

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

IN THE MATTER OF APPLICATION)
FOR TRANSFER NOS. 72177 & 72178)
IN THE NAME OF DIAMOND A)
LIVESTOCK, INC.)

**PRELIMINARY ORDER AND
DEFAULT ORDER**

On August 8, 2005, Diamond A Livestock, Inc. ("Diamond A") filed two applications for transfer with the Idaho Department of Water Resources ("IDWR"). IDWR assigned transfer numbers 72177 and 72178 to the applications. The applications for transfer were published and were protested by Christine Davis, Polly Ann Huggins, Heidi Olson, Steve Paulin, LeeAnn Reed, and Nicole Reed. IDWR conducted a hearing for the protests on June 13, 2006. Polly Ann Huggins, Heidi Olson, and LeeAnn Reed (hereafter referred to as "the Protestants") appeared at the hearing and represented themselves. Christine Davis, Steve Paulin and Nicole Reed did not appear at the hearing. Rob Williams, Attorney at Law, appeared on behalf of Diamond A.

ORDER TO AUGMENT RECORD

At the hearing, the protestant offered summaries of waste nutrient (contamination) information prepared by the Department of Agriculture ("Agriculture"), identified as Protestants' Exhibit D. The applicant objected to admission of the information, and the hearing officer stated he would review the proposed Protestant's Exhibit D and determine its admissibility in the preliminary order.

The hearing officer reviewed all of the exhibits and proposed Protestant's Exhibit D. In particular, the hearing officer reviewed the nutrient management plan prepared for the truck wash proposed by application for transfer no. 72177, numbered as Applicant's Exhibit no. 9. The hearing officer found discrepancies in Applicant's Exhibit no. 9, and, on August 24, 2006, issued an *Order to Augment the Record*. The order requiring augmentation of the record stated:

Although the beginning materials in Applicant's Exhibit no. 9 are labeled "Commercial Livestock Washing Facility," the details of the nutrient management plan are titled "Diamond A Truck Wash and Feedlot Nutrient Management Plan." Much of the nutrient management plan contains information about application of waste from the feedlot.

Testimony at the hearing established that liquid waste from the truck wash would be applied to a 72-acre pasture, irrigated by a circular pivot, and identified as

SUPPORT DATA

"Pasture 1." The pasture is located in the S1/2 of the SE of Section 19, and in the N1/2NE1/4 of Section 30, T6S, R15E.

A section of the nutrient management plan titled "Annual Nutrient Budget" begins on page 29. A table at the bottom of page 29 shows the nutrient requirements for the pasture grass and the nutrients added by various sources.

The hearing officer understands that phosphorus concentrations should not exceed the crop uptake, and that the limited phosphorus uptake by the plants often governs the amount of waste that can be applied to a field.

Despite testimony at the hearing that liquid waste would be applied to Pasture 1, the annual nutrient budget for Pasture 1 on page 29 lists "0" nutrients derived from "Truck Wash Liquids." Furthermore, the hearing officer believes there is no opportunity for application of additional nutrients to Pasture 1 because the crop phosphorus requirement equals the phosphorus added from other sources. Any additional nutrients would exceed the crop uptake, resulting in possible contamination.

Beginning on page 6 of the nutrient management plan, there is another summary titled "Manure Application Rate Requirement by Year." The table on page 7 tabulates the predicted nutrients applied to the Pasture 1 from various sources for the years 2006, 2007, 2008, and 2009. A component of the total nutrients are derived from "Truck Wash Liquids."

The hearing officer believes the tables are inconsistent. As a result, the hearing officer is concerned that the nutrient management plan does not accurately describe how the waste from the truck wash will be land applied.

The purpose of this order is to allow the applicant to resolve the identified inconsistencies, and to revise the nutrient management plan, if necessary, to reflect how the waste from the truck wash will be managed.

Because the applicant was given the opportunity to correct inconsistencies, the hearing officer also asked the protestants to clarify information contained in proposed Protestant's Exhibit D. All parties were asked to submit information about phosphorus contamination.

In addition to the above request, the hearing officer seeks additional information about phosphorus contamination. The protestants offered a tabular summary of phosphorus concentrations at various locations in Gooding County. The document is marked as "Protestants' Exhibit D." The column titles identify information that assists the Idaho Department of Agriculture identify the location and size of fields where waste is applied, where information about the contaminants can be found, when tests were conducted, and two columns of numerical values. There is no information that would link the information to Diamond A, its operations, or any other operation nearby.

Above the headings of the last two columns containing numerical values (titled SWSampleP and GWSampleP), someone hand wrote the numbers "26" and "40." During review of the nutrient management plan, the hearing officer found some information in the record that may relate to these numbers. Nonetheless, the protestants should submit a written explanation of the significance of what the numbers mean and any explanation about their significance. In addition, the protestants should submit any information that would link the data to Diamond A, its operations, or any other operation nearby.

Finally, the hearing officer seeks more recent, additional information available to the parties about phosphorus concentrations in Gooding County, and, if possible, the location of the problems.

In the "Order" portion of the document, the hearing officer ordered the following:

1. Diamond A shall submit any revisions to Applicant's Exhibit no. 9 (Nutrient Management Plan) to resolve inconsistencies or conflicts in the nutrient management plan.
2. The protestants shall submit information about the meaning and significance of the numbers "26" and "40" handwritten about the last two spreadsheet columns in Protestant's Exhibit D, and any information about location of the fields identified by the spreadsheet that are associated with or nearby the Diamond A operation.
3. Diamond A and the protestants may submit any more recent, additional information about relevant contaminant levels in Gooding County. This information should also identify proximity to the Diamond A operation.

Diamond A Submittals

On September 12, 2006, Diamond A submitted an *Affidavit of Robert Ohlensehlen*. In the affidavit, Ohlensehlen acknowledged the inconsistencies in the Nutrient Management Plan, admitted into evidence as Applicant's Exhibit no. 9. Ohlensehlen submitted corrections that reflect application of liquid waste from the proposed truck wash onto Pasture 1. On page 29 of Applicant's Exhibit no. 9, the hearing officer pasted a copy of the correction over the incorrect information for Pasture 1.

The hearing officer noticed some of the applied nutrient quantities for "Field 1" changed in the corrections to the nutrient management plan submitted by Ohlensehlen. The changes are not significant, however, and were not replaced in Applicant's Exhibit no. 9.

Ohlensehlen also attached to his affidavit a copy of a permit for the Diamond A truck wash, issued by Agriculture on August 28, 2006. The permit will be considered by the hearing officer.

Finally Ohlensehlen submitted with his affidavit a copy of an analysis of a test conducted on Pasture 1 soils that determines the concentration of phosphorus. The test found a phosphorus concentration of 20 ppm at a soil depth of between 18 inches and 24 inches in depth. Ohlensehlen states in his affidavit that "the phosphorus threshold of 20 ppm has been reached . . . and . . . that nutrients can be applied lawfully to this field at the crop uptake rate . . ."

The hearing officer will consider the soil phosphorus analysis as part of the record.

In paragraphs 5 and 6 of the *Affidavit of Robert Ohlensehlen*, Ohlensehlen discusses other lands that may be able to accept waste from the truck wash. The nutrient management plan does not identify these lands as a place where waste will be applied. As a result, the hearing officer will not consider paragraphs 5 and 6 of the *Affidavit of Robert Ohlensehlen*. All other portions of the affidavit will be considered.

On September 12, 2006, Ohlensehlen also executed a *Second Affidavit of Robert Ohlensehlen*. In his second affidavit, Ohlensehlen discusses phosphorus standards. Ohlensehlen states in his affidavit that "[p]hosphorus is not necessarily a contaminate." The hearing officer rejects this statement because it appears to be an attempt by Ohlensehlen to diminish the importance of complying with the threshold nutrient standards.

In paragraphs 7 and 8 of the second affidavit, Ohlensehlen briefly describes the standards for phosphorus found in the soils. When there is a surface water concern, the phosphorus threshold is 40 ppm. When there is a shallow ground water concern, the phosphorus threshold is 20 ppm. The hearing officer will consider paragraphs 7 and 8 of the *Second Affidavit of Robert Ohlensehlen*.

All other content of the *Second Affidavit of Robert Ohlensehlen* will not be considered by the hearing officer.

Protestant's Submittals

Protestants Heidi Olson and Polly Ann Huggins submitted a letter and a significant number of documents. Rob Williams, attorney for Diamond A, filed a *Motion to Strike, or Rule Documents Inadmissible, and Response to Submission of Material by Protestants*. The hearing officer reviewed the contents of the documents. The second paragraph of the letter submitted by Olson and Huggins reiterates the phosphorus standards presented by Ohlensehlen. The hearing officer recognizes the efforts of Olson and Huggins to provide information, but the remainder of their letter and the documents submitted do not further explain or clarify proposed Protestants' Exhibit D, nor do they provide new meaningful or relevant information about possible contamination as it relates to the Diamond A application. As a result, the hearing officer will not consider any of the documents submitted by Olson and Huggins in response to the *Order to Augment Record*.

DISCUSSION OF PROPOSED PROTESTANTS' EXHIBIT D

The exhibit identified as Protestants' Exhibit D contains responses from Agriculture to a public information request. Agriculture's responses address four subjects of inquiry. Referring to the documents in the order contained in the exhibit, the first document is an 18 page "Summary of ISDA Testing," titled at the top of each page as "Soil Samples Query." This document will be referred to hereafter as "Protestants' Exhibit D-1." Protestants' Exhibit D-1 is a table with column headings showing an identification number, county, the field name, acreage, sample data, and a column for both surface water and ground water readings.

Protestants' Exhibit D-1 raises issues of both foundation and relevancy. IDWR recognizes that the summary was prepared by Agriculture. The foundational question is: What does the information represent, particularly the sample data? The number "26" is handwritten above the column titled "SWSampleP" The number "40" is handwritten above the column titled "GWSampleP." No units are ascribed to the numbers. No testimony was presented at the hearing explaining the significance of the handwritten numbers, who wrote them, or how the numbers in the columns relate to the handwritten numbers at the top of the columns.

Applicant's Exhibit no. 9 is a Nutrient Management Plan submitted to Agriculture by Diamond A. On page 22 of Applicant's Exhibit no. 9, there is an explanation of phosphorus thresholds for surface and ground water concerns. The discussion refers to a threshold of "40 ppm" for basic soils using a particular testing method when there is a surface water concern. In a table also found on page 22, many of the fields to which Diamond A plans to apply waste are assigned a phosphorus threshold of 40 ppm.

The threshold for phosphorus in areas of ground water concern varies depending on the depth of the soil and the method of determining phosphorus concentration. The table on page 22 of Applicant's Exhibit no. 9 assigns a phosphorus threshold of 20 ppm to three of the fields where waste will be applied. The waste management plan does not refer to the number "26."

The information submitted by both Diamond A and the protestants establish that when there is a surface water concern, the phosphorus threshold is 40 ppm, and when there is a shallow ground water concern, the phosphorus threshold is 20 ppm.

The relevancy issue of Protestants' Exhibit D-1 is: How does the information relate to the project proposed by Diamond A's applications for transfer? The only written linkage between the project proposed by Diamond A and the table is that some of the locations listed in the spreadsheet are in Gooding County. The protestants did not establish a relationship between the document and the Diamond A applications for transfer.

The second document is a one page bar graph titled "Dairy Resource Exportation," and will hereafter be referred to as Protestants' Exhibit D-2. The document is dated 4/22/2003. The bar graph depicts the "sum of" nitrogen, potassium, and phosphorus "exported" in tons. The summary does not explain whether the values depicted were accumulated over the course of one year or whether the values were accumulated over the course of several years. Protestants' Exhibit D-2 is irrelevant for the more compelling reason that Diamond A does not intend to

export waste material in its waste management plan. Protestants' Exhibit D-2 is not relevant to the Diamond A applications for transfer.

The third document is a one page written summary of nutrient management sampling in 2003 to insure compliance with the nutrient management plans approved by Agriculture. The one page summary will be referred to hereafter as "Protestants' Exhibit D-3." The summary shows that between one-third and one-half of the acres where waste is applied are being sampled for target nutrient management, and that 25% of the samples test above the threshold limitations for contaminants. A one in four noncompliance ratio gives one pause. Nonetheless, the protestants did not establish a nexus between the Diamond A proposal and the high incidence of non-compliance. The Diamond A proposal is not an ordinary feedlot or dairy operation. Diamond A has sufficient acreage to apply its waste onsite. Protestants' Exhibit D-3 is not relevant to Diamond A's applications for transfer.

Protestants' Exhibit D is not admitted into evidence.

NOTICE OF DEFAULT

IDWR served a *Notice of Default and Proposed Default Order* on Christine Davis, Steve Paulin, and Nicole Reed. Christine Davis, Steve Paulin, and Nicole Reed did not respond to the *Notice of Default and Proposed Default Order*.

Having reviewed the testimony and the exhibits submitted by the parties, the hearing officer finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Application for transfer nos. 72177 and 72178 propose changes to decreed water right no. 37-2514 and claim to water right no. 37-21492.
2. Water right no. 37-2514 is described in the records of IDWR as follows:

Priority Date:	January 29, 1965
Flow Rate:	3.20 cfs
Annual Volume:	640 acre-feet
Beneficial Use:	Irrigation
Point of Diversion:	NWNWNE ¹ , Section 30, T6S, R15E
Place of Use:	
T06S R15E	Section 19
	Lot 7 (SWSW)
	SESW
	SWSE
	SESE
	<u>Acres</u>
	10.0
	26.0
	27.0
	6.3

¹ In this decision, the public land survey numeric descriptor "1/4" is assumed to follow each two alpha character public land survey locator when the numeric descriptor is missing. For instance, in this example, the full description would be the NE1/4NE1/4, Section 1, Township 9 South, Range 30 East, Boise Meridian.

Section 30	NENE	8.4
	NWNE	37.0
	NENW	38.0
Lot 1	(NWNW)	7.3

Total = 160.0 acres

3. Beneficial use claim no. 37-21492 was filed by Diamond A in October of 2005, and represents a purported domestic use for an existing small truck wash. Because claim no. 37-21492 was only just recently filed, the Snake River Basin Adjudication (SRBA) Court has not yet considered the claim. IDWR has prepared the recommendations for claim no. 37-21492 as follows:

Priority Date:	June 1, 1971
Flow Rate:	0.04 cfs
Volume	2.8 acre-feet
Nature of Use:	Domestic
Point of Diversion:	NESWSE, Section 19, T6S, R15E
Place of Use:	SWSE, Section 19, T6S, R15E

4. The well identified by claim no. 37-21492 was the source of water for a feedlot, a home, a shop, and the small truck wash.

Application for transfer nos. 72177 and 72178 propose the following:

- Discontinue irrigation of two acres under water right no. 37-2514 in the NENW of Section 30, T6S, R15E.
- For the remaining portion of water right no. 37-2514 authorizing irrigation use, change the water right number to 37-21490 and change the place of use of the 158 remaining acres.
- Change the two-acre portion of 37-2514 to water right no. 37-21491, and also change the nature of use, period of use, point of diversion, and place of use for water right no. 37-21491.
- Change the place of use for claim no. 37-21492, and also change the nature of use from domestic to commercial use.
- Describe the commercial use proposed by transfer no. 72177 as a wash facility for large trucks, particularly trucks hauling cattle.

5. Application for transfer no. 72177 proposes that water right no. 37-21491 be changed as follows:

Priority Date:	January 29, 1965
Flow Rate:	0.04 cfs
Volume:	8.0 acre feet
Period of Use:	Full Year
Beneficial Use:	Commercial (Cattle truck wash)

Point of Diversion: NESWSE, Section 19, T6S, R15E
Place of Use: NESWSE, Section 19, T6S, R15E

6. Application for transfer no. 72177 proposes that claim no. 37-21492 be changed as follows:

Priority Date: June 1, 1971
Flow Rate: 0.04 cfs
Volume: 2.8 acre feet
Period of Use: Full Year
Beneficial Use: Commercial (Cattle truck wash)
Point of Diversion: NESWSE, Section 19, T6S, R15E
Place of Use: NESWSE, Section 19, T6S, R15E

7. Application for transfer no. 72178 proposes that claim no. 37-21490 be changed as follows:

Priority Date:	January 29, 1965		
Flow Rate:	3.16 cfs		
Annual Volume:	632 acre-feet		
Beneficial Use:	Irrigation		
Point of Diversion:	NWNWNE, Section 30, T6S, R15E		
Place of Use:	<u>Acres</u>		
T06S R15E	Section 19	Lot 7 (SWSW)	10.0
		SESW	22.0
		SWSE	21.0
		SESE	8.0
	Section 30	NENE	12.0
		NWNE	33.0
		NENW	35.0
		Lot 1 (NWNW)	17.0
Total			= 158.0 acres

8. There is a public need for a facility to wash animal excrement out of livestock hauling trucks. By washing the trucks, the spillage of manure on the roads will be reduced.

9. The proposed truck wash facility will have two wash bays for large livestock hauling trucks. The residue washed from the trucks will primarily be manure excreted by livestock in the trucks while the cattle are being hauled. Diamond A anticipates that two to six trucks will be washed per day at the truck wash facility. With an average of four trucks being washed per day, approximately 6,000 gallons of water must be delivered daily for the truck washing. This equates to a total annual water volume of 6.7 acre-feet per year. Application for transfer no. 72177 offers an annual volume of 10.8 acre-feet per year of water rights for the truck wash.

10. Pressure washing nozzles for the truck wash will discharge water at 25 gallons per minute ("gpm"), and the duration of each truck wash will be one hour. The total flow rate for water right nos. 37-21491 and 37-21492 sought to be transferred is 0.08 cfs, or 36 gpm. The flow rate proposed for transfer exceeds the estimated rate for a single wash nozzle discharge. If more than one nozzle is operating, the actual flow rate will exceed the flow rate proposed for transfer.

11. IDAPA 02.04.23, a portion of the Rules for the Idaho State Department of Agriculture, requires that an owner of a commercial livestock truck washing facility obtain a permit for the facility from the Director of Agriculture. A truck washing facility is a commercial facility if the owner charges a fee for washing trucks. Agriculture has jurisdiction over these water quality matters delegated by the Idaho Department of Environmental Quality ("DEQ"). As part of the permit approval process, the applicant must prepare a nutrient management plan.

12. Robert Ohlensehlen, an animal waste specialist, prepared the nutrient management plan for Diamond A. Ohlensehlen designed the solid separators, the lagoon system, and the delivery system. Ohlensehlen determined that a maximum of 11.2 acres must receive liquid waste from the proposed operation. Ohlensehlen also determined that a maximum of 16.8 acres must receive solid waste from the proposed operation. The maximum number of acres needed for waste application is 28.0 acres. Ohlensehlen rounded the number up to 30 acres.

13. Liquid waste can only be applied to pasture during the growing season. Diamond A will store liquid waste for up to five months. Storage of the waste will require careful management of the water diverted.

14. Liquid waste will be applied at various locations within a 72-acre pasture, irrigated by a circular pivot, and identified as Pasture 1. The pasture is located in the S1/2 of the SE of Section 19, and in the N1/2NE of Section 30, T6S, R15E.

15. Applicant's Exhibit no. 7 analyzes past use of the two acres Diamond A proposes to retire in the NENW of Section 30, T6S, R15E. The exhibit determines that the historical consumptive use was 3.02 acre-feet per acre. The exhibit identifies an annual diversion volume, or duty of water, of 4.0 acre-feet per acre.

16. Applicant's Exhibit no. 7 argues for IDWR approval of the right to divert the entire duty of water of 4.0 acre feet per acre instead of being limited to the consumptive use, by stating: "Water is land applied, therefore consumptive use is assumed to be 75% of diversion volume based on irrigation efficiency."

17. Diamond A's nutrient management plan (Applicant's Exhibit no. 9) discusses the application of irrigation water. On page 4, paragraph 4, it states: "Do not over irrigate cropland to conserve water and nutrients. In addition, over irrigation will increase the incidence of nutrients being moved through the crop root zone beyond the reach of plants."

18. The purpose of the nutrient management plan is to balance the crop nutrient intake with the nutrient application. Percolation below the root zone would move nutrients into the aquifer and cause increases in the nutrient, or contaminant levels.

19. In Appendix B, titled "Nutrient Risk Analysis," and attached to the nutrient management plan (Applicant's Exhibit no. 9), all of the fields identified to receive waste are assessed as initially having an existing phosphorus concentration of "very high" or "critical." In the nutrient leaching section of Appendix B, the analysis for each field contains the following comment: "Some potential for nitrogen leaching if excess water is applied from irrigation and/or precipitation events."

20. A residence is located approximately 440 feet from the nearest liquid waste application site, or only about 150 yards away.

21. Diamond A will apply the liquid waste to pasture ground through gated pipe rather than applying it to the land through pressurized nozzle. Application of the liquid waste with gated pipe will reduce odors released during application.

22. Diamond A's nutrient management plan was submitted to Agriculture on June 1, 2005. The nutrient management plan was received into evidence as Applicant's Exhibit no. 9. The nutrient management plan was corrected as discussed in the "Order to Augment Record" section above.

23. Soil tests of Pasture 1 for phosphorus concluded that phosphorus is found in the soil at concentrations of 20 ppm. This is a threshold concentration, above which all applications of waste containing phosphorus must not exceed the ability of the plants to utilize the phosphorus as a plant nutrient. The nutrient management plan balances the crop needs for phosphorus with the phosphorus provided by applying truck wash waste.

24. Agriculture granted a permit to Diamond A for the truck wash.

25. A domestic well existing on Diamond A property will provide water for the new truck wash. The existing well presently provides water for domestic purposes to a home, a feedlot, and a shop. The well also provided water for the existing smaller truck wash operated by Diamond A for 20 to 30 years. Decreed water right no. 37-10604 authorizes diversion of water for the feedlot. Beneficial use claim no. 37-21492 asserts the right to divert water for the pre-existing truck wash. The home and the shop are not represented by any recorded water right.

26. The domestic use for the home, and the shop is not described by a water right. Nonetheless, at the present time, the domestic use for the home and shop is exempt from the mandatory filing requirement and need not be described by an approved water right.

27. An analysis of drawdowns in the protestants' wells using the Theis equation concludes that the drawdowns caused by additional pumping will be negligible. (See Applicant's Exhibit no. 4).

28. Limited use of water as described in the conclusions of law will not result in an additional flow rate, additional total annual volume diverted, or in consumptive use.

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 § 42-211 and Idaho Code § 42-222.

3. Idaho Code § 202B(3) defines the local public interest as follows:

"Local public interest" is defined as the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource.

4. The proposed transfers will not injure other water rights.

5. The proposed transfers must not enlarge the water rights sought to be transferred. A right could be enlarged by increasing the flow rate, the annual volume diverted, or the annual volume of water consumed.

6. Application for transfer no. 72177 proposes that IDWR recognize the entire irrigation diversion volume for the proposed commercial use. The applicant argues that, because the liquid waste is being land applied, IDWR should determine that losses, including losses to percolation, would continue at the approximate rates for irrigation.

7. A waste management plan is prepared and hopefully employed by the person whose operation is producing waste to insure that the waste is applied in limited quantities to prevent contamination of surface and ground water sources. One of the principles of proper waste management through land application is that water carrying the nutrients be applied at rates that will minimize or even eliminate percolation of the nutrients carried by the water. As a result, IDWR assumes full consumption of the water applied as liquid waste. The total annual volume for a change from irrigation to commercial use shall be the historical consumptive use of the crops grown on the irrigated acres that are proposed to be retired. The consumptive use of 3.02 acre-feet per acre annually, or a total of 6.04 acre-feet is the maximum annual volume of water that can be transferred from two acres of irrigation to the commercial truck washing facilities from water right no. 37-21491.

8. If transfer no. 72177 is approved, the maximum flow rate that can be diverted is 36 gpm, or 0.08 cfs. If one nozzle is washing a truck, the flow rate will be 25 gpm. If two nozzles are operating, the flow rate will be 50 gpm, 14 gpm more than is authorized.

9. Diamond A did not present any information about storage facilities that might dampen maximum peaks in flow rate and reduce the diversion rate from the well to below the maximum allowable.

10. Based on information presented at the hearing, Diamond A must either: (a) Limit its water use to one hose and nozzle and only one wash bay at any given time; or (b) Construct sufficient water storage at the truck wash to provide peak flows in excess of 0.08 cfs; or (c) Install flow control mechanisms that will limit the total flow from the well to the truck wash to 0.08 or less.

11. Despite the close proximity of a home to the proposed liquid waste disposal site, the location of a home, on its own, does not fall within the definitional boundaries of IDWR's public interest review responsibilities.

12. Despite IDWR's rejection of Protestant's Exhibit D, the applicant's waste management plan raises significant concerns about possible future contamination, especially from phosphorus. A violation of water quality standards is cause for IDWR to revoke this water right.

13. The application is in the local public interest.

14. The application will conserve the waters of the state of Idaho.

ORDER

IT IS HEREBY ORDERED that applications for transfer nos. 72177 and 72178 are **Approved**, and all of the water rights that are the subject of the applications for transfer are subject to the following conditions.

Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.

A lockable device subject to the approval of the Department shall be maintained on the diverting works in a manner that will provide the watermaster suitable control of the diversion.

The right holder shall accomplish the change authorized by this transfer within one year of the date of this approval.

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.

Water Right no. 37-21490

Prior to the diversion and use of water under Transfer approval 72178 the right holder shall install and maintain acceptable measuring device, including data logger, at the authorized point of diversion and in accordance with Department specifications, or shall obtain an approved variance from the Department to determine the amount of water diverted from power records or to maintain an existing measuring device.

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.

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.

The period of use for the irrigation described in this approval may be extended to a beginning date of 3/15 and an ending date of 11/15 provided that beneficial use of the water can be shown and other elements of the right are not exceeded. The use of water before 4/15 and after 10/15 is subordinate to all water rights having no subordinated early or late irrigation use and a priority date earlier than the SRBA partial decree date.

Failure of the right holder to comply with the conditions of this right is cause for the Director to rescind approval of transfer no. 72178.

Use of this right is combined with water from North Side Canal Co., Ltd.

Water Right nos. 37-21491 and 37-21492

Prior to diversion and use of water under this water right, the right holder shall install and maintain acceptable measuring devices, including data loggers, at the authorized point of diversion in accordance with Department specifications.

The right holder shall read and record monthly maximum flow rate and monthly accumulated volume. The right holder shall maintain the records in its possession. Upon request by the Department, the right holder shall submit the measurement records to the Department.

Prior to diverting water under this right for commercial purposes, the right holder shall obtain all required approvals from the Idaho Department of Agriculture and the Idaho Department of Environmental Quality.

Failure to adhere to the conditions of this water right is cause for the Director of the Department to revoke the approval of the commercial use authorized by this water right.

The place of commercial use authorized by this approval includes land upon which wastewater may be applied for irrigation purposes to satisfy water quality requirements. Water diverted under this approval shall not be used for irrigation unless the water is first used in the truck wash facility as authorized by water rights 37-21491 and 37-21492.

Failure of the right holder to comply with the conditions of this right is cause for the Director to rescind approval of transfer no. 72177.

Commercial Use is for a truck washing facility.

Rights 37-10604, 37-21491, and 37-21492 are diverted through the point of diversion described above.

Water Right no. 37-21491

Prior to diverting water under this right, the permit holder shall do one of the following:
(a) Limit its water use to one hose and nozzle and only one wash bay at any given time; or (b) Construct sufficient water storage at the truck wash to provide peak flows in excess of 0.08 cfs; or (c) Install flow control mechanisms that will limit the flow from the well to the truck wash to the combined flow rate authorized by this right and right no. 37-21492 (0.08 or less).

Water Right no. 37-21492

Prior to diverting water under this right, the permit holder shall do one of the following:
(a) Limit its water use to one hose and nozzle and only one wash bay at any given time; or (b) Construct sufficient water storage at the truck wash to provide peak flows in excess of 0.08 cfs; or (c) Install flow control mechanisms that will limit the flow from the well to the truck wash to the combined flow rate authorized by this right and right no. 37-21491 (0.08 or less).

DEFAULT ORDER

IT IS HEREBY ORDERED that Christine Davis, Steve Paulin, and Nicole Reed are **Dismissed** as parties to this contested case.

Dated this 29th day of November, 2006.

A handwritten signature in black ink, reading "Gary Spackman", written over a horizontal line.

Gary Spackman
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of November, 2006, a true and correct copy of the document(s) described below were served by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Preliminary Order and Default Order
Explanatory Information to Accompany a Preliminary Order with a hearing.

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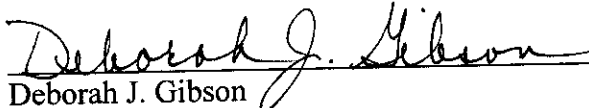
ROBERT E WILLIAMS
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NICHOLE REED
LE ANN REED
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Deborah J. Gibson
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