

T.A. GRIFFITH

Livestock Transportation

3184

3626 N. 3200 E.
Kimberly, ID 83341
(208) 733-7380
Mobile# 731-7380
ID# 82-0446348

Origin Blisc Id Date 11-11 20 02
Destination Oakley Truck No. CSC Farms Trl. No. -
Shipped by Wybenga To -

No. Head	DESCRIPTION	Weight	Rate	Amount
34	Cows			250.00
40	Cows			6.00

Check to CSC Farms Inc.

TOTAL \$ 500
385

Received by _____
In good condition except as noted

Speedometer End _____ Route _____

Speedometer Start _____

Total Miles _____ Rate Per Mile _____ TOTAL _____

Driver 911 REC 911

Depart

T.A. GRIFFITH

Livestock Transportation

3180

3626 N. 3200 E.
Kimberly, ID 83341
(208) 733-7380
Mobile# 731-7380
ID# 82-0446348

Origin Bliss Id Date 11-18 20 02
Destination Oakley Id Truck No. 94 Trl. No. 53
Shipped by Wybenga Dairy To _____

No. Head	DESCRIPTION	Weight	Rate	Amount
34	Cows		250	00
42	Cows		250	00

TOTAL --- \$

Received by _____ In good condition except as noted

Speedometer End _____ Route _____

Speedometer Start _____

Total Miles _____ Rate Per Mile _____ TOTAL _____

Driver _____

RECEIVED

APR 01 2003

WYBENGA DAIRY SETTLEMENT AGREEMENT

This Agreement is made among the following parties on this 8 day of ^{July}~~June~~, 2002. The parties to the Agreement are the Idaho Department of Water Resources ("IDWR" or "Department"); the Applicants, Steve Wybenga and Darla Wybenga ("Wybengas"); the Protestants: Elden Thompson, Mike Elliott, Lynn Elliott, Ray Maxfield, Judy Maxfield, Ron Stroud, and R. Randolph Erkins ("Protestants"); and Gooding County.

RECITALS

A. There is presently pending before the Idaho Supreme Court (Docket No. 28602) an appeal from a decision by the Gooding County District Court in a case entitled *Steve Wybenga and Darla Wybenga v. IDWR, Ray and Judy Maxfield, Mike W. and Lynn Elliott, Elden Thompson, Ron Stroud, and R. Randolph Erkins*, Gooding County Case No. CV-01-00577. This case involves a petition for judicial review of the denial of Application for Transfer No. 5580 seeking to transfer water for use on the Wybenga Dairy at 662 Spring Cove Ranch Road, Bliss, ID, 83314. The transfer application sought approval to use water to operate a dairy of about 900 animals.

B. There is presently pending in District Court in Gooding County a lawsuit captioned *Gooding County, Idaho v. Steve Wybenga and Darla Wybenga*, Case No. CV-00-00030. This case involves Gooding County's concerns about Wybengas' operation of the Wybenga Dairy at more than 306 animal units.

C. The Wybengas are proposing the construction of a new dairy at 1300 South 900 West in Cassia County. The new dairy will house at least 2,700 dairy cows. The Wybengas applied for a Confined Animal Feeding Operation ("CAFO") permit from Cassia County. Cassia County approved the CAFO permit in April, 2002.

D. Application for Transfer No. 69708 has been filed with IDWR to transfer water from an irrigation use to commercial and stockwater use in connection with the new dairy to be built by the Wybengas in Cassia County. The application was protested, but the protest was resolved. A final review of the application has been completed by IDWR which approved the transfer application on June 11, 2002.

E. The parties to this Agreement desire to fully resolve all issues involved in the two pending lawsuits. The parties enter into this Agreement for that purpose, to buy their peace, and to obtain assurances that further litigation will not occur among the parties over the operation of the Wybenga dairy, except as may be authorized under the terms of this Agreement. To achieve these purposes, the parties to this Agreement intend the Agreement to bind each party, and their respective successors and assigns, to the terms and conditions of this Agreement.

AGREEMENT

NOW THEREFORE, In exchange for the mutual covenants, consideration, and performance set forth in this Agreement, the parties agree as follows:

1. Wybengas and Gooding County agree to seek dismissal of *Gooding County v. Wybenga*, Case No. CV-00-00030, with prejudice and to file all documents and to do all other acts reasonable or necessary to obtain such final dismissal.

2. Wybengas agree to seek dismissal of the Idaho Supreme Court appeal involving Transfer No. 5580 with prejudice, and to file all documents and to do all other acts reasonable or necessary to obtain such final dismissal.

3. Each party agrees to cooperate in and not oppose dismissal of the two cases mentioned above.

4. Wybengas will maintain the waste lagoon at the Wybenga dairy in as dry condition as reasonably possible until the number of animal units at the dairy has been reduced to 306 animal units (calculated for this Agreement under Gooding County Ordinance No. 66) and the use of ground water has been reduced to no more than the amount authorized under Water Right No. 37-11191, which authorizes a .06 cfs diversion rate up to a volume of 13,000 gpd). Wybengas will take other reasonable actions in compliance with their approved nutrient management plan as may be required to reduce and control the odor generated by their dairy.

5. Wybengas, within ten (10) days of the execution of this Agreement, will establish an effective fly control program that is consistent with practices recommended by the Idaho Department of Agriculture to spray the Wybenga dairy property, but not the neighboring properties, for flies at the concentrations and frequencies recommended by the product manufacturer until the number of animal units and ground water use has been reduced as stated in the above paragraph.

6. Wybengas will reduce to 306 animal units the number of cows at the Wybenga dairy by moving them to the proposed new dairy in Cassia County, as soon as is practical given the progress of construction at the new dairy. Under no circumstances, however, will Wybengas have more than 306 animal units of cows on the Wybenga dairy after February 28, 2003, nor after that date will Wybengas divert more water for the dairy than is authorized under Water Right No. 37-11191.

7. At any time after February 28, 2003, IDWR may, without further notice to the Wybengas, institute a civil enforcement action against Wybengas consistent with the provisions of I.C. § 42-1701B(5) and obtain a preliminary and permanent injunction against the diversion of any ground water in excess of that authorized by Water Right No. 37-11191. Alternatively, any excessive diversion of water under the right may be curtailed by a watermaster if IDWR has created a water district, pursuant to I.C. § 42-604, with regulatory authority over Water Right No. 37-11191. In bringing a civil enforcement action in accordance with this paragraph, IDWR may seek penalties in excess of those provided for in this Agreement only to the extent

that the penalties relate to conduct occurring after February 28, 2003, or to conduct not addressed by this Agreement. Wybengas waive any defenses and agree not to oppose a civil enforcement action brought by IDWR, or alternatively regulation by a watermaster, in accordance with this paragraph to the extent the action relates to the conduct addressed in this Agreement. Wybengas do not waive any defenses or their right to oppose an enforcement action brought by IDWR that relates to conduct not addressed by this Agreement.

8. At no time will the Wybengas divert ground water in excess of 0.11 cfs at the Wybenga dairy. In the event that the Wybengas divert more than 0.11 cfs, IDWR may, without further notice to Wybengas, cause the excessive diversion to be curtailed by a duly authorized watermaster or institute a civil enforcement action against Wybengas and obtain a preliminary and permanent injunction against the diversion of any ground water in excess of that authorized by Water Right No. 37-11191. The IDWR may also seek any related civil penalties authorized by statute. The Wybengas waive any defenses they might otherwise assert and agree not to oppose any enforcement action brought by the Department in accordance with this provision of the Agreement.

9. The Wybengas agree to maintain to the satisfaction of the Director of IDWR a suitable measuring device in accordance with I.C. § 42-701 which will allow determination of the total volume of diversion from their well. The Wybengas agree to allow IDWR personnel access to the Wybenga dairy for the purpose of measuring water diversions or otherwise monitoring compliance with this Agreement.

10. Upon execution of this Agreement, the Wybengas shall immediately pay the sum of forty four thousand four hundred ninety-four and 38/100 dollars (\$44,494.38) to the Protestants, by delivering a cashiers check payable to Speck & Aanestad Trust Account to the law office of Speck & Aanestad, P.O. Box 987, Ketchum ID 83340-0987.

11. Upon the execution of this Agreement, the Wybengas shall immediately pay to IDWR an advance penalty cost of \$12,500.00 for the proposed use of water in excess of that authorized under Water Right No. 37-11191 from the effective date of this Agreement through February 28, 2003. The payment shall be calculated at the rate of fifty dollars (\$50.00) per calendar day for each one-tenth (0.1) cfs, or part thereof, proposed to be diverted in excess of that authorized by Water Right No. 37-11191. A minimum daily penalty cost of fifty dollars (\$50.00) shall be charged for each day that water is diverted in excess of the 13,000 gallons per day authorized to be diverted at the rate of .06 cfs under Water Right No. 37-11191. The advance penalty cost for an estimated 250 days at \$50.00 per day is \$12,500.00. The Department shall refund to the Wybengas the advance penalty costs paid by the Wybengas for any days prior to February 28, 2003 for which the diversion of ground water at the Wybenga dairy is reduced to that authorized under Water Right No. 37-11191. Any refund due under this paragraph shall be issued within ten (10) days after IDWR receives written notice from Wybengas that the diversion of water at the dairy has been permanently reduced so that it will not exceed the amount authorized under Water Right No. 37-11191.

12. Upon the execution of this Agreement, the Wybengas shall immediately secure an irrevocable letter of credit from an Idaho bank payable jointly to the Idaho Department of Water Resources and Gooding County in the amount of fifty thousand dollars (\$50,000) with an expiration date of March 10, 2003. IDWR and Gooding County shall be entitled to call for payment under the letter if the Wybengas either have more than 306 animal units of cows on the Wybenga dairy after February 28, 2003, or continue to divert more water than authorized under Water Right No. 37-11191 after February 28, 2003. IDWR and Gooding County agree to allow the letter of credit to expire and not initiate a call on the letter of credit for payment if the Wybengas have ceased diverting more water for the dairy than is authorized under Water Right No. 37-11191 by February 28, 2003, and if the Wybengas have reduced the number of animal units of cows on the Wybenga dairy to no more than 306. If prior to February 28, 2003, the Wybengas notify IDWR and Gooding County in writing that they have ceased diverting more water than authorized under Water Right No. 37-11191 and have reduced the number of cows to no more than 306 animal units, IDWR and Gooding County agree to provide the bank holding the letter of credit with written notice authorizing the expiration and release of the letter of credit before March 10, 2003, provided IDWR and Gooding County are satisfied that the same has occurred. Upon receiving notice of compliance from Wybengas, IDWR and Gooding County agree to promptly conduct any investigation and either notify the bank and Wybengas that the letter of credit may be released, or notify the Wybengas of the reasons why they believe the release terms of this paragraph have not been satisfied.

13. Compliance with this Agreement by the Wybengas shall preclude the bringing of a civil enforcement action by IDWR, except as provided in this Agreement, relating to the diversion of water not in conformance with a valid water right at the Wybenga dairy prior to March 1, 2003.

14. Compliance with this Agreement by the Wybengas shall preclude any civil enforcement action by Gooding County relating to the siting of 900 animal units at the Wybenga dairy prior to March 1, 2003.

15. The Protestants agree not to bring or pursue any judicial or administrative action or proceeding, or encourage, assist, or aid others in so doing, which shall have the purpose, intent, or effect of requiring the Wybengas to operate the dairy at a level of less than the 900 animal units during any time prior to March 1, 2003.

16. If a party to this Agreement does not comply with the terms of this Agreement, one or more of the other parties to the Agreement may seek and obtain an appropriate order from the Gooding County district court providing for specific performance of this Agreement and/or such other and further relief as is authorized by the laws of the State of Idaho, including but not limited to a civil enforcement action by IDWR.

17. This Agreement does not merge into any other agreement, settlement, or dismissal of the two lawsuits. This Agreement survives any dismissal of the two lawsuits.

18. The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Idaho applicable to agreements made and performed in that state.

19. This Agreement sets forth the entire agreement among the parties. There are no covenants, provisions, promises, agreements, conditions, or understandings, either oral or written, among the parties other than are herein set forth.

20. This Agreement has been reached in the process of good faith negotiations for the purpose of resolving legal disputes, including pending litigation, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding, and that this Agreement is not and shall not be used as precedent in any other legal proceeding.

21. As between the Wybengas and the Protestants, if either party retains an attorney for the purpose of enforcing any right or duty against the other arising out of this Agreement, the non-prevailing party in such dispute shall pay to the prevailing party the latter's reasonable attorneys fees, whether or not litigation is actually instituted, and including attorneys fees on appeal.

22. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns. All of the terms and conditions of this Agreement shall be covenants running with the land, which shall be binding upon the Wybengas dairy property and inure to the benefit of the other parties to this Agreement. This Agreement shall be recorded in the real property records of Gooding County.

23. This Agreement may be modified only in writing and only if each party to this Agreement signs the written modification.

24. This Agreement shall be effective immediately upon signing by all parties hereto.

25. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original document as if all the signatory Parties to all of the counterparts had signed the same document. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures, and may be attached to another counterpart of this Agreement identical in form having attached to it one or more signature pages.

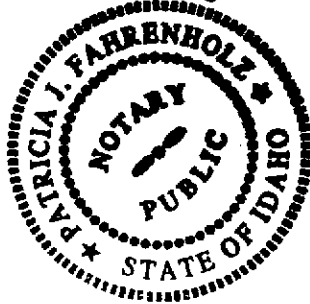
The Parties execute this Agreement as of the day that the last signatory executes the Agreement.

STATE OF IDAHO)
) ss.
County of Twin Falls)

STEVE WYBENGA

DARLA WYBENGA

On this 8th day of July, in the year of 2002, before me, a notary public, personally appeared **STEVE WYBENGA** and **DARLA WYBENGA**, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.



Patricia J. Fahrenholz
NOTARY PUBLIC FOR IDAHO

Residing in: Twin Falls

Commission expires: 11-09-04

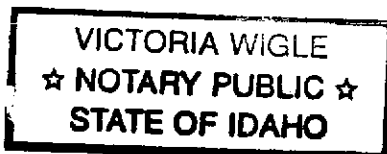
STATE OF IDAHO)
) ss.
COUNTY OF Ada)

Idaho Department of Water Resources

KARL J. DREHER

On this 17th day of June, 2002, before me, a Notary Public in and for said county and state, personally appeared **KARL J. DREHER**, known to me to be the Director of the Idaho Department of Water Resources, who represents the state agency that is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the date and year first above written.



Victoria Wigle
NOTARY PUBLIC for Idaho

Residing at Boise, Idaho

My Commission expires 5/29/04

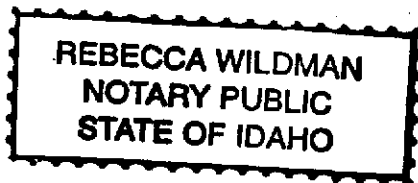
STATE OF IDAHO)
) :SS
County of Gooding)

GOODING COUNTY

Philip A. Brown
PHILIP A. BROWN

On this 24th day of June, 2002, before me, a Notary Public in and for said county and state, personally appeared **PHILIP A. BROWN**, known to me to be the Gooding County Prosecuting Attorney, who represents the county that is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the date and year first above written



Rebecca Wildman
NOTARY PUBLIC FOR IDAHO
Residing in: Gooding, Idaho
Commission expires: 08/13/04

STATE OF IDAHO)
) :SS
County of Gooding)

Ray Maxfield
RAY MAXFIELD

Judy Maxfield
JUDY MAXFIELD

On this 20th day of June, in the year of 2002, before me, a notary public, personally appeared **RAY MAXFIELD** and **JUDY MAXFIELD**, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.



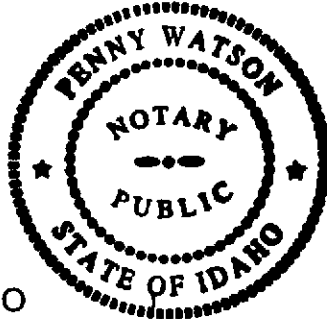
Penny Watson
NOTARY PUBLIC FOR IDAHO
Residing in: Wendell, Id.
Commission expires: 12-6-05

STATE OF IDAHO)
) :SS
County of Gooding)

Mike W. Elliott
MIKE W. ELLIOTT

Lynn Elliott
LYNN ELLIOTT

On this 20th day of June, in the year of 2002, before me, a notary public, personally appeared **MIKE ELLIOTT** and **LYNN ELLIOTT**, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

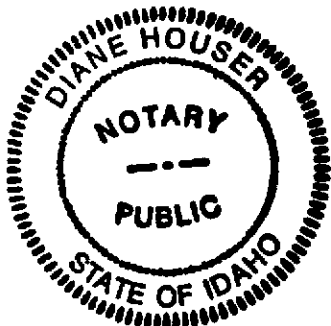


Penny Watson
NOTARY PUBLIC FOR IDAHO
Residing in: Wendell, ID
Commission expires: 12-6-05

STATE OF IDAHO)
) :SS
County of Gooding)

Elden Thompson
ELDEN THOMPSON

On this 18 day of June, in the year of 2002, before me, a notary public, personally appeared **ELDEN THOMPSON**, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.



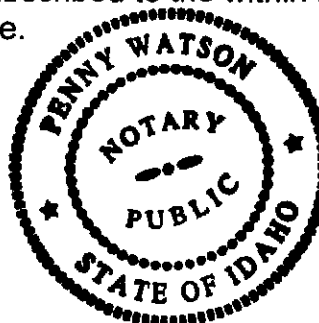
Diane Houser
NOTARY PUBLIC FOR IDAHO
Residing in: Gooding
Commission expires: 7-24-2004

STATE OF IDAHO)
)SS
County of Gooding)



RON STROUD

On this 20th day of June, in the year of 2002, before me, a notary public, personally appeared RON STROUD, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.





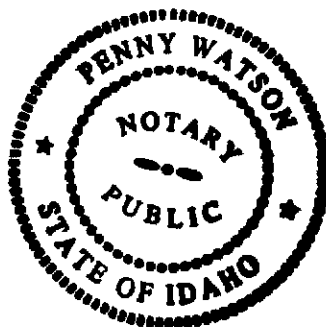
NOTARY PUBLIC FOR IDAHO
Residing in: Wendell, Id
Commission expires: 12-10-05

STATE OF IDAHO)
)SS
County of Gooding)



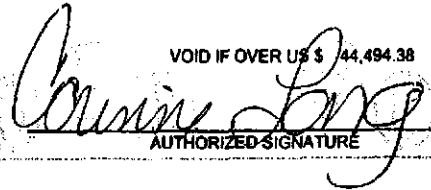
R. RANDOLPH ERKINS

On this 21st day of June, in the year of 2002, before me, a notary public, personally appeared R. RANDOLPH ERKINS, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.





NOTARY PUBLIC FOR IDAHO
Residing in: Wendell Id
Commission expires: 12-10-05

06069 Office AU #	11-24 1210(8)	CASHIER'S CHECK	0606901176
Operator I.D.: Idho5815		Idho5815	July 12, 2002
PAY TO THE ORDER OF		***SPECK & AANESTAD TRUST ACCOUNT***	
Forty-four thousand four hundred ninety-four dollars and 38 cents		**\$44,494.38**	
WELLS FARGO BANK, N.A. PAYABLE IF DESIRED AT WELLS FARGO BANK NORTHWEST, N.A. 1864 BLUE LAKES NORTH TWIN FALLS, ID 83301 FOR INQUIRIES CALL (480) 394-3122		VOID IF OVER US \$ 44,494.38  AUTHORIZED SIGNATURE	

⑈0606901176⑈ ⑆121000248⑆4861 505808⑈

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

In Re SRBA)
Case No. 39576)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 37-11191

2001 MAY -4 AM 11:15

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME AND ADDRESS: DARLA WYBENGA
STEVE WYBENGA
622 E SPRING COVE RD
BLISS, ID 83314

SOURCE: GROUNDWATER

QUANTITY: 0.06 CFS

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

PRIORITY DATE: 01/01/1955

POINT OF DIVERSION: T05S R13E S30 SWSWSE Within Gooding County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Domestic 1 HOME	01-01 TO 12-31	0.04 CFS
	Stockwater	01-01 TO 12-31	0.06 CFS

PLACE OF USE: Stockwater Within Gooding County
T05S R13E S30 SWSE

Domestic Within Gooding County
T05S R13E S30 SWSE

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

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

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. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Roger Burdick

Roger Burdick
Presiding Judge of the
Snake River Basin Adjudication



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

April 2, 2003

Patrick D Brown
HUTCHINSON & BROWN, LLP
104 Lincoln Street
P.O. Box 207
Twin Falls, ID 83303-0207

Re: Wybenga Dairy Settlement Agreement

Dear Mr. Brown:

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APR 2 2003

Department of Water Resources

RECEIVED

APR 2 2003

Department of Water Resources

Enclosed as requested in your letter of March 24, 2003, and in accordance with Paragraph 11 of the July 8, 2002 Wybenga Dairy Settlement Agreement, is State of Idaho Draft No. 15626152 in the amount of \$5,050.00 payable to Hutchinson & Brown LLP Trust Account.

This payment is a partial refund of the \$12,500.00 prepaid penalty paid by Steve Wybenga and Darla Wybenga to the Department of Water Resources on July 8, 2002. The prepaid penalty was calculated based on a penalty of \$50.00 per day for 250 days from June 23, 2002 to February 28, 2003. The partial refund of \$5,050.00 is based on the livestock transportation records you provided to the Department to support Wybenga's representation that the number of cows at the Wybenga dairy was reduced to no more than 306 animal units by November 19, 2002. The final penalty under the Settlement Agreement is thus calculated at \$7,450.00 for the 149 days from June 23, 2002 to November 19, 2002. The difference between the prepaid penalty of \$12,500.00 and \$7,450.00 is the refund amount of \$5,050.00.

Sincerely,

L. GLEN SAXTON, P.E.
Chief, Water Allocation Bureau

Enclosure

REMOVE SIDE EDGES FIRST
THEN FOLD, CREASE AND TEAR THIS STUB ALONG PERFORATION

15626152

Idaho State Controller

P O Box 83720 - Boise, Idaho 83720-0011



Do Not Discard
Official State Business

RECEIVED

Department

360 L-0000144
HUTCHINSON & BROWN LLP
TRUST ACCOUNT
PO BOX 207
TWIN FALLS, ID 83303

116667443

REMOVE SIDE EDGES FIRST
THEN FOLD, CREASE AND TEAR THIS STUB ALONG PERFORATION

REMOVE SIDE EDGES FIRST
THEN FOLD, CREASE AND TEAR THIS STUB ALONG PERFORATION

RECEIVED

MAR 27 2003

Department of Water Resources

PHONE: (208) 733-9300

WATS: (800) 753-2529

FAX: (208) 733-9343

**HUTCHINSON
&
BROWN, LLP**

ATTORNEYS AT LAW

Keith E. Hutchinson, Esq.
Patrick D. Brown, Esq.

March 24, 2003

Phillip J. Rassier
Deputy Attorney General
Idaho Department of Water Resources
1301 North Orchard St.
P. O. Box 83720
Boise, Idaho 83720-0098

RECEIVED

APR 01 2003

Department of Water Resources

Re: Wybenga Dairy

Dear Mr. Rassier:

I understand from Steve Wybenga that he had reduced his dairy herd to no more than 306 animal units by November 19, 2002. His water use also dropped by that date to no more than .06 c.f.s. or 13,000 gallons per day.

Consequently he is entitled to a refund on the prepaid penalty described in paragraph 11 of the July 8, 2002 Settlement Agreement.

By my calculations, he is entitled to refund of \$5,050.00. I calculated this figure based on a penalty of \$50.00 per day for the 250 days between June 23, 2002 and February 28, 2003. From June 23, 2002 until November 19, 2002 when the herd reduction was complete is 149 days. At \$50.00 per day the penalty is \$7,450.00. The difference between the \$12,500.00 prepaid and \$7450.00 penalty is the refund amount of \$5,050.00.

To document the herd reduction, I have enclosed a chart indicating when the cows were removed from the dairy along with the livestock transportation records.

If you have any questions or need further documentation, please give me call. Otherwise, I look forward to receiving the refund on behalf of the Wybengas and to presenting it to Steve as the last act to be performed under the Settlement Agreement.

Sincerely,

HUTCHINSON & BROWN, LLP



Patrick D. Brown
Attorney at Law

Enclosures

Livestock Chart

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APR 01 2003

Department of Water Resources

DATE/Receipt	NO.COWS
Receipt 0865	
11/18/2002	34
11/18/2002	38
11/18/2003	30
Receipt 0874	
10/31/2002	33
11/16/2002	35
37943	103
Brown Trucking	
31-Oct	33
	35
	8
	5
	23
	8
	33
	32
Griffith Transport	
11/19/2002	34
	40
11/18/2002	34
	42
Wagner Transport	
11/18/2002	34
	41
	34
	41
	34
	34
	28
	34
	36
	20
	936

DOG CREEK TRUCKING

0874

Date 11-24-02

Ron Brown
P.O. Box 486
Gooding, Idaho 83330
(208) 934-4416

Customer's
Order No.

Steve Wybenga
3418 S. 2400 E.
Jerome, ID 83338

Date	Quantity	Description	Rate	Amount
10/31	33	Dry Cows (Bliss to Oakley)		250 00
11/9	34	Cows (Jerome to Oakley)		225 00
11/16	35	Dry Cows (Bliss to Oakley)		250 00
11/18	103	Cows (Bliss to Oakley) (3 loads)		725 00
11/20	140	Cows (Jerome to Oakley) (4 loads)		900 00
11/23	82	Hfrs. (Jerome to Oakley)		225 00
			+ 350 00	
Thank you!				
TOTAL				2575 00

RECEIVED

NOV 27 2002

Steve Wybenga

0865

Date 11/25/02

Wybenga Daisy

Date	Quantity	Description	Rate	Amount
11/14	34	Hol - Oakley		225 ⁰⁰
11/18	34	Cows		
	38	Cows } Bliss to Oakley		675 ⁰⁰
	30	Cows		
11/20	34	Cows, 1 Bull		
	34	Cows } Jerome		900 ⁰⁰
	34	Cows } to Oakley		
	34	Cows		
11/23	30	Hol HF		
	18	Sm Hol HF } from Jerome		225 ⁻
	7	Spr.		
J. H. H. H.				
			TOTAL	2025 ⁰⁰

RECEIVED

APP-1

Department of Water Resources

DALE BROWN TRUCKING

Dog Creek

626 Agri Lane
Gooding, Idaho 83330
934-5080

RECEIVED

Date 11-25-02 Customer's Order No. _____

Steve Wybenga
3418 South 2400 East
Jerome, Idaho 83338

Date	Quantity	Description	Rate	Amount
10/9	28hd	Springer } Emmet to Oakley		475
	9hd	Sprrs }		
10/10	50hd	Mix Hfs - Jerome to Oakley		225
10/11	49hd	Mix Hfs - Jerome to Oakley		225
10/31	33hd	Dry Cows - Bliss to Oakley		250
11/6	35hd	Hol Springers } Bliss to Oakley		250
	8hd	Jersey Springer }		
11/6	5hd	Hol Springers		250
11/6	33hd	Half Jersey Cows (Dry)		
11/6	8hd	Jersey Hf - Emmett to Bliss		80
11/14	39hd	Cows Dry Bliss to Oakley		250
11/18	32hd	Milk Cows - ~~Gooding~~ to Oakley		250
11/20	138hd	4 loads Milk Cows - Jerome to Oakley		900
11/23	65hd	Hfs - Jerome to Oakley		225
11/23	20hd	Cows } Jerome to Oakley		225
	10hd	Springers }		
TOTAL			3605	00

0615

T.A. GRIFFITH

Livestock Transportation

3626 N. 3200 E.
Kimberly, ID 83341
(208) 733-7380
Mobile# 731-7380
ID# 82-0446348

3184

Origin Blisc Id Date 11-29 2002
Destination Oakley CSC Farms
Truck No. Trl. No.
Shipped by Wybenga To

No. Head	DESCRIPTION	Weight	Rate	Amount
34	Cows		250	
40	Cows		6	

Check to CSC Farms Inc

TOTAL - \$ 500

385

Received by In good condition except as noted

Speedometer End Route

Speedometer Start

Total Miles Rate Per Mile TOTAL

Driver

T.A. GRIFFITH

Livestock Transportation

3180

3626 N. 3200 E.
Kimberly, ID 83341
(208) 733-7380
Mobile# 731-7380
ID# 82-0446348

Origin Bliss Id Date 11-18, 2002

Destination Oakley Id Truck No. 94 Trl. No. 13

Shipped by Wybenga Dairy To _____

No. Head	DESCRIPTION	Weight	Rate	Amount
34	Cows		250	00
42	Cows		250	00

TOTAL --- \$

Received by _____
In good condition except as noted

Speedometer End _____ Route _____

Speedometer Start _____

Total Miles _____ Rate Per Mile _____ TOTAL _____

Driver _____

ORIGINAL

#20544 #20718
 #20066 #20719
 #20042 #20721
 #20720

TRUCK FREIGHT BILL

6791

Wagner Transportation Company

AREA CODE 208
 TELEPHONE 733-7671 OR 733-7279

P.O. BOX 192 --- TWIN FALLS, IDAHO 83303-0192

11-18-19-02
 DATE DELIVERED

#446
 #440-432-450
 VEHICLE NUMBER

DESTINATION AND STOPS - PARTIAL UNLOADING

Dairy
 Golden Valley Area, Idaho

ORIGIN AND STOP FOR PARTIAL LOADING

Wybenga Dairy
 N of Bliss, Idaho

DATE SHIPPED
 11-18-19-02

NO. PACKAGES	COMMODITY AND DESCRIPTION	WEIGHT	RATE	AMOUNT
34	Hol Cows			
41	Jer Cows			
34	Hol Cows			
41	Jer Cows			
34	Hol Cows			
34	Hol Cows			
28	Hol Cows 5 Jer Cow 1 Bull			
34	Hol Cows			
36	Jer Cows 4 Bull			
20	Hol Cows 8 Bulls Mxd 11-19-02			
	10 Loads @ \$250.00 per load			\$2500.00
			TOTAL	

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APR 11 2003

Department of Water Resources

MEMORANDUM

To: Phil Rassier
From: L. Glen Saxton *WJ*
RE: REVIEW OF REFUND REQUEST - WYBENGA DAIRY NEAR BLISS
Date: March 31, 2003

At your request, I have reviewed the letter dated March 24, 2003 from Patrick Brown in which he requests a refund of part of the \$12,500 advance penalty cost paid by Steve Wybenga pursuant to the Wybenga Dairy Settlement Agreement dated June 23, 2002. I have also reviewed the agreement together with the receipts submitted with the refund request that shows costs and dates associated with the shipping of cows from the Wybenga dairy in the Bliss area.

From my review of the information provided by Brown, a refund of \$5,050 to Wybenga for reduction in water use by November 19, 2002, appears to be reasonable based on the receipts for removal of the dairy cattle from the Bliss site.

c: Tim Luke
Allen Merritt
Cindy Yenter
Debbie Allen

Debbie,

Please make the check

*payable to Hutchinson &
Brown, LLP Trust Account.*

*THANKS,
Phil*

RECEIVED

APR 01 2003 RECEIVED

Department of Water Resources

**HUTCHINSON
&
BROWN, LLP**

ATTORNEYS AT LAW

Keith E. Hutchinson, Esq.
Patrick D. Brown, Esq.

PHONE: (208) 733-9300
WATS: (800) 753-2529
FAX: (208) 733-9343

July 12, 2002

RECEIVED

JUL 16 2002

Mr. Phillip J. Rassier, Deputy AG
Idaho Department of Water Resources
1301 North Orchard Street
P.O. Box 83720
Boise ID 83720-0098

COPY

Department of Water Resources

Re: Settlement Agreement

Dear Phil:

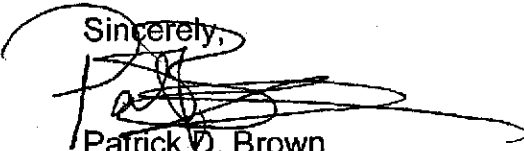
Enclosed is the original Wybenga Dairy Settlement Agreement with the following attachments:

1. Check No. 6574 payable to IDWR in the amount of \$12,500.00;
2. Copy of Cashier's check payable to Speck & Aanestad Trust Account for \$44,494.38;
3. Letter from Northwest Farm Credit Services to IDWR re: Irrevocable Letter of Credit No. 39362 (Regarding Steve Wybenga).

A copy of this letter, the Agreement with attachments, and the original cashier's check for \$44,493.38 are being sent to Mr. Speck.

If you have any questions, please call me. Thank you for your attention to this matter.

Sincerely,


Patrick D. Brown
Attorney at Law

pdb/tf
enc. Agmt-attachments
cc: Jim Speck w/enc.&ck
Phil Brown w/enc.
Steve Wybenga w/o enc.

RECEIVED

APR 01 2003

Department of Water Resources

COPY

WYBENGA DAIRY SETTLEMENT AGREEMENT

This Agreement is made among the following parties on this 8 day of ~~June~~^{July}, 2002. The parties to the Agreement are the Idaho Department of Water Resources ("IDWR" or "Department"); the Applicants, Steve Wybenga and Darla Wybenga ("Wybengas"); the Protestants: Elden Thompson, Mike Elliott, Lynn Elliott, Ray Maxfield, Judy Maxfield, Ron Stroud, and R. Randolph Erkins ("Protestants"); and Gooding County.

RECITALS

A. There is presently pending before the Idaho Supreme Court (Docket No. 28602) an appeal from a decision by the Gooding County District Court in a case entitled *Steve Wybenga and Darla Wybenga v. IDWR, Ray and Judy Maxfield, Mike W. and Lynn Elliott, Elden Thompson, Ron Stroud, and R. Randolph Erkins*, Gooding County Case No. CV-01-00577. This case involves a petition for judicial review of the denial of Application for Transfer No. 5580 seeking to transfer water for use on the Wybenga Dairy at 662 Spring Cove Ranch Road, Bliss, ID, 83314. The transfer application sought approval to use water to operate a dairy of about 900 animals.

B. There is presently pending in District Court in Gooding County a lawsuit captioned *Gooding County, Idaho v. Steve Wybenga and Darla Wybenga*, Case No. CV-00-00030. This case involves Gooding County's concerns about Wybengas' operation of the Wybenga Dairy at more than 306 animal units.

C. The Wybengas are proposing the construction of a new dairy at 1300 South 900 West in Cassia County. The new dairy will house at least 2,700 dairy cows. The Wybengas applied for a Confined Animal Feeding Operation ("CAFO") permit from Cassia County. Cassia County approved the CAFO permit in April, 2002.

D. Application for Transfer No. 69708 has been filed with IDWR to transfer water from an irrigation use to commercial and stockwater use in connection with the new dairy to be built by the Wybengas in Cassia County. The application was protested, but the protest was resolved. A final review of the application has been completed by IDWR which approved the transfer application on June 11, 2002.

E. The parties to this Agreement desire to fully resolve all issues involved in the two pending lawsuits. The parties enter into this Agreement for that purpose, to buy their peace, and to obtain assurances that further litigation will not occur among the parties over the operation of the Wybenga dairy, except as may be authorized under the terms of this Agreement. To achieve these purposes, the parties to this Agreement intend the Agreement to bind each party, and their respective successors and assigns, to the terms and conditions of this Agreement.

RECEIVED

APR 01 2003

AGREEMENT

NOW THEREFORE, In exchange for the mutual covenants, consideration, and performance set forth in this Agreement, the parties agree as follows:

1. Wybengas and Gooding County agree to seek dismissal of *Gooding County v. Wybenga*, Case No. CV-00-00030, with prejudice and to file all documents and to do all other acts reasonable or necessary to obtain such final dismissal.

2. Wybengas agree to seek dismissal of the Idaho Supreme Court appeal involving Transfer No. 5580 with prejudice, and to file all documents and to do all other acts reasonable or necessary to obtain such final dismissal.

3. Each party agrees to cooperate in and not oppose dismissal of the two cases mentioned above.

4. Wybengas will maintain the waste lagoon at the Wybenga dairy in as dry condition as reasonably possible until the number of animal units at the dairy has been reduced to 306 animal units (calculated for this Agreement under Gooding County Ordinance No. 66) and the use of ground water has been reduced to no more than the amount authorized under Water Right No. 37-11191, which authorizes a .06 cfs diversion rate up to a volume of 13,000 gpd). Wybengas will take other reasonable actions in compliance with their approved nutrient management plan as may be required to reduce and control the odor generated by their dairy.

5. Wybengas, within ten (10) days of the execution of this Agreement, will establish an effective fly control program that is consistent with practices recommended by the Idaho Department of Agriculture to spray the Wybenga dairy property, but not the neighboring properties, for flies at the concentrations and frequencies recommended by the product manufacturer until the number of animal units and ground water use has been reduced as stated in the above paragraph.

6. Wybengas will reduce to 306 animal units the number of cows at the Wybenga dairy by moving them to the proposed new dairy in Cassia County, as soon as is practical given the progress of construction at the new dairy. Under no circumstances, however, will Wybengas have more than 306 animal units of cows on the Wybenga dairy after February 28, 2003, nor after that date will Wybengas divert more water for the dairy than is authorized under Water Right No. 37-11191.

7. At any time after February 28, 2003, IDWR may, without further notice to the Wybengas, institute a civil enforcement action against Wybengas consistent with the provisions of I.C. § 42-1701B(5) and obtain a preliminary and permanent injunction against the diversion of any ground water in excess of that authorized by Water Right No. 37-11191. Alternatively, any excessive diversion of water under the right may be curtailed by a watermaster if IDWR has created a water district, pursuant to I.C. § 42-604, with regulatory authority over Water Right No. 37-11191. In bringing a civil enforcement action in accordance with this paragraph, IDWR may seek penalties in excess of those provided for in this Agreement only to the extent

that the penalties relate to conduct occurring after February 28, 2003, or to conduct not addressed by this Agreement. Wybengas waive any defenses and agree not to oppose a civil enforcement action brought by IDWR, or alternatively regulation by a watermaster, in accordance with this paragraph to the extent the action relates to the conduct addressed in this Agreement. Wybengas do not waive any defenses or their right to oppose an enforcement action brought by IDWR that relates to conduct not addressed by this Agreement.

8. At no time will the Wybengas divert ground water in excess of 0.11 cfs at the Wybenga dairy. In the event that the Wybengas divert more than 0.11 cfs, IDWR may, without further notice to Wybengas, cause the excessive diversion to be curtailed by a duly authorized watermaster or institute a civil enforcement action against Wybengas and obtain a preliminary and permanent injunction against the diversion of any ground water in excess of that authorized by Water Right No. 37-11191. The IDWR may also seek any related civil penalties authorized by statute. The Wybengas waive any defenses they might otherwise assert and agree not to oppose any enforcement action brought by the Department in accordance with this provision of the Agreement.

9. The Wybengas agree to maintain to the satisfaction of the Director of IDWR a suitable measuring device in accordance with I.C. § 42-701 which will allow determination of the total volume of diversion from their well. The Wybengas agree to allow IDWR personnel access to the Wybenga dairy for the purpose of measuring water diversions or otherwise monitoring compliance with this Agreement.

10. Upon execution of this Agreement, the Wybengas shall immediately pay the sum of forty four thousand four hundred ninety-four and 38/100 dollars (\$44,494.38) to the Protestants, by delivering a cashiers check payable to Speck & Aanestad Trust Account to the law office of Speck & Aanestad, P.O. Box 987, Ketchum ID 83340-0987.

11. Upon the execution of this Agreement, the Wybengas shall immediately pay to IDWR an advance penalty cost of \$12,500.00 for the proposed use of water in excess of that authorized under Water Right No. 37-11191 from the effective date of this Agreement through February 28, 2003. The payment shall be calculated at the rate of fifty dollars (\$50.00) per calendar day for each one-tenth (0.1) cfs, or part thereof, proposed to be diverted in excess of that authorized by Water Right No. 37-11191. A minimum daily penalty cost of fifty dollars (\$50.00) shall be charged for each day that water is diverted in excess of the 13,000 gallons per day authorized to be diverted at the rate of .06 cfs under Water Right No. 37-11191. The advance penalty cost for an estimated 250 days at \$50.00 per day is \$12,500.00. The Department shall refund to the Wybengas the advance penalty costs paid by the Wybengas for any days prior to February 28, 2003 for which the diversion of ground water at the Wybenga dairy is reduced to that authorized under Water Right No. 37-11191. Any refund due under this paragraph shall be issued within ten (10) days after IDWR receives written notice from Wybengas that the diversion of water at the dairy has been permanently reduced so that it will not exceed the amount authorized under Water Right No. 37-11191.

12. Upon the execution of this Agreement, the Wybengas shall immediately secure an irrevocable letter of credit from an Idaho bank payable jointly to the Idaho Department of Water Resources and Gooding County in the amount of fifty thousand dollars (\$50,000) with an expiration date of March 10, 2003. IDWR and Gooding County shall be entitled to call for payment under the letter if the Wybengas either have more than 306 animal units of cows on the Wybenga dairy after February 28, 2003, or continue to divert more water than authorized under Water Right No. 37-11191 after February 28, 2003. IDWR and Gooding County agree to allow the letter of credit to expire and not initiate a call on the letter of credit for payment if the Wybengas have ceased diverting more water for the dairy than is authorized under Water Right No. 37-11191 by February 28, 2003, and if the Wybengas have reduced the number of animal units of cows on the Wybenga dairy to no more than 306. If prior to February 28, 2003, the Wybengas notify IDWR and Gooding County in writing that they have ceased diverting more water than authorized under Water Right No. 37-11191 and have reduced the number of cows to no more than 306 animal units, IDWR and Gooding County agree to provide the bank holding the letter of credit with written notice authorizing the expiration and release of the letter of credit before March 10, 2003, provided IDWR and Gooding County are satisfied that the same has occurred. Upon receiving notice of compliance from Wybengas, IDWR and Gooding County agree to promptly conduct any investigation and either notify the bank and Wybengas that the letter of credit may be released, or notify the Wybengas of the reasons why they believe the release terms of this paragraph have not been satisfied.

13. Compliance with this Agreement by the Wybengas shall preclude the bringing of a civil enforcement action by IDWR, except as provided in this Agreement, relating to the diversion of water not in conformance with a valid water right at the Wybenga dairy prior to March 1, 2003.

14. Compliance with this Agreement by the Wybengas shall preclude any civil enforcement action by Gooding County relating to the siting of 900 animal units at the Wybenga dairy prior to March 1, 2003.

15. The Protestants agree not to bring or pursue any judicial or administrative action or proceeding, or encourage, assist, or aid others in so doing, which shall have the purpose, intent, or effect of requiring the Wybengas to operate the dairy at a level of less than the 900 animal units during any time prior to March 1, 2003.

16. If a party to this Agreement does not comply with the terms of this Agreement, one or more of the other parties to the Agreement may seek and obtain an appropriate order from the Gooding County district court providing for specific performance of this Agreement and/or such other and further relief as is authorized by the laws of the State of Idaho, including but not limited to a civil enforcement action by IDWR.

17. This Agreement does not merge into any other agreement, settlement, or dismissal of the two lawsuits. This Agreement survives any dismissal of the two lawsuits.

18. The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Idaho applicable to agreements made and performed in that state.

19. This Agreement sets forth the entire agreement among the parties. There are no covenants, provisions, promises, agreements, conditions, or understandings, either oral or written, among the parties other than are herein set forth.

20. This Agreement has been reached in the process of good faith negotiations for the purpose of resolving legal disputes, including pending litigation, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding, and that this Agreement is not and shall not be used as precedent in any other legal proceeding.

21. As between the Wybengas and the Protestants, if either party retains an attorney for the purpose of enforcing any right or duty against the other arising out of this Agreement, the non-prevailing party in such dispute shall pay to the prevailing party the latter's reasonable attorneys fees, whether or not litigation is actually instituted, and including attorneys fees on appeal.

22. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns. All of the terms and conditions of this Agreement shall be covenants running with the land, which shall be binding upon the Wybengas dairy property and inure to the benefit of the other parties to this Agreement. This Agreement shall be recorded in the real property records of Gooding County.

23. This Agreement may be modified only in writing and only if each party to this Agreement signs the written modification.

24. This Agreement shall be effective immediately upon signing by all parties hereto.

25. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original document as if all the signatory Parties to all of the counterparts had signed the same document. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures, and may be attached to another counterpart of this Agreement identical in form having attached to it one or more signature pages.

The Parties execute this Agreement as of the day that the last signatory executes the Agreement.

STATE OF IDAHO)
) ss.
County of Twin Falls)

STEVE WYBENGA

DARLA WYBENGA

On this 8th day of July, in the year of 2002, before me, a notary public, personally appeared **STEVE WYBENGA** and **DARLA WYBENGA**, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.



Patricia J. Fahrenholz
NOTARY PUBLIC FOR IDAHO

Residing in: Twin Falls

Commission expires: 11-09-04

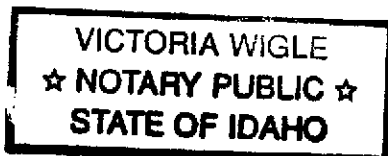
STATE OF IDAHO)
) ss.
COUNTY OF Ada)

Idaho Department of Water Resources

KARL J. DREHER

On this 17th day of June, 2002, before me, a Notary Public in and for said county and state, personally appeared **KARL J. DREHER**, known to me to be the Director of the Idaho Department of Water Resources, who represents the state agency that is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the date and year first above written.



Victoria Wigle
NOTARY PUBLIC for Idaho

Residing at Basin, Idaho

My Commission expires 5/29/04

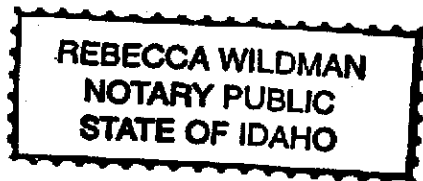
STATE OF IDAHO)
 :SS
County of Gooding)

GOODING COUNTY

Philip A. Brown
PHILIP A. BROWN

On this 24th day of June, 2002, before me, a Notary Public in and for said county and state, personally appeared **PHILIP A. BROWN**, known to me to be the Gooding County Prosecuting Attorney, who represents the county that is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the date and year first above written



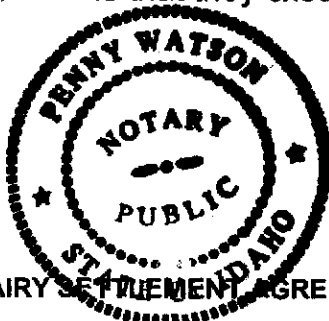
Rebecca Wildman
NOTARY PUBLIC FOR IDAHO
Residing in: Gooding, Idaho
Commission expires: 08/13/04

STATE OF IDAHO)
 :SS
County of Gooding)

Ray Maxfield
RAY MAXFIELD

Judy Maxfield
JUDY MAXFIELD

On this 20th day of June, in the year of 2002, before me, a notary public, personally appeared **RAY MAXFIELD** and **JUDY MAXFIELD**, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.



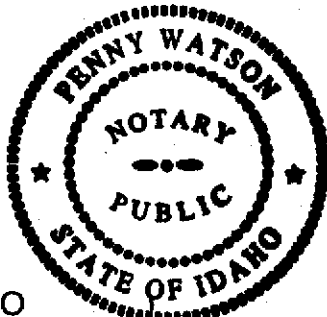
Penny Watson
NOTARY PUBLIC FOR IDAHO
Residing in: Wendell, Id.
Commission expires: 12-6-05

STATE OF IDAHO)
) :ss
County of Gooding)

Mike W Elliott
MIKE W. ELLIOTT

Lynn Elliott
LYNN ELLIOTT

On this 20th day of June, in the year of 2002, before me, a notary public, personally appeared **MIKE ELLIOTT** and **LYNN ELLIOTT**, known or identified to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

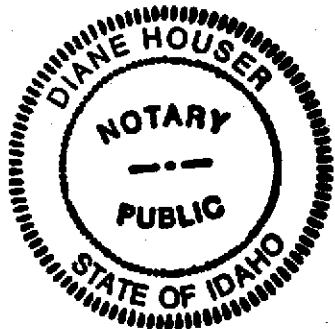


Penny Watson
NOTARY PUBLIC FOR IDAHO
Residing in: Wendell, ID
Commission expires: 12-6-05

STATE OF IDAHO)
) :ss
County of Gooding)

Elden Thompson
ELDEN THOMPSON

On this 18 day of June, in the year of 2002, before me, a notary public, personally appeared **ELDEN THOMPSON**, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

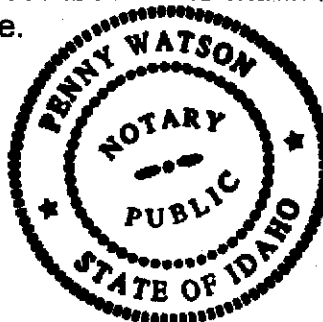


Diane Houser
NOTARY PUBLIC FOR IDAHO
Residing in: Gooding
Commission expires: 7-24-2004

STATE OF IDAHO)
 :SS
County of Gooding)

Ron Stroud
RON STROUD

On this 20th day of June, in the year of 2002, before me, a notary public, personally appeared RON STROUD, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

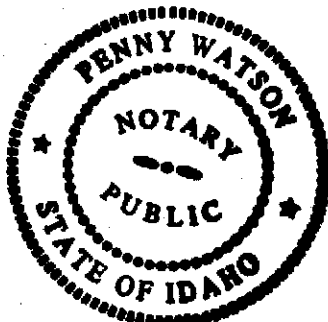


Penny Watson
NOTARY PUBLIC FOR IDAHO
Residing in: *Wendell, Id*
Commission expires: *12-6-05*

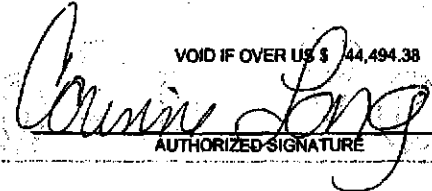
STATE OF IDAHO)
 :SS
County of Gooding)

R. Randolph Erkins
R. RANDOLPH ERKINS

On this 21st day of June, in the year of 2002, before me, a notary public, personally appeared R. RANDOLPH ERKINS, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.



Penny Watson
NOTARY PUBLIC FOR IDAHO
Residing in: *Wendell, Id*
Commission expires: *12-6-05*

06069 Office AU #	11-24 1210(8)	CASHIER'S CHECK	0606901176
Operator I.D.: ldho5815		ldho5815	July 12, 2002
PAY TO THE ORDER OF		***SPECK & AANESTAD TRUST ACCOUNT***	
Forty-four thousand four hundred ninety-four dollars and 38 cents		**\$44,494.38**	
WELLS FARGO BANK, N.A. PAYABLE IF DESIRED AT WELLS FARGO BANK NORTHWEST, N.A. 1854 BLUE LAKES NORTH TWIN FALLS, ID 83301 FOR INQUIRIES CALL (480) 394-3122		VOID IF OVER US \$ 44,494.38  AUTHORIZED SIGNATURE	

⑈0606901176⑈ ⑆121000248⑆4861 505808⑈

1363 Fillmore Street

P.O. Box 5059

Twin Falls, Idaho 83303-5059

(208) 732-1000

July 2, 2002

To: IDWR
Gooding County

Subject: Irrevocable Letter of Credit No. 39362 (Regarding Steve Wybenga)

Ladies and Gentlemen:

We, Northwest Farm Credit Services, PCA, hereby establish our irrevocable letter of credit in favor of IDWR and Gooding County, Idaho ("Beneficiary") for our Borrower, Steve Wybenga ("Account Party") located at Bliss, Idaho, effective on the date shown above up to \$50,000 U.S. Funds (the "Commitment Amount"), for payment to be provided for under that certain Wybenga Dairy Settlement Agreement dated 7-8-02 between Beneficiary and Account Party.

Demands and documents must be presented on or before 03/10/03, which is the expiration date of this Letter of Credit.

Said funds are available upon our receipt of a Certificate in form and content materially the same as Exhibit A hereto, signed by an authorized representative of Beneficiary. We hereby agree that we will honor amounts demanded in such certificate up to the Commitment Amount. We will duly honor one or more such Certificates whenever received by us on the business day following our receipt of the Certificate if presented prior to the expiration date of this Letter of Credit.

This Letter of Credit is issued subject to the Uniform Customs and Practices for Commercial Documentary Credits, 1993 Revision (UCP).

This Letter of Credit shall be signed by Account Party and Northwest Farm Credit Services, PCA.

Sincerely,

Northwest Farm Credit Services, PCA

By: Bill Debbly

Authorized Agent

Account Party:

The undersigned Account Party hereby consents to the terms of this Letter of Credit.

Steve Wybenga

By: Steve Wybenga

Steve Wybenga

WYBENGA DAIRY

6574

ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH MICROPRINTED BORDER - SEE REVERSE SIDE FOR COMPLETE SECURITY FEATURES



WYBENGA DAIRY
STEVE or DARLA WYBENGA
3418 SOUTH 2400 EAST
JEROME, ID 83338
(208) 644-9455



NORTHWEST FARM CREDIT SERVICES

BANK OF AMERICA
Atlanta, DeKalb County, Georgia
Member FDIC

64-1278/611

DATE

7-8-02

AMOUNT

12,500⁰⁰

PAY

twelve thousand five hundred dollars

TO THE
ORDER
OF

IDWR

advance penalty under July 8, 2002 Settlement Agreement.

This Account Does Not Accept Electronic Transactions

SIGNATURE



THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE - RED IMAGE DISAPPEARS WITH HEAT

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**HUTCHINSON
&
BROWN, LLP**

ATTORNEYS AT LAW

Keith E. Hutchinson, Esq.
Patrick D. Brown, Esq.

PHONE: (208) 733-9300
WATS: (800) 753-2529
FAX: (208) 733-9343

July 12, 2002

RECEIVED

JUL 16 2002

Mr. Phillip J. Rassier, Deputy AG
Idaho Department of Water Resources
1301 North Orchard Street
P.O. Box 83720
Boise ID 83720-0098

Department of Water Resources

Re: Settlement Agreement

Dear Phil:

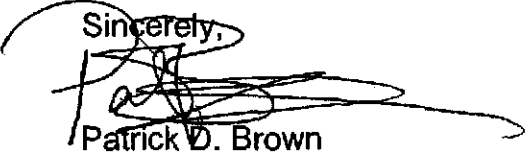
Enclosed is the original Wybenga Dairy Settlement Agreement with the following attachments:

1. Check No. 6574 payable to IDWR in the amount of \$12,500.00;
2. Copy of Cashier's check payable to Speck & Aanestad Trust Account for \$44,494.38;
3. Letter from Northwest Farm Credit Services to IDWR re: Irrevocable Letter of Credit No. 39362 (Regarding Steve Wybenga).

A copy of this letter, the Agreement with attachments, and the original cashier's check for \$44,493.38 are being sent to Mr. Speck.

If you have any questions, please call me. Thank you for your attention to this matter.

Sincerely,


Patrick D. Brown
Attorney at Law

pdb/tf

enc. Agmt-attachments

cc: Jim Speck w/enc.&ck

Phil Brown w/enc.

Steve Wybenga w/o enc.

1363 Fillmore Street

P.O. Box 5059

Twin Falls, Idaho 83303-5059

(208) 732-1000

July 2, 2002

To: IDWR
Gooding County

Subject: Irrevocable Letter of Credit No. 39362 (Regarding Steve Wybenga)

Ladies and Gentlemen:

We, Northwest Farm Credit Services, PCA, hereby establish our irrevocable letter of credit in favor of IDWR and Gooding County, Idaho ("Beneficiary") for our Borrower, Steve Wybenga ("Account Party") located at Bliss, Idaho, effective on the date shown above up to \$50,000 U.S. Funds (the "Commitment Amount"), for payment to be provided for under that certain Wybenga Dairy Settlement Agreement dated 7-8-02 between Beneficiary and Account Party.

Demands and documents must be presented on or before 03/10/03, which is the expiration date of this Letter of Credit.

Said funds are available upon our receipt of a Certificate in form and content materially the same as Exhibit A hereto, signed by an authorized representative of Beneficiary. We hereby agree that we will honor amounts demanded in such certificate up to the Commitment Amount. We will duly honor one or more such Certificates whenever received by us on the business day following our receipt of the Certificate if presented prior to the expiration date of this Letter of Credit.

This Letter of Credit is issued subject to the Uniform Customs and Practices for Commercial Documentary Credits, 1993 Revision (UCP).

This Letter of Credit shall be signed by Account Party and Northwest Farm Credit Services, PCA.

Sincerely,

Northwest Farm Credit Services, PCA

By: Bill Luckley

Authorized Agent

Account Party:

The undersigned Account Party hereby consents to the terms of this Letter of Credit.

Steve Wybenga

By: Steve Wybenga

Steve Wybenga

MEMORANDUM

TO: FILE A37-11191

FROM: VAULT

RE: TRANSFER # 5580

DATE: 12/21/99

=====

**Original Transfer Application, Form and correspondence regarding the above
referenced Transfer is located within:**

FILE # 37-08005