	RED LAVA		☒
8	4685	4705	RED LAVA		☒
8	4705	4725	RED LAVA		☒
8	4725	4745	RED LAVA		☒
8	4745	4765	RED LAVA		☒
8	4765	4785	RED LAVA		☒
8	4785	4805	RED LAVA		☒
8	4805	4825	RED LAVA		☒
8	4825	4845	RED LAVA		☒
8	4845	4865	RED LAVA		☒
8	4865	4885			

Idaho State Department of Agriculture
2270 Old Penitentiary Road
Boise, Idaho 83712
(208) 332-8500

Well Analyses Report

JOSEPH BUCKWAY
584 N 250 W
SHOSHONE, ID 83352

Sample # 7500268

Sample Date: 5/29/2002

Project # 750

ANALYTES:	RESULTS:	DETECTION LIMITS:	UNITS OF MEASURE:
Temperature	14.900		degrees Celcius
pH	7.060		unitless
TDS	258.000		mg/L
Salinity			unitless
Nitrate	10.00		mg/L
Nitrite	ND	0.025	mg/L
OrthoP	BDL	0.025	mg/L
Sulfate	24.00	0.027	mg/L
Bromide	ND	0.150	mg/L
Chloride	18.00	0.038	mg/L
Flouride	0.27	0.090	mg/L
Ammonia	BDL	0.120	mg/L

Primary Standards:

Based on the protection of human health

Nitrate: 10.0 mg/L
Nitrite: 1.0 mg/L
Flouride: 4.0 mg/L

Secondary Standards:

Based on aesthetic qualities

Chloride 250 mg/L
Sulfate 250 mg/L
pH 6.5 to 8.5
TDS 500 mg/L

Notes:

mg/L = milligrams per liter (equivalent to parts per million)

µg/L = micrograms per liter (equivalent to parts per billion)

TDS = total dissolved solids

NA = not analyzed

ND = not detected or below detection limit

Results reported higher than the noted detection limit signifies a positive detection. All constituents listed without detection limits are reported as actual detections. For results reported below the detection limit, these indicate non-detectable levels.

8/26/2002

Page 55 of 82

2270 Old Penitentiary Road
Boise, Idaho 83712
(208) 332-8500

Well Analyses Report

MRS. JOSEPH BUCKWAY
584 N 250 W
SHOSHONE, ID 83352

Sample # 7500463

Sample Date: 7/6/2004

Project # 760

ANALYTES:	RESULTS:	DETECTION LIMITS:	UNITS OF MEASURE:
Temperature	15.900		degrees Celcius
pH	7.730		unitless
TDS	493		mg/L
Salinity	NA		unitless
Nitrate	6.1		mg/L
Nitrite	ND	0.025	mg/L
OrthoP	BDL	0.025	mg/L
Sulfate	25	0.027	mg/L
Bromide	ND	0.150	mg/L
Chloride	15	0.038	mg/L
Flouride	0.3	0.090	mg/L
Ammonia	BDL	0.120	mg/L

Primary Standards:

Based on the protection of human health

Nitrate: 10.0 mg/L
Nitrite: 1.0 mg/L
Flouride: 4.0 mg/L

Secondary Standards:

Based on aesthetic qualities

Chloride 250 mg/L
Sulfate 250 mg/L
pH 6.5 to 8.5
TDS 500 mg/L

Notes:

g/L = milligrams per liter (equivalent to parts per million)

µ/L = micrograms per liter (equivalent to parts per billion)

TDS = total dissolved solids

NA = not analyzed

BDL = not detected or below detection limit

COPY

IDAHO STATE DEPARTMENT
OF AGRICULTURE

ENGINEERING SERVICES

2004 JUL -8 AM 8:41



June 25, 2004

Mr. Wendell Johnson
Planning and Zoning Administrator
Lincoln County
111 W. B Street, Suite P
Shoshone, ID 83352

RE: Fitzgerald Proposed Dairy Expansion, CAFO Siting Team, June 24, 2004 – Lincoln County, Idaho

Dear Mr. Johnson:

The Idaho State CAFO Siting Team has completed its review of the application for 4 Brothers proposed dairy expansion, located at 427 N. 250 W. Shoshone, Idaho in Lincoln County. The review was completed in response to a request made by the Lincoln County Commissioners in accordance with IDAPA 02.04.18.

The Team, consisting of representatives from the Idaho Department of Environmental Quality (IDEQ), Idaho Department of Water Resources (IDWR), and the Idaho State Department of Agriculture (ISDA) performed a site evaluation (from 2:00 PM to 3:30 PM) on June 24, 2004 and conducted a final review meeting on the same day.

The information evaluated for this facility included the application package provided by Lincoln County, IDWR well log information and water right records, IDWR State-wide Ambient Ground Water Quality Monitoring Program network data, Eastern Snake River Plain Aquifer information (see attached), IDEQ and IDWR data (see attached), ISDA Regional Agricultural Ground Water Quality Monitoring Program data, well driller reports and discussion with Andrew Fitzgerald (owner/operator) during the site review. Wendell Johnson, Planning and Zoning Board Administrator, also provided verbal information during the site visit and final review meeting.

The following technical factors contributed in determination of the rating.

- The proposal is to expand an existing dairy facility. The facility currently has a permit for 7,258 animal units and is requesting an additional 4,000 animal units permit.
- The dairy currently resides and will have control of 1,377 acres of irrigated cropland. Andrew Fitzgerald mentioned an offer has been made to buy additional acreage, but the CAFO Siting Team did not take this information into account since it has yet to transpire.
- An Application for Transfer of a Water Right has been filed with the IDWR. As filed, the application appears to provide adequate water supply for the proposed expansion. The application is currently being processed and a final determination has not been issued. Issues involving water availability are matters to be heard and decided by IDWR in a separate water right process prescribed by law. Upon completion of the water right and transfer process, IDWR will make a final determination.
- Average precipitation is 10 inches per year. Groundwater recharge is primarily from precipitation, irrigation, tributary streams and underflow.
- The groundwater table and first encountered water in the local area is greater than 100 feet below land surface. Geologic information shows fractured basalt without any protective layers between soil and the water table.
- The general regional groundwater flow direction is towards the west-southwest.
- The facility is within a sole source aquifer boundary.
- Groundwater quality data within the area suggest median nitrate concentrations to be between less than 1.0 and 2 parts per million in the local area and are stable or decreasing.

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- Liquid wastewater including runoff from the expanded facility will be contained within new waste storage ponds (to be built). The wastewater will be land applied on the 1,271 irrigated acres owned by the dairy.
- The cropland is irrigated with pivots. Dairy wastewater is applied through gated pipe.
- Solid waste will be composted on-site or directly land applied. The facility is planning on exporting approximately 74% of its waste. The dairy would need approximately 5,250 acres of irrigated cropland to apply the waste generated from the facility according to the current NMP. This NMP was written for 9,220 au's. The current facility permit and new permit would encompass 11,258 au's. Using the current au/acre needed the current facility and expansion would require approximately 6,400 total acres for land application of waste.
- Pest Control. The dairy currently has a pest management program in place including spraying and harrowing the corrals to minimize pests.
- Domestic wells are present within 1000' of the proposed expansion.

The following information is beyond the scope of evaluation by the CAFO Siting team:

1. Information regarding air quality. For a more specific evaluation of air quality concerns, please contact the regional IDEQ office.
2. Increase in the number of lumens due to the expansion.
3. Potential road changes due to increased traffic. For a more specific evaluation, please contact your county highway district or the Idaho State Department of Transportation.

The final dairy engineering and site plans must be submitted to ISDA for final approval before construction can commence. In addition to meeting all the other State requirements, the producer must have any new wastewater containment structures approved by ISDA including berming prior to use. Any rock outcroppings found in the expansion area which are exposed will need to be covered with a minimum of 1 foot of soil.

The following recommendation is based on the information supplied to the team through the producer and site-specific conditions at the time of the evaluation. However, information used for evaluating the ground water, geology and soils is based on regional information and may not fully characterize the local conditions on the specific facility. Any changes or modification in the application or at the site may alter the Suitability Determination. The Suitability Determination, as determined by the Team, is Moderate Risk.

Several ways to mediate and lower the risk factor is to:

- Conduct annual soil and manure/compost testing prior to manure application to ensure the amount of waste is land applied at the appropriate agronomic rates.
- The facility can increase the amount of actively controlled (either own or lease) irrigated cropland to help reduce the amount of manure exported.
- The facility should re-write its current NMP to the requested permit level.

The following individuals were present at the CAFO Siting Team evaluation. The names depicted in bold type are the individuals responsible for the suitability determination.

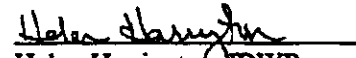
1. **Matt Thompson, ISDA, Resource Engineer**
2. **John Bilderback, ISDA, Resource Engineer**
3. **Craig Tesch, ISDA, Hydrogeologist**
4. **Helen Harrington, IDWR, Technical Hydrogeologist**
5. **John Frietag, IDWR, Senior Water Right Agent**
6. **Scott Stanton, IDEQ, Water Quality Science Officer**
7. **David Anderson, IDEQ, Regional Engineering Manager**
8. **Wendell Johnson, Payette County Planning and Zoning Assistant Administrator**
9. **Andrew Fitzgerald, Owner/Operator**
10. **Clement Fitzgerald, Owner/Operator**

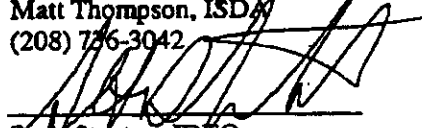
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If you require further information regarding this site determination, please feel free to contact us.


Matt Thompson, ISDA
(208) 736-3042


Helen Harrington, IDWR
(208) 327-7950


Scott Stanton, IDEQ
(208) 736-2190

ATTACHMENTS

1. IDEQ produced map (including animal units in the area, public water systems, residential wells, irrigated acres and population)
2. IDWR Summary Information for Lincoln County (information regarding the Eastern Snake River Plain Aquifer including groundwater and nitrate data).

"Serving consumers and agriculture by safeguarding the public, plants, animals and the environment through education and regulation."

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A37-10404
Date Received: 7/06/1988
Receipt No: S000715
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: JERRY L. WESTENDORF 208-886-7570
Address: 705W 420N
GOODING, ID 83330
AND/OR
Name: SUSAN WESTENDORF 208-886-7570
Address: 705W 420N
GOODING, ID 83330

2. Date of Priority: JAN 01, 1950

3. Source: GROUNDWATER Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
05S	16E	10	NE	NE	SW		LINCOLN

5. Description of diverting works:
WELL & PUMP

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
DOMESTIC	01/01	12/31	0.040		
STOCKWATER	01/01	12/31	0.040		

7. Total Quantity Appropriated is:
0.040 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
D/1 HOUSE, S/60 HEREFORD

A37-10404

Page 1

Date: 07/06/88

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A37-10405
Date Received: 7/06/1988
Receipt No: S000719
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: KURT W WESTENDORF
Address: 439N 700W
GOODING, ID

83330

208-886-7701

AND/OR

Name: IRENE WESTENDORF
Address: 439N 700W
GOODING, ID

83330

208-886-7701

2. Date of Priority: JAN 01, 1912

3. Source: GROUNDWATER

Trib. to:

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
05S	16E	10	NE	SE	SW		LINCOLN

5. Description of diverting works:
WELL & PUMP

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
DOMESTIC	01/01	12/31	0.040		

7. Total Quantity Appropriated is:
0.040 C.F.S. (and/or)

A.F.A.

8. Total consumptive use is

Acre Feet Per Annum.

9. Non-irrigation uses:
D/1 HOUSE

A37-10405

Page

1

Date: 07/06/88

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A37-01191
Date Received: 7/ 6/1988
Receipt No: S000719
Received By: _____

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

AMENDED

1. Name: KURT W WESTENDORF 208-886-7701
Address: 439N 700W
GOODING ID 83330

AND/OR

Name: IRENE WESTENDORF 208-886-7701
Address: 439N 700W
GOODING ID 83330

2. Date of Priority: SEP 2, 1902

3. Source: BIG WOOD RIVER Trib. to: MALAD RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
05S	16E	10	NE	NE	SW		LINCOLN

5. Description of diverting works:
VIA BIG WOOD CANAL CO. SYSTEM

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/01	11/01	2.400		

7. Total Quantity Appropriated is:
2.400 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
05S	16E	10	SW	SW		IRR	40.0

A37-01191

Page 1

Date: 04/09/93

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A37-00619
Date Received: 7/06/1988
Receipt No: S000719
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: KURT W. WESTENDORF 208-886-7701
Address: 439N 700W
GOODING, ID 83330
AND/OR 208-886-7701
Name: IRENE WESTENDORF
Address: 439N 700W
GOODING, ID 83330

2. Date of Priority: MAY 01, 1884

3. Source: BIG WOOD RIVER Trib. to: MALAD RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
05S	14E	10	SE	SE	NW		LINCOLN

5. Description of diverting works:
SIMS #22 & M-G #23 HEADGATES FROM BIG WOOD CANAL CO. SYSTEM

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	04/01	11/01	3.200		

7. Total Quantity Appropriated is:
3.200 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

A37-00619

Page 1

Date: 07/06/88

RICHARD A. CARLSON

Attorney at Law

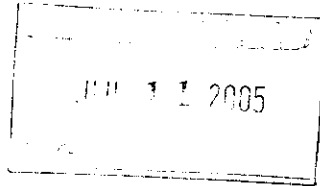
ISB # 5971 OSB # 79-180

P.O. Box 21
Filer, ID 83328

Telephone and fax :
(208)326-3686

July 8, 2005

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



Re: 4 Bros. Transfer No. 71607

Dear Rob:

Please find enclosed an IDWR Water Right Report consisting of three pages I am sending you to supplement the discovery I have already provided.

In addition, I received a package of materials this morning from IDWR. Although I have only had a chance to do a cursory review of the materials, I can tell from what I did review that the Lincoln County Rural Council will be accumulating, at the very least, more documentary evidence related to the "public interest" criteria and will send that to you as soon as it is available.

I see that we have a tentatively scheduled prehearing conference scheduled for July 14 in Shoshone. Although that date has not been confirmed I'll expect to see you then.

Yours truly,

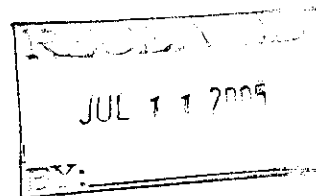

Rich Carlson

cc: Russell and Pamela Pantone



[Close](#)IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

07/08/2005



WATER RIGHT NO. 37-10425

Owner Type Name and Address

Current Owner DOUGLAS ALBRIGHT
675 NORTH 150 WEST
SHOSHONE, ID 83352
(208)866-2315

Original Owner ROBERT A HILTON
PO BOX 98
BLAINE, WA 98230
(604)533-2328

Priority Date: 12/31/1910

Basis: Decreed

Status: Active

Source Tributary

GROUND WATER

Beneficial Use From To Diversion Rate Volume

STOCKWATER 1/01 12/31 0.09 CFS

DOMESTIC 1/01 12/31 0.08 CFS

Total Diversion 0.17 CFS

Location of Point(s) of Diversion: