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FAX COVER SHEET**RECEIVED**

JUL 26 2005

DEPARTMENT OF
WATER RESOURCES**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: July 26, 2005

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JUL 26 2005

DEPARTMENT OF
WATER RESOURCES

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

RECEIVED**JUL 26 2005****DEPARTMENT OF
WATER RESOURCES****ROBERT E. WILLIAMS**

IDAHO STATE BAR NO. 1693

FREDERICKSEN, WILLIAMS, MESERVY & LOTH SPEICH, LLP

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P.O. Box 168

Jerome, ID 83338

Telephone: (208) 324-2303

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Attorney 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. 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:

MOTION FOR ORDER STRIKING PROTESTANT'S EXHIBITS OR, ALTERNATIVELY, FOR VACATION OF HEARING AND SANCTIONS - 2

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"Failure to respond to reasonable requests for information may lead to delays in the hearing of this matter and/or the exclusion of the withheld information from the hearing."

Regarding potential sanctions for disobedience of discovery orders, IRCP 37(b)(2) provides in pertinent part as follows:

"(2) Sanctions by court in which action is pending. If a party ... fails to obey an order to provide or permit discovery, including an order made ... the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following: (A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order; (B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence; (C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party; (D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination; (E) Where a party has failed to comply with an order under Rule 35(a) requiring the party to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that the party is unable to produce such person for examination. In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising the party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust."

The Applicants are anxious for the hearing in this matter to proceed as scheduled. They are more anxious that their case be fully prepared at the time of the hearing. Because of the Protestants' failures to adequately respond to the

MOTION FOR ORDER STRIKING PROTESTANT'S EXHIBITS OR, ALTERNATIVELY, FOR VACATION OF HEARING AND SANCTIONS - 3

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Applicant's discovery requests, it is not now possible for the Applicant to be fully prepared at the date and time now set for the hearing.

In accordance with I.R.C.P. Rule 37(b), Applicant requests that the Protestants' Exhibits Nos. 103 - 120 be stricken, that the Protestants be prohibited from introducing them into evidence, or to introduce into evidence any of the matters contained in those exhibits. If the Hearing Officer does not believe such an order is appropriate, the Applicant requests that the hearing be vacated to allow Applicant to adequately prepare, which order should also allow the Applicant the opportunity to conduct additional discovery, if it determines it is required after a full analysis of the additional exhibits. Should the Hearing Officer deem this alternative order to be appropriate, the Applicant believes it should also be awarded attorney fees, costs and expenses which will be incurred as a result of the Protestant's failure to timely comply with the previous orders regarding discovery.

In support of this motion, a copy of the Applicant's First Set of Interrogatories and Requests for Production of Documents directed to Protestant Lincoln County Rural Council (hereafter "LCRC") is attached hereto as **EXHIBIT "B"** (identical discovery requests were sent to all Protestants); a copy of Protestant LCRC's initial discovery responses are attached hereto as **EXHIBIT "C"** and a copy of Protestant LCRC's supplemental discovery responses are attached hereto as **EXHIBIT "D"**. Dr. Brockway's Affidavit is also attached as **EXHIBIT "A"**. The responses of all other Protestants to the discovery requests were substantially identical to that of LCRC.

An expedited hearing on this motion is requested.

RESPECTFULLY SUBMITTED this 26th day of July, 2005.



ROBERT E. WILLIAMS
Attorney for Applicant

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/Exh A only
☐ Federal Express


ROBERT E. WILLIAMS

MOTION FOR ORDER STRIKING PROTESTANT'S EXHIBITS OR, ALTERNATIVELY, FOR VACATION
OF HEARING AND SANCTIONS - 5

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ROBERT E. WILLIAMS
IDAHO STATE BAR NO. 1693
FREDERICKSEN, WILLIAMS, MESERVY & LOTHSPREICH, LLP
117 South Adams Street
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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.

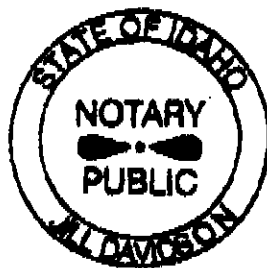
3. I spent several hours examining the proposed exhibits on Monday, July 25, 2005. In order that I may fully digest the exhibits, do the necessary research and corroboration and otherwise fully prepare expert testimony in response to those exhibits, several days of my time will be required.

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 & LOTHSPREICH, LLP

117 South Adams Street

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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 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;

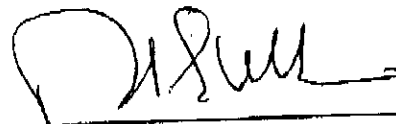
(b) Whether such witness is the author of the exhibit;

(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
& LOTHSPICH, LLP



ROBERT E. WILLIAMS
Attorney for Applicant

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	)	
4 Bros. Dairy, Inc.,	)	LINCOLN COUNTY RURAL
Applicant,	)	COUNCIL'S RESPONSE TO
	)	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

EXHIBIT

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 home number is IDWR, 1341 Fillmore St. Suite 200, Twin Falls, ID 83301 (208)736-3033.

LINCOLN COUNTY RURAL COUNCIL'S

RESPONSE TO INTERROGATORIES AND REQUEST FOR PRODUCTION - 2

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

LINCOLN COUNTY RURAL COUNCIL'S

RESPONSE TO INTERROGATORIES AND REQUEST FOR PRODUCTION - 3

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

LINCOLN COUNTY RURAL COUNCIL'S

RESPONSE TO INTERROGATORIES AND REQUEST FOR PRODUCTION - 5

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.

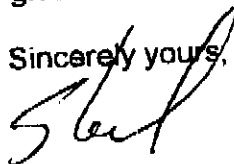
I've also reviewed the data surrounding the wells at the Black Butte Properties in order to give you some information for discussion with the applicant. During the Brockway test the well was pumped for about 50 hours at 220 gallons per minute or .49 cubic feet per second. The drawdown during that period 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
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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", with a large, stylized flourish extending from the end.

Sheri L. Chapman
President

SLC:kje