

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

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 71968 & 71971)

DARRELL &/OR PATRICIA FUNK,)
Applicants)

MILNER CONCERNED CITIZENS,)
Protestant)
_____)

PRELIMINARY ORDER

On May 19, 2005 Darrell & Patricia Funk ("Funks"), filed with the Department of Water Resources ("IDWR") two applications to transfer the public waters of the State of Idaho.

Application for Transfer No. 71968 seeks the change of points of diversion and place of use of two stockwater water rights and the change of points of diversion, change of place of use, change of season of use, and the change in nature of use from irrigation to stockwater and commercial purposes for a portion of one water right currently used for irrigation. These proposed changes are associated with operation of a new feedlot.

Application for Transfer No. 71971 seeks the change of point of diversion and place of use of a portion of a water right now used at a small dairy, and the change of points of diversion, change of place of use, change of season of use, and the change in nature of use from irrigation to stockwater and commercial purposes for a portion of one water right currently used for irrigation. These proposed changes are associated with operation of a new dairy.

These applications were advertised and the IDWR received protests against the approval of said applications from the Milner Concerned Citizens ("Milner").

On April 26, 2006, IDWR conducted a joint hearing for the protests. Funks appeared by and through their attorney, Rob Williams. Milner appeared by and through their attorney, Richard Carlson.

At the hearing, the applicant offered 12 exhibits into the record. The protestant stipulated to the admission of these exhibits. Those exhibits considered by the hearing officer are listed as follows:

SUPPORT DATA

RECEIVED
JUL 11 2006
IDWR

Applicant's Exhibits	Description
1	Aerial photo showing from/to locations, protestant wells, USGS groundwater contours, ESPA new model cells, and other features
2	Aquifer transmissivity estimation
3	Well interference study
4	Drilling records utilized for analysis
5	Local well water quality data - nitrate
6	Statistics of dairy well nitrate samples taken by ISDA
7	Water balance study
9	Chart showing ESPA water consumption by type of use
10	IDWR transfer file – T71968
11	IDWR transfer file – T71971
12	Cassia County letter dated March 1, 2006
13A	Waste Management Area Map

At the hearing, the protestant offered 23 exhibits into the record. The applicant stipulated to the admission of 16 of these exhibits. The remaining 7 were objected to but the hearing officer allowed and considered 5 of those objected to. The hearing officer considered a total of 21 exhibits listed as follows:

Protestant's Exhibits	Description
101	Waste Management Plan Map – David Funk Dairy
102	Miscellaneous Water Right reports, legal descriptions, "parcel inquiries"
103	IDWR Monitoring Program report 2003 (Marge Bradshaw)
103A	Miscellaneous additional water quality test reports (Marge Bradshaw)
104	IDWR ESPA groundwater elevations – Spring 2001
106	Vicinity map for Darrell Funk dairy site with feedlot and waste management area added
107	Applications for CAFO with CAFO Overlay Zone, Cassia Co. (feedlot and dairy)
108	Nutrient Management Plans for feedlot and dairy
109	Narrative Statements of Darrell Funk re: feedlot and dairy
110	Appendix 'A': Analysis of soil characteristics – feedlot and dairy
112	Map of Critical Ground Water Areas
113	May 12, 2005 IDWR letter to Darrell Funk

114	Map of ESPA and model boundaries and Darrell Funk property
115	IDEQ Policies
117	IDEQ 1999 – 2000 Nitrate Prioritization
120	ISDA Project 790
121	ISDA Tech. Results Summaries 13, 17, 24
124	Cassia County Livestock operations list
124A	Cassia County Livestock operations map
126	IDWR GW Technical Brief
127	Seepage from newly constructed dairy lagoon

The following listed exhibits were offered and objected to and not considered by the hearing officer:

123	ISDA MOU Report 4/20/2005
123A	Transcript of Marv Patton testimony in T71607

At the conclusion of the hearing the record was left open to allow for the submission of an IDWR staff memorandum and computer analysis of the impacts of Application for Transfer No. 71968 on reaches of the Snake River for determination of the need for a mitigation plan. On May 17, 2006 the hearing officer sent to the parties the "Submission of IDWR Staff Memorandum to Hearing Record and Order to Submit Mitigation Plan". On June 20, 2006 the applicant through his attorney submitted a mitigation plan. At the conclusion of the hearing, the hearing office took official notice of the subject application for transfer files, holdings in past decisions and orders by IDWR as they may apply to these protested matters, IDWR water right records, records of stream flows and water measurements, and well logs.

After considering the evidence, the hearing officer finds, concludes, and orders as follows:

FINDINGS OF FACT

Application for Transfer No. 71968 (Feedlot transfer)

1. Application for Transfer No. 71968 proposes the transfer of three decreed water rights, presently described in the records of the IDWR as follows:

Decreed Water Right no.	45-7274
Source:	Ground Water
Priority Date	August 19, 1976
Purpose of Use:	Irrigation
Flow Rate:	5.71 cfs (1248 AFA)

Point of Diversion: NWSWNW¹ Section 5 T12S, R21E
 Place of Use: 312 acres located in the E½ of Section 31, T11S, R21E

Decreed Water Right no. **45-10228**
 Source: Ground Water
 Priority Date May 31, 1966
 Purpose of Use: Stockwater
 Flow Rate: 0.06 cfs
 Point of Diversion: NENE Section 24 T11S, R20E
 Place of Use: In the NENE of Section 24, T11S, R20E

Decreed Water Right no. **45-13657**
 Source: Ground Water
 Priority Date January 1, 1983
 Purpose of Use: Stockwater
 Flow Rate: 0.06 cfs
 Point of Diversion: NENENE Section 24 T11S, R20E
 Place of Use: In the W½NE of Section 19; NWNW and SENW of Section 30; and NWNW of Section 31; all T11S, R21E

Right No. 45-13657 in combination with Right No. 45-10228 is limited to a total of 0.06 cfs.

2. Application for Transfer No. 71968 with associated mitigation plan proposes that the above stockwater rights and a portion of the irrigation right be diverted as follows:

Source: Ground Water
 Points of Diversion: NENENE(Existing Well) Section 24 T11S, R20E
 SESESE(Existing Well) Section 24 T11S, R20E

Water Right No.	Use	Rate (cfs)	Volume (AFA)
45-10228	Stockwater	0.06*	14.6*
45-13657	Stockwater	0.06*	14.6*
45-7274 (Part)	Commercial	0.04**	5**
	Stockwater	0.64**	85.8**
Total		0.70	100.4

*In combination limited to 0.06 cfs and 14.6 AFA

** In combination limited to 0.64 cfs and 85.8 AFA

¹ Public land survey descriptions in this decision without a fraction following a two alpha character descriptor are presumed to be followed by the fraction "1/4." In addition, all public land survey descriptions are presumed to be based on the Boise Meridian. All locations are in Cassia or Twin Falls Counties.

Place of Use: Feedlot to be within the SW of Section 19, T11S, R21E where stockwater and commercial uses are to be located. Additionally stockwater is to be provided in isolated stock troughs within SENE and NENW of Section 19; NWNW and SWNW of Section 30; and NWNW and SWNW of Section 31; all in T11S, R21E.

The portion of Right No. 45-7274 being converted to stockwater and commercial use represents 35 acres currently irrigated by Right No. 45-7274. These 35 acres are proposed to be permanently dried up under this right. Additionally, the mitigation plan provides for drying up an additional 21 acres for 14.5 years after which the 21 acres will again be watered under the right.

3. (Injury - Feedlot) The new points of diversion proposed by the Feedlot transfer and the old point of diversion serving the irrigation use being converted to feedlot use are within the model boundary of the Eastern Snake Plain Ground Water Model. The model predicts impacts on reaches of the Snake River based on changes in diversion amount and location changes. If large impacts are predicted IDWR requires mitigation to offset depletion that may injure other water rights. Analysis of the Feedlot transfer predicts an impact significant enough (greater than 2.0 acre-feet per trimester) on the Devil's Washbowl to Buhl reach of the Snake River to require mitigation.
4. (Injury - Feedlot) The mitigation plan as submitted by the applicant mitigates the impact of the proposed Feedlot transfer to within reasonable limits established by IDWR (Equal to or less than 2.0 acre-feet per trimester).
5. (Injury - Feedlot) Dr. Charles G. Brockway (Brockway), expert witness for the applicant, compiled information about existing wells near the Dairy and Feedlot (Exhibits No. 2 and No. 4). Using the data gathered, Brockway estimated characteristics of the aquifer around the Funk property. Using the derived characteristics as input for the Theis Equation, Brockway estimated drawdown impacts for the Feedlot transfer. The predicted drawdowns at the neighbor's wells resulting from the Theis equation simulations are depicted in Exhibit No. 3. The cumulative impact of both transfers is the sum of the individual simulations. The simulations are conservative in that the assumption is made that the withdrawals are new to the area; but, the withdrawal impacts already occur to some extent due to the existing water use for the rights proposed to be transferred.
6. (Injury - Feedlot) The hearing officer finds overall the maximum drawdowns predicted by the simulations on the neighbor's wells are less than one-half a foot. Drawdowns of one-half of a foot or less are not significant and would not result in injury to neighboring water rights.
7. (Injury - Feedlot) The site of the feedlot is within the West Oakley Fan Critical Ground water Area (WOFCGA) (Exhibit 112). The sites of the points of diversion, for the rights associated with the Feedlot transfer, are currently located within the WOFCGA. The sites of the points of diversion, for the rights associated with the Feedlot transfer, as proposed by the transfer remain within the WOFCGA.

8. (Enlargement - Feedlot) The Feedlot transfer in part is based on the change in nature of use of a portion of Right No. 45-7274 from irrigation to stockwater and commercial use. The applicant provided historical crop data including year 2003 showing 131 acres of sugar beets and 390.5 acres of winter wheat were grown. Consistent with IDWR policy Corey Skinner, IDWR employee, determined 2.45 acre-feet per acre was the highest annual consumptive use for the mix of crops grown. The value of 2.45 acre-feet per acre is the limiting volume allowed for conversion from irrigation to other fully consumptive uses to prevent enlargement of the consumptive use of Right No. 45-7274. Based on the 2.45 acre-feet per acre value it is calculated that 35 acres of Right No. 45-7274 would need to be dried up for uses at the feedlot. Additionally the mitigation plan is based on the 2.45 acre-feet per acre value.

9. (Enlargement - Feedlot) Brockway's exhibit 7 calculates the before and after use of water at the feedlot. This calculation is consistent with Findings No. 8. This calculation, within rounding error, numerically predicts no enlargement of water use will result from the Feedlot transfer.

10. (Public Interest - Feedlot) Ground water in the area of the proposed feedlot has elevated nitrate concentrations above that which would be considered background levels. The elevated levels are likely due to human related activities that include fertilizers (both organic and inorganic), manure, septic system, decaying organic matter, and wastewater. The area is within a "Nitrate Priority Area" established by Idaho Department of Environmental Quality. Nitrate concentration samples vary throughout the area. (Exhibits 126 and 117)

11. (Public Interest - Feedlot) Funks submitted a nutrient management plan to the Idaho Department of Agriculture for the Feedlot (Exhibit 108). The nutrient management plan has not yet been approved by the Idaho Department of Agriculture. Nutrient management plans are not approved until final construction is completed and inspected by the Idaho Department of Agriculture. Nutrient management plans are modified or updated as conditions change or warrant.

12. (Public Interest - Feedlot) The nutrient management plan identifies vulnerabilities to the environment for contamination including contamination of water. The nutrient management plan address these vulnerabilities by defining methods of waste application and nutrient management to minimize risk.

13. (Public Interest - Feedlot) Funks have been granted a Confined Animal Feeding Operation (CAFO) permit by Cassia County for the proposed Feedlot. The Feedlot is authorized for 10,000 total animal units. (Exhibit 12)

14. (Public Interest - Feedlot) Funks own approximately 8500 acres and lease approximately 1120 acres from the State of Idaho, all located in Twin Falls or Cassia Counties near the site of the proposed Feedlot and Dairy. (Exhibit 13A)

15. (Public Interest - Feedlot) If managed properly the Funks own or control sufficient land to agronomically apply all nutrients in the form of manure or liquid waste generated from the proposed Dairy and Feedlot.

16. (Public Interest- Feedlot) Funks plan to berm the Feedlot site to prevent runoff from the site.

17. (Conservation - Feedlot) Funks plan on use of troughs for normal watering of cattle.

18. (Agricultural Base - Feedlot) Operation of a dairy and feedlot are agricultural in nature.

Application for Transfer no. 71971 (Dairy transfer)

19. Application for Transfer No. 71971 proposes the transfer of portions of two decreed water rights, presently described in the records of the IDWR as follows:

Decreed Water Right no. **45-2249**
Source: Ground Water
Priority Date March 8, 1948
Purpose of Use: Irrigation
Flow Rate: 4.40 cfs (960 AFA)
Points of Diversion: NWNWNE and SESWNE, Section 21; NWSWNE (2 pts), SENE, SWSWNE, SWSWSW and NWSWSE Section 22; all T11S, R20E
Place of Use: 443 acres permissible place of use located in the S½N½ and S½ of Section 22, T11S, R20E

Right No. 45-2249 is limited to irrigation of 240 acres within the permissible place of use. The right is in a common delivery system with Rights Nos. 45-2443 and 45-4102 supplied from the same 8 wells used to irrigate the permissible place of use. When Rights Nos. 45-2249, 45-2443 and 45-4102 are combined they are limited to 7.82 cfs.

Decreed Water Right no. **45-7504**
Source: Ground Water
Priority Date June 8, 1982

Purpose of Use	Flow Rate (cfs)	Annual Volume (AFA)
Stockwater***	0.06	6.7
Commercial***	0.06	1.7
Domestic (4 homes)	0.06	2.4
Irrigation (5.7 acres)	0.03	4
Total	0.06	14.8

*** Associated with an old dairy

Point of Diversion: SESESW Section 22 T11S, R20E

Place of Use (all uses): In the SESESW of Section 22, T11S, R20E

20. Application for Transfer No. 71971 (Dairy transfer) proposes that portions of the rights be diverted as follows:

Source: Ground Water
Point of Diversion: NWSESW(Existing Well) Section 22 T11S, R20E

Water Right No.	Use	Rate (cfs)	Volume (AFA)
45-2249 (Part)	Stockwater	1.83	297
	Commercial	1.83	297
45-7504 (Part)	Stockwater	0.06	6.7
	Commercial	0.06	1.7
Total		1.83	305.4

Place of Use: Stockwater and commercial uses are proposed to be located at a New Dairy site within the NW of Section 24, T11S, R20E.

21. (Injury - Dairy) Under direct testimony Darrell Funk testified that he proposed to move water from the irrigation well indicated by number "1" (NWSESW of Section 22, T11S, R20E) and drill dairy well(s) at the dairy site as indicated by the number "2" (NW of Section 24, T11S, R20E) hand written on Exhibit 13A during the hearing. This testimony and notations on the exhibit contradict the written intent of Application for Transfer No. 71971. Mr. Funk later changed his testimony indicating the transfer application correctly described the current intended point of diversion. He explained that the use of the existing irrigation well in NWSESW of Section 22, T11S, R20E was decided on to facilitate timely processing of the Dairy transfer. The hearing officer notes that the drilling of new wells at the dairy pursuant to the Dairy transfer would move the right to divert water into a designated critical ground water area and such a move would require mitigation analysis similar to that completed for Application for Transfer No. 71968. Even if the mitigation analysis were completed, this type of change of point of diversion for a right into a critical ground water area would **not** be recommended for approval by the hearing officer. **Only the proposed point of diversion for the Dairy as described in the written Application for Transfer No. 71971 is being considered by the hearing officer in this matter.**

22. (Injury – Dairy) The point of diversion proposed by the Dairy transfer is not moving water beyond a model cell of the Eastern Snake Plain Ground Water Model (Reference Findings No. 21). As a result, there is no requirement for analysis of the proposed use using the Eastern Snake Plain Ground Water Model.

23. (Injury - Dairy) Impacts of the Dairy transfer will have little impact on reaches of the Snake River.

24. (Injury - Dairy) Dr. Charles G. Brockway (Brockway), expert witness for the applicant, compiled information about existing wells near the Dairy and Feedlot (Exhibits No. 2 and No. 4). Using the data gathered, Brockway estimated characteristics of the

aquifer around the Funk property. Using the derived characteristics as input for the Theis Equation, Brockway estimated drawdown impacts for the Dairy transfer. The predicted drawdowns at the neighbor's wells resulting from the Theis equation simulations are depicted in Exhibit No. 3. The cumulative impact of both transfers is the sum of the individual simulations. The simulations are conservative in that the assumption is made that the withdrawals are new to the area; but, the withdrawal impacts already occur to some extent due to the existing water use for the rights proposed to be transferred.

25. (Injury - Dairy) The hearing officer finds overall the maximum drawdowns predicted by the simulations on the neighbor's wells are less than one-half a foot. Drawdowns of one-half of a foot or less are not significant and would not result in injury to neighboring water rights.

26. (Injury - Dairy) The site of the dairy is within the West Oakley Fan Critical Ground water Area (WOFCGA) (Exhibit 112). The site of the points of diversion, for the rights associated with the Dairy transfer, are currently located outside any designated critical ground water area. The site of the point of diversion, for the rights associated with the Dairy transfer, as proposed by the transfer remain outside any designated critical ground water area.

27. (Enlargement - Dairy) The Dairy transfer in part is based on the change in nature of use of a portion of right 45-2249 from irrigation to stockwater and commercial use. The applicant provided historical crop data including year 2005 showing 100 acres of alfalfa were grown. Consistent with IDWR policy Corey Skinner, IDWR employee, determined 2.97 acre-feet per acre was the highest annual consumptive use for the mix of crops grown for the acres intended to be dried up. The value of 2.97 acre-feet per acre is the limiting volume allowed for conversion from irrigation to other fully consumptive uses to prevent enlargement of the consumptive use of right 45-2249. Based on the 2.97 acre-feet per acre value it is calculated that 100 acres of Right No. 45-2249 would need to be dried up for proposed uses at the Dairy.

28. (Enlargement - Dairy) Brockway's exhibit 7 calculates the before and after use of water at the dairy. This calculation is consistent with Findings No. 27. This calculation, within rounding error, numerically predicts no enlargement of water use will result from the Dairy transfer.

29. (Enlargement - Dairy) The Dairy transfer in part is based on movement of a portion of Right No. 45-7504 being the portion associated with an old dairy (stockwater and commercial uses). The intent is to move the allowed pumped volume for these uses to the new dairy. The rate associated with the moved uses is not intended nor should it increase the rate of diversion to the proposed dairy since the unchanged portion of Right No. 45-7504 (Domestic and Irrigation) will remain and require the full rate of the right for those remaining uses.

30. (Public Interest - Dairy) Ground water in the area of the proposed dairy has elevated nitrate concentrations above that which would be considered background levels.

The elevated levels are likely due to human related activities that include fertilizers (both organic and inorganic), manure, septic system, decaying organic matter, and wastewater. The area is within a "Nitrate Priority Area" established by Idaho Department of Environmental Quality. Nitrate concentration samples vary throughout the area. (Exhibits 126 and 117)

31. (Public Interest - Dairy) Funks submitted a nutrient management plan to the Idaho Department of Agriculture for the Dairy (Exhibit 108). The nutrient management plan has not yet been approved by the Idaho Department of Agriculture. Nutrient management plans are not approved until final construction is completed and inspected by the Idaho Department of Agriculture. Nutrient management plans are modified or updated as conditions change or warrant.

32. (Public Interest - Dairy) The nutrient management plan identifies vulnerabilities to the environment for contamination including contamination of water. The nutrient management plan address these vulnerabilities by defining methods of waste application and nutrient management to minimize risk.

33. (Public Interest - Dairy) Funks have been granted a Confined Animal Feeding Operation (CAFO) permit by Cassia County for the proposed Dairy. The Dairy is authorized for a total of 7,602 animal units. (Exhibit 12)

34. (Public Interest - Dairy) Funks own approximately 8500 acres and lease approximately 1120 acres from the State of Idaho, all located in Twin Falls or Cassia Counties near the site of the proposed Feedlot and Dairy. (Exhibit 13A)

35. (Public Interest - Dairy) If managed properly the Funks own or control sufficient land to agronomically apply all nutrients in the form of manure or liquid waste generated from the proposed Dairy and Feedlot.

36. (Public Interest - Dairy) Funks plan to berm the Dairy site to prevent runoff from the site.

37. (Conservation - Dairy) Funks plan on redundant use of the water in the dairy by using water for cooling then using it to water cattle. There will be no sprinkler washing in the dairy and the lots will be dry scraped.

38. (Agricultural Base - Dairy) Operation of a dairy is agricultural in nature.

ANALYSIS

The hearing officer understands that the major concerns of the protestant are centered on the impact of the feedlot and dairy on the water quality in the area.

The water quality in the area has been impacted by human activity and as a result, nitrates have been elevated. In response to the elevated nitrates DEQ has established the area as a "Nitrate priority Area". This in itself does not prevent establishment of new dairies or feedlots in the area. The hearing officer is not aware of any moratorium or restriction of new land use activity preventing construction of a feedlot or dairy having been established in response to water quality issues in the area by DEQ, IDA or the county. Rather, current efforts to address water quality issues involve use of "Best Management Practices" or in the case of dairies and feedlots IDA requires "Enforced Management Practices" through the implementation of required Nutrient Management Plans. There was some testimony indicating that with the implementation of Nutrient Management Plans, for lands associated with waste management from dairies and feedlots, elevated nitrates in groundwater should decline as contrasted with other farm land where commercial fertilizer or manure are applied without the requirement of Nutrient Management Plans.

The hearing officer also understands the concerns raised by the protestant about potential pathogens or soluble chemicals from dairies or feedlots that **may** impact water quality of the area. No credible evidence was provided about these potential problems actually being a problem in Idaho or of the probability of being a problem at the proposed feedlot or dairy.

CONCLUSIONS OF LAW

1. Idaho Code § 42-222 states, in pertinent part:

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

2. The applicant bears the burden of proof for all of the factors listed in Idaho Code § 42-222.
3. Approval and completion of the proposed transfers will not injure other water rights.
4. Approval and completion of the proposed transfers will not enlarge the use of the rights sought to be transferred if the transfers are conditioned properly. Accordingly, Application for Transfer No. 71968 requires the 312 acre place of use described by water Right No. 45-7274 be permanently reduced by 35 acres to allow water use at the feedlot. Additionally Right No. 45-7274 should be reduced by an additional 21 acres through year 2020 to mitigate the movement of water to the feedlot from Right No. 45-7274. Application for Transfer No. 71971 requires the 240 acre allowance within the 443 acre place of use described by water Right No. 45-2249 be permanently reduced by 100 acres.
5. The Idaho Department of Water Resources should not approve a water right transfer that will create a situation that will violate water quality standards. Nonetheless, IDWR should defer to the agencies that have primary jurisdiction over water quality matters. This jurisdiction is vested in the Idaho Department of Environmental Quality. Idaho Department of Environmental Quality has in part delegated jurisdiction to the Idaho Department of Agriculture for regulation of dairies and feedlots. Despite concerns about water quality raised by the protestant, the applicant has established its prima facie case that operation of the proposed dairy and proposed feedlot satisfies the local public interest related to water quality as set forth in the findings of fact. The protestant did not present evidence sufficient to overcome the weight of the evidence provided by the applicant. The changes proposed by the applications for transfer are in the local public interest.
6. The applicant will employ methods of water use that are consistent with conservation of water for those uses proposed by the transfers.
7. Approval and completion of the proposed changes of nature of use of the transfers do not affect the agricultural base of the local area.
8. These applications for transfer should be approved.

ORDER

IT IS HEREBY ORDERED that application for transfer no. 71968 is **Approved** subject to the conditions as listed on the attached **preliminary** approval document.

IT IS HEREBY ORDERED that application for transfer no. 71971 is **Approved** subject to the conditions as listed on the attached **preliminary** approval document.

Dated this 17th day of July, 2006.

A handwritten signature in black ink, appearing to read "Allen D. Merritt", is written over a horizontal line.

Allen D. Merritt, PE
Hearing Officer

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER OF WATER RIGHT
TRANSFER NO. 71968

This is to certify that: DARRELL M FUNK
3173 N 4900 E
MURTAUGH ID 83344
(208)432-5386
And/Or

PATRICIA M FUNK
3173 N 4900 E
MURTAUGH ID 83344
(208)432-5386

DRAFT

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Change

<u>Right</u>	<u>Origin/Basis</u>	<u>Priority</u>	<u>Rate</u>	<u>Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
45-10228	WR/Decreed	05/31/1966	0.06 cfs	N/A			GROUND WATER
45-7274	WR/Decreed	08/19/1976	5.71 cfs	1248 af		312.0	GROUND WATER
45-13657	WR/Decreed	01/01/1983	0.06 cfs	N/A			GROUND WATER

Purpose of Transfer (Changes Proposed)

<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
45-10228	NO	NO	YES	YES	NO	NO
45-7274	NO	YES	YES	YES	YES	YES
45-13657	NO	NO	YES	YES	NO	NO

Summary of Water Rights After the Approved Change

<u>Existing Right</u>	<u>New No. (changed portion)</u>	<u>Transfer Rate</u>	<u>Transfer Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>New No. (remaining portion)</u>	<u>Remaining Rate</u>	<u>Remaining Volume</u>	<u>Remaining Acre Limit</u>	<u>Remaining Total Acres</u>
45-10228	45-10228	0.06 cfs	14.6 af	N/A			N/A	N/A		N/A
45-7274	45-13911	0.64 cfs	85.8 af	N/A		45-13910	5.07 cfs	1108 af	N/A	277.0
45-13657	45-13657	0.06 cfs	14.6 af	N/A			N/A	N/A		N/A
COMBINED TOTALS		0.7 cfs	100.4 af				N/A	N/A	N/A	N/A

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER OF WATER RIGHT
TRANSFER NO. 71968

Detailed Water Right Description(s) attached

Dated this _____ day of _____, 20____

DRAFT

Chief, Water Allocation Bureau

WATER RIGHT NO. 45-13910
As Modified by Transfer No. 71968

In accordance with the approval of Transfer No. 71968, Water Right No. 45-13910 is now described as follows.

Right Holder: DARRELL M FUNK
 3173 N 4900 E
 MURTAUGH ID 83344

And/Or

PATRICIA M FUNK
 3173 N 4900 E
 MURTAUGH ID 83344

DRAFT

Priority Date: August 19, 1976

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	03/15	11/15	5.07 CFS	1,108.0 AF
			5.07 CFS	1,108.0 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER NWSWNW Sec. 5 Twp 12S Rge 21E CASSIA County

PLACE OF USE: IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11S	21E	31	32.0	33.0	33.0	32.0									40.0	33.0	37.0	37.0	277.0

Total Acres: 277

SCANNED
 11/11/2006

WATER RIGHT NO. 45-13910
As Modified by Transfer No. 71968

CONDITIONS OF APPROVAL

1. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.
2. Right 45-13910 is used for mitigation purposes for right 45-13911 under Transfer approval No. 71968. The irrigation use is limited to the following schedule of allowed diversion rate, diversion volume and number of irrigated acres. The right holder shall file a notice of intent with the Department prior to increasing the diversion rate, diversion volume and number of acres irrigated at the time an increase according to the schedule is sought.
 - Years 2007 through 2020 the right is limited to 4.69 cfs, 1024 afa, and irrigation of 256 acres. (21 acres left unirrigated).
 - Years 2021 and beyond the right is limited to 5.07 cfs, 1108 afa, and irrigation of 277 acres. (No acres required to be unirrigated).
3. The model used to calculate depletion effects and mitigation for Devils Washbowl to Buhl reach may also show gains in other reaches of the Snake River. Such gains have not been quantified at this time. The right holder retains the right to seek quantification of such gains resulting from Transfer approval No. 71968. Protestants retain the right to object to the quantification of such gains. If such reach gains are quantified and acknowledged by the Department, credits for such gains shall be available for use only after the Department has implemented a system for administering such credits.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this _____ day of _____, 20____

DRAFT

Chief, Water Allocation Bureau

SCANNED
11/1/08

[illegible]

WATER RIGHT NO. 45-13911
As Modified by Transfer No. 71968

CONDITIONS OF APPROVAL

1. Rights 45-10228, 45-13657, and 45-13911 when combined shall not exceed a total diversion rate of 0.70 cfs and a total annual maximum diversion volume of 100.4 af.
2. The water right holder shall maintain control of the necessary portion of right 45-13910 for mitigation purposes under Transfer approval No. 71968. If the necessary portion of the mitigation right is sold, transferred, leased, used on any place of use, or is not deliverable due to a priority call, then the amount of water authorized for diversion under this transfer approval shall be reduced by the same proportion of the amount reduced under the mitigation right.
3. Prior to the diversion and use of water under Transfer approval 71968, the right holder shall install and maintain acceptable measuring device(s), including data logger(s), at the authorized point(s) of diversion, in accordance with Department specifications.
4. The right holder shall record the quantity of water diverted and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.
5. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable county zoning and use ordinances.
6. Commercial use is for a feedlot operation.
7. Rights 45-10228 and 45-13657 are also diverted through the point(s) of diversion described above.
8. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
9. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
10. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this _____ day of _____, 20____

DRAFT

Chief, Water Allocation Bureau

SCANNED
10/1/2004

Right Holder: DARRELL M FUNK
3173 N 4900 E
MURTAUGH ID 83344

PATRICIA M FUNK
3173 N 4900 E
MURTAUGH ID 83344

DRAFT

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
STOCKWATER	01/01	to 12/31	0.06 CFS	14.6 AF
			0.06 CFS	14.6 AF

GROUND WATER SESESE Sec. 24 Twp 11S Rge 20E CASSIA County

[illegible]

WATER RIGHT NO. 45-10228
As Modified by Transfer No. 71968

CONDITIONS OF APPROVAL

1. Rights 45-10228 and 45-13657 when combined shall not exceed a total diversion rate of 0.06 cfs, nor a daily diversion of 13,000 gallons per day.
2. Rights 45-10228, 45-13657, and 45-13911 when combined shall not exceed a total diversion rate of 0.70 cfs and a total annual maximum diversion volume of 100.4 af.
3. Prior to the diversion and use of water under Transfer approval 71968, the right holder shall install and maintain acceptable measuring device(s), including data logger(s), at the authorized point(s) of diversion, in accordance with Department specifications.
4. The right holder shall record the quantity of water diverted and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.
5. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable county zoning and use ordinances.
6. Rights 45-13657 and 45-13911 are also diverted through the point(s) of diversion described above.
7. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this _____ day of _____, 20____

DRAFT

Chief, Water Allocation Bureau

800-45-10228

In accordance with the approval of Transfer No. 71968, Water Right No. 45-13657 is now described as follows.

Right Holder: DARRELL M FUNK
3173 N 4900 E
MURTAUGH ID 83344

Priority Date: January 01, 1983

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
STOCKWATER	01/01	to 12/31	0.06 CFS	14.6 AF
			0.06 CFS	14.6 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER NENENE Sec. 24 Twp 11S Rge 20E CASSIA County

GROUND WATER SESESE Sec. 24 Twp 11S Rge 20E CASSIA County

PLACE OF USE: STOCKWATER

[illegible]

WATER RIGHT NO. 45-13657
As Modified by Transfer No. 71968

CONDITIONS OF APPROVAL

1. Rights 45-10228 and 45-13657 when combined shall not exceed a total diversion rate of 0.06 cfs, nor a daily diversion of 13,000 gallons per day.
2. Rights 45-10228, 45-13657, and 45-13911 when combined shall not exceed a total diversion rate of 0.70 cfs and a total annual maximum diversion volume of 100.4 af.
3. Prior to the diversion and use of water under Transfer approval 71968, the right holder shall install and maintain acceptable measuring device(s), including data logger(s), at the authorized point(s) of diversion, in accordance with Department specifications.
4. The right holder shall record the quantity of water diverted and annually report diversions of water and/or other pertinent hydrologic and system information as required by Section 42-701, Idaho Code.
5. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable county zoning and use ordinances.
6. Rights 45-10228 and 45-13911 are also diverted through the point(s) of diversion described above.
7. The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.
8. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
9. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this _____ day of _____, 20____

DRAFT

Chief, Water Allocation Bureau

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRANSFER OF WATER RIGHT
TRANSFER NO. 71971

This is to certify that: DARRELL M And/Or PATRICIA M FUNK
3173 N 4900 E
MURTAUGH ID 83344
(208)432-5386

DRAFT

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Change

<u>Right</u>	<u>Origin/Basis</u>	<u>Priority</u>	<u>Rate</u>	<u>Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
45-7504	WR/Decreed	06/08/1982	0.06 cfs	14.8 af	N/A	5.7	GROUND WATER
45-2249	WR/Decreed	03/08/1948	4.4 cfs	960 af	240.0	443.0	GROUND WATER

Associated Water Rights Also Included in Transfer Approval (Conditions Updated)

<u>Right</u>	<u>Origin/Basis</u>	<u>Priority</u>	<u>Rate</u>	<u>Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
45-2443	WR/Decreed	04/24/1953	2.58 cfs	740 af	185.0	443.0	GROUND WATER
45-4102	WR/Decreed	03/15/1962	0.84 cfs	138 af	34.5	443.0	GROUND WATER

Purpose of Transfer (Changes Proposed)

<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
45-7504	YES	YES	YES	NO	NO	NO
45-2249	YES	YES	YES	NO	YES	YES

Summary of Water Rights After the Approved Change

<u>Existing Right</u>	<u>New No. (changed portion)</u>	<u>Transfer Rate</u>	<u>Transfer Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>New No. (remaining portion)</u>	<u>Remaining Rate</u>	<u>Remaining Volume</u>	<u>Remaining Acre Limit</u>	<u>Remaining Total Acres</u>
45-7504	45-13917	0.06 cfs	8.4 af	N/A		45-13916	0.06 cfs	6.4 af	N/A	5.7
45-2249	45-13915	1.83 cfs	297 af	N/A		45-13914	2.57 cfs	560 af	140.0	343.0

COMBINED

TOTALS	1.83 cfs	305.4 af	N/A			N/A	N/A	N/A	N/A	N/A
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Detailed Water Right Description(s) attached

Dated this _____ day of _____, 20____

DRAFT

Chief, Water Allocation Bureau

WATER RIGHT NO. 45-13914
As Modified by Transfer No. 71971

In accordance with the approval of Transfer No. 71971, Water Right No. 45-13914 is now described as follows.

Right Holder: DARRELL M And/Or PATRICIA M FUNK
 3173 N 4900 E
 MURTAUGH ID 83344

DRAFT

Priority Date: March 08, 1948

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01 to	10/31	2.57 CFS	560.0 AF
			2.57 CFS	560.0 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	NWNWNE	Sec. 21 Twp 11S	Rge 20E	TWIN FALLS County
GROUND WATER	SESWNE	Sec. 21 Twp 11S	Rge 20E	TWIN FALLS County
GROUND WATER	NWSWNE	Sec. 22 Twp 11S	Rge 20E	TWIN FALLS County
GROUND WATER	NWSWNE	Sec. 22 Twp 11S	Rge 20E	TWIN FALLS County
GROUND WATER	SENE	Sec. 22 Twp 11S	Rge 20E	TWIN FALLS County
GROUND WATER	SWSWNE	Sec. 22 Twp 11S	Rge 20E	TWIN FALLS County
GROUND WATER	SWSWSW	Sec. 22 Twp 11S	Rge 20E	TWIN FALLS County
GROUND WATER	NWSESW	Sec. 22 Twp 11S	Rge 20E	TWIN FALLS County

PLACE OF USE: IRRIGATION

Twps	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11S	20E	22			39.0	38.0					38.0		38.0	33.0	39.0	40.0	39.0	39.0	343.0

Total Acres: 343

CONDITIONS OF APPROVAL

1. The use of water for irrigation under this right may begin as early as March 15 and may continue to as late as November 15, provided other elements of the right are not exceeded. The use of water before April 1 and after November 1 under this remark is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than June 29, 2005.
2. Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.

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 APR 1 2005

WATER RIGHT NO. 45-13914
As Modified by Transfer No. 71971

3. After specific notification by the Department, the right holder shall record the quantity of water diverted or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.
4. Failure of the right holder to comply with the conditions of transfer 71305 is cause for the Director to rescind approval of the transfer.
5. This right is limited to the irrigation of 140 acres within the place of use described above in a single irrigation season.
6. If the surface water right(s) appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert groundwater shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
7. Use of the rights listed below is limited to a total combined diversion rate of 5.99 cfs and to a total combined annual diversion volume of 1372 af. Combined right nos.: 45-2443, 45-4102, 45-13914.
8. Use of the rights listed below is limited to the irrigation of a combined total of 343 acres in a single irrigation season. Combined right nos.: 45-2326, 45-2443, 45-4102, 45-13914.
9. The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.
10. The right holder shall accomplish the change authorized by transfer 71305 by December 22, 2006.
11. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
12. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
13. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this _____ day of _____, 20____

DRAFT

Chief, Water Allocation Bureau

In accordance with the approval of Transfer No. 71971, Water Right No. 45-13915 is now described as follows.

Priority Date: March 08, 1948

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
COMMERCIAL	01/01	to 12/31	1.83 CFS	297.0 AF
STOCKWATER	01/01	to 12/31	1.83 CFS	297.0 AF
			1.83 CFS	297.0 AF

LOCATION OF POINT(S) OF DIVERSION: NWSESW Sec. 22 Twp 11S Rge 20E TWIN FALLS
GROUND WATER County

[illegible][illegible]

100

WATER RIGHT NO. 45-13915
As Modified by Transfer No. 71971

CONDITIONS OF APPROVAL

1. Rights 45-13915 and 45-13917 when combined shall not exceed a total diversion rate of 1.83 cfs, nor a total annual maximum diversion volume of 305.4 ac-ft.
2. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable county zoning and use ordinances.
3. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.
4. Commercial use is for a dairy operation.
5. Rights 45-2443, 45-4102, 45-13914, and 45-13917 are also diverted through the point of diversion described above.
6. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable water quality permitting requirements administered by the Department of Environmental Quality or the Department of Agriculture.
7. The right holder shall accomplish the change authorized by transfer 71971 within one year of the date of this approval.
8. Failure of the right holder to comply with the conditions of transfer 71971 is cause for the Director to rescind approval of the transfer.
9. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this _____ day of _____, 20____

DRAFT

Chief, Water Allocation Bureau

DELETED
Chief, Water Allocation Bureau

Right Holder: DARRELL M And/Or PATRICIA M FUNK
3173 N 4900 E
MURTAUGH ID 83344

Source: GROUND WATER

LOCATION OF POINT(S) OF DIVERSION:

LOCATION OF POINT(S) OF DIVERSION:
GROUND WATER NWSESW Sec. 22 Twp 11S Rge 20E TWIN FALLS
County

PLACE OF USE: STOCKWATER

[illegible]

PLACE OF USE: COMMERCIAL

[illegible]

WATER RIGHT NO. 45-13917
As Modified by Transfer No. 71971

CONDITIONS OF APPROVAL

1. Rights 45-13915 and 45-13917 when combined shall not exceed a total diversion rate of 1.83 cfs, nor a total annual maximum diversion volume of 305.4 ac-ft.
2. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable county zoning and use ordinances.
3. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.
4. Commercial use is for a dairy operation.
5. Rights 45-2443, 45-4102, 45-13914, and 45-13915 are also diverted through the point of diversion described above.
6. Prior to the diversion and use of water under this approval, the right holder shall comply with applicable water quality permitting requirements administered by the Department of Environmental Quality or the Department of Agriculture.
7. The right holder shall accomplish the change authorized by transfer 71971 within one year of the date of this approval.
8. Failure of the right holder to comply with the conditions of transfer 71971 is cause for the Director to rescind approval of the transfer.
9. Pursuant to Section 42-1412(6), Idaho Code, this water right is subject to such general provisions necessary for the definition of the rights or for the efficient administration of water rights as may be determined by the Snake River Basin Adjudication court at a point in time no later than the entry of the final unified decree.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this _____ day of _____, 20____

DRAFT

Chief, Water Allocation Bureau

WATER RIGHT NO. 45-2443
As Modified by Transfer No. 71971

In accordance with the approval of Transfer No. 71971, Water Right No. 45-2443 is now described as follows.

Right Holder: DARRELL M FUNK
 3173 N 4900 E
 MURTAUGH ID 83344

Priority Date: April 24, 1953

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	to 10/31	2.58 CFS	740.0 AF
			2.58 CFS	740.0 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	NWNWNE	Sec. 21 Twp 11S	Rge 20E	TWIN FALLS County
GROUND WATER	SESWNE	Sec. 21 Twp 11S	Rge 20E	TWIN FALLS County
GROUND WATER	NWSWNE	Sec. 22 Twp 11S	Rge 20E	TWIN FALLS County
GROUND WATER	NWSWNE	Sec. 22 Twp 11S	Rge 20E	TWIN FALLS County
GROUND WATER	SENE	Sec. 22 Twp 11S	Rge 20E	TWIN FALLS County
GROUND WATER	SWSENW	Sec. 22 Twp 11S	Rge 20E	TWIN FALLS County
GROUND WATER	SWSWSW	Sec. 22 Twp 11S	Rge 20E	TWIN FALLS County
GROUND WATER	NWSESW	Sec. 22 Twp 11S	Rge 20E	TWIN FALLS County

PLACE OF USE: IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals		
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
11S	20E	22			39.0	38.0			22.0	37.0			40.0	39.0	38.0	33.0	39.0	40.0	39.0	39.0	443.0

Total Acres: 443

CONDITIONS OF APPROVAL

1. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
2. The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.

WATER RIGHT NO. 45-2443
As Modified by Transfer No. 71971

3. Use of the rights listed below is limited to a total combined diversion rate of 5.99 cfs and to a total combined annual diversion volume of 1372 af. Combined right nos.: 45-2443, 45-4102, 45-13914.
4. Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.
5. Failure of the right holder to comply with the conditions of transfer 71305 is cause for the Director to rescind approval of the transfer.
6. The use of water for irrigation under this right may begin as early as March 15 and may continue to as late as November 15, provided other elements of the right are not exceeded. The use of water before April 1 and after November 1 under this remark is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than June 29, 2005.
7. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
8. The right holder shall accomplish the change authorized by transfer 71305 by December 22, 2006.
9. This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
10. After specific notification by the Department, the right holder shall record the quantity of water diverted or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.
11. This right is limited to the irrigation of 185 acres within the place of use described above in a single irrigation season.
12. If the surface water right(s) appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert groundwater shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
13. Use of the rights listed below is limited to the irrigation of a combined total of 343 acres in a single irrigation season. Combined right nos.: 45-2326, 45-2443, 45-4102, 45-13914.
14. Use of this right with right no. 45-2326 is limited to the irrigation of a combined total of 206 acres in a single irrigation season.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this _____ day of _____, 20____

DRAFT

Chief, Water Allocation Bureau

WATER RIGHT NO. 45-4102
As Modified by Transfer No. 71971

In accordance with the approval of Transfer No. 71971, Water Right No. 45-4102 is now described as follows.

Right Holder: DARRELL M FUNK
 3173 N 4900 E
 MURTAUGH ID 83344

Priority Date: March 15, 1962

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/01	10/31	0.84 CFS	138.0 AF
			0.84 CFS	138.0 AF

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER	NWNWNE	Sec. 21 Twp 11S	Rge 20E	TWIN FALLS County
GROUND WATER	SESWNE	Sec. 21 Twp 11S	Rge 20E	TWIN FALLS County
GROUND WATER	NWSWNE	Sec. 22 Twp 11S	Rge 20E	TWIN FALLS County
GROUND WATER	NWSWNE	Sec. 22 Twp 11S	Rge 20E	TWIN FALLS County
GROUND WATER	SENE	Sec. 22 Twp 11S	Rge 20E	TWIN FALLS County
GROUND WATER	SWSENW	Sec. 22 Twp 11S	Rge 20E	TWIN FALLS County
GROUND WATER	SWSWSW	Sec. 22 Twp 11S	Rge 20E	TWIN FALLS County
GROUND WATER	NWSESW	Sec. 22 Twp 11S	Rge 20E	TWIN FALLS County

PLACE OF USE: IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals	
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
11S	20E	22			39.0	38.0			22.0	37.0		40.0	39.0	38.0	33.0	39.0	40.0	39.0	39.0	443.0

Total Acres: 443

CONDITIONS OF APPROVAL

1. The right holder shall accomplish the change authorized by transfer 71305 by December 22, 2006.
2. If the surface water right(s) appurtenant to the place of use is sold, transferred, leased or used on any other place of use, this right to divert groundwater shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.
3. Use of the rights listed below is limited to a total combined diversion rate of 5.99 cfs and to a total combined annual diversion volume of 1372 af. Combined right nos.: 45-2443, 45-4102, 45-13914.

WATER RIGHT NO. 45-4102
As Modified by Transfer No. 71971

4. Use of the rights listed below is limited to the irrigation of a combined total of 343 acres in a single irrigation season. Combined right nos.: 45-2326, 45-2443, 45-4102, 45-13914.
5. Failure of the right holder to comply with the conditions of transfer 71305 is cause for the Director to rescind approval of the transfer.
6. The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized to be irrigated under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.
7. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
8. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
9. This right is limited to the irrigation of 34.5 acres within the place of use described above in a single irrigation season.
10. After specific notification by the Department, the right holder shall record the quantity of water diverted or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.
11. The use of water for irrigation under this right may begin as early as March 15 and may continue to as late as November 15, provided other elements of the right are not exceeded. The use of water before April 1 and after November 1 under this remark is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than June 29, 2005.
12. This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
13. Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.

This water right is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources.

Dated this _____ day of _____, 20____

DRAFT

Chief, Water Allocation Bureau

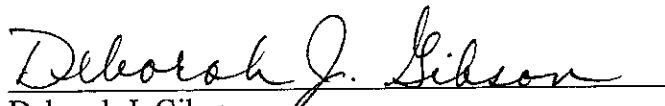
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 18th day of July, 2006, a true and correct copy of the foregoing documents described below were served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to:

Document(s) Served: Preliminary Order, and Explanatory Information Sheet to accompany a Preliminary Order when a hearing has been held.

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

MILNER CONCERNED CITIZENS
C/O RICHARD CARLSON
PO BOX 21
FILER ID 83328


Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau